

BETWEEN

**HER MAJESTY THE QUEEN acting by and through the Minister
of Education**

AND

BARADENE COLLEGE TRUST BOARD

SUPPLEMENTARY AGREEMENT TO INTEGRATION AGREEMENT

DEED dated this day of - 7 APR 1999 199

BETWEEN **HER MAJESTY THE QUEEN** acting by and through the Minister
of Education ("the Minister")

AND **BARADENE COLLEGE TRUST BOARD** ("the Proprietor")

Background

- A. Following the Integration Agreement dated 26th day of March 1983 between the Minister and the Proprietor, **Baradene College, Remuera** was established as an integrated school, pursuant to s 7(2) of the Private Schools Conditional Integration Act 1975.
- B. Under the Integration Agreement the Minister has an obligation to the Proprietor to maintain the school's premises. The Minister and the Proprietor have agreed that this obligation is to be discharged annually in two ways;
- (i) by the Minister funding the Board of Trustees of the school to carry out a certain part of the maintenance of the school premises; and
 - (ii) by the Minister paying a sum of money to the Proprietor for the Proprietor to carry out that part of the maintenance of the school premises not undertaken by the Board of Trustees of the school.
- C. Pursuant to s 7(9) of the Private Schools Conditional Integration Act 1975, the Minister and the Proprietor have agreed to vary the Integration Agreement by this Supplementary Agreement.

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The parties agree as follows:

1. Definitions

1.1 In this Supplementary Agreement, words and expressions have the same meaning as in the Integration Agreement and in the Private Schools Conditional Integration Act 1975, except that if a word or expression is defined in this Supplementary Agreement, that definition shall apply.

1.2 In this Supplementary Agreement:

1.2.1 **“Board of Trustees”** means the Board of Trustees of the School

1.2.2 **“Depreciation Rate”** means the rate at which state school buildings are depreciated, as set out in the “statement of accounting policies” in the Ministry of Education’s Annual Report;

1.2.3 **“Deemed Sum”** has the meaning given to it by clause 5.2;

1.2.4 **“Force Majeure Event”** has the meaning given to it by clause 8.1;

1.2.5 **“Effective Date”** means - 1 JAN 1999 ;

1.2.6 **“Integration Act”** means the Private Schools Conditional Integration Act 1975 and all amendments or any Act passed in amendment or substitution thereto;

1.2.7 **“Integration Agreement”** means the Integration Agreement for the School entered into between the Minister and the Proprietor dated 26th day of March 1983 together with any supplementary agreements thereto;

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1.2.8 “**Minister**” includes the current and all future Ministers of Education, or any Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Integration Act;

1.2.9 “**Ministry of Education Annual Report**” means the annual report of the Ministry of Education presented to the House of Representatives under s 39 of the Public Finance Act 1989, or any Act passed in amendment or substitution thereto;

1.2.10 “**Revised Sum**” has the meaning given to it in clause 5.3;

1.2.11 “**School**” means Baradene College, Remuera;

1.2.12 “**Sum**” means the sum calculated in accordance with clause 5;

1.2.13 “**Supplementary Agreement**” means this supplementary deed of agreement;

1.2.14 “**Year**” means the calendar year from 1 January to 31 December.

1.3 In this Supplementary Agreement:

1.3.1 headings are for reference only and shall not affect or relate to the construction of this Supplementary Agreement;

1.3.2 words that refer to one gender shall be deemed to encompass both genders;

1.3.3 references to clauses are references to clauses of this Supplementary Agreement;



1.3.4 any reference to state schools in this Supplementary Agreement, shall for the purpose of this Supplementary Agreement, not include integrated schools.

2. Effective Date

2.1 This Supplementary Agreement will come into force on the Effective Date.

3. Discharge of Maintenance Obligations

3.1 The Minister shall after the Effective Date pay to the Proprietor in each year the Sum, in consideration for which the Minister's obligations to the Proprietor under the Integration Agreement to maintain the School premises for that year which are not being discharged by the provision of funding by the Minister to the Board of Trustees or otherwise as the Minister thinks fit shall be discharged in full, subject to the provisions of clause 8. The Minister shall be under no obligation to pay any further amount for maintenance to the Proprietor or to undertake any maintenance otherwise than in accordance with this Supplementary Agreement.

