

**BOSCO CATHOLIC EDUCATION TRUST**  
**ADVICE ON DfE MULTI ACADEMY TRUST**  
**MODEL MASTER FUNDING AGREEMENT (v December 2014)**

<b>Clause No.</b>	<b>Subject/Amendment (if any)</b>	<b>Advice</b>
1.3 and 1.4	Definition of "Supplemental Agreement"	This definition refers to an additional and separate funding agreement that needs to be entered into with the Secretary of State for each Academy school within the multi academy trust ("MAT") structure.
1.4	Definitions of types of Academies and Characteristics of an Academy	<p>The model funding agreement for academies and free schools has been revised and combined in this hybrid model, so that the new models encompasses all academy types that the multi academy trust could run in one model. If for example the MAT does not have any alternative provision academies, then the alternative provision references simply won't apply.</p> <p>The definitions of the different types of Academies reflect the provisions of the Academies Act 2010 and the characteristics that each Academy school must demonstrate entitling it to funding.</p> <p>The requirements of a Mainstream Academy or Free School are those set down in Section 1A of the Academies Act 2010 requiring it to be an independent school, having a balanced and broadly based curriculum, providing education for pupils with different abilities and for pupils who are wholly or mainly drawn from the area in which it is situated.</p>
1.13	Legal Agreement	<p>This clause is the key operative provision of the Agreement. In return for establishing and maintaining a number of "independent" schools, the Secretary of State ("SoS") will provide funding.</p> <p>Sub-clause 1.13d) is relevant to special schools (for example, if a special school were to join the multi academy trust at a later date) and is in addition to any SEN obligations imposed upon Academies directly in legislation or regulations or in the Academy's Supplemental Agreement.</p>
1.14 – 1.20	General Conditions of Grant and Conduct	<p>This clause sets out the general conditions that the MAT must comply with to receive funding.</p> <p>Amongst other matters, the MAT must comply under clause 1.5 with all relevant legislation</p>

Clause No.	Subject/Amendment (if any)	Advice
		<p>applicable to companies, charities and publicly funded bodies (e.g. equal opportunities, health &amp; safety, public procurement) and specifically the independent school standards regulations, which cover a range of matters such as safeguarding, education standards and dealing with complaints.</p> <p>Clause 1.16 requires the MAT to make arrangements for the receipt and management of donations to the Academy school. The emphasis is on appropriate mechanisms. These will depend on the level of anticipated donations. Relatively small amounts of money can be held in a restricted fund. It may be advisable to set up a separate charity or trust for large sums of money. In which case you will need to consider who are the members of such a trust and the issue of consolidation of accounts if the members of this trust fund are the same as the members of the MAT. You may also need to consider existing funds.</p> <p>Clause 1.20 requires a MAT to make provision for pupils with special education needs (whether or not such pupils have statements). This is consistent with current practice for maintained schools. Clause 2.17 confirms that the MAT can accept payments from a local authority or a charity in respect of the admission of a pupil with SEN.</p>
1.21 – 1.29	Governance and SoS guidance	<p>The MAT will be governed by a Board of Charity Trustees (or strategic Directors). Each Academy school will then be governed by the MAT. The MAT must have regard to any guidance issued from time to time by the SoS regarding Academies, but it is noted that whilst guidance must be properly considered there is no obligation to implement.</p> <p>The MAT is obliged under clause 1.23 to engage with the relevant Local Governing Bodies (if any), or representatives of each Academy school, and that arrangements are put in place for matters relating to the functioning of each Academy school to be brought to the attention of the Trustees of the MAT. These arrangements will largely be dealt with in a Scheme of Delegation.</p> <p>Within 14 days of their appointment, the MAT is obliged to provide to the SoS the names of all new or replacement Members of the MAT and the name of the Member they replaced. The MAT must not appoint any new or replacement Members until it has first informed them, and they have agreed, that their names will be shared with the SoS to enable her to assess their suitability.</p> <p>According to the DfE, the purpose of these clauses is to ensure that unsuitable individuals or organisations do not become involved in the academy sector, and are intended to support academy trusts in their existing endeavours in this area. Any proposed amendments to the MAT Articles of Association relating to the appointment, election, resignation or removal of the</p>

