

**DEED OF NOVATION AND VARIATION
OF THE
FUNDING AGREEMENT FOR WIGAN UTC**



Dated

2015.

The Parties to this Deed are:

(1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the "**Secretary of State**");

(2) **BRIGHT FUTURES EDUCATIONAL TRUST**, a charitable company incorporated in England and Wales with registered company number 07695771 whose registered address is at Lodge House, Cavendish Road, Bowdon, Altrincham, WA14 2NJ("**BFET**"); and

(3) **WIGAN UTC**, a charitable company incorporated in England and Wales with registered company number 07695542 whose registered address is at Wigan UTC Academy, New Market Street, Wigan, Lancashire, WN1 1RP (the "**Company**"),

together referred to as the "**Parties**".

INTRODUCTION

- A. Wigan UTC is an academy within the meaning of the Academies Act 2010 (the "**UTC**") and is currently operated by the Company (a single academy trust).
- B. The Secretary of State and the Company entered into a funding agreement on 29th October 2012 (the "**Funding Agreement**") for the maintenance and funding of the UTC.
- C. With effect from 00.01 am on 1 March 2015 ("**Transfer Date**"), BFET will assume responsibility for the management and operation of the UTC in succession to the Company.
- D. The Parties wish to novate the Funding Agreement to BFET and to vary the terms of the Funding Agreement subject to the provisions of this Deed.



LEGAL AGREEMENT

1. Any word or phrase used in this Deed shall, if that word or phrase is defined in the Funding Agreement, bear the meaning given to it in the Funding Agreement.

NOVATION

2. The Company transfers all its rights and obligations under the Funding Agreement to BFET with effect from the Transfer Date. With effect from the Transfer Date, BFET shall enjoy all the rights and benefits of the Company under the Funding Agreement, and all references to the Company in the Funding Agreement shall be read and construed as references to BFET.

3. BFET agrees to perform the Funding Agreement and be bound by its terms in every way as if it were the original party to it in place of the Company with effect from the Transfer Date.

4. The Secretary of State agrees to perform the Funding Agreement and be bound by its terms in every way as if BFET were the original party to it in place of the Company.

OBLIGATIONS AND RESPONSIBILITIES

5. With effect from the Transfer Date, the Company and the Secretary of State release each other from all future obligations to the other under the Funding Agreement.

6. Each of the Company and the Secretary of State release and discharge the other from all claims and demands under or in connection with the Funding Agreement arising after the Transfer Date.

7. Each of BFET and the Secretary of State will have the right to enforce the Funding Agreement and pursue any claims and demands under the Funding Agreement against the other with respect to matters arising before, on or after the date of this Deed as though BFET were the original party to the Funding Agreement instead of the Company.



VARIATION

8. The Secretary of State and BFET agree that with effect from the Transfer Date the Funding Agreement shall be amended and restated so as to take effect in the form set out in Schedule 1 to this Deed.

9. As varied by this Deed, the Funding Agreement shall remain in full force and effect.

10. This Deed shall be governed by and interpreted in accordance with English law.

11. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this deed or its subject matter or formation (including non-contractual disputes or claims).

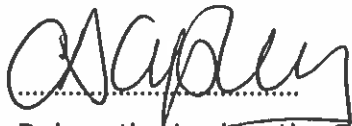
COUNTERPARTS

12. This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.



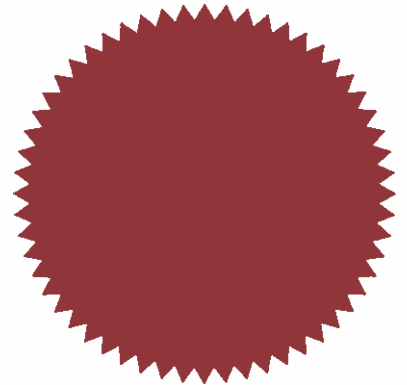
IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the last date listed below.

EXECUTED as a deed by affixing the corporate seal)
of **THE SECRETARY OF STATE FOR EDUCATION**)
authenticated by:-)



Duly authorised by the **SECRETARY OF STATE FOR EDUCATION**

Date 26 February 2015



EXECUTED as a deed by
BRIGHT FUTURES
EDUCATIONAL TRUST acting
by two directors:

Director 

Print name DANA ROSS-WAWRZYNSKI

Date 25.02.15

Director

Print name

Date.....



EXECUTED as a deed by
WIGAN UTC acting by two
directors:

Director 

Print name..... C J HATHERALL

Date

~~Director~~

~~Print name.....~~

~~Date.....~~

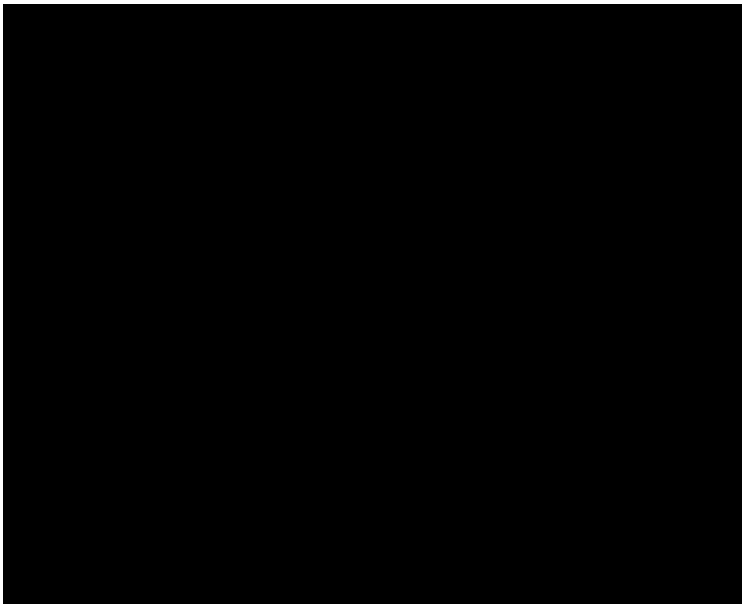
In the presence of:-

Witness Signature: K. Dickens.