3.2 The Minister may pay the Sum to the Proprietor in instalments on the same dates as the Minister provides operations funding to the Board of Trustees and the obligations referred to in clause 3.1 shall be deemed to be discharged at the time that all the instalments of the Sum are paid in each year.

4. Proprietor's maintenance obligation

4.1 The Proprietor must on receipt of the Sum in each year undertake the maintenance of that part of the School premises not required to be undertaken by the Board of Trustees during the course of that year to the standard to which the Crown maintains comparable state schools.

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4.2 The Sum shall be applied to meet the obligation in clause 4.1. After the obligation in clause 4.1 has been met in full and if there is a balance of the sum remaining the Proprietor may apply the balance in the following ways:

4.2.1 to capital works or other purposes directly related to the School;

4.2.2 to maintenance, capital works or other purposes directly related to any other integrated school.

5. Calculation of the Sum

5.1 The Sum will be calculated on or before 1 January of each year in accordance with the following formula:

- (a) The depreciated value (or net carrying value) of the buildings comprising state schools as shown in the most recent Ministry of Education Annual Report (V) is multiplied by the Depreciation Rate (r).
- (b) The figure thus obtained is divided by the total number of students enrolled in state schools as determined by the most recent actual rolls used for the purposes of operations funding in the year preceding that for which sum is being calculated (S), to give a per student amount.
- (c) The per student amount is then multiplied by the number of students enrolled in the School as determined by the most recent actual roll used for the purposes of operations funding in the year preceding that for which the sum is being calculated (R) (which number must not exceed the maximum roll provided for in the Integration Agreement).
- (d) Goods and Services Tax is then added to this figure (GST).

(expressed in the following formula:

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$$\frac{V \times r \times R}{S} + \text{GST} = \text{the Sum})$$

- 5.2 If it is not possible by 1 January in any year to calculate the Sum in accordance with clause 5.1 by using numbers and/or values from the immediately preceding year, the Sum shall be the sum for that preceding year (hereafter referred to as the "Deemed Sum").
- 5.3 If clause 5.2 applies and if the Deemed Sum has been paid in whole or in part in accordance with clause 3.1 the Minister shall calculate the Sum as soon as numbers and/or values are available for the preceding year in accordance with clause 5.1 (the sum so calculated being referred to hereafter as "the Revised Sum").
- 5.4 Subject to the provisions of clause 5.5, in the event that the Revised Sum is more than the Deemed Sum the Minister shall pay the amount of that difference. If the Deemed Sum is more than the Revised Sum the Proprietor shall pay to the Minister the amount of that difference. In either case the payment will be taken into account in the instalments of the Sum paid in accordance with clause 3.2.
- 5.5 If the Minister has in any year and for any reason paid the Proprietor more than the Proprietor is entitled to be paid under this Supplementary Agreement, the Minister may at his election recover the overpayment by deducting it from any instalments of the Sum payable, in the current or any future year or years.
- 5.6 Where the Effective Date is later than 1 January then in the first year of the operation of this Supplementary Agreement the Sum shall be deemed to be the amount of the remaining instalments of the Sum, calculated in accordance with this clause 5 for the whole year, payable for the period from the Effective Date to the end of that year.

6. Information

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- 6.1 The Minister may by notice to the Proprietor, require the Proprietor to supply to the Minister any information including but not limited to accounting or banking records in the possession or control of the Proprietor (whether stored on electronic media or otherwise) relating to the performance of the Proprietor's obligations under the Supplementary Agreement.
- 6.2 The Minister shall be entitled to make and retain copies of any information supplied to the Minister in accordance with clause 6.1.
7. Right to enter premises
- 7.1 Any official or authorised agent of the Ministry of Education shall be entitled on reasonable notice to the Proprietor, to enter the premises of the School for the purpose of auditing and assessing the Proprietor's compliance with clause 4.1.
8. No liability for default in certain circumstances
- 8.1 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Supplementary Agreement, if such act, omission or failure arises from any cause reasonably beyond its control including acts of war, epidemics, earthquakes, or other natural disasters or acts of God. (referred to hereafter as a "Force Majeure Event").
- 8.2 The party unable to fulfil its obligations due to a Force Majeure Event shall:
- 8.2.1 immediately notify the other in writing and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome the event;



8.2.2 use its best endeavours to overcome the event and minimise the loss to the other party; and

8.2.3 continue to perform its obligations as far as practicable.

