DATED _____ 2008

(1) BARNSLEY METROPOLITAN BOROUGH COUNCIL

(2) THE GOVERNING BODY OF PENISTONE GRAMMAR SCHOOL

GOVERNORS' AGREEMENT

Penistone Grammar School

INTRODUCTION TO THIS DOCUMENT

This Governing Body Agreement is recommended for use between School Governing Bodies and Local Authorities involved in the BSF programme where the LEA is to enter in to a PFI Project Agreement in respect of a particular school. The use of such an agreement has become standard practice over the years, where the LEA is procuring the provision of facilities and services for use by the School. Entry into such an agreement will always be a condition precedent to signature and completion of the Project Agreement with the private sector partner.

The agreement provides for the Governing Body to make a contribution to payment for services through a deduction from the Governing Body's delegated budget. The detail of how payments will be calculated and made will always be for local determination between the Governing Body and the LEA and after detailed discussions and liaison with the LEA.

Each of the Local Authority and the Governing Body will appoint representatives who will represent the interests of the two parties in the operation of the Governing Body Agreement and to enable effective management of the PFI Contractor at the School.

The agreement provides the Governing Body with rights to enforce obligations contained in the Project Agreement relating specifically to the School and provides the Governing Body with the opportunity to represent any views and concerns relating to the contract through a Schools Liaison Procedure. Liaison arrangements are for local determination but a suggestion has been included as a basis for discussion.

The agreement confirms the arrangements for the availability of the buildings for use by the School within periods of time that constitute the "School Day", that is the core sessions and additional periods as defined in the output specification, volume 2 for the school and to enable access to the School at other times by arrangement – "Exceptional School Periods[1]". In addition the agreement anticipates use of the School for community purposes with any remaining hours available for income generation from third party use. Provision is made for the transfer of control from the Governing Body as appropriate with regard to the use of the facilities by the community and third parties.

[1] Because the definition of hours that we want for the school and community are so extensive there will be very little likelihood of any "exceptional school periods" being required. The hours are found in detail in the output specification volume 2 for the school and are summarised in schedule 2 for this agreement.

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THIS AGREEMENT is made on

BETWEEN

(1) ***BARNSLEY METROPOLITAN BOROUGH COUNCIL*** of The Town Hall, Church Street, Barnsley (the "**Authority**"); and

(2) **THE GOVERNING BODY** of **PENISTONE GRAMMAR SCHOOL** of ***Penistone, Sheffield, S36 7BX*** (the "**Governing Body**")

BACKGROUND

(A) The Governing Body is constituted as a body corporate by virtue of Section 19 of the Education Act 2002 and, by virtue of paragraph (3) (3) (c) of Schedule 1 thereto has, inter alia, power to enter into contracts.

(B) The School is in an area in respect of which the Authority is the local education authority;

(C) The Authority is proposing to enter into the Project Documents with a view, amongst other things, to procuring accommodation and related services at the School;

(D) In order for the Authority to enter into the Project Documents the Authority has requested the Governing Body agree certain matters insofar as the Project Documents relate to the School;

(E) Prior to the Authority entering into the Project Documents, the Governing Body has been requested by the Authority to agree the terms and conditions of this Agreement;

(F) By virtue of Section 40 and Schedule 13 of the School Standards and Framework Act 1998, the Governing Body has power to enter into transfer of control agreements.

(G) The Governing Body has decided that it is in the interests of the School that the Authority should enter into the Project Documents insofar as they relate to the School from year to year under the School Standards and Framework Act 1998.

(H) The Governing Body has agreed having due regard for the undertakings given by the Authority under this Agreement that it is in the interests of the School that the Governing Body should enter into this Agreement which amongst other matters commits the Governing Body to repay the Authority a proportion of its delegated budget and confirms to the Governing Body that matters concerning the Works and the provisions of other of the Services at the School shall be managed by the Authority in liaison with the Governing Body as provided for in this Agreement.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement unless the context otherwise requires, the following terms shall have the meanings given to them below:

"Authority's Representatives	the representative appointed by the Authority pursuant to Clause 5.1 of this Agreement
"Delegated Budget"	the budget allocated to the Governing Body as determined by the Authority under the Local Management of Schools arrangements as amended from time to time
"Governing Body	the representative appointed by the Governing Body