Witness Name :

Witness Address :

Witness Position :





**SCHEDULE 1
AMENDED FUNDING AGREEMENT**

DATED

2015

(1) THE SECRETARY OF STATE FOR EDUCATION

(2) BRIGHT FUTURES EDUCATIONAL TRUST

**SUPPLEMENTAL FUNDING AGREEMENT
RE: Wigan UTC**

SCHEDULE 1
AMENDED FUNDING AGREEMENT

THIS AGREEMENT made

2015

BETWEEN

- (1) **THE SECRETARY OF STATE FOR EDUCATION**; and
- (2) **BRIGHT FUTURES EDUCATIONAL TRUST (“the Company”)**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 17th August 2011 as amended by deed of variation dated 1st June 2012 and by a deed of variation dated 30th June 2014 (the “Master Agreement”).

1 DEFINITIONS AND INTERPRETATION

1.1 Except as expressly provided in this Agreement words and expressions defined in the Master Agreement shall have the same meanings in this Agreement as were ascribed to them in the Master Agreement.

1.2 The following words and expressions shall have the following meanings:

“the Academy” means the Mainstream Academy called Wigan UTC established at the premises formerly known as Civic Buildings, Market Street, Wigan and now known as Wigan UTC, which is currently registered under title numbers MAN 202019 and MAN 202026;

“Chief Inspector” means Her Majesty's Chief Inspector of Education, Children's Services and Skills or his successor;

“Employer Partner” means Martin Ainscough Holdings Limited (company number 06306316);

“Insured Risks” means fire, lightning, explosion, earthquake, storm, tempest, flood, subsidence, landslip, heave, impact, terrorism, bursting

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or overflowing of water tanks and pipes, earthquake damage by aircraft and other aerial devices or articles dropped there from, riot and civil commotion, labour disturbance and malicious damage and such other risks as the Company insures against from time to time, subject in all cases to any exclusions or limitations as may from time to time be imposed by the insurers or underwriters;

“the Land” means the land (including for the avoidance of doubt all buildings, structures landscaping and other erections) situated at and formerly known as Civic Buildings, Market Street, Wigan and now known as Wigan UTC, being the land registered under Title number MAN 202019, and the land known as land on the north west side of the land formerly known as Civic Buildings aforesaid and now known as Wigan UTC, being the land registered under Title number MAN 202026 making up the permanent site of the Academy;

“the Lease” means the leasehold agreements or their equivalent between the Wigan UTC and Wigan Borough Council (“the Landlord”) in respect of the Land upon which the Academy is situated;

“Start-up period” means up to a maximum of 3 Academy Financial Years and covers the period up to the first Academy Financial Year in which all age groups are present at the Academy (that is, all the pupil cohorts relevant to the age-range of the Academy will have some pupils present); and

“Termination Notice” means a notice sent by the Secretary of State to the Company, terminating this Agreement on the date specified in the notice.

“University Partner” means University of Central Lancashire.

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1.3 Reference in this Agreement to clauses and Annexes shall, unless otherwise stated, be to clauses and annexes of this Agreement.

2 THE ACADEMY

2.1 The Company will establish and maintain, and carry on or provide for the carrying on of the Academy in accordance with the Master Agreement and this Agreement. The Academy will be subject to the provisions of the Master Agreement which are applicable to a Mainstream Academy, save as amended by this Agreement.

2.2 The curriculum provided by the Academy to pupils up to the age of 16 shall be broad and balanced including provision for technical education with an emphasis on engineering.

2.3 The requirements for the admission of pupils to the Academy are set out at **Annex 1**.

2.3A The Company must ensure that so far as is reasonably practicable and consistent with (i) the provisions of the Master Agreement and this Agreement as they relate to the provision of religious education and collective worship; and (ii) the Equality Act 2010, the policies and practices adopted by the Academy (in particular regarding curriculum, uniform and school food) enable pupils of all faiths and none to play a full part in the life of the Academy, and do not disadvantage pupils or parents of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of pupils of any faiths or none currently attending or predicted to join the school.

ACADEMY OPENING DATE

2.4 The Academy opened as a school on 2 September 2013. The planned capacity of the Academy is 500 in the age range 14-19, including a sixth form of 250 places.

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FURTHER CONDITIONS OF GRANT

- 2.5 Further to the conditions and requirements of grant which apply to the Academy by virtue of clause 13 of the Master Agreement, in establishing the Local Governing Body for the Academy in accordance with the Articles, the Company shall ensure that the majority of those appointed to the Local Governing Body for the Academy shall be from the University Partner and the Employer Partner.

SAFEGUARDING

- 2.6 (i) The Academy will abide by the requirements of and have regard to any guidance issued by the Secretary of State on
- (a) safeguarding, in particular that contained in the guidance document entitled "Safeguarding Children and Safer Recruitment in Education", as amended from time to time; and
 - (b) the employment and work placement/work experience opportunities for pupils, in particular that contained in the document entitled "Guidance on the Employment of Children", as amended from time to time
- (ii) The Academy will take appropriate steps to ensure that any employment and work placement/work experience opportunities for pupils are suitable, so as to safeguard the health, safety and welfare of pupils whilst employed or on work placement/work experience either on or off the school premises.

CURRICULUM, CURRICULUM DEVELOPMENT AND DELIVERY

- 2.7 The Company shall not, in respect of the Academy, make provision in the context of any subject for the teaching, as an evidence-based view

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or theory, of any view or theory that is contrary to established scientific and/or historical evidence and explanations.

