

THE BARNSLEY ACADEMY

SUPPLEMENTAL AGREEMENT

2005

Lewis Silkin
12 Gough Square
London EC4A 3DW

GRD/82548.5
07/09/2005
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THIS AGREEMENT made

2005

BETWEEN

(1) **THE SECRETARY OF STATE FOR EDUCATION AND SKILLS**; and

(2) **UNITED LEARNING TRUST**

IS SUPPLEMENTAL TO THE MASTER FUNDING AGREEMENT made between the same parties and dated 2005 (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" The Barnsley Academy to be established in Barnsley.

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 sponsor the Academy.

2.2 The specialism of the Academy will be science with business and enterprise.

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

2.4 The Academy is intended to open on 1 September 2006.

3 **CAPITAL EXPENDITURE**

3.1 The Cash Limit will be £25,506,332.

3.2 The Company's Contribution will be £1,500,000.

3.3 The Capital Costs Spreadsheet is annexed to this Agreement as Annex 2.

3.4 The Capital Cashflow Programme is attached to this Agreement as Annex 3B.

3.5 Payment of Capital Grant is conditional upon the approval by the Secretary of State of the matters set out in Capital Cashflow Programme.

3.6 The Secretary of State agrees to pay Capital Grant to the Company in accordance with the Master Agreement and this Agreement.

4 **IMPLEMENTATION GRANT**

The Secretary of State agrees to pay Implementation Grant to the Company in accordance with Annex 3C to this Agreement.

5 **GAG AND EAG**

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

6 **TERMINATION**

6.1 Either party may give not less than seven years' written notice to terminate this Agreement, such notice to expire on 31 August 2013 or any subsequent anniversary of that date.

6.2 If the Secretary of State is of the opinion that the Academy no longer has the characteristics set out in clause 11 of the Master Agreement or that the conditions and requirements set out in clauses 11 and 12 of the Master Agreement are not being met, or that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State may give notice of his provisional intention to terminate this Agreement.

6.3 Any such notice shall be in writing and shall:

6.3.1 state the grounds on which the Secretary of State considers the Academy no longer has the characteristics set out in clause 11 of the Master Agreement or is not meeting the conditions and requirements of clauses 11 and 12 of the Master Agreement or the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement;

6.3.2 specify the measures needed to remedy the situation or breach;

- 6.3.3. specify a reasonable date by which these measures are to be implemented;
and
- 6.3.4. state the form in which the Company is to provide its response and a reasonable date by which it must be provided.
- 6.4. If no response is received by the date specified in accordance with clause 6.3, the Secretary of State may give the Company 12 months, or such lesser period as he considers appropriate in the circumstances, written notice to terminate this Agreement.
- 6.5. If a response is received by the date specified in accordance with clause 6.3, the Secretary of State shall consider it, and any representations made by the Company, and shall, within three months of its receipt, indicate that:
- 6.5.1. he is content with the response and/or that the measures which he specified are being implemented; or
- 6.5.2. he is content, subject to any further measures he reasonably specifies being implemented by a specified date or any evidence he requires that implementation of such measures have been successfully completed; or
- 6.5.3. he is not satisfied, that he does not believe that he can be reasonably satisfied, and that he will proceed to terminate the Agreement.
- 6.6. In the circumstances of clause 6.5 the Secretary of State shall notify the Company why he believes that he cannot be reasonably satisfied and, if so requested by the Company within thirty days from such notification, he shall meet a deputation including representatives from directors of the Company and the Local Governing Body of the Academy to discuss his concerns. If following such meeting he has good reasons for remaining satisfied that the Academy does not and will not have the characteristics set out in clause 11 of the Master Agreement or does not and will not meet the conditions and requirements set out in clauses 11 and 12 of the Master Agreement or the Company is in material breach of the provisions of this Agreement or the Master Agreement and such breach will not be remedied to his reasonable satisfaction, he shall give the Company twelve months written notice to terminate this Agreement.
- 6.7. 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, the period of twelve months notice referred to in clause 6.6 may be shortened to a period deemed appropriate by the Secretary of State

6.8 The Secretary of State will, by not later than the end of December each 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 financial year (the "Indicative Funding"). If the Company is of the opinion that, after receipt of the Indicative Funding for the next following financial year (the "Critical Year") and of the taking into account all other resources available to the Academy, including such funds as are set out in clause 86 of the Master Agreement and such other funds as are available to the Academy from other ULT academies ("**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 (provided it has complied with clause 37 of the Master Agreement) the Company may give notice of its intention to terminate this Agreement at the end of the then current financial year.