Representative"	pursuant to Clause 5.2 of this Agreement
"Project Agreement"	an agreement between the Authority and Barnsley Partnership for Learning Limited (the Contractor i.e the Consortium with the successful tender) relating to the provision of schools within the Authority's area of responsibility made or to be made under a Private Finance Initiative arrangement within the Barnsley Building Schools for the Future Programme.
"Project Documents"	the Strategic Partnering Agreement, The Management Services Agreement, The PFI Project Agreement, Design and Build and FM Contract, ICT Contracts and Funders Agreement
"Relevant Proportion"	Being the sum of the following School's contribution from their Individual Schools Budget- being each school's share of £1.5m in 2008/09 and 2009/10 (indexed in the second year) [2] Schools' contribution from the total Individual Secondary and Special Schools Budget- being £3.256m in 2010/11 (indexed annually thereafter)[3] £258k indexed annually; in relation to the School's Delegated Budgets [4] £120 per pupil in 2010/11 (indexed annually thereafter) as a contribution towards the ICT Managed Service[5]
"School"	the school known as Penistone at the date of this Agreement which will be situated at Penistone, Sheffield, S36 7BX[6]
"School Liaison Procedure"	the procedure set out in Schedule 1 to this Agreement

1.2 **Interpretation**

In this Agreement unless the context otherwise requires:

1.2.1 capitalised terms defined in the Project Agreement have the same meaning in this Agreement;

1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Agreement;

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[2] Individual school's contributions to be based on confirmed pupil numbers for the relevant year. However, for planning purposes, the indicative contribution based on Sept 2007 pupil numbers is as follows: £107k (08/09), £109k (09/10).

[3] As agreed by the Schools' Forum in December 2005. For planning purposes an indicative contribution for 2010/11 based on 2007 pupil numbers is £224k

[4] The value of the contribution from the delegated budget stated above is for the financial year 2007/2008, it is indexed on an annual ongoing basis, using RPI-X. The contribution only becomes payable upon the opening of the new school building to pupils. i.e. if the school building opens in January 2010 then payments will begin to accrue from January 2010 and will fall due for payment later in that year.

[5] Individual school contributions to be based on confirmed pupil numbers for the relevant year. However for planning purposes, an indicative full year contribution based on Sept 2007 pupil numbers at the initial rate of £120 per pupil is £110k.

[6] Where two or more schools are amalgamating and the name of the new school has not yet been designated, and where the school which is the subject of this agreement changes its name upon amalgamation, then the new school with it's new name will still be covered by this agreement.

1.2.3 all references to clauses and schedules are references to the clauses of and the schedules to this Agreement unless otherwise stated;

1.2.4 the schedules form part of this Agreement;

1.2.5 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time;

1.2.6 all references to any statutory provision shall include references to any statute or statutory provisions which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision;

1.2.7 words importing the singular include the plural and vice versa;

1.2.8 words importing a gender include all genders;

1.2.9 "person" includes an individual, partnership, forum, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;

1.2.10 the words "include" and "including" are to be construed without limitation;

1.2.11 references to sub-contractors shall be to sub-contractors of any tier; and

1.2.12 a requirement not to unreasonably withhold consent includes a requirement not to unreasonably delay the giving or withholding of that consent.

2. COMMENCEMENT DURATION

2.1 This Agreement shall come into force on the date of the Project Agreement, and shall continue in force until the earlier to occur of the Termination Date and the Expiry Date.

2.2 The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination. The clauses of this Agreement which expressly or by implication have effect after termination will continue to be enforceable notwithstanding termination.

3. CONSENT

3.1 Entering into Project Documents

The Governing Body consents to the Authority entering into the Project Documents insofar as they relate to the School.

3.2 Compliance with Project Documents

The Governing Body shall not take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur which would cause the Authority to be in breach of its obligations under the Project Documents insofar as they relate to the School.

3.3 Performance of Authority's Obligations

The Authority owes obligations to the Contractor under the Project Documents. To the extent that these obligations are relevant to the provision of the Works and the Services at the School the Authority undertakes to perform its obligations in a timely manner and with due regard to the interests of the School and the Governing Body.

3.4 **Performance of the Contractor's Obligations**

The Authority shall use its reasonable endeavours to procure compliance by the Contractor with its obligations under the Project Agreement for the benefit of the School and the Governing Body.

4. ACKNOWLEDGEMENT AND UNDERTAKINGS

4.1 The Governing Body acknowledge that in performance of the Authority's obligations under this Agreement the Authority will follow procedures and take certain actions required under the terms of the Project Agreement. The Authority will incur in certain circumstances financial liabilities in connection with the Project Agreement.

4.2 The Authority and the Governing Body agree that:-

4.2.1 the Authority will not give any consent, approval or authorisation of any matter concerning the School without the prior operation of the procedures set out in clause 4.

4.2.2 the Governing Body Representative will accordingly be authorised by the Governing Body to give any consent or approval or authorisation that may be at any time necessary under the Project Agreement.