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		<p>Members or Charity Trustees (i.e. the “Governance Articles”) will need SoS consent so that your Articles of Association are not amended to say anything to the contrary.</p> <p>The DfE’s latest preference, but not obligation, is to have 5 Members. The minimum requirement is 3 Members at all times.</p> <p>Please be aware of the DfE’s latest Governors’ handbook which can be found at the following weblink: <a href="https://www.gov.uk/government/publications/governors-handbook--3">https://www.gov.uk/government/publications/governors-handbook--3</a></p>
2.1	Duration of the School Day and Year	<p>The length of the school day and year will be the responsibility of the MAT. This clause protects the MAT’s freedom in relation to deciding the length of the school day and year.</p>
2.2 – 2.8	Teachers and Staff	<p>Please note the contents of clause 2.2 and the Disclosure and Barring (DBS) requirements on all personnel who could potentially come into contact with children, young people and vulnerable groups. The DfE have issued a guidance note on their website on DBS requirements at the following weblink:</p> <p><a href="https://www.gov.uk/government/publications/disclosure-and-barring-service-dbs-guide-for-academies">https://www.gov.uk/government/publications/disclosure-and-barring-service-dbs-guide-for-academies</a></p> <p>Clause 2.5 enables teachers’ levels of pay and conditions of service to be the responsibility of and set by the MAT.</p> <p>You should note in particular that the MAT will be obliged to allow employees access to the TPS and LGPS. This is a restriction on the freedom to adopt such terms and conditions of employment as the MAT sees fit, but there is always the scope for agreeing a specific arrangement with the SoS at some point in the future. Pension (both TPS and LGPS) clauses 2.6 and 2.7 now makes explicit reference to the new Fair Deal guidance.</p>
2.9 – 2.12	School Meals	<p>These clauses apply obligations that you are most probably familiar with. Free school meals are funded through the GAG.</p> <p>These clauses refer to universal free school meals for infants, and free meals for eligible pupils in 16-19 academies.</p>

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		There is also requirement to comply with the new schools food standards legislation at clause 2.10 as if the academy schools within the MAT were still maintained schools and where an academy is providing milk for their pupils, they must provide it free of charge to pupils who are eligible for free school meals under clause 2.11.
2.13 – 2.14	Pupil Premium	At clause 2.14 there is a new requirement on the MAT to report on how year 7 catch up premium is used and the impact it has had on the academy/academies.
2.15 – 2.19	Charging	<p>There must be no charge for admission to or attendance at any Academy school within a MAT, and Academies may only charge pupils where the law might allow a maintained school to charge (i.e. music tuition).</p> <p>As noted above, however, clause 2.17 confirms that the MAT can accept payments from a local authority or a charity in respect of the admission of a pupil with SEN. The MAT can also charge people who are not registered pupils at one of its Academies for education or use of facilities (i.e. letting out sports or conference facilities).</p>
2.20	Exclusions	<p>When a pupil is excluded, funding follows the pupil. Clause 2.20 refers to the pupil exclusions which will form part of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 that came into force in September 2012. More information on these regulations can be found at the following weblink:</p> <p><a href="http://www.education.gov.uk/aboutdfe/statutory/g00210521/statutory-guidance-regs-2012">http://www.education.gov.uk/aboutdfe/statutory/g00210521/statutory-guidance-regs-2012</a></p> <p>This clause seeks to reintroduce the “hard to place” and “fair access” protocols that you will be familiar with.</p>
2.21 – 2.32	Curriculum and Assessment	<p>Whilst the MAT is not bound to deliver the National Curriculum under clause 2.21, these clauses seek to apply specific obligations, including that the curriculum up to the age of 16 is balanced and broadly based (linking to the Article 4 objects clause in your Articles of Association), that the curriculum includes English, mathematics and science and ensuring there is pupil assessment under clauses 2.28 to 2.32, all of which obligations are consistent with the obligations applicable to maintained schools.</p> <p>Clause 2.23 places a duty on the MAT to publish information about its approach to and the content of the curriculum, GCSE and other Key Stage 4 options if applicable, phonics or reading</p>