8.3 Notwithstanding clause 8.1 if in any year Parliament has not appropriated sufficient public money to enable the Minister to meet his obligations to all the proprietors of integrated schools with whom the Minister has entered into a supplementary agreement in the same (or similar) terms to this Supplementary Agreement, the Minister shall not be required to pay the instalments of the Sum from that point onward until an appropriation is made which enables the payment of the Sum to be recommenced. In that event the Minister shall only be required to pay the instalments of the Sum due from the date on which that appropriation is made.

8.4 If the Sum is not paid as a result of clause 8.3, the Minister's obligations under the Integration Agreement to the Proprietor to maintain the School premises, from the point that Parliament decides not to appropriate the monies until an appropriation is made which enables the payment of the Sum to be recommenced, will not be discharged and the Minister will be required to perform those obligations as if this Supplementary Agreement had not been executed.

9. Disputes

9.1 The Minister and the Proprietor shall endeavour to resolve by negotiation any disputes that arise between them concerning this Supplementary Agreement within 30 days of one party advising the other of the existence of the dispute.

9.2 If the Minister and the Proprietor are unable to resolve a dispute by negotiation, they shall refer the matter to mediation, and shall choose jointly a mediator. If the parties are unable to agree on the appointment of a mediator then the

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mediator shall be appointed by the then New Zealand President of LEADR (Lawyers Engaged in Dispute Resolution New Zealand Inc) or failing that by the then President of the New Zealand Law Society. The mediation shall thereafter be conducted by the mediator in accordance with the usual practice for LEADR mediation.

- 9.3 The obligations of the Minister and of the Proprietor under this Supplementary Agreement shall not be affected by any dispute, and each party shall continue to perform its obligations as if the dispute had not arisen.

10. Termination

- 10.1 If the Proprietor is in breach of its obligations under this Supplementary Agreement and if in the reasonable opinion of the Minister the breach is able to be remedied the Minister may by notice to the Proprietor require that the breach be remedied within 60 days (or such further or other period as may be specified) of the date of the notice.
- 10.2 If the breach is not remedied within the period specified in the notice or if in the reasonable opinion of the Minister the breach is not capable of being remedied this Supplementary Agreement may be terminated on the giving of 14 days notice to the Proprietor.
- 10.3 If this Supplementary Agreement is terminated in accordance with this clause the Minister shall remain liable to maintain the School premises in accordance with the provisions of the Integration Agreement.
- 10.4 Nothing in this clause shall be construed as limiting or affecting the powers that the Minister has under the Integration Act.

11. No assignment

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11.1 The Proprietor shall not assign all or any of its obligations under this Supplementary Agreement unless it has first obtained the prior written consent of the Minister

12. No Agency

12.1 The parties acknowledge and agree that the Proprietor is not an agent of the Minister or of the Ministry of Education and may not represent itself by its servants or agents or otherwise that it is an agent of the Minister or of the Ministry of Education.

13. General

13.1 The Minister and the Proprietor shall act in good faith to each other in respect of any dealings or matters under or in connection with this Supplementary Agreement.

13.2 It is acknowledged and agreed that this Supplementary Agreement only varies the Integration Agreement to the extent set out herein.

14. Notice provisions

14.1 All notices which are required to be sent under this Supplementary Agreement shall be in writing and sent to the address for notifications in accordance with the following clause unless otherwise agreed between the parties.

14.1.1 All notices to the Minister shall be sent to The Senior Manager, National Operations, Ministry of Education, PO Box 1666, Wellington, facsimile (04) 499-1327.

14.1.2 All notices to be sent to the Proprietor shall be sent to The Proprietor, Baradene College Trust Board, 111 Shore Road, Remuera, Auckland

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IN WITNESS WHEREOF this deed has been executed on the day and year hereinbefore written.

Signed by **Kathy Phillips**
Senior Manager, National Operations
Ministry of Education pursuant to
authority delegated by the Minister
of Education acting on behalf of
HER MAJESTY THE QUEEN

Kathy Phillips.

in the presence of:

[Signature]
adviser
Wellington

THE COMMON SEAL of
BARADENE COLLEGE TRUST BOARD

was hereunto affixed by
and in the presence of:

[Signature]
A. Haurahan
SBES.