4.2.3 the Governing Body will ensure that the Governing Body Representative gives any consent approval or confirmation in a timely manner, having regard to the timescales within which the Authority is required to act in responding to the Contractor concerning any matter. Where the Governing Body does not wish to provide such consents or approvals as set out in this sub-clause 4.2.3 the Governing Body will provide full written details of its objections to the Authority within such time period as the Authority may reasonably require to enable the Authority to comply with its obligations under the Project Agreement.

4.2.4 the Authority shall consult with the Governing Body Representative before agreeing any date by which a particular decision is to be taken.

5. REPRESENTATIVES

5.1 The Authority shall from time to time appoint a representative to exercise the functions and powers of the Authority in relation to the performance of this Agreement notifying the Governing Body promptly of the identity of the relevant person. The Authority shall be entitled from time to time to amend by notice in writing the identity of its appointed representative to the Governing Body.

5.2 The Governing Body may opt to establish a sub-group for the review of this agreement and shall from time to time appoint a representative from one of the members of this sub-group to act as a Signatory on behalf of the Governing Body as a whole. The Governing Body shall notify the Authority promptly of the identity of the relevant person. The Governing Body shall be entitled from time to time to amend by notice in writing the identity of its appointed representative to the Authority.

6. TIMETABLE AND DESIGN

6.1 **Construction Programme**

The Governing Body shall make arrangements for the relevant areas of the School to be made available to the Contractor in accordance with the Construction Programme[7] and the Site Plans[8].

[7] The Governing Body will have been fully involved in the sign off of these documents.
[8] The Governing Body will have been fully involved in the sign off of these documents.

6.2 **Reviewable Design Data**

The Authority will liaise with the Governing Body in connection with the exercise of the Authority's rights to review Reviewable Design Data[9] and the Governing Body shall respond in such time period as the Authority may reasonably require.

7. PREMISES

7.1 **Authority to Enter School Premises**

The Governing Body hereby acknowledges that the Contractor, its employees, servants, agents and sub-contractors have sufficient authority to enter the School premises from time to time for the purpose of carrying out its obligations under the Project Agreement and agrees not to unreasonably withhold such access.

8. PHASING AND DECANTING OF EQUIPMENT MATTERS

8.1 The Governing Body acknowledges that the Authority has agreed certain decant and transfer arrangements under the Project Agreement so as to facilitate the provision of the new school accommodation and the effective commencement of Services. The Governing Body agrees to facilitate and to comply with the requirements of the Project Agreement in relation to decant and transfer arrangements.

8.2 The Governing Body shall review with the Authority whether any items of Contractor Equipment[10] can be provided from existing supplies of Authority Equipment in the Existing School[11] in accordance with the Authority's obligations under Clause 11.5 of the Project Agreement.

8.3 If the Contractor fails to decant any Authority Equipment in accordance with the terms under the Project Agreement the Governing Body may where agreed by the Authority decant the Authority Equipment and recover the cost of doing so from the Authority as a debt.

The Governing Body shall assist and co-operate with the Authority in relation to all its obligations in the implementation of Schedule 22 (Decant Protocol[12]) of the Project Agreement and in accordance with the Construction Programme.

9. SERVICES

9.1 The Governing Body agrees that with effect from the Service Commencement Date[13] the Contractor shall be entitled to provide those services provided for in the Project Agreement at the School in substitution for any then existing service provider. The Governing Body shall be responsible for terminating at its own cost any services that it has procured at the School prior to this provision having effect.

9.2 The Governing Body confirms that in procuring the catering services or any additional services which are not provided by the LEP for its Advance Learning Centre it shall ensure that the service provider it engages shall enter into a contract with the Governing Body which shall provide that the Authority shall be fully indemnified against any claim(s) for damages and or losses howsoever arising as a result of any act or omission of that service provider or other connected party.

10. PAYMENT OF CONTRIBUTION

[9] This consists of plans, drawings, documents and information relating to works at the School proposed by the Contractor. The Governing Body will have been fully involved in the sign off of these documents and can expect to continue to be involved in relation to the sign off of reviewable design data.
[10] This will be items of furniture, fixtures and equipment included in the Authority's Requirements for the School.
[11] This will be the school in use prior to the new school becoming available.
[12] This sets out the responsibilities for the removal and relocation of items from existing schools to the new schools.
[13] The date on which the new school or areas within it are suitable for its intended use.

10.1 **Contribution**

The Governing Body shall pay to the Authority the Relevant Proportion.