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		<p>schemes in operation for Key Stage 1 if applicable and how parents (current or prospective) can obtain further information in relation to the Academy's curriculum.</p> <p>There is now greater consistency in the DfE's explicit requirements on academies and free schools in relation to the prohibition on teaching of creationism as an evidence based theory under clause 2.25, and the specific requirement to teach about evolution. In practice all academies and free schools have been prevented by the DfE from teaching creationism, because of the requirement to provide a broad and balanced curriculum.</p> <p>There are also now similar requirements at clause 2.26 on academies in relation to promotion of fundamental British values, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. The clause largely reflects existing independent school standards, which apply to all academies and free schools, but is a recent addition to the model funding agreement.</p> <p>Clause 2.27 places a requirement on the MAT to secure impartial and independent careers advice at its Academy schools.</p> <p>In terms of assessment, there is a duty on the MAT to publish information on the Academy school's website about Key Stage 2 and Key Stage 4 results (where applicable), latest inspection reports and where and how parents can access the latest school performance tables.</p> <p>At clause 2.29, a requirement to seek SoS consent for courses leading to non-approved qualifications funded through GAG now applies. Your academy trust may offer any education or training course leading to a qualification approved by the Secretary of State under section 96 of the Learning and Skills Act 2000. Your academy trust may also offer any other education or training course. But the Secretary of State's written permission is required if the course will be funded from your general annual grant.</p>
3.1 – 3.4	Grant Funding and Financial Responsibility	<p>Funding is to be provided for both revenue and capital commitments for each Academy school. Revenue funding is either provided on a general basis or is earmarked for specific items.</p> <p>These provisions set out:</p>

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		<ul style="list-style-type: none"> <li>• that general annual grant ('GAG') covers your normal running costs and lists typical areas of expenditure, such as salary and administration costs;</li> </ul> <p>that your GAG must include funding equivalent to that which a maintained school with similar characteristics would have received; and funding for functions which the local authority would carry out, if your academy were a maintained school;</p> <p>We would note that there are no guarantees as to levels of either revenue or capital funding, but an annual funding letter will be sent each year (see clause 3.19). The implication from the drafting is that the Academy will receive exactly what the local authority would have allocated if the school had been a maintained school, i.e. there is no top slicing of budgets by the Department. Whilst the specific details will need to be carefully considered you will be familiar with the concepts given your knowledge of the SSFA 98 provisions relating to suspension of the delegated budget where there has been financial mismanagement. We do not expect the application of the principles to be more onerous than the current system for maintained school, although we note that reporting and intervention will be at the behest of the SoS rather than the local authority.</p> <p>Funding based on estimated pupil numbers will only apply to free schools and brand new provision Academy schools and those estimates will only apply until all year-groups have pupils present.</p> <p>The clauses dealing with grant funding should be considered alongside the termination provisions set out in clauses 6.1 to 6.10 (and termination provisions set out the Supplemental Agreement for each Academy school). Termination of the Master Funding Agreement may occur where the MAT becomes insolvent. You should note the personal implications for Trustees/Directors under Company Law with regard to wrongful trading in the event that the MAT carries on trading whilst technically insolvent.</p>
3.5 – 3.11	Capital Grants and Expenditure	<p>No commitment to capital funding is being made in this Agreement and any capital grant is to remain entirely discretionary at clauses 3.5 to 3.11. If the MAT is expecting to receive capital funding, please let us know. We would expect an additional agreement to be entered into dealing with this. You should note that the consent of the SoS is required before the Academy can commit to capital expenditure and what is 'capital expenditure' is listed in clause 3.6. We would note that it is a requirement that capital grant is spent on 'capital expenditure' (with invoices submitted) and grant for 'recurrent expenditure' on everything else.</p>

