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**SUMMARY SHEET**

**Information about the Academy:**

<b>Name of Academy Trust</b>	Bosco Catholic Trust
<b>Company number</b>	10573272
<b>Date of Master Funding Agreement</b>	1st February
<b>Name of academy</b>	Annecy Catholic Primary School
<b>Opening date</b>	1 January
<b>Type of academy (indicate whether academy or free school)</b>	Academy
<b>Religious designation</b>	Catholic
<b>Wholly or partly selective</b>	n/a
<b>Name of predecessor school (where applicable)</b>	Annecy Catholic Primary School and Version 3
<b>Capacity number</b>	210
<b>Age range</b>	4-11
<b>Number of sixth form places</b>	n/a
<b>Number of boarding places</b>	n/a
<b>SEN unit / Resource provision</b>	n/a
<b>Land arrangements (Version 1-4 or other)</b>	Version 2
<b>Address and title number of Land</b>	Annecy Catholic Primary School Sutton Avenue, Seaford, East Sussex, BN25 4LF  ESX2385

Clause	Description	Applied	Not used
1.I	Clause 1.I applies to free schools and new academies		X
2.A.1	Clause 2.A.1 applies to academies which were an academy or a foundation school with a religious character		X
2.C, 2.F	Clause 2.C, 2.F applies to academies where the academy has an independent school		X
2.E	Clause 2.E applies to academies where there was a predecessor school		X
2.G	Clause 2.G does not apply to free schools which were a predecessor school, or new provision	X	
2.M	Clause 2.M applies only to academies and free schools with a religious character	X	
2.N	Clause 2.N applies only to academies that were formerly wholly selective grammar schools		X
2.O	Clause 2.O applies only to academies that were formerly partially selective grammar schools		X
2.T	Clause 2.T applies to free schools and new academies designated with a religious character		X
2.W	Clause 2.W only applies where the academy was designated with a religious character	X	
2.X	Clause 2.X only applies where the academy was designated with a religious character		X
2.Y	Clause 2.Y applies to academies which were an academy or a foundation school with a religious character		X

	Description	Applicable to	Applied	Not used
	the academy is an educational institution rather than 'Christian'			
	converter and special delete option 2	religious 'Christian'		X
	free schools and academies if used delete	sponsored	X	
	start-up only applicable not apply to academies	new option 1		X
	to full sponsored academies in Action Plans	in sponsored academies		X
	apply to free schools and predecessor with new provision	and with		X
	Sub-clause 2 with a designatory CE etc. rather than do	rather than do		
	Option 1 applies to academies	academy boarding	X	
	Option 2 applies to free academies: if provision	sponsored academies		X
	Clause 10 relating to State schools and academies	State schools and academies	X	
	Clause 11 (does not convert) apply to free schools and academies	free schools and academies		X
	Clause 12 to be sponsored intermediate Academy to approved	schools and academies		X
	Clause 13 to be not apply to schools and academies	schools and academies		X
	Clause 14 (unless approved school) independent academies	independent academies		X
	Clause 15 applies only to academies	academies		X
	Clause 16 to be school academies	schools which		X
	Clause 17 apply to academies in England	England		X
	Clause 18 to be academies	academies		
	Clause 19 new provision applied	are or	X	
	Clause 20 applies to free schools			
	Clause 21 new provision applied			
	Clause 22 applies to free schools			
	Clause 23 new provision applied			
	Clause 24 applies to free schools			
	Clause 25 new provision applied			
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	Clause 96 applies to free schools			
	Clause 97 new provision applied			
	Clause 98 applies to free schools			
	Clause 99 new provision applied			
	Clause 100 applies to free schools			

# 1. ESTABLISHING THE ACADEMY

1.A This Agreement made between the Secretary of State for Education and Bosco Catholic Education Trust is supplemental to the master funding agreement made between the same parties and dated 1st February 2019 (the "**Master Agreement**").

## Definitions and Interpretation

1.B Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have those same meanings in this Agreement.