10.2 **Deduction from Delegated Budget**

During such time as the Delegated Budget is provided to the School by the Authority, payment of the Relevant Proportion shall be effected by the deduction of the Relevant Proportion from the Delegated Budget.

11. PERFORMANCE REGIME

11.1 **Deductions**

The Authority is entitled under Schedule 6 (Payment Mechanism) of the Project Agreement to make Unavailability Deductions[14] and Service Performance Deductions[15] and the provisions of this clause 11 shall apply to the administration of and accounting for such Deductions.

11.2 **Reporting**

The Governing Body shall procure that the head teacher of the School (or a person authorised by the Governing Body) shall in relation to the School:

11.2.1 use the Help Desk to report any service failures eligible for Service Performance Deductions;

11.2.2 promptly report any apparent Unavailability to the Help Desk and the Contractor's Representative and the Authority's Representative;

11.2.3 review any report of the performance of the Contractor sent to the Governing Body and notify any inaccuracies relating to the School to the Authority's Representative.

11.3 **Attribution of Performance Deductions**

In the event of a deduction being made from the Unitary Charge the Authority shall retain the full value of any such deductions up to a threshold of £5000.00, thereafter deductions will be re-distributed, with the School retaining 3/8 and the Authority retaining 5/8 of the deductions. In the event of substantial reductions being made then this clause may be reviewed with a view to removing the threshold.

12. DAMAGE TO THE FACILITIES

12.1 **Reporting of Damage**

Under the terms of clause 64 of the Project Agreement the Contractor has agreed that it shall promptly inform the School of the discovery of any damage to any part of the Facilities or any furniture, fittings and equipment within the School. The Governing Body will co-operate with the Contractor at all times in the performance by the Contractor of its obligations to identify and report any damage.

12.2 **Authority Damage**

In order to facilitate the Contractor's responsibility to report damage on a timely basis (which in turn will facilitate the correct allocation of responsibility under the Project Agreement as between the Authority and the Contractor), the Governing Body shall procure that the headteacher co-operates with the Contractor in agreeing whether or not any damage is Authority Damage and that the Contractor is kept informed of the headteacher's alternative as required by clause 64.2.3.

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[14] When the school or areas within it are not suitable for its intended use.
[15] When the services to the school e.g. cleaning or ground maintenance are below expected standards.

13. PROVISION OF INFORMATION

Under the terms of the Project Agreement the Authority is required to provide certain information[16] to the Contractor which is in the possession or control of the Governing Body. The Governing Body will provide such information to the Authority promptly and in any event within such time period as the Authority may reasonably require.

14. BENCHMARKING AND MARKET TESTING

In exercising its rights pursuant to clause 27 and 28 (Benchmarking and Market Testing) of the Project Agreement the Authority shall consult with the Governing Body Representative on all matter affecting the School which arise pursuant to that and the benchmarking or market testing exercise shall so far as is compatible with the programme for the undertaking of any benchmarking exercise and any subsequent market testing be referred to the School Liaison Committee for consideration.

15. CONSULTATION AND LIAISON[17]

15.1 Consultation

Both parties shall ensure that its respective representative shall consult and regularly liaise with each other. The School Liaison Procedure set out at Schedule 1 shall be the principle basis for such liaison[18].

15.2 Meetings of Representatives

The Authority shall convene a meeting of the Governing Body Representative, The Trustee Representative and the Authority's Representative [no less frequently than monthly] to review the Project[19].

15.3 Agenda for the School Liaison Committee Meetings

The Authority shall convene a meeting of the School Liaison Committee in accordance with the procedures provided for at Schedule 1 no less frequently than quarterly. The Governing Body Representative for the School shall receive a copy of the agenda for all School Liaison Committee meetings between the Authority and the Contractor and may if not directly a member of that Committee attend any such meeting.

15.4 Duties

The Governing Body shall use its reasonable endeavours to ensure that the duly authorised Governing Body Representative or his or her duly authorised deputy carries out his or her duties in accordance with this Agreement.

16. USE AND CONTROL OF THE SCHOOL

16.1 The Governing Body confirms that it is aware of the arrangements for the making available of the School in accordance with the terms and conditions of the Project Agreement as follows:-

16.1.1 The School Day is agreed to be within the hours set out in Schedule 2 to this Agreement. Variations to these hours may be agreed with the Contractor but this may involve the operation of the Change Procedure under the Project Agreement

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[16] This will include information such as school protocols and employee data.
[17] This clause makes provision for regular (not less frequently than monthly) meetings between representatives of the Authority and the School. In addition the arrangements anticipate a School specific liaison committee. The Authority may wish to consider adapting these arrangements to meet its overall arrangements for contract management.
[18] Monthly meetings involving each party's Representative are suggested with the School specific Liaison Committee meeting less frequently – say quarterly.
[19] This will be for local determination.