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		<p>The MAT is also obliged to provide evidence to the SoS that it has obtained all planning and other consents required for any proposed building and infrastructure development to be funded using capital grant under clause 3.8 and if the grant is not used for its intended purpose or a project does not complete, there is the ability for the SoS to clawback part or all of the capital grant.</p>
3.13	Additional Funding	<p>Payment of additional funding is generally on a case by case basis and at the SoS's discretion.</p> <p>To note, under the Supplemental Agreement for a Sponsored Academy, the possibility of financial assistance for proposed redundancies during restructuring may only be for 'full' sponsored and 'intermediate' sponsored projects (and not 'fast-track' sponsored projects) and is limited to two years. This may be a change if you have an old Funding Agreement in place with the SoS (although any financial assistance under your existing Funding Agreement is likely to have only been at the SoS's discretion anyway).</p>
4.6 – 4.8	Academies Financial Handbook	<p>These clauses have been included to reinforce the supremacy of the latest version of the Academies Financial Handbook, which has become the key regulatory tool of the DfE and Education Funding Agency (both to impose obligations on Academies and Free Schools and to provide freedoms, such as the removal of all rights to claim back unspent revenue funding).</p> <p>The MAT must therefore follow the requirements of DfE the latest Academies Financial Handbook under clause 4.6, which the provisions throughout the Master Funding Agreement link to. You should familiarise yourself and keep up to date with the provisions of the Handbook. The latest version of the Academies Financial Handbook can be found at the following weblink:</p> <p><a href="https://www.gov.uk/government/publications/academies-financial-handbook">https://www.gov.uk/government/publications/academies-financial-handbook</a></p>
4.9 – 4.17	Budgeting and Surpluses	<p>It is the responsibility of the MAT under clause 4.9 to ensure that each Academy school balances its budget from Academy Financial Year to Academy Financial Year.</p> <p>We would draw particular attention to the importance of new clause 4.11 which will have important consequences for the Trust. The drafting says that "in circumstances where a predecessor school had a deficit balance and the DfE has settled this with the relevant LA, that amount will be recovered from the Academy Trust's GAG over a period not normally exceeding 3 years (unless the Secretary of State's in his discretion decides otherwise) after the Academy opened". Prior to taking on any schools into the MAT going forward, it will be essential to find out prior to conversion whether the school has a deficit balance and if so what it amounts to and will the DfE/EFA be</p>

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		<p>looking to recoup this from the Trust over a 3 year period.</p> <p>The right of the SoS to claw back surplus General Annual Grant (GAG) funding has now been removed. A MAT may now carry forward unspent GAG under new clause 4.14. (It was previously the case that the MAT was only entitled to carry forward from one year to the next unspent revenue budget for each Academy amounting to no more than 12% of the total revenue payable for the Academy for the next year.)</p> <p>Part of any surpluses can be used for revenue expenditure for the next year, but generally the bulk should be used for the upkeep and improvement of premises and other types of capital expenditure (as defined).</p> <p>An in-year deficit is permitted (see sub-clauses 4.9b and 4.9c).</p>
4.10	Private Funds	The MAT is permitted to accumulate private funds for the benefit of any Academy, but these should be identified separately in the MAT's balance sheet.
4.11	Recouping of Deficit	We would draw particular attention to the importance of new clause 4.11 which may have important consequences for the Trust. The drafting says that "in circumstances where a predecessor school had a deficit balance and the DfE has settled this with the relevant LA, that amount will be recovered from the Academy Trust's GAG over a period not normally exceeding 3 years (unless the Secretary of State's in his discretion decides otherwise) after the Academy opened". Prior to taking on any schools into the MAT going forward, it will be essential to find out prior to conversion whether the school has a deficit balance and if so what it amounts to and whether the DfE/EFA intends to recoup this from the Trust over a 3 year period.
4.1 – 4.5A and 4.18 – 4.26	Financial Reporting	<p>The MAT must appoint an Accounting Officer. The Academy Trust should have regard to the guidance in the Academies Financial Handbook published by the DfE which indicates that the CEO or Executive Principal should be the Accounting Officer for MATs. The responsibilities of the role are set out in the Academies Financial Handbook and HM Treasury's publication 'Managing Public Money' must be adhered to.</p> <p>A formal budget plan must be submitted and approved each Academy Financial Year by the Trustees of the MAT. The accounts must be audited by an independent auditor appointed under arrangements approved by the SoS under clause 4.20. The accounts must be filed with the SoS as the "Principal Regulator" under clause 4.4. The accounts must comply with any Statement of</p>