1.C The following capitalised words and expressions will have the following meanings:

"**The Academy**" means the Annecy Catholic Primary School

"**Coasting**" has the meaning given by regulations under subsection (3) of section 60B of the Education and Inspections Act 2006 in relation to a school to which that section applies.

"**SEN**" means Special Educational Needs and the expressions "**special educational needs**" and "**special educational provision**" have the meaning set out in sections 20(1) and 21(2) of the Children and Families Act 2014.

"**Termination Notice**" means a notice sent by the Secretary of State to the Academy Trust, terminating this Agreement on the date specified in the notice.

"**Termination Warning Notice**" means a notice sent by the Secretary of State to the Academy Trust, giving his intention to terminate this Agreement.

1.D The Interpretation Act 1978 applies to this Agreement as it applies to an Act of Parliament.

1.E References in this Agreement to clauses and annexes will, unless otherwise

and, of the clauses and annexes to this Agreement.

**The Academy**

1.F The Academy is a mainstream Academy as defined in clause 1.4 of the Master Agreement.

1.G The Academy Trust will establish and maintain the Academy in accordance with the Master Agreement and this Agreement.

1.H The Academy Trust will open the Academy on 1 January 2019.

1.I

**2. TEACHING STAFF**

**Teaching Staff**

2.A In accordance with clause 2.A.2 and 7.A of this Agreement and section 67 of the Children and Families Act 2014, the Academy Trust may, in accordance with the relevant Guidance, employ anyone it believes is suitably qualified or is otherwise able to plan and prepare lessons and courses for pupils, teach them, and assess and report on pupils' development, progress and attainment.

2.A.1

2.A.2 The Academy Trust must designate a staff member at the Academy as a designated person for promoting the educational achievement of registered pupils who are being looked after by an LA or are no longer looked after by an LA because of an adoption, special guardianship or child care order, or because they have been adopted from 'state care' in England and Wales, and in doing so must comply with the law, regulations and guidance that apply to maintained schools. The Academy must ensure the designated person undertakes appropriate training and complies with any guidance issued by the Secretary of State.



## Pupils

2.B The planned capacity of the Academy is 210 in the age range 11-16. The Academy will be an all ability inclusive school.

## SEN Unit

2.C Not used.

2.D Not used.

## Charging

2.E Not used.

## Admissions

2.F Subject to clauses 2.K- 2.L the Academy Trust will act in accordance with, and will ensure that its independent Appeal Panel is trained to act in accordance with, the School Admissions Code and School Admissions Appeals Code published by the DfE (the "Codes") and all relevant admissions law as they apply to foundation and voluntary aided schools, and with equalities law. Reference in the Codes or legislation to "admission authorities" will be deemed to be references to the Academy Trust.

2.G Pupils on roll in a Predecessor School which was a maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at that Predecessor School must be admitted to the Academy.

2.H The Academy Trust must participate in the local Fair Access Protocol. The Academy Trust must participate in the coordinated admission arrangements operated by the LA in whose area the Academy is situated. If the Academy is a free school, the Academy Trust is not required to participate in coordination for its first intake of pupils.

2.I Not used

2.J Not used

2 Not used

2 The Secretary of State may:

a) direct the Academy Trust to admit a named pupil to the Academy:

i. following an application from an LA including, complying with a school attendance order as defined in section 437 of the Education Act 1996. Before doing so the Secretary of State will consult the Academy Trust; or

ii. where in relation to a specific child or child in the Academy Trust has failed to act in accordance with the Codes or this Agreement or has otherwise acted unlawfully; or

b) direct the Academy Trust to amend its admission arrangements, where they do not comply with the Codes or this Agreement, or are otherwise unlawful.

2. The Academy is an Academy designated with a religious character. The relevant religious authority (i.e. the diocese, or foundation faith body) is the Bishop of Arundel and Brighton

2. **Not used**

2. **Not used**

2. The Academy Trust must make arrangements to ensure an independent appeals panel is established for the Academy and its staff and members are trained to act in accordance with the Codes. The Academy Trust must ensure that parents and 'relevant children' (as described in the Codes) are informed of their right to appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The arrangements for appeals must comply with the Codes as they apply to voluntary aided schools. The determination of the appeals panel is binding on all parties.