16.1.2 The Contractor has committed to making the School Available and to providing Services during a quota of core hours and additional core periods that are set out in the table at Schedule 2 to this Agreement.

16.1.3 The Contractor has also committed to enabling the School to be provided[20] for Community Use under the arrangements described in the Table at Schedule 2 to this Agreement

16.2 Outside of the above periods the Contractor is entitled to require use of the Site and any facilities on the Site for purposes of third party income generation. These arrangements (and restrictions upon the manner in which such use can arise) shall be as set out in the clause 29 of the Project Agreement.

16.3 Under Clause 29 of the Project Agreement the Authority shall accordingly be entitled to notify the Contractor of any proposed period of Community Use for the School. Where the Governing Body considers it appropriate to make available all or part of the School at any time following the Service Commencement Date for the purpose of Community Use, the Governing Body Representative shall be entitled to serve notice upon the Authority of any such requirement whereupon the Authority shall exercise its rights pursuant to clause 29.7 of the Project Agreement.

17. ADDITIONAL INCOME

17.1 Third Party Use - Approval

The Authority hereby agrees with the Governing Body that where the Governing Body reasonably believes that such use is not compatible with the use of the Sites for schools, the Authority shall exercise its powers to regulate the use of the School under the terms of Clause 29 of the Project Agreement.

17.2 Control[21]

The Governing Body transfers control of the use of the School at all times outside the Required Period[22] (the Required Period being the School Days and Additional School Periods under the Project Agreement) to the Authority and the Contractor to the extent contemplated by the Project Documents but no further.

17.3 The Governing Body hereby agrees that where it is to let any part of its Advanced Learning Centre to any Third Party User during the Required Period or at any other such times as may be appropriate the Governing Body shall liaise with both the LEP and the Local Authority prior to negotiating any term or agreement. The Governing Body before entering into any form of Agreement or Contract Document should ensure that they have adequately provided for all the insurable interests on behalf of all stakeholders and should ensure that the standard forms of contract as drafted by the Authority are used to enter into Contract.

17.4 School Standards and Framework Act 1998

The matters contained in Section 40 and **Schedule 13** to the School Standards and Framework Act 1998 are hereby incorporated into this Agreement and form part of it.

18. DISPUTE RESOLUTION

18.1 Dispute Resolution Procedure

If the Governing Body has a dispute with the Contractor relating to its interest in the Project Agreement through this Agreement with the Authority then the Authority

[20] Note that the basis of provision is likely to be without the Availability and Performance Standards obligations provided for under the payment mechanism to be fully satisfied or at all – this will always be project specific.
[21] The Authority will have agreed the detail of this with the Governing Body prior to signing of the Project Agreement.
[22] The Required Period means those periods where services to the School are to be provided by the Contractor.

undertakes acting reasonably in considering whether to submit such dispute to the Dispute Resolution Procedure contained in the Project Agreement.

18.2 Resolution by Secretary of State for Children, Schools and Families

All other disputes between the parties shall be resolved by a person nominated by or on behalf of the Secretary of State for Children, Schools and Families.

19. EMPLOYEES

19.1 Information

The Governing Body shall provide all and any employee information required to be provided by the Authority under the Project Agreement.

19.2 Co-operation

The Governing Body shall co-operate with the Authority and the Contractor in the conduct of any employee consultation which may be required with employees of the Governing Body in connection with the Project.

20. EXERCISE OF AUTHORITY RIGHTS

20.1 Request by Governing Body

Subject to **clause 20.2** below, the Governing Body may request the Authority to exercise any entitlement which it may have under the Project Documents insofar as it relates to the School in accordance with the Governing Body's reasonable requirements including in relation to:

20.1.1 the exclusion of any person from the provision of the Services at the School;

20.1.2 Authority Change[23]; and

20.1.3 the exercise of step-in rights[24] by the Authority in relation to the School; and

20.1.4 the allocation from time to time of the Additional[25] School Period provision for the School.

20.2 Authority Declining to Exercise its Entitlement

The Authority may decline to exercise any of its entitlements under **clause 20.1.2** and **20.1.3** if it reasonably believes that to do so would be materially prejudicial to the Project as a whole or would involve the elements of the Unitary Charge attributable to the School to exceed the Relevant Proportion.