6.9 Any notice given by the Company under clause 6.8 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 before the date specified in clause 6.8 above, within six weeks after the Secretary of State shall have done so. The notice must specify:

6.9.1. 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

6.9.2. 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

- 6.9.3. a detailed budget of income and expenditure for the Academy during the Critical Year (the "Projected Budget").
- 6 10 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.
- 6 11 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 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 chosen by agreement between the parties. If the parties fail to agree 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.
- 6 12 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 the Expert's determination shall have been given to the parties.
- 6 13 The Secretary of State may at any time by notice in writing terminate this Agreement forthwith if the Academy has ceased (except where such cessation occurs temporarily by reason of an event beyond the reasonable control of the Company) to operate as an Academy within the meaning of Section 482 of the Education Act 1996

7 **EFFECT OF TERMINATION**

7.1 In the event of termination of this Agreement however occurring the school shall cease to be an Academy within the meaning of Section 482 of the Education Act 1996.

7.2 If the Secretary of State terminates this Agreement for reasons other than that the Academy no longer has the characteristics set out in clause 7 of the Master Agreement, or is no longer meeting the conditions and requirements set out in clauses 8 and 9 of the Master Agreement that the Company is otherwise in material breach of the provisions of this Agreement or the Master Agreement, the Secretary of State shall indemnify the Company.

7.3 The amount of any such indemnity 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.

7.4 The amounts and categories of expenditure incurred by the Company in consequence of the termination of the Agreement in respect of which the Secretary of State shall indemnify 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.

7.5 On the termination of this Agreement however occurring the Company shall repay to the Secretary of State a sum in respect of the Capital Grant made under clause 3.

7.6 The amount to be repaid to the Secretary of State in accordance with clause 7.5 shall be determined in accordance with subclauses 7.6.1 or 7.6.2 as appropriate.

7.6.1. Where the Company retains the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the value of the assets belonging to the Company at the date of termination which were purchased wholly or in part with capital grants paid under this agreement. Such percentage to be the same as the percentage of the capital contribution made by the Secretary of State to the original cost of those assets, whether that contribution was made on the establishment of the Academy or later;

7.6.2. Where the Company disposes of the site and buildings of the Academy the amount to be repaid to the Secretary of State shall be a percentage of the net proceeds of the realisation of the assets belonging to the Company at the date of termination, which were purchased wholly or in part with capital grants paid under this agreement. 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 than contribution was made on the establishment of the Academy or later.

7.7 The Secretary of State may waive in whole or in part the repayment due under clause 7.6 if:

7.7.1. The Company obtains his permission to invest the proceeds of sale for its charitable objects; or

7.7.2. The Secretary of State directs all or part of the repayment to be paid to the LEA.

7.8 If any land or premises of the Academy were acquired by the Company from an LEA by a scheme under Schedule 35A of the 1996 Act or otherwise at less than the market value of the land at the date of acquisition, and the Secretary of State does not make a scheme as provided for in Schedule 35A (Paragraph 8) of the 1996 Act , the Company may dispose of its interest in that land or premises but only with the consent of the Secretary of State, who shall have regard to any representations from the Company and the LEA from which the land was transferred before giving or withholding that consent.

8 **ANNEXES**

The Annexes to this Agreement form part of and are incorporated into this Agreement.


9 **THE MASTER AGREEMENT**

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

10 **ENGLISH LAW**


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

SIGNED by G. DAVIES)
On behalf of UNITED)
LEARNING TRUST)



Governor

SIGNED by)
On behalf of THE SECRETARY OF STATE)
FOR EDUCATION AND SKILLS)



Duly authorised

19/10/2005

ANNEXES TO THIS SUPPLEMENTAL AGREEMENT

Arrangements for Admission for pupils at the Academy	Annex 1
Capital Costs Spreadsheet	Annex 2
Capital expenditure incurred for the purposes of or in connection with the establishment of the Academy prior to the date of this agreement	Annex 3A
Capital Cashflow Programme (for monthly capital expenditure during the Academy's Implementation phase)	Annex 3B
Implementation phase cashflow programme	Annex 3C
Architects drawings/specification of the new build as proposed up to RIBA Stage D	Annex 4