2. Subject to clause 2.R, the meaning of "relevant area" for the purposes of

consultation requirements in relation to admission arrangements that determined by the relevant LA or maintained schools in the area in accordance with the Education (Religious Areas for Consultation and Admission Arrangements) Regulations 1999.

2.F If the Academy does not consider the relevant area determined by the LA for the maintained schools in the area to be appropriate, it must refer the matter to the Secretary of State by 1 August before the start of the academic year in question for a determination of the appropriate relevant area for the Academy, setting out the reasons for this view. The Secretary of State will consult the Academy Trust and the LA in whose area the Academy is situated in reaching a decision.

2.G The Office of the Schools Adjudicator ("OSA") will consider objections to the Academy's admission arrangements (except objections against any agreed derogations from the provisions of the Codes specified in this agreement, over which it has no jurisdiction). The Academy Trust must therefore make it clear, when entering the Academy's admission arrangements, that objections should be submitted to the OSA. The OSA's determination of an objection is binding on the Academy and the Academy Trust must make appropriate changes to its admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative time scale is specified by the Adjudicator.

2.H **None used.**

## Curriculum

2.J The Academy Trust must provide for the teaching of religious education and a daily act of collective worship at the Academy.

2.K The Academy Trust must comply with section 71(1)-(5) and (6) of the School Standards and Framework Act 1998 as if the Academy were a community, foundation or voluntary school, and as if references to "religious education" and "religious worship" in that section were references to the religious

education and religious worship provided by the Academy in accordance with clause.

2.W Subject to clause 2.V, where the Academy is designated with a religious character (in accordance with section 124B of the School Standards and Framework Act 1998 or further provision in 6(8) of the Academies Act 2010):

- a) provision must be made for religious education to be given to all pupils at the Academy in accordance with the tenets of the Academy's specified religion or religious denomination. This is subject to paragraph 4 of Schedule 1 of the School Standards and Framework Act 1998 which applies as if the Academy were a voluntary controlled school with a religious character;
- b) the Academy Trust must comply with section 70(1) of, and Schedule 20 to, the School Standards and Framework Act 1998 as if the Academy were a foundation school with a religious character or a voluntary school, and as if references to the required collective worship were references to collective worship in accordance with the tenets and practices of the Academy's specified religion or religious denomination;
- c) the Academy Trust must ensure that the quality of religious education given to pupils at the Academy and the contents of the Academy's collective worship given in accordance with the tenets and practices of its specific religion or religious denomination are inspected. The inspection must be conducted by a person chosen by the Academy Trust, and the Academy Trust must ensure that the inspection complies with the statutory provisions and regulations which would apply if the Academy were a foundation school or voluntary school designated as having a religious character.

2.X **Not used.**

2.Y **Not used.**

2.Z The Academy Trust must have regard to any Guidance, further to section 403

of the Education Act 1996, on sex and relationship education to ensure that children at the Academy are protected from inappropriate teaching materials and that they learn the nature of marriage and its importance for family life and for bringing up children. The Academy Trust must also have regard to the requirements in section 405 of the Education Act 1996, as if the Academy were a maintained school.

AA The Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.

## GRANT FUNDING

### Calculation of GAG

A-3D Not used

E The Secretary of State will calculate GAG based on the pupil count at the Academy. In order to calculate GAG for the Academy Financial Year in which the Academy opens, the pupil count will be determined on the same basis as that used by the relevant LA for determining the budget of the maintained Predecessor School.

F For Academy Financial Years after that referred to in clause 3.E the basis of the pupil count for determining GAG will be:

- a) for pupils in Year 11 and below, the Schools Census which is used to fund maintained schools for the financial year overlapping with the Academy Financial Year in question; and
- b) for pupils in Year 12 and above, the formula which is in use at the time for maintained schools.