- 2.8 The Company shall, in respect of the Academy make provision for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.9 The Company shall ensure that principles in the Academy are promoted which support fundamental British values, including: respect for the basis on which the law is made and applied in England; respect for democracy and support for participation in the democratic processes; support for equality of opportunity for all; support and respect for the liberties of all within the law; and respect for and tolerance of different faiths and religious and other beliefs.
- 2.10 Clause 63 of the Master Agreement shall not apply to the Academy.

RUNNING OF THE ACADEMY

Pupils

- 2.11 The relevant clauses in the Master Agreement and Annex B shall 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.

School Meals

Clauses 32 and 33 of the Master Agreement are disapplied and replaced with the following clauses 2.12, 2.13 and 2.14.

- 2.12 The Company must provide school lunches and free school lunches in accordance with the provisions of sections 512(3) and 512ZB(1) of the Education Act 1996 as if references in sections 512 and 512ZB to a

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local authority were to the Company and as if references to a school maintained by a local authority were to any of its Academies.

- 2.13 The Company must comply with school food standards legislation as its Academies were maintained schools.
- 2.14 Where the Company provides milk to pupils, it must be provided free of charge to pupils who would be eligible for free milk if they were pupils at a maintained school.

Governance

- 2.15 The Company must provide to the Secretary of State the names of all new or replacement Directors and members of the Company, stating whether they have been appointed or elected, the date of their appointment or election and, where applicable, the name of the Director or member they replaced as soon as is practicable and in any event within 14 days of their appointment or election.
- 2.16 The Company must not appoint any new or replacement Directors or members until it has first informed them, and they have agreed, that their names will be shared with the Secretary of State to enable him to assess their suitability.
- 2.16A The Company must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Directors or members (“the Governance Articles”) without the Secretary of State’s consent.
- 2.16B Before any change to the Governance Articles is proposed the Company must give notice to the Secretary of State of:
- a) the proposed amendment or removal; and

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b) the reason for it.

2.16C If the Secretary of State consents to the proposed changes, the Company shall approve any changes to the Governance Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Governance Articles and the resolution(s) approving them.

2.17 For each Academy Financial Year, the Company must publish, on the Company's website, information about:

a) the amount of Year 7 literacy and numeracy catch-up premium grant that it will receive during the Academy Financial Year;

b) what it intends to spend its Year 7 literacy and numeracy catch-up premium grant on;

c) what it spent its Year 7 literacy and numeracy catch-up premium grant on in the previous Academy Financial Year;

d) the impact of the previous year's Year 7 literacy and numeracy catch-up premium grant on educational attainment, and how that effect was assessed.

3 CAPITAL GRANT

3.1 Pursuant to clause 35 of the Master Agreement, the Secretary of State may, in his absolute discretion provide Capital Expenditure funding in accordance with any arrangements he considers appropriate.

4 GAG AND EAG

4.1 The Secretary of State agrees to pay GAG and EAG to the Company in relation to the Academy in accordance with the Master Agreement

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subject to clauses 4.2-4.9 below which replace clauses 42A to 49 of the Master Agreement.

4.2 GAG will be paid by the Secretary of State to the Company in order to cover the normal running costs of the Academy. These will include, but are not limited to:

- a) teachers' salaries and related costs (including full and part time teaching staff and seconded teachers);
- b) non-teaching staff salaries and related costs (including pension contributions, educational support staff, administrative and clerical staff and manual and premises related staff);
- c) employees' expenses;
- d) the purchase, maintenance, repair and replacement:
 - (i) of teaching and learning materials and other educational equipment, including books, stationery and ICT equipment and software, sports equipment and laboratory equipment and materials;
 - (ii) of other supplies and services;
- e) examination fees;
- f) repairs, servicing and maintenance of buildings (including redecoration, heating, plumbing, lighting etc); maintenance of grounds (including boundary fences and walls); cleaning materials and contract cleaning; water and sewage; fuel and light (including fuel oil, solid and other fuel, electricity and gas); rents; rates; purchase, maintenance, repairs and replacement of furniture and fittings;

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- g) insurance;
- h) medical equipment and supplies;
- i) staff development (including in-service training);
- j) curriculum development;
- k) the costs of providing school meals for pupils (including the cost of providing free school meals to pupils who are eligible to receive them), and discretionary grants to pupils to meet the cost of pupil support, including support for pupils with special educational needs or disabilities (taking account of the fact that separate additional money will be available for pupils with statements of special educational needs);
- l) administration; and
- m) establishment expenses and other institutional costs.

4.3 Subject to clause 4.10 of this Agreement, GAG for each Academy Financial Year for the Academy will include:

- a) funding equivalent to that which would be received by a maintained school with similar characteristics, determined by the Secretary of State and notified in the Annual Letter of Funding or its equivalent, taking account of the number of pupils at the Academy;
- b) funding for the cost of functions which would be carried out by the local authority if the Academy was a maintained school, such funding to be determined at the discretion of the Secretary of State;

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- c) funding for matters for which it is necessary for the Academy to incur extra costs, to the extent that those costs are deemed in the discretion of the Secretary of State to be necessary; and
- d) payments equivalent to further, specific grants made available to maintained schools, where the Academy meets the requisite conditions and criteria_necessary for a maintained school to receive these grants, such payments to be at the discretion of the Secretary of State.

4.4 Subject to clause 4.6, the basis of the pupil number count for the purposes of determining GAG at the Academy for an Academy Financial Year will be the Company's most recent estimate in respect of the Academy provided in accordance with clause 4.5.

4.5 The Secretary of State shall in advance of each Academy Financial Year for the Academy, at such time or times as he shall determine, request that the Company provides an estimate of the number of pupils on roll in the following September at the Academy for the purposes of determining GAG for an Academy Financial Year at the Academy, and the Company shall provide the requested estimate (such estimate to be based on an objective assessment of numbers) in respect of the Academy to the Secretary of State as soon as reasonably practicable.