ANNEX 1

THE ADMISSION OF PUPILS TO BARNSELY ACADEMY

- 1 This document sets out the admission arrangements for Barnsley Academy, throughout this document referred to as “the Academy”. These arrangements are without prejudice to the provisions of Annex C to the Master Agreement. Any changes to the arrangements set out in this document, with the exception of setting a published admission number higher than the agreed admission number for a specific year, must be approved in advance by the Secretary of State.
- 2 The Academy will comply with all relevant provisions of the statutory codes of practice (the School Admissions Code of Practice and the School Admission Appeals Code of Practice) as they apply at any given time to maintained schools and with the law on admissions as it applies to maintained schools. Reference in the codes to admission authorities shall be deemed to be references to the Company. References to “the LEA” shall be deemed to be references to the Barnsley Local Education Authority and references to “the Admissions Forum” to be to the Barnsley LEA Admissions Forum. In particular, the Academy will take part in the Admissions Forum set up by the LEA and have regard to its advice; and will participate in the co-ordinated admission arrangements operated by the LEA.
- 3 Notwithstanding these arrangements, the Secretary of State may direct the Academy to admit a named pupil to the Academy on application from an LEA. Before doing so the Secretary of State will consult the Academy.

ADMISSION ARRANGEMENTS APPROVED BY SECRETARY OF STATE

- 4 The admission arrangements for the Academy for the year 2006/2007 and, subject to any changes approved by the Secretary of State, for subsequent years are:
 - a) The Academy has an agreed admission number of 180 pupils. The Academy will accordingly admit at least 180 pupils in the relevant age group each year if sufficient applications are received;
 - b) The Academy may set a higher admission number as its Published Admission Number for any specific year. Before setting an admission number higher than its agreed admission number, the Academy will consult those listed at paragraph 17 below. Pupils will not be admitted above the Published Admission Number unless exceptional circumstances apply and such circumstances shall be

reported to the Secretary of State.

PROCESS OF APPLICATION

- 5 Applications for places at the Academy will be made in accordance with the LEA's co-ordinated admission arrangements and will be made on the Common Application Form provided and administered by the LEA. The Academy will use the following timetable for applications each year (exact dates within the months may vary from year to year) which, whenever possible, will fit in with the common timetable agreed by the Admissions Forum or LEA:
- a) September - The Academy will publish in its prospectus information about the arrangements for admission, including oversubscription criteria, for the following September (e.g. in September 2005 for admission in September 2006). This will include details of open evenings and other opportunities for prospective pupils and their parents to visit the school. The Academy will also provide information to the LEA for inclusion in the composite prospectus, as required;
 - b) September/October - The Academy will provide opportunities for parents to visit the Academy;
 - c) October/November – Common Application Form to be completed and returned to the LEA to administer;
 - d) November/December - LEA sends application details to Academy;
 - e) January - Academy sends list of pupils to be offered places to LEA;
 - f) February - LEA applies agreed scheme for own schools, informing other LEAs of offers to be made to their residents;
 - g) 1st March offers made to parents.

CONSIDERATION OF APPLICATIONS

- 6 The Academy will consider all applications for places. Where fewer than 180 applications are received, the Academy will offer places to all those who have applied.
- 7 Notwithstanding paragraph 6 above, the Academy may refuse admission to particular applicants in cases where fewer than the published admission number have applied.

These are applicants who have been excluded from two or more other schools and the ability to refuse admissions runs for a period of two years since the last exclusion. Exclusions which took place before the child concerned reached compulsory school age do not count for this purpose.