G The Secretary of State may, at his discretion, adjust the basis of the pupil

count to take account of any diseconomies of scale, which may affect the Academy if it is operating below the planned capacity in clause 2.B. If such an adjustment is made in any Academy Financial Year, this will not change the basis of the pupil count for calculating the following Academy Financial Year's GAG. If the Secretary of State has indicated that additional grant may be payable in such circumstances, the Academy Trust will bid for this additional grant based on need and providing appropriate supporting evidence. The Secretary of State may accept or refuse the bid at his discretion.

3.H **Not used.**

3.I The Secretary of State recognises that if a Termination Notice or a Termination Warning Notice is served, or the Master Agreement is otherwise terminated, the intake of new pupils during the notice period may decline and therefore payments based on the number of pupils attending the Academy may be insufficient to meet the Academy's needs. In these circumstances the Secretary of State may pay a larger GAG in the notice period, to enable the Academy to operate effectively.

#### **Other relevant funding**

3.J **Not used.**

3.K The Secretary of State may pay the Academy Trust's costs in connection with the transfer of employees from a Predecessor School under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Such payment will be agreed on a case-by-case basis. The Academy Trust must not budget for such a payment unless the Secretary of State confirms in writing that it will be paid.

## Carrying forward of funds

3.L Any additional grant made in accordance with clause 3.I, for a period after the Secretary of State has served a Termination Notice or a Termination Warning Notice under this Agreement, or otherwise terminates the Master Agreement, may be carried forward without limitation or deduction until the circumstances set out in clause 3.I cease to apply or the Academy closes.

## 4. LAND

Version 2: existing leasehold site

"Land" means the land at Anney Catholic Primary School, Sutton Avenue, Seaford, East Sussex being the land registered with title number ESX28501 and demised by the Lease.

"Lease" means the lease or other occupational agreement between the Academy Trust and a third party (the "Landlord") under which the Academy Trust derives title to the Land.

"Property Notice" means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord) which materially affects the Academy Trust's ability to use the Land for the purposes of the Academy.

### Restrictions on Land transfer

4A The Academy Trust must:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is transferred to the Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the transfer of the Land to the Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the "Restriction") to be entered in the proprietorship register for the Land:
- b) No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Secretary of

State for Education, of Sanctuary Buildings, Great Smith Street, London  
SW 1P 3BT;

- c) take any further steps reasonably required to ensure that the Restriction is entered on the proprietors' register;
- d) promptly confirm to the Secretary of State when the Restriction has been registered;
- e) if it has not registered the Restriction, permit the Secretary of State to do so in its place; and
- f) not, without the Secretary of State's consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust.

#### Obligations of the Academy Trust

4B The Academy Trust must keep the Land clean and tidy, and make good any damage or deterioration to the Land. The Academy Trust must not do anything to lessen the value or marketability of the Land without the Secretary of State's consent.

4C The Academy Trust must comply with the Lease and promptly enforce its rights against the Landlord.

4D The Academy Trust must not, without the Secretary of State's consent:

- a) terminate, vary, surrender, renew, dispose of or agree any revised rent under the Lease;
- b) grant any consent or licence; or
- c) create or allow any encumbrance; or
- d) part with or share possession or occupation; or
- e) enter into any onerous or restrictive obligations,



in respect of all or part of the Land

#### Option

4E The Academy Trust grants and the Secretary of State accepts an option (the "Option") to acquire the Land at nil consideration. The Secretary of State may exercise the Option in writing on termination of this Agreement. If the Option is exercised, completion will take place 28 days after the exercise date in accordance with the Law Society's Standard Conditions of Sale for Commercial Property in force at that date.