4.6 Once the condition specified in clause 4.7 has been satisfied with respect to the Academy for the Academy Financial Year for which funding is being calculated, the basis of the pupil number count for the purpose of determining GAG for the Academy will be:

- a) for the pupil number count for pupils in Year 11 and below, the Schools Census for the relevant month (determined at the

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discretion of the Secretary of State) preceding the Academy Financial Year in question; and

- b) for the pupil number count for pupils in Year 12 and above, the formula which for the time being is in use for maintained schools for the calculation of pupil numbers for pupils in Year 12 and above for the purpose of calculating their level of funding.

4.7 For the purpose of clause 4.6, the condition is satisfied 4 Academy Financial Years after the Academy opening date.

4.8 For any Academy Financial Year in which GAG for the Academy has been calculated in accordance with clauses 4.4 and 4.5 of this Agreement, an adjustment may be made to the following Academy Financial Year's formula funding element of GAG for the Academy to recognise any variation from that estimate greater than or lower than 2.5%. The additional or clawed-back grant will be only that amount relevant to the number of pupils beyond the 2.5% variation.

4.9 For any Academy Financial Year in which GAG for the Academy is calculated in accordance with clause 4.6 of this Agreement, no adjustment will be made to the equivalence funding element in the following Academy Financial Year's equivalence funding element of GAG for the Academy unless the Company demonstrates to the satisfaction of the Secretary of State that there has been a significant impact on costs, such as an extra class. For any other element of GAG for the Academy the Secretary of State may make adjustments to recognise a variation in pupil numbers from that used to calculate the element of grant in question; the basis of these will be set out in the Annual Letter of Funding or its equivalent.

4.10 Clause 74 a) of the Master Agreement shall not apply to the Academy. Any additional grant provided over and above that set out in clauses

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4.3 to 4.9 of this Agreement and made in accordance with clauses 50 of the Master Agreement may be carried forward limitation or deduction until the Start-up Period (as this period is defined in this Agreement) or the circumstances set out in clause 50) of the Master Agreement come to an end.

4.11 If the Secretary of State pays grant not including GAG to the Company on condition either that such grant be used for a particular purpose or purposes or that such grant be used by a certain date, any failure on the part of the Company to use such grant for such a purpose or purposes or by such date may be taken into account by the Secretary of State either:

- (i) in the same Academy Financial Year that such grant is paid to the Company; or
- (ii) in the calculation and/or payment of any subsequent grant to the Company; or
- (iii) by an adjustment to the GAG paid by the Secretary of State to the Company in the following Academy Financial Year or Academy Financial Years.

4.12 If the Secretary of State or his agents pay any grant to the Company in respect of the Academy which includes an amount to cover the VAT which will be payable by the Company in using any such grant for the purposes intended, the Company shall, having paid the VAT to a third party for any goods or services it has purchased from such a third party, where entitled, promptly and, in any event, as soon as is reasonably practicable, submit a VAT reclaim application to Her Majesty's Revenue and Customs (HMRC) in respect of such VAT payment. Any failure on the part of the Company to submit a VAT reclaim application to HMRC or repay the amount recouped to the

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Secretary of State as soon as reasonably practicable following the receipt of any such payment from HMRC may be taken into account by the Secretary of State either:

- (a) in the same Academy Financial Year that any such grant is paid to the Company; or
- (b) in the calculation and/or payment of any subsequent grant to the Company in respect of the Academy; or
- (c) by an adjustment to the GAG paid by the Secretary of State to the Company in respect of the Academy in the following Academy Financial Year or Academy Financial Years.

4A ADDITIONAL FUNDING

4A.1 Not used

4A.2 The Secretary of State may pay further grant in the Start-up period, as determined and specified by him, for costs which cannot otherwise be met from GAG.

4B LEASE

4B.1 If the Company is in material breach of the provisions of the Lease or if it is reasonably foreseeable that the Company will be in material breach of the Lease, the Company shall forthwith give written notice to the Secretary of State specifying the exact nature of the material breach or reasonably foreseeable material breach and such notice shall set out the steps taken or to be taken by the Company to remedy the material breach or reasonably foreseeable material breach and, where appropriate, shall include the timescales relating to any remedial action.

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- 4B.2 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of any material breach or reasonably foreseeable material breach.
- 4B.3 Following the receipt by the Secretary of State of the written notice under clause 4B.1, the Company shall permit the Secretary of State to take all such steps in conjunction with or instead of the Company as may be necessary to remedy or prevent the material breach referred to in the said notice. The Company shall, in such circumstances, use its best endeavours to assist the Secretary of State to remedy or prevent such material breach.
- 4B.4 The Company shall, within 14 days of receiving any order, notice, proposal, demand or any other requirement materially affecting the ability of the Company to use the Land for the purposes of the Academy from any competent authority (including the Landlord), give full particulars by written notice to the Secretary of State and deliver to the Secretary of State copies of such documents as he may require. Such notice shall state what steps, if any actions are required, the Company intends to take in response to the order, notice, proposal, demand or other requirement affecting the Land.
- 4B.5 The Company will at its own cost provide all information reasonably required by the Secretary of State in respect of an order, notice, proposal, demand or any other requirement affecting the Land as referred to in clause 4B.4.
- 4B.6 Following the receipt by the Secretary of State of the written notice under clause 4B.4, the Company shall permit the Secretary of State to take all steps in conjunction with or instead of the Company as may be necessary to comply with any order, notice, proposal, demand or other requirement affecting the Land referred to in the said notice. The

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Company shall, in such circumstances, use all reasonable endeavours to assist the Secretary of State to take the appropriate required steps.

5 TERMINATION

- 5.1 Either party may give not less than seven Academy Financial Years' written notice to terminate this Agreement, such notice to expire on 31 August 2022 or any subsequent anniversary of that date.