20.3 Change Leading to Increase in Unitary Charge

The Authority shall not confirm any change which is requested by the Governing Body without the prior consent in writing of the Governing Body. Where an Authority Change requested by the Governing Body leads to an increase in the Unitary Charge or the payment to the Contractor of a lump sum the Governing Body shall, unless agreed otherwise in writing, bear the entire increase or reimburse the amount of the lump sum to the Authority.

20.4 Termination of the Project Agreement by the Authority

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[23] This could be for example the addition of further classrooms or a change to the hours that are treated as the School Day.
[24] The Authority has rights in certain circumstances to takeover elements of the Services on a temporary basis if there are failures by the Contractor or other reasons for delay that are agreed in the Project Agreement.
[25] See Clause 16.1.2.

The Authority shall (having first consulted with the Governing Body) be entitled to terminate the Project Agreement in the following circumstances:

20.4.1 where the termination is pursuant to clause 41.3 (Termination on Contractor Default) of the Project Agreement and;

20.4.2 where the termination is pursuant to clause 41.1 (Voluntary Termination by the Authority) of the Project Agreement;

20.4.3 where the termination is pursuant to clause 43 (Termination for Breach of Refinancing Provisions) of the Project Agreement;

20.4.4 where the termination is pursuant to clause 42 (Termination for Persistent Breach by the Contractor) and arises from circumstances other than any which are solely associated with the performance of the Services at the School of the Project Agreement;

20.4.5 where the termination is pursuant to clause 44 (Termination for Corrupt Gifts or Fraud) of the Project Agreement.

21. TERMINATION

21.1 Occurrence

This Agreement shall terminate on the earlier of:

21.1.1 the expiry or termination of the Project Agreement; and

21.1.2 the closure of the School.

21.2 Reconciliation

Upon termination of the Project Agreement the Authority and the Governing Body shall reconcile the Relevant Proportion payments received from the Governing Body against the actual period of payments made by the Authority for the Services received by the Governing body up to the date of termination.

21.3 Accrued Rights

The parties agree that this Agreement shall be extended if at any time it becomes apparent to either party that any of their obligations or rights accruing to either of them in respect of this Agreement will not have been carried out or completed by the termination of the Project Agreement.

22. GOVERNING LAW

22.1 Applicable Law

This Agreement is subject to the laws of England and Wales.

22.2 Jurisdiction

The parties shall be subject to the exclusive jurisdiction of the courts of England and Wales.

23. THIRD PARTY RIGHTS

23.1 Entitlement of Third Parties

No term of this Agreement is intended to give any entitlement as against either party to any person who is not a party to this Agreement.

23.2 Exclusion of Contracts (Rights of Third Parties) Act 1999

No term of this Agreement may be enforced by any person other than a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

24. MISCELLANEOUS PROVISIONS

24.1 Provisions to remain in force

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

24.2 Entire Agreement

This Agreement and the documents referred to in this Agreement contain all the terms which the Parties have agreed in relation to the subject matter of this Agreement.

24.3 Waiver

No term of provision of this Agreement shall be considered as waived by either Party to this Agreement unless a waiver is given in writing by that Party. No waiver shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and only to the extent) expressly stated in that waiver.

24.4 Counterparts

This Agreement may be executed and delivered in any number of counterparts, each of which so executed will be an original, but together will constitute one and the same instrument.

25. NOTICES

25.1 Form of Notice

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, leaving the same at:

If to the Governing Body Penistone Grammar School, Penistone, Sheffield, S36 7XB

Fax No: •

If to the Authority- The Borough Secretary's Department, Legal Services Westgate Plaza 1, PO Box 600, Westgate, Barnsley.

Fax No: • (01226) 773099

If to the Trustees – The Penistone Foundation School Trust, The Borough Secretary's Department, Legal Services, Westgate Plaza1, P.O Box 600, Westgate, Barnsley

Fax. No

25.2 Communication with Representatives

Where any information or documentation is to be provided or submitted to the Authority's Representative it shall be provided or submitted by sending the same by first class post, facsimile or by hand, leaving the same at:

If to the Authority's Representative

The BSF Programme Manager

Directorate for Children Schools ad Families

Berneslai Close

Barnsley

South Yorkshire

S70 2HS

Fax No: • 01226 773518

If to the Governing Body Representative [*Address*]

Fax No: •

If to the Trustee Representative to :

The Borough Secretary,

Legal Services Department,

Westgate Plaza1,

PO Box 600, Westgate

Barnsley

South Yorkshire

(copied in each case to the Authority)

25.3 **Change of Address**

Either party to this Agreement (and either Representative) may change its nominated address or facsimile number by prior notice to the other party.