#### Option Notice

4F The Academy Trust:

- a) must, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to the Land Registry on Form AN1 (including a copy of this Agreement) for a notice of the Option (the "Option Notice") to be entered in the register, taking any further steps required to have the Option Notice registered and promptly confirming to the Secretary of State when this has been done;
- b) if it has not registered the Option Notice, agrees that the Secretary of State may apply to register it using Form UN1;
- c) must not, without the Secretary of State's consent, apply to disapply, modify or remove the Option Notice, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Academy Trust; and
- d) must, in the case of previously unregistered land, within 14 days after acquiring the Land or, if later, after signing this Agreement, apply to register a Class C(iv) land charge in the Land Charges Registry, and send the Secretary of State a copy of the relevant entry within 7 days after the registration has been completed. If the Secretary of State considers that the Academy Trust has not complied with this clause, he may apply to secure the registration.

Property Notices

4G If the Academy Trust receives a Property Notice, it must:

- a) send a copy of it to the Secretary of State within 14 days, stating how the Academy Trust intends to respond to it;
- b) promptly give the Secretary of State all the information he asks for about it;
- c) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to comply with it, and
- d) use its best endeavours to help the Secretary of State in connection with it.

Breach of Lease

4H If the Academy Trust is in breach of its Lease, and if it is reasonably foreseeable that it will be, in material breach of the Lease, the Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

4I After notifying the Secretary of State under clause 4.H the Academy Trust must:

- a) promptly give the Secretary of State all the information he asks for about the breach;
- b) allow the Secretary of State to take all necessary action, with or instead of the Academy Trust, to remedy or prevent the breach, and
- c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.

Sharing the Land

4.J Where:

- a) the Secretary of State identifies basic or parental need for additional places in the area in which the Academy is situated; and
- b) the Secretary of State then considers that not all the Land is needed for the

operation of the Academy and planned capacity.

the Secretary of State must consult with the Academy Trust to determine whether part of the Land could be devised or sold to another Academy Trust, as the Secretary of State considers appropriate, for the purpose of that Academy Trust establishing and maintaining an educational institution on the Land.

4.K To the extent that the Academy Trust and the Secretary of State agree to part of the Land being devised or sold in accordance with clause 4.J, the Academy Trust must use its best endeavours to procure either the approval of the landlord or any necessary amendments to the Lease in order to enable it to share occupation of the Land with the incoming Academy Trust and to provide the incoming Academy Trust with security of tenure over the Land occupied by it, and shall enter into any legal arrangements which the Secretary of State requires for this purpose. The Secretary of State shall meet the necessary and reasonable costs incurred by the Academy Trust in connection with this clause.

4.L For the purposes of clause 4.J:

- a) a basic need arises when the forecast demand for pupil places in the area where the Academy is situated is greater than the existing capacity to provide them;
- b) a parental need will arise when the DfE is actually aware of an additional demand for pupil places in the area where the Academy is situated following representations from parents in that area; and
- c) planned capacity has the meaning given in clause 2.B.

**Version 3: existing lease held under church supplemental agreement or lease from private site**

The parties' rights and obligations in respect of the Land are set out in the Church Supplemental Agreement or private lease dated 2008 and made between (1) the Secretary of State (2) the Academy Trust (3); and (4) any relevant religious authority. For the purposes of this clause, Land has the meaning given in the Church Supplemental Agreement or private lease.

## 5. TERMINATION

### Termination by either party

5.A Either party may give at least seven Academy Financial Years' notice to terminate this Agreement. Such termination would take effect on 31 August of the relevant year.

### Termination Warning Notice

5.B The Secretary of State may serve a Termination Warning Notice where he considers that:

- a) the Academy Trust has breached the provisions of this Agreement or the Master Agreement; or
- b) the standards of performance of pupils at the Academy are unacceptably low; or
- c) there has been a serious breakdown in the way the Academy is managed or governed; or
- d) the safety of pupils or staff is threatened, including due to breakdown of discipline; or
- e) the Academy is coasting provided he has notified the Academy Trust that it is coasting.

5.C A Termination Warning Notice served under clause 5 B will specify:

- a) the action the Academy Trust must take;
- b) the date by which the action must be completed; and
- c) the date by which the Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.