Notice of Intention to Terminate by the Company

- 5.2 The Secretary of State shall, at a date preceding the start of each Academy Financial Year, provide to the Company an indication of the level of funding to be provided by the Secretary of State to the Company by way of GAG and EAG in the next following Academy Financial Year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following Academy Financial Year (the "Critical Year") and of the taking into account all other resources available and likely to be available to the Academy, including such funds as are set out in clause 73 of the Master Agreement and such other funds as are and likely to be available to the Academy from other academies operated by the Company ("All Other Resources"), it is likely that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding, to become insolvent (and for this reason only) then the Company may give notice of its intention to terminate this Agreement at the end of the then current Academy Financial Year.
- 5.3 Any notice given by the Company under clause 5.2 shall be in writing and shall be served on the Secretary of State not later than 28 February preceding the Critical Year or, if the Secretary of State shall not have given notice of the Indicative Funding to the Company on or

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before the date specified in clause 5.2 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

- 5.3.1. the grounds upon which the Company's opinion is based and include the evidence of those grounds and any professional accounting advice the Company has received and including a detailed statement of steps which the Company proposes to take with a view to ensuring that as soon as reasonably practicable the costs of running the Academy are reduced sufficiently to ensure that such costs are less than the Indicative Funding and All Other Resources and the period of time within which such steps will be taken; and
 - 5.3.2. the shortfall in the Critical Year between the Indicative Funding and All Other Resources expected to be available to the Company to run the Academy and the projected expenditure on the Academy; and
 - 5.3.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "**Projected Budget**").
- 5.4 Both parties undertake to use their best endeavours to agree whether or not the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent. Both parties recognise that they will need to engage in a constructive dialogue at the time about how best to provide education for the pupils at the Academy and undertake to use their best endeavours to agree a practical solution to the problem.
- 5.5 If no agreement is reached by 30 April (or such other date as may be agreed between the parties) as to whether the cost of running the

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Academy during the Critical Year on the basis of the Indicative Funding and All Other Resources would cause the Company to become insolvent, then that question shall be referred to an independent expert (the “Expert”) for resolution. The Expert’s determination shall be final and binding on both parties. The Expert shall be requested to specify in his determination the amount of the shortfall in funding (the “Shortfall”). The Expert shall be an insolvency practitioner with significant professional experience of educational institutions or academies. If the parties fail to agree upon the appointment of the Expert then the Expert shall be appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales. The Expert’s fees shall be borne equally between the parties.

- 5.6 The Expert shall 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 large schools. If the parties fail to agree upon the appointment of the educational specialist then the educational specialist shall be appointed by the Chairman for the time being of the Specialist Schools and Academies Trust. The educational specialist’s fees shall be borne equally between the parties.
- 5.7 If the Expert determines that the cost of running the Academy during the Critical Year would cause the Company, on the basis of the Indicative Funding and All Other Resources, to become insolvent, and the Secretary of State shall not have agreed to provide sufficient additional funding to cover the Shortfall, then the Company shall be entitled to terminate this Agreement, by notice expiring on 31 August prior to the Critical Year. Any such notice shall be given within 21 days after (a) the Expert’s determination shall have been given to the parties or (b), if later, the Secretary of State shall have given written notice of

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his refusal to provide sufficient additional funding for the Academy to cover the Shortfall.

Termination Warning Notice

5.7A The Secretary of State shall be entitled to issue to the Company a written notice of his intention to terminate this Agreement ("Termination Warning Notice") where he considers that:

- a) the Academy is no longer meeting the requirements set out in clause 12 of the Master Agreement (subject to clause 5.11);
- b) the conditions and requirements set out in clauses 2.2, 2.3, 2.3A, 2.5-2.17 of this Agreement and clauses 13-34C of the Master Agreement (where applicable to the Academy) are no longer being met;
- c) the standards of performance of pupils at the Academy are unacceptably low;
- d) there has been a serious breakdown in the way the Academy is managed or governed;
- e) the safety of pupils at the Academy is threatened (whether by breakdown of discipline or otherwise); or
- f) the Company is otherwise in material breach of the provisions of this Agreement.

5.7B A Termination Warning Notice issued by the Secretary of State in accordance with clause 5.7A shall specify:

- a) reasons for the Secretary of State's issue of the Termination Warning Notice;
- b) the remedial measures which the Secretary of State requires the Company to carry out, with associated deadlines, in order to rectify the defaults identified ("Specified Remedial Measures");

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and;

- c) the date by which the Company must respond to the Termination Warning Notice providing its representations with regard thereto and/ or confirm that it accepts and agrees to undertake the Specified Remedial Measures.

5.7C The Secretary of State shall consider any response and representations from the Company which are received by the date specified in accordance with clause 5.7Bc) and shall, within three months of receipt, confirm whether he considers that:

- a) in light of the Company's representations in response to the Termination Warning Notice, some or all of the Specified Remedial Measures are not required to be implemented (and if so which) and/or the Specified Remedial Measures are being or will be implemented with the specified timeframe; or
- b) subject to any further measures he reasonably requires ("Further Remedial Measures") being implemented by a specified date or any evidence he requires being provided, the implementation of such measures has been or will be successfully completed within the specified timeframes; or
- c) he is not satisfied that the Company will rectify the defaults identified in the Termination Warning Notice. (In such circumstances, the Secretary of State may notify the Company of his intention to terminate the Agreement on a specified date.)

5.7D The Secretary of State may by notice in writing terminate this Agreement with effect from a specified date specified in the Termination Warning Notice in the event that:

- a) the Company has not by the date specified in clause 5.7 B c) responded to the Termination Warning Notice either confirming

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that it accepts and agrees to undertake the Specified Remedial Measures or providing its representations with regard to the Specified Remedial Measures; or

- b) the Company has not carried out the Specified Remedial Measures and/or Further Remedial Measures within the specified timeframes;

provided that having considered any representations made by the Company pursuant to clause 5.7B c), the Secretary of State remains satisfied that it is appropriate to terminate the Agreement

Notice of Intention to Terminate

5.7E The Secretary of State may at any time give written notice of his intention to terminate the Agreement where the Chief Inspector gives notice to the Company in accordance with section 13(3) of the Education Act 2005 stating that in the Chief Inspector's opinion –

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

5.7F Any notice issued by the Secretary of State in accordance with clause 5.7E shall invite the Company to respond with any representations within a specified timeframe.