PROCEDURES WHERE THE ACADEMY IS OVERSUBSCRIBED

- 8 Where the number of applications for admission is greater than the published admissions number, applications will be considered against the criteria set out below. After the admission of pupils with Statements of Special Educational Needs where the Academy is named on the Statement, the criteria will be applied in the order in which they are set out below:
- a) Children who are in Public Care (Looked after Children) at the time of application;
 - b) Children who have specific medical needs, social needs and special needs where the application is supported by written specific professional advice as to why admission to the Academy is necessary. The definition as to what constitutes medical, social and special needs within the scope of this provision will be agreed by ULT and will be available in writing to parents in the prospectus as part of the admissions policy;
 - c) Siblings of pupils who will be attending the Academy on the date when the applicant would be admitted. The term "sibling" means a full, step, half, adopted or fostered brother or sister, but not cousins. The Academy reserves the right to ask for proof of relationship;
 - d) Children who live nearest to the Academy. The distance which determines how close the child lives to the Academy is the shortest walking distance along public highways and footpaths between the door of the child's permanent address to the nearest entrance to the Academy main building. The child's permanent address is where he or she normally lives and sleeps and goes to school from. Proof of residence can be requested at any time throughout the admissions process. If false or misleading information is used to gain entry to the Academy, the offer of a place will be withdrawn and the application cancelled.

OPERATION OF WAITING LISTS

- 9 Subject to any provisions regarding waiting lists in the LEA's co-ordinated admission scheme, the Academy will operate a waiting list. Where in any year the Academy receives more applications for places than there are places available, a waiting list will operate until a month after the admission date. This will be maintained by the Academy and it will be open to any parent to ask for his or her child's name to be placed on the waiting list, following an unsuccessful application.
- 10 Children's position on the waiting list will be determined solely in accordance with the oversubscription criteria set out in paragraphs 8a - d of this Annex. Where places become vacant they will be allocated to children on the waiting list in accordance with the oversubscription criteria.

ARRANGEMENTS FOR APPEALS PANELS

- 11 Parents will have the right of appeal to an Independent Appeal Panel if they are dissatisfied with an admission decision of the Academy. The Appeal Panel will be independent of the Academy. The arrangements for Appeals will be in line with the Code of Practice on School Admission Appeals published by the Department for Education and Skills as it applies to Foundation and Voluntary Aided schools. The determination of the appeal panel will be made in accordance with the Code of Practice on School Admission Appeals and is binding on all parties. The Academy should prepare guidance for parents about how the appeals process will work and provide parents with a named contact who can answer any enquiries parents may have about the process.

ARRANGEMENTS FOR ADMISSION TO POST 16 PROVISION

- 12 The Academy will publish specific criteria in relation to minimum entrance requirements for the range of courses available based upon GCSE grades or other measures of prior attainment.
- 13 There will be a right of appeal to the Independent Appeals Panel for unsuccessful applicants.

ARRANGEMENTS FOR ADMITTING PUPILS TO OTHER YEAR GROUPS, INCLUDING TO REPLACE ANY PUPILS WHO HAVE LEFT THE ACADEMY

- 14 Subject to any provisions in the LEA's co-ordinated admission arrangements relating to applications submitted for years other than the normal year of entry, the Academy must consider all such applications and, if the year group applied for has a place available, admit the child. However, within the exceptional circumstances set out in paragraph 7.7 of the Admissions Code of Practice, the Academy refuse to admit a challenging child where there are places available on the grounds that admission would prejudice the provision of efficient education or the efficient use of resources. If more applications are received than there are places available, the oversubscription criteria shall apply. Parents whose application is turned down are entitled to appeal.

TRANSITIONAL ARRANGEMENTS

- 15 On 31st August 2006, the predecessor school, Elmhirst School, will close. On 1st September 2006, all pupils entering Years 8 to 11 will transfer from the predecessor school to the Academy. The Academy will provide up to 120 places to those entering Years 8 to 11. In the event of over subscription, applications will be considered in accordance with the over subscription criteria set out in paragraph 8 above after the pupils from the predecessor school have been admitted. Pupils entering Years 12 and 13 will transfer from the predecessor school to the Academy on the basis of the specific criteria in relation to minimum entrance requirements for each of the courses available. All pupils from the predecessor school who apply and meet these criteria will be offered a place at the Academy.

ANNUAL PROCEDURES FOR DETERMINING ADMISSION ARRANGEMENTS

CONSULTATION

- 16 The Academy shall consult each year on its proposed admission arrangements.
- 17 The Academy will consult by 1 March:
- a) the LEA;
 - b) Any other admission authorities for primary and secondary schools located within the relevant area for consultation set by the LEA;
 - c) Any other governing body for primary and secondary schools (as far as not

falling within paragraph (b)) located within the relevant area for consultation.