5.D The Secretary of State will consider any representations from the Academy Trust which he receives by the date specified in the Termination Warning

Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Academy Trust must take, and the date by which it must be completed.

5 E If the Secretary of State considers that the Academy Trust has not responded to the Termination Warning Notice as specified under clause 5.C(c), or has not completed the action required in the Termination Warning Notice as specified under clauses 5.C(a) and (b) (and any further action specified under clause 5.D) he may serve a Termination Notice.

#### **Termination by the Secretary of State after inspection**

5 F If the Chief Inspector gives notice to the Academy Trust that:

- a) special measures are required to be taken in relation to the Academy;
- or
- b) the Academy requires significant improvement

the Secretary of State may serve a Termination Warning Notice, specifying the date by which the Academy Trust must make any representations.

5 G In deciding whether to give notice of his intention to terminate under clause 5.F, the Secretary of State will have due regard to the overall performance of the Academy Trust.

#### **5 G.1 Not used.**

5 H If the Secretary of State has served a Termination Warning Notice under clause 5.F and:

- a) has not received any representations from the Academy Trust by the date specified in the notice; or
- b) having considered the representations made by the Academy Trust remains satisfied that this Agreement should be terminated;

he may serve a Termination Notice.

5.I If the Chief Inspector gives a notice referred to in clause 5.F to the Academy Trust within two years after the Academy opened, the Secretary of State may only serve a Termination Warning Notice under clause 5.F if:

- a) the Chief Inspector has held a monitoring inspection under section 8 of the Education Act 2005 later than two years after the Academy opened; and
- b) the Chief Inspector considers that the Academy is not making enough progress towards the removal of the designation referred to in his notice.

Nothing in this clause prevents or prejudices the Secretary of State exercising any other rights arising from or under this Agreement (including, for the avoidance of doubt, any rights under clauses 5.B to 5.E).

#### **Termination by the Secretary of State**

5.J If the Secretary of State has determined that the Academy will be removed from the Register of Independent Schools and no appeal against that determination is pending, the Secretary of State may serve a Termination Notice.

5.K *Not used*

5.L *Not used*

5.M *Not used*

5.N *Not used*

5.O *Not used*

#### **Funding and admission during notice period**

5.P If the Secretary of State serves a Termination Notice under clause 5.A, the Academy Trust may continue during the notice period to admit pupils to the Academy and to receive CAG and FAG, in accordance with this agreement.

5.Q If the Secretary of State serves a Termination Warning Notice on

Termination Notice, otherwise than under clause 5.1, the Academy Trust may continue during the notice period to admit pupils to the Academy (unless the Secretary of State specifies otherwise) and to receive GAG and EAG in accordance with the Agreement.

**Notice of intention to terminate the Academy Trust**

5.F The Secretary of State will, before the end of each Academy Financial Year, provide the Academy Trust with a final funding allocation indicating the level of GAG and EAG to be provided in the next Academy Financial Year (**"Funding Allocation"**).

5.G If the Academy Trust is of the opinion that, after receipt of the Funding Allocation for the next Academy Financial Year (the **"Critical Year"**) and after taking into account other resources likely to be available to the Academy, including other funding that is likely to be available to the Academy from other academies operated by the Academy Trust (**"All Other Resources"**), it is likely that the cost of running the Academy during the Critical Year will cause the Academy Trust to become insolvent (and for this reason on the date of its written notice of its intention to terminate the Agreement on 31/12/2017 must be before the Critical Year.

5. Any notice given by the Academy Trust under clause 5.S must be provided to the Secretary of State within six weeks of the Secretary of State issuing the Funding Allocation. The notice given by the Academy Trust under clause 5.S must specify:

- a) the grounds on which the Academy Trust's opinion is based, including:
  - i. evidence of the grounds;
  - ii. any provision of a contract or agreement which the Academy Trust has received;
  - iii. a detailed statement of steps which the Academy Trust proposes to take to ensure that the funding costs of the Academy are met.

reduced such that costs are less than the Funding Allocation and All Other Resources, and the time within which such steps will be taken; and

- b) the shortfall in the Critical Year between the Funding Allocation and All Other Resources expected to be available to the Academy Trust to run the Academy and the projected expenditure on the Academy; and
- c) a detailed budget of income and expenditure for the Academy during the Critical Year (the "Projected Budget").