5.7G Where the Secretary of State has given notice of his intention to terminate this Agreement in accordance with clauses 5.7E and 5.7F and:

- (a) he has not received any representations from the Company within the timeframe specified in clause 5.7F; or

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- (b) having considered the representations made by the Company pursuant to clause 5.7F, the Secretary of State remains satisfied that it is appropriate to terminate this Agreement

he may by notice in writing terminate this Agreement, such termination to take effect from the date of the notice.

Termination with Immediate Effect

5.7H Not used.

5.7I If at any time after signing this Agreement and after the Academy has opened, the Secretary of State is of the opinion that, by virtue of low pupil numbers, the Academy is not financially viable, then the Secretary of State may:-

- (a) give a Warning Notice to the Company; or
- (b) by written notice terminate this Agreement forthwith; or
- (c) by written notice provide such notice as he deems appropriate in the circumstances to terminate this Agreement.

For the purposes of this clause a "Warning Notice" means a notice in writing by the Secretary of State to the Company requiring the Company to procure the admission of a sufficient number of pupils by such date as he deems appropriate in the circumstances and setting out the consequences of not procuring the admission of a sufficient number of pupils by the date specified in such Warning Notice.

5.7J If at any time after signing this Agreement, the Parties agree that by virtue of low pupil numbers the Academy is not financially viable, then the Parties jointly may terminate this Agreement having agreed first the precise terms of termination.

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5.8 Not used.

5.9 Not used.

5.10 Not used.

5.11 If the Secretary of State has cause to serve a notice on the Company under section 165 of the Education Act 2002 and a determination (from which all rights of appeal have been exhausted) has been made that the Academy shall be struck off the Register of Independent Schools, he may terminate this Agreement by notice in writing to the Company such termination to take effect on the date of the notice.

5.12A If

- a) Any Director or member of the Company refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) The Secretary of State determines that any Director or member of the Company is unsuitable,

the Secretary of State may:

- i. direct the Company to ensure that the Director or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

5.12B For the purposes of clause 5.12A a Director or member of the Company will be "unsuitable" if that Director or member:

- a) has been convicted of an offence;

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- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Director or member is unsuitable to take part in the management of the Academies.

5.8C For the purposes of clause 5.12B:

- a) a Director or member of the Company will be subject to a “relevant finding” in respect of an offence if:
 - i. that Director or member has been found not guilty of the offence by reason of insanity;
 - ii. that Director or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
 - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) “relevant conduct” is conduct by a Director or member of the Company which is:
 - i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or

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- ii. found to be in breach of professional standards by a professional body; or
- iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Director or member unsuitable to take part in the management of the Academy.

6 EFFECT OF TERMINATION

- 6.1 In the event of termination of this Agreement however occurring, the school shall cease to be an Academy within the meaning of Sections 1 and 1A of the Academies Act 2010.
- 6.2 Subject to clause 6.3 and 6.4, if the Secretary of State terminates this Agreement pursuant to clause 5.1 of this Agreement, the Secretary of State shall indemnify the Company. If the Secretary of State terminates this Agreement other than pursuant to clause 5.1 of this Agreement, the Secretary of State may in his absolute discretion indemnify or (to such extent if any as he may in his absolute discretion consider appropriate) compensate the Company.
- 6.3 The amount of any such indemnity or compensation shall be determined by the Secretary of State having regard to any representations made to him by the Company, and shall be paid at such times and in such manner as the Secretary of State may reasonably think fit.
- 6.4 The categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall (where the Secretary of State terminates this Agreement pursuant to clause 5.1) indemnify the Company and may (where the Secretary of State terminates this Agreement otherwise than pursuant to clause 5.1) in his absolute discretion

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indemnify or compensate the Company include (but not by way of limitation), staff compensation and redundancy payments, compensation payments in respect of broken contracts, expenses of disposing of assets or adapting them for other purposes, legal and other professional fees, and dissolution expenses.

6.5 Subject to clause 6.6, on the termination of this Agreement however occurring, the Company shall in respect of any of its capital assets at the date of termination:

(a) promptly transfer a proportion of the assets to a person nominated by the Secretary of State, if the Secretary of State considers that all or some of those assets need to be used for any educational purpose by that nominee. The proportion of the assets to be transferred shall be the same as the proportion of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later; or

(b) if the Secretary of State confirms that a transfer under clause 6.5(a) is not required, promptly repay to the Secretary of State a sum equivalent to the percentage of the value of the assets at the date of termination, or, by agreement with the Secretary of State, at the date of subsequent disposal of those assets. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original value of those assets, whether that contribution was made on the establishment of the Academy or later.

6.6 The Secretary of State may waive in whole or in part the repayment due under clause 6.5(b) if:

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- a) The Company obtains his permission to invest the proceeds of sale for its charitable objects; or
- b) The Secretary of State directs all or part of the repayment to be paid to the L A.

6.7 The sale or disposal by other means of publicly funded land held for the purposes of an Academy is now governed by Part 3 of Schedule 1 to the Academies Act 2010.

7 ANNEX

7.1 The Annex to this Agreement forms part of and is incorporated into this Agreement.

8 GENERAL

8.1 This Agreement shall not be assignable by the Company.

8.2 No delay, neglect or forbearance on the part of the Secretary of State in enforcing (in whole or in part) any provision of this Agreement or in exercising (in whole or in part) any right conferred on him by this Agreement shall be or be deemed to be a waiver of such provision or right or a waiver of any other provision or right or shall in any way prejudice any right of the Secretary of State under this Agreement or shall amount to an election not to enforce such provision or exercise such right (including, for the avoidance of doubt, any right to terminate this Agreement).