25.4 **Service**

Notices given by post shall be effective upon the earlier of actual receipt and five Working Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

25.4.1 within two hours after sending, if sent on a Working Day between the hours of 9am and 4pm; or

25.4.2 by 11am on the next following Working Day, if sent after 4pm, on a Business Day but before 9am on that next following Working Day.

IN WITNESS whereof the parties have executed this Agreement as a Deed.

The Common Seal of)
Barnsley Metropolitan Borough Council)
was hereunto)
affixed in the presence of:)

No. 283
IN REGISTER

Debra Bl

AUTHORISED
SIGNATORY

SIGNED by)
for and on behalf of)
THE GOVERNING BODY OF)
Penistone **SCHOOL** in the presence of:

J.G.Gostelow (J.G. GOSTELOW)

J Higgins (J. HIGGINS)

SCHEDULE 1

Liaison Procedure

1. **SCHOOL LIAISON COMMITTEE**

The Authority, The Trustees and the Governing Body shall establish and maintain for the duration of this Agreement a liaison group for the School (the "School Liaison Committee"), consisting of [6 members in total. 2 members shall be members of the Governing Body, 2 members shall be of the Trustee Body and 2 members shall be officers of the Authority [26]]

2. **FUNCTIONS**

The functions of the School Liaison Committee shall be:

to provide a means for the joint review where appropriate of all aspects of the performance of this Agreement; and

2.1 to provide a forum for joint strategic discussion and consideration of all aspects with regard to this Agreement including ensuring dissemination of information and consideration of the views of all the stakeholders connected with the Project Agreement; and

2.2 consideration of issues relating to:

2.2.1 any requests for consents or approvals;

2.2.2 the Construction Programme;

2.2.3 provision of the Services, including transition between the phases;

2.2.4 Authority Changes; and

2.2.5 any other issues that arise

3. **ROLE**

The role of the School Liaison Committee is to make recommendations to the Authority and to the Governing Body, which the Authority and the Governing Body may accept or reject at their complete discretion. Neither the School Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Agreement or to make any decision binding on the Parties. No discussion, review or recommendation by the School Liaison Committee shall relieve the Authority or the Governing Body of any liability or vary any such liability or any right or benefit.

4. **REPRESENTATIVES**

The Authority, The Trustees and the Governing Body may appoint their representatives on the School Liaison Committee and remove those representatives and appoint replacements, by written notice delivered to the other at any time.

5. **PRACTICES AND PROCEDURES**

Subject to the provisions of this Schedule, the members of the School Liaison Committee may adopt such procedures and practices for the conduct of the activities of the School Liaison Committee as they consider appropriate, from time to time, provided that the quorum for a meeting of the School Liaison Committee shall be [four (with at least one representatives of

[26] The number of representatives and general voting rights for such a group will be for local determination.

the Authority, One representative of the Trust and two representatives of the School present)[27]].

6. **VOTING**

Each member of the School Liaison Committee shall have [one vote each[28]].

7. **CHAIRMAN**

[The chairman of the School Liaison Committee ("the Chairman") shall be nominated by the Authority, Trustees and by the Governing Body alternately every six months during the Contract Period from the members of the School Liaison Committee (commencing with the Authority). In the event of an equality of votes, the Chairman shall not have a casting vote[29]].

8. **FREQUENCY OF MEETINGS**

The School Liaison Committee shall meet [at least once every term during the Works Period[30]] and thereafter at such intervals as the School Liaison Committee shall determine.

9. **CONVENING OF MEETINGS**

The Chairman of the School Liaison Committee may convene a meeting at any time, or a meeting may be convened upon [three] members of the School Liaison Committee notifying the Chairman that a meeting should be held.

10. **NOTICES OF MEETINGS**

Not less than [ten] Working Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the School Liaison Committee, except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

11. **ATTENDANCE AT MEETINGS**

Meetings of the School Liaison Committee should normally involve the attendance (in person or by alternative) of representatives at the meeting. Where the representatives of the School Liaison Committee consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one representative of the Authority and one representative of the Governing Body) meetings may also be held by telephone or another form of telecommunication by which each participant can hear and speak to all other participants at the same time.

12. **MINUTES**

Minutes of all decisions and meetings of the School Liaison Committee shall be kept by the Authority and copies circulated promptly to the Governing Body, normally within ten (10) Business Days of the making of the decision or the holding of the meeting.

[27] This will be for local determination.
[28] This will be for local determination.
[29] Again this will be for local determination.
[30] This is during the building of the school.

SCHEDULE 2

USE OF SCHOOL

School Day[31]

The tables and explanations below summarise the use of the school both in core school hours and the additional periods for . and other use. This includes use by the school of the facilities outside the core hours.