5.U Both parties will use their best endeavours to ascertain whether or not the cost of running the Academy during the Critical Year will cause the Academy Trust to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how to provide education for the pupils at the Academy and use their best endeavours to agree a practical solution to the problem.

5.V If no agreement is reached by 30 April (or the date it is agreed between the parties) as to whether the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent, then that question will be referred to an independent expert ("the Expert") for resolution. The Expert's determination will be final and binding on both parties. The Expert will be requested to specify in his determination the amount of the shortfall in funding (the "Shortfall").

5.W The Expert will be an insolvency practitioner with significant professional experience of educational institutions or a person with such experience. If the parties fail to agree upon the appointment of the Expert, then the Expert will be appointed by the President of the Institute of Chartered Accountants in England and Wales. The Expert's fees will be borne equally by both parties.

5.X The Expert will be required in reaching his determination to take account of advice from an educational specialist who is professionally familiar with the issues arising from the budget management of schools. If the parties fail to agree upon the appointment of the educational specialist then the educational



specialist will be appointed by the Chairman of the Specialist Schools and Academies Trust (or any successor or equivalent body). The educational specialist's fees will be borne equally between the parties.

5.Y If the Expert determines that the cost of running the Academy during the Critical Year would cause the Academy Trust to become insolvent and the Secretary of State will not have agreed to provide sufficient additional funding to cover the Shortfall, then the Academy Trust will be entitled to terminate this Agreement, by notice expiring on 31 August before the Critical Year. Any such notice will be given within 21 days after (a) the Expert's determination will have been given to the parties or (b), if later, the Secretary of State will have given written notice of his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

#### **Effect of termination**

5.Z If this Agreement is terminated, the Academy will cease to be an academy within the meaning of sections 1 and 1A of the Academies Act 2010.

5.AA Subject to clauses 5.BB and 5.CC, if the Secretary of State terminates this Agreement under clause 5.A, he will indemnify the Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 5.A, he may at his discretion indemnify or compensate the Academy Trust.

5.BB The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to him by the Academy Trust, and will be paid as and when the Secretary of State considers appropriate.

5.CC The categories of expenditure incurred by the Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Academy Trust under clause 5.AA, may include:

- a) staff compensation and redundancy payments;
- b) compensation payments in respect of broken contracts;

- c) expenses of disposing of assets or accepting them for other purposes;
- d) legal and other professional fees; and
- e) dissolution expenses.

5.DD If this Agreement is terminated, and the Academy Trust owns capital assets which have been partly or wholly funded by HM Government, the Academy Trust must, as soon as possible after the termination:

- a) transfer a proportion of those capital assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
- b) if the Secretary of State directs that a transfer under clause 5.DD(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

5.EE The Secretary of State may:

- a) Waive all or part of the repayment due under sub-clause 5.DD (b) if the Academy Trust obtains his permission to invest the sale proceeds for its charitable purposes; or
- b) direct the Academy Trust to pay all or part of the sale proceeds to the relevant LA.

## 6. OTHER CONTRACTUAL ARRANGEMENTS

### Annexes

6.A Any annexes to this Agreement form part of and are incorporated into this Agreement.

### The Master Agreement

6.B Except as expressly provided in this Agreement, all provisions of the Master

Agreement have full force and effect.

## **General**

- 6.C The Academy Trust cannot assign this Agreement.
- 6.D Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate this Agreement), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.
- 6.E Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 6.F This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all of which will together constitute the same agreement.
- 6.G This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.
- 6.H The Secretary of State agrees that this Agreement shall be interpreted in a way which is compatible with the provisions of clauses 20A-F and 23A-H (if used) of the Church Supplemental Agreement dated 2018 and made between (1) the Secretary of State; (2) the Academy Trust; (3) Bishop of Arundel and Brighton; and (4) The Arundel and Brighton Roman Catholic Diocesan Corporation Limited.