8.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

8.4 This Agreement may be executed in any number of counterparts, each

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of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

9. THE MASTER AGREEMENT

9.1 Except as expressly provided in this Agreement the Master Agreement shall continue in full force and effect.

10 ENGLISH LAW

10.1 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.

10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Restrictions on Land transfer

10B) Recognising that they are or will be receiving publicly funded land at nil consideration (which for the purposes of this transaction shall include leases granted at a peppercorn rent) the Company:

a) shall, within 28 days from the transfer to it of the Land, apply to the Land Registry for a restriction in the proprietorship register (under section 43(1)(a) of the Land Registration Act 2002 in Form RX1 as prescribed by Rule 91 and Schedule 4 of the Land Registration Rules 2003) in the following terms:

No disposition of the registered estate by the proprietor of the

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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 SW1P 3BT

- b) shall take any further steps required to ensure that the restriction referred to in clause 6A(a) is entered on the proprietorship register.
- c) shall provide the Secretary of State with confirmation of the entry of the restriction referred to in clause 6A(a) as soon as practicable after it receives notification from the Land Registry.
- d) in the event that it has not registered the restriction referred to in clause 6A(a), hereby consents to the entering of the restriction referred to in 6A(a) in the register by the Secretary of State (under s.43(1)(b) of the Land Registration Act 2002).
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a restriction entered in accordance with clause 6A(a) or 6A(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company.

Obligations of the Company

- 10C)(i) The Company shall keep the Land clean and tidy and make good any damage it causes to the Land and / or any deterioration to the condition of the Land that may arise from the date of this Agreement, save that the Company shall ensure that any actions undertaken in compliance with this clause shall be consistent with the terms of the Lease. In compliance with this clause, the Company shall not do or cause or permit to be done anything to lessen the value or marketability of the Land save with the express written consent of the Secretary of State.

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10C)(ii) The Company shall observe and comply with its obligations under the Lease and shall promptly enforce its rights against the Landlord.

10C)(iii) The Company agrees it shall seek and obtain the prior written consent of the Secretary of State, not to be unreasonably withheld or delayed before taking any steps to:

- a) terminate, vary surrender or dispose of the Lease; and / or
- b) grant any consent or licence in respect of the Land or any part of it; and / or
- c) create or permit to arise or continue any encumbrance affecting the Land or any part of it; and / or
- d) part with or share possession or occupation of the Land or any part of it; and / or
- e) enter into any onerous or restrictive obligations affecting the Land or any part of it.

10C)(iv) The Company agrees that prior to taking any steps, including but not limited to the service of any notice or waiver of any condition, under any contractual arrangement entered into in respect of the acquisition of the legal interest in the Land, it shall seek and obtain the written consent of the Secretary of State, not to be unreasonably withheld or delayed.

Insurance

10D) The Company shall, save where the terms of the Lease provide for the Landlord to obtain insurance in respect of Land 2:-

- a) keep the Land insured in accordance with the terms of the Lease and in any event with a reputable insurance office against loss or

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damage by the Insured Risks in the sum the Company is advised represents the reinstatement value of the Land from time to time or opt in to the Department's arrangements as set out in the Academies Financial Handbook;

- b) pay the premiums for insurance promptly as they become due and maintain in force the policies of insurance on the Land;
- c) following the incidence of damage to or destruction of the Land and subject to receipt of all necessary consents licences permissions and the like apply the proceeds of the policy of the insurance received for those purposes in rebuilding and reinstating the Land (provided that this clause should be satisfied if the Company provides premises not necessarily identical to the Land as the same existing prior to such damage or destruction occurring) as soon as may be reasonably practicable;
- d) produce to the Secretary of State a copy of the insurance policy whenever reasonably requested and the receipt for the last premium or other evidence of renewal and up to date details of the amount of cover (but no more often than once in any period of 12 months in both cases);
- e) not knowingly do anything whereby any policy of insurance relating to the Land may become void or voidable.
- f) insure against liability in respect of property owners' and third party risks including occupiers liability or opt in to the Department's arrangements as set out in the Academies Financial Handbook.

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Transfer of Land

- 10E) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company hereby grants and the Secretary of State hereby accepts an option, exercisable by the Secretary of State or his nominee, to acquire the said Land or any part thereof at nil consideration. The option hereby granted shall be exercisable (by notice in writing by or on behalf of the Secretary of State) on the termination of this Agreement for whatever cause or in circumstances where the Company is unable to use all or part of the Land as the permanent site of the Academy in accordance with clauses 10H) or 10K). On the exercise of this option, the Law Society's Standard Conditions of Sale for Commercial Property in force at the date of such exercise shall apply to the transaction and completion shall take place 28 days after such exercise.
- 10F) In consideration that it has or will be obtaining a legal interest in the Land, such acquisition being financed by the Secretary of State, the Company:
- a) shall, within 14 days from the transfer to it of the Land or the signing of this Agreement, whichever is the latter, apply to the Land Registry in Form AN1 as prescribed by Rule 81 of the Land Registration Rules 2003 for a notice to be entered in the register (under section 34(3)(a) of the Land Registration Act 2002) to protect the option granted under clause 10E and including a copy of this Agreement as evidence of that option,
 - b) shall take any further steps required to ensure that the notice

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referred to in clause 10F(a) is entered on the proprietorship register,

- c) shall provide the Secretary of State with confirmation of the entry of the notice referred to in clause 10F(a) as soon as practicable after it receives notification from the Land Registry,
- d) in the event that it has not registered the notice referred to in clause 10F(a), hereby consents to the entering of the notice referred to in 10F(a) in the register by the Secretary of State (by application in Form UN1 under s. 34(3)(b) of the Land Registration Act 2002),
- e) shall not, without the consent of the Secretary of State, apply to dis-apply, modify or remove (by cancellation or otherwise) a notice entered in accordance with clause 10F(a) or 10F(d) above, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Company, and
- f) in the case of previously unregistered land, for the further protection of the option granted in Clause 10E the Company shall within 14 days of the acquisition of the legal interest in the Land or the signing of this Agreement, whichever is the latter, make application to register a Class C (iv) land charge in the Land Charges Registry and a Caution against First Registration in the Land Registry and shall provide the Secretary of State with copies of the entries secured thereby within 7 days of completing each registration, respectively. If the Secretary of State is of the view that the Company has failed to perform the registration obligations in this sub-clause he shall be at liberty to

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make his own applications to secure these registrations.