Core Sessions and Additional Periods

Category	Facilities	Percentage of ALC in use	Period	Total Sessions	Morning Session	Afternoon Session	Evening Session
School Core Sessions	Whole School Site	100%	Monday to Friday (195 days term time)	390	08:00 to 13:00	13:00 to 18:00	
Term Time Additional Periods	Whole/ Part School Site	100% (10 hours or 5 half sessions) 40% (20 hours or 10 half sessions) 20%(750 hours or 187.5 sessions)	Monday to Friday (195 days term time)	195			18:00 to 22:00
Non Term Time Additional Periods (Daytime)	Part School Site	10%	Monday to Friday (Non term time)	132	08:00 to 13:00	13:00 to 18:00	

[31] It will be appropriate to deal with out of hours access by School staff which is usually possible subject to compliance with security arrangements. This may need to be reflected in an additional clause within the agreement confirming the arrangements agreed with the PFI Contractor.

Non Term Time Additional Periods (Evening)	Part School Site	20%	Monday to Friday (Non term time)	66			18:00 to 22:00
Weekend Additional Periods (Saturdays)	Part School Site	20%	Saturdays (all year)	104	10.00 to 14:00	14:00 to 18:00	
Weekend Additional Periods (Sundays)	Sports Facilities only	10%	Sundays (all year)	52		14:00 to 19:00	
Authority Additional Periods	Whole School Site	100%	Ad Hoc (Non term time)	See below	08:00 to 13:00	13.00 to 18:00	

Non Core Periods

Category	Facilities	Percentage of ALC in use	Period	Total Sessions	Morning Session	Afternoon Session	Evening Session
Additional Staff Non-Core Periods	Kitchen Facilities, Admin Areas	5%	Monday to Friday (195 days term time)	195	06:00 to 07:30		
Additional Student Non - Core Periods	Part School Site	20%	Monday to Friday (195 days term time)	195	07.00 to 07.30		

Core Sessions and Additional Periods

Core Sessions and Additional Periods are subject to availability and performance deductions under the payment mechanism.

Core Sessions attract full availability deductions, whilst Additional Periods will attract 50% deductions

The hours for Core Sessions and Additional Periods detailed above are common across all of the ALC's.

The Contractor should note that although core hours are stated to be 08:00 to 18:00, it is anticipated that of the ten hours, three of these hours will have a significantly reduced footfall.

The percentages given for the area of the ALC in use are approximate and may differ from session to session. The areas anticipated to be in use outside of the School core sessions (identified as 20% of area, and relating to building rather than site areas) will generally include reception, atrium, café facilities, adult learning facilities, and sports areas (including halls, changing facilities and external pitches). It will also include ad hoc use of performance facilities and specialised and general teaching bases.

Term Time Additional Periods include hours for both extended school use and extended . use. Extended School Use for use exclusively by the School has been estimated at a total of 200 hours for each School, based on the following usage of the school:

Hours	Proportion of ALC
10	100%
20	40%
120	20%
50	10%

This extended school use includes the school's use of the building outside the normal school day for events such as school productions, parent evenings, governors meetings etc.

In addition to this the ALC's will also be open for . use throughout the year during term time and non - term time periods. This amounts to a further 844 hours utilising 20% of the building for community use Monday to Friday, together with a further 676 hours of weekend community use. On Sundays, only sports facilities and the café are anticipated to be open for community use.

Non- Term Time Additional Periods (Daytime)

Around 5% of school staff are employed on 52 week contracts and therefore during school holiday periods these staff will require access similarly to offices and administration areas and ancillary spaces. An area of 10% of the building area has been identified for this purpose. Schools sometimes also run revision sessions during these holiday periods and these sessions have also been included within the 10% area.

Authority Additional Periods

As identified in the table, the Authority also utilise school facilities periodically during the school year for specific community events. The Authority has identified the need for the use of an ALC facility 30 days per year (60 sessions). The 30 days are a total requirement across all of the schools and will be booked on an ad hoc basis at any of the ALC's as the need arises. Hence the number of sessions attributable to this ALC has not been stated in the above table.

Non Core Periods

Non Core Periods will not be subject to availability and performance deductions under the payment mechanism. Although not subject to availability and performance requirements, the Contractor will be required to provide basic services during these periods necessary for the staff to occupy and work in the relevant spaces, including maintaining environmental conditions and services.

Access is required to the kitchen areas for kitchen staff from 06:30. Similarly during the school term access shall be provided to teaching and non-teaching staff, allowing them to access offices, preparation areas and where necessary teaching spaces for example to set up such spaces for teaching delivery.