**ANNEXES**

**7. MISSION OF CHILDREN AND YOUNG PEOPLE WITH EDUCATIONAL, HEALTH AND CARE PLANS**

“EHC plan” means an Education, Health and Care plan made under section 37 of the Children and Families Act 2014.

7.A The duties set out in clause 8 below on Academies in respect of pupils with special educational needs including the admission of pupils with EHC plans. If an Academy Trust considers that an Academy should not have named the Academy in an EHC plan, it may ask the Secretary of State to determine whether the LA has acted unreasonably, and to make an order directing the LA to reconsider. The Academy Trust must admit the pupil if such a determination is pending. The Secretary of State's determination as to whether the LA has acted unreasonably will be final, subject to any right of appeal which a parent of the pupil may have to the First Tier Tribunal (Special Educational Needs and Disability) or the Upper Tribunal Administrative Appeals Chamber.

**8. MISSION OF CHILDREN WITH STATEMENT OF SPECIAL EDUCATIONAL NEEDS**

(Clauses 8.A-8.C only apply where the pupil has a statement of special educational needs (SEN) rather than an EHC plan and where the statement therefore continues to be subject to the relevant provisions of the Education Act 1996. EHC plans are replacing statements of SEN but although statements of SEN should have been converted to an EHC plan by the 1 April 2013 this clause is retained to protect pupils who do not have a statement of special educational needs for this date. The detail on the drafting of a statement below is retained to protect pupils in exceptional circumstances.)

“Statement of SEN” means a statement made under section 324 of the Education Act 1996.

8.A An Academy Trust must admit all children with a statement of SEN naming the Academy.

- 8.B The my Trust must have regard to the Special Educational Needs Code of Practice 2001 when dealing with statements of Special Educational Needs.
- 8.C When the LA sends the Academy/Trust a draft statement with a proposal that a child is named in the final statement, the Academy/Trust must respond within 15 working days unless the time period falls within a school holiday in which case the Academy/Trust must respond within 10 working days of the end of the school holiday.
- 8.D If the Academy/Trust must either name the child in the final statement or explain why it believes that admitting the child would be in the best interests of the child, including why it believes that a provision of efficient education for other children would be disrupted, including why no reasonable steps could be taken to avoid the Academy/Trust must have regard to the relevant Code of Practice. If the Academy/Trust does not agree with the LA's proposal, and names the child in the final statement, the Academy/Trust must admit the child to the school specified in the statement or otherwise name the child in the final statement. The final decision as to whether the child is named in the final statement falls to the LA.
- 8.E If the Academy/Trust considers that the LA should not name the child in the final statement, it may ask the Secretary of State whether the LA has acted unreasonably, and may request the LA to reconsider. The Academy/Trust may not name the child in the final statement if such a request is pending. The Secretary of State's decision may be appealed to any right of appeal which a parent of the child may have to the First-tier Tribunal (Special Educational Needs and Disability) or the Administrative Appeals Chamber.
- 8.F If the parent of a child for whom the LA maintains a statement of Special Educational Needs appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Administrative Appeals Chamber, either for or against the naming of the child in the final statement, the parent must also appeal to the First-tier Tribunal (Special Educational Needs and Disability) or the Administrative Appeals Chamber against the naming of the child in the final statement.

the Academy in the child's statement, then the Tribunal's decision will be binding, even if it is different from that of the Secretary of State.

8.G Where it has been finally determined that the Academy be named in a child's Statement of SEN, the Academy Trust must admit the child to the Academy, notwithstanding any other admissions requirements in this Agreement.

8.H Clauses 8.A to 8.G only apply insofar as the relevant provisions of the Children and Families Act 2014 relating to SEN and disability do not apply to Academies and Free Schools.



Department  
for Education

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