DETERMINATION AND PUBLICATION OF ADMISSION ARRANGEMENTS

- 18 Following consultation, the Academy will consider comments made by those consulted. The Academy will then determine its admission arrangements by 15 April of the relevant year and notify those consulted what has been determined.

PUBLICATION OF ADMISSION ARRANGEMENTS

- 19 The Academy will publish its admission arrangements each year once these have been determined, by:

- a) copies being sent to primary and secondary schools in the LEA;
- b) copies being sent to the offices of the LEA;
- c) copies being made available without charge on request from the Academy;
- d) copies being sent to public libraries in the area of the LEA for the purposes of being made available at such libraries for reference by parents and other persons.

- 20 The published arrangements will set out:

- a) the name and address of the Academy and contact details;
- b) a summary of the admissions policy, including oversubscription criteria;
- c) a statement of any religious affiliation;
- d) numbers of places and applications for those places in the previous year; and
- e) arrangements for hearing appeals.

REPRESENTATIONS ABOUT ADMISSION ARRANGEMENTS

- 21 Where any of those bodies that were consulted, or that should have been consulted, make representations to the Academy about its admission arrangements, the Academy will consider such representations before determining the admission arrangements. Where the Academy has determined its admission arrangements and notified all those bodies whom it has consulted and any of those bodies object to the

Academy's admission arrangements they can make representations to the Secretary of State. The Secretary of State will consider the representation and in so doing will consult the Academy. Where he judges it appropriate, the Secretary of State may direct the Academy to amend its admission arrangements.

- 22 Those consulted have the right to ask the Academy to increase its proposed Published Admissions Number for any year. Where such a request is made, but agreement cannot be reached locally, they may ask the Secretary of State to direct the Academy to increase its proposed Published Admissions Number. The Secretary of State will consult the Academy and will then determine the Published Admission Number.
- 23 In addition to the provisions at paragraphs 21 and 22 above, the Secretary of State may direct changes to the Academy's proposed admission arrangements and, in addition to the provisions above, the Secretary of State may direct changes to the proposed Published Admissions Number.

PROPOSED CHANGES TO ADMISSION ARRANGEMENTS BY THE ACADEMY AFTER ARRANGEMENTS HAVE BEEN PUBLISHED

- 24 Once the admission arrangements have been determined for a particular year and published, the Academy will propose changes only if there is a major change of circumstances. In such cases, the Academy must notify those consulted under paragraph 17 above of the proposed variation and must then apply to the Secretary of State setting out:
- a) the proposed changes;
 - b) reasons for wishing to make such changes;
 - c) any comments or objections from those entitled to object.

NEED TO SECURE SECRETARY OF STATE'S APPROVAL FOR CHANGES TO ADMISSION ARRANGEMENTS

- 25 The Secretary of State will consider applications from the Academy to change its admission arrangements only when the Academy has notified and consulted on the proposed changes as outlined at paragraph 17 above.
- 26 Where the Academy has consulted on proposed changes the Academy must secure

the agreement of the Secretary of State before any such changes can be implemented. The Academy must seek the Secretary of State's approval in writing, setting out the reasons for the proposed changes and passing to him any comments or objections from other admission authorities/other persons.

- 27 The Secretary of State can approve, modify or reject proposals from the Academy to change its admission arrangements.
- 28 Records of applications and admissions shall be kept by the Academy for a minimum period of ten years and shall be open for inspection by the Secretary of State.

BARNESLEY ACADEMY

DRAWINGS USED FOR THE FUNDING AGREEMENT COST PLAN

04045 / 113 – 1: 1000 @ A1	Site Plan, as Existing,
04045 / 114 – 1: 2500 @ A1	Site Location Plan,
04045 / 200 – 1: 500 @ A1	Site Plan, as Proposed,
04045 / 201 – 1: 200 @ A1	Lower Ground Floor Plan,
04045 / 202 – 1: 200 @ A1	Upper Ground Floor Plan,
04045 / 203 – 1: 200 @ A1	First Floor Plan,
04045 / 204 – 1: 200 @ A1	Roof Plan,
04045 / 205 – 1: 200 @ A1	Proposed Elevations – 1 of 2,
04045 / 206 – 1: 200 @ A1	Proposed Elevations – 2 of 2,
04045 / 211 – 1: 200 @ A0	Proposed Sections.