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		Recommended Practice (SORP) that applies to charity accounts and the accounts must also be filed with Companies House under clause 4.18.
4.27 – 4.33	Restrictions on Dealings	The MAT is prevented from acquiring and disposing of certain publicly funded or capital assets without the consent of the SoS.
4.34	Power to Borrow	There is no power to borrow without having to first get the SoS's consent which is likely to be refused. The MAT is not permitted to maintain a formal pre-arranged overdraft without the SoS's consent.
5.1 – 5.4	Complaints	<p>These provisions should be noted by the MAT. Your academy trust must abide by legislation that applies to maintained schools in relation to any complaint that was being, had been or could have been investigated by the Local Government Ombudsman before each school became an Academy. The Secretary of State may investigate such complaints as though they had taken place post-conversion and the MAT must abide by any order and/or direction he makes. Your MAT must complete investigations (using the predecessor school's complaints procedure) where they had not been completed by the governing body of the predecessor school; and carry out an investigation (using your complaints procedure) where the matter being complained about took place in the 12 months before the school became an Academy.</p> <p>The EFA's role is to check whether the complaint has been dealt with properly. It is not to overturn an Academy's decision about a complaint.</p> <p>If the EFA finds an Academy did not deal with a complaint properly, it will request the complaint is looked at again from the appropriate stage, following a process which meets the regulations. If the Academy's complaints procedure does not meet the regulations, the EFA will ask the Academy to put this right. If appropriate, the EFA may seek to enforce the decision under the terms of the funding agreement on behalf of the Secretary of State.</p>
6.1 – 6.6	Termination	The SoS may terminate the Master Funding Agreement if the MAT becomes insolvent.
6.7 – 6.10	Change of Control	<p>Please note the termination rights available to the SoS in the event of any change of control of the MAT (or indeed a change of control of any entity that itself controls the MAT, such as a sponsor or particular body that is a Member of the MAT in their corporate capacity).</p> <p>You will note in the definition of "Control" at clause 1.4 of the Master Funding Agreement that this</p>

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		<p>includes circumstances when the MAT Membership changes (i.e. where one Member resigns and another is appointed or if a Member resigns and that Member had the ability to appoint a majority of the Board of Trustees).</p> <p>However, there is a proviso in the drafting at clause 6.8 to avoid the need for the MAT to be concerned about these control provisions every time a Member changes by virtue of their office / post.</p> <p>Please note, there is a requirement to inform the SoS of a change / proposed change of Control (see clause 6.9) and it may therefore be advisable to seek the SoS's agreement before any change so that a termination clause is not triggered (see clause 6.10).</p>
7 onwards	General provisions	Please note.

This is only an overview of the most significant provisions in the Master Funding Agreement for Multi Academy structures and you will need to read the Agreement in full. For further information, please contact Winckworth Sherwood.