Failure to use the Land for the purposes of the Academy

10H) If the Company is unable to use the Land or any part thereof as the permanent site of the Academy but the Secretary of State agrees not to terminate this Agreement on that basis, the Secretary of State may give notice to the Company that:-

- a) he intends to exercise the option granted under clause 10E) to transfer the Land or the relevant part thereof for nil consideration to himself or his nominee;

Sharing of the Land

10I) The Company agrees that if:

- a) the Academy does not reach its planned capacity over a period of 4 Academy Funding Years; or
- b) notice of termination is served by either the Company or the Secretary of State in accordance with clause 5.1 of this Agreement; or
- c) in the reasonable opinion of the Secretary of State the operation of the Academy at planned capacity does not require the use of the full extent of the Land,
 - i. it will share occupation of the Land with such other Academies as the Secretary of State deems appropriate in the circumstances and enter into such legal

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arrangements in respect of the same as are required by
the Secretary of State; or

10(O) Not Used.

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This Agreement was executed as a Deed on
2015

Executed on behalf of Bright Futures
Educational Trust by:

.....

Director

.....

Director/Secretary

The Corporate Seal of the Secretary of State for Education, hereunto affixed
is authenticated by:

.....

Duly Authorised

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ANNEX TO THIS SUPPLEMENTAL AGREEMENT

Requirements for the Admission for pupils at the
Academy

Annex B



Annex B

REQUIREMENTS FOR THE ADMISSION OF PUPILS TO THE WIGAN UTC

GENERAL

1. This Annex may be amended in writing at any time by agreement between the Secretary of State and the Academy Trust.
2. The Academy Trust will act in accordance with, and will ensure that an Independent Appeal Panel is trained to act in accordance with, all relevant provisions of the School Admissions Code and the School Admission Appeals Code published by the Department for Education ("the Codes") as they apply at any given time to maintained schools and with equalities law and the law on admissions as they apply to maintained schools. For this purpose, reference in the Codes or legislation to "admission authorities" shall be deemed to be references to the governing body of the Academy Trust.
3. Notwithstanding the generality of paragraph 2 of this Annex, the Academy Trust will not participate in the co-ordinated admission arrangements operated by the LA for the first year of opening but will participate in such arrangements operated by the LA in subsequent years and the local Fair Access Protocol.
4. Notwithstanding any provision in this Annex, the Secretary of State may:
 - (a) direct the Academy Trust to admit a named pupil to the Wigan UTC on application from a LA. This will include complying with a School Attendance Order². Before doing so the Secretary of State will consult the Academy Trust.
 - (b) direct the Academy Trust to admit a named pupil to the Wigan UTC if the Academy Trust has failed to act in accordance with this Annex or has otherwise failed to comply with applicable admissions and equalities legislation or the provisions of the Codes.
 - (c) direct the Academy Trust to amend its admission arrangements where they fail to comply with the School Admissions Code or the Admission Appeals Code.
5. The Academy Trust shall ensure that parents and 'relevant children'³ will have

² Local authorities are able to issue school attendance orders if a child is not attending school. These are legally binding upon parents. Such an order might, for instance, be appropriate where a child has a place at an Academy but his/her parents are refusing to send him/her to school. The order will require a parent to ensure his/her child attends a specified school.

³ relevant children' means:

- a) in the case of appeals for entry to a sixth form, the child, and;
- b) in any other case, children who are above compulsory school age, or will be above compulsory school age by the time they start to receive education at the school.



the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy Trust. The Independent Appeal Panel will be independent of the Academy Trust. The arrangements for appeals will comply with the School Admission Appeals Code published by the Department for Education as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel is binding on all parties.

Relevant Area

6. Subject to paragraph 7, the meaning of "Relevant Area" for the purposes of consultation requirements in relation to admission arrangements is that determined by the local authority for maintained schools in the area in accordance with the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

7. If the Academy does not consider the relevant area determined by the local authority for the maintained schools in the area to be appropriate, it must apply to the Secretary of State by 1 August 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 and the LA in which the Academy is situated in reaching a decision.

Requirement to admit pupils

8. Pupils on roll in any predecessor maintained or independent school will transfer automatically to the Academy on opening. All children already offered a place at any predecessor school will be admitted.

9. The Academy will:

- a. subject to its right of appeal to the Secretary of State in relation to a named pupil, admit all pupils with a statement of special educational needs naming the Academy;
- b. adopt admission oversubscription criteria that give highest priority to looked after children, in accordance with the relevant provisions of the School Admissions Code.

Oversubscription criteria, admission number, consultation, determination and objections.

10. The Academy admission arrangements will include oversubscription criteria, and an admission number for each relevant age group⁴. The Academy will consult on its admission arrangements and determine them in line with the requirements within the School Admissions Code.

11. The Academy Trust must make it clear, when determining the Academy's admission arrangements, that objections should be submitted to the Schools Adjudicator.

12. A determination of an objection by the Schools Adjudicator will be binding upon the Academy.

⁴ 'Relevant age group' means 'normal point of admission to the school: for example, year R, Year7 and Year 12.

