

**EXCHEQUER FUNDING AGREEMENT**

**DATE OF AGREEMENT:**

**BETWEEN**

- (1) **The English Sports Council**, a body corporate with registration number RC000766, of SportPark, 3 Oakwood Drive, Loughborough Leicestershire LE11 3QF with registered company number RC000766 ("**Sport England**");
- (2) **Exeter City Council**, a local authority of Civic Centre, Paris Street, Exeter EX1 1JN (the "**Applicant**").

**BACKGROUND**

- (A) Sport England was established by virtue of a Royal Charter dated 19 September 1996 to carry on activities in England previously carried on by the Great Britain Sports Council and is a distributor of both Lottery and Exchequer grants. The focus of Sport England's current strategy is to increase the number of people getting active, with the vision that everyone in England, regardless of age, background or ability, feels able to take part in sport or activity.
- (B) The Applicant is a local authority.
- (C) The Applicant has applied for a grant of Exchequer funding for the Project (details of which are set out below) and Sport England has decided to award a grant on the terms set out in this Agreement.

**KEY TERMS**

<b>Project</b>	<p>The project is a part refurbishment and part new build of the existing Wonford Community and Sports Centre. The intention is to turn the facility into the Wonford Community Wellbeing Hub. The part new build / part refurbishment includes the following facilities:</p> <ul style="list-style-type: none"><li>• 32m x 17m refurbished sports hall and stores</li><li>• Sports hall viewing space</li><li>• Refurbished community hall and multiuse suite</li><li>• Dry changing space</li><li>• Accessible wc facilities</li><li>• 60 station gym</li><li>• 25 person studio</li><li>• Private/family changing space</li><li>• Changing place facility</li><li>• Meeting and lounge space</li><li>• Spacious café, kitchen and store</li><li>• Dedicated team and officials changing space suitable for outdoor sport</li></ul>
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	<ul style="list-style-type: none"><li>• Community garden and associated external works, landscaping &amp; improvements.</li></ul>
<b>Facility</b>	Wonford Community Wellbeing Hub
<b>Site</b>	Burnthouse Lane, Exeter
<b>Amount of Exchequer Grant</b>	The maximum amount of the Exchequer Grant is £2,000,000 (Two million pounds), of which the " <b>Retention Amount</b> " is £60,000 (Sixty thousand pounds).
<b>Availability Period</b>	The Exchequer Grant will be available for drawdown from the date on which the Conditions are satisfied until <b>31<sup>ST</sup> AUGUST 2028</b>
<b>Grant Term</b>	The period during which the Applicant must comply with the terms of this Agreement starts on the date of this Agreement and ends 25 years from the date of this Agreement.

**OTHER TERMS**

Part 1 (**Payment of Exchequer Grant**) sets out how the Applicant may draw down the Exchequer Grant, including conditions that need to be satisfied before drawing down.

Part 2 (**Conduct of Project**) sets out how the Applicant must carry out the Project.

Part 3 (**Restrictions on assets**) section sets out restrictions on the use and disposal of assets that have been funded with the Exchequer Grant.

Part 4 (**Project Revenues**) sets out requirements to repay or reinvest certain revenues that may be generated in connection with the Project.

Part 5 (**General Terms**) sets out other terms and conditions that apply to the Exchequer Grant.

**This Agreement comprises the above provisions, and has been agreed by the parties:**

Signed for and on behalf of the **English Sports Council**

Signatory name:

\_\_\_\_\_  
Signature

Signatory position:

Signed for and on behalf of **Exeter City Council**

Signatory name:

\_\_\_\_\_  
Signature

Signatory position:

## PART 1

### PAYMENT OF EXCHEQUER GRANT

#### 1. PAYMENT OF EXCHEQUER GRANT

- 1.1 Sport England will pay the Exchequer Grant to the Applicant in accordance with, and subject to, the terms of this Agreement.

#### 2. CONDITIONS TO PAYMENT

- 2.1 Sport England's obligation to pay the Exchequer Grant is wholly conditional upon the conditions set out in Part A of Schedule 10 (*Conditions*) (the "**Primary Conditions**") being fulfilled to Sport England's reasonable satisfaction.
- 2.2 Sport England's obligation to pay the Retention Amount is wholly conditional upon the conditions set out in Part B of Schedule 10 (*Conditions*) (the "**Secondary Conditions**") being fulfilled to Sport England's reasonable satisfaction.
- 2.3 The Applicant will provide any evidence that Sport England may from time to time reasonably require to demonstrate that the Primary Conditions or Secondary Conditions have been fulfilled.
- 2.4 Any costs incurred by the Applicant prior to or in the process of fulfilling the Primary Conditions or the Secondary Conditions will be the responsibility of the Applicant. The purchase of any goods or services before Sport England confirms that the Primary Conditions or Secondary Conditions have been fulfilled will be at the sole risk and cost of the Applicant unless Sport England agrees otherwise in writing.

#### 3. COST PLAN

- 3.1 The Applicant may only draw down the Exchequer Grant for items of expenditure that are set out in the Cost Plan in the form set out in Schedule 3.
- 3.2 For each such item of expenditure the Applicant may not draw down more than the amount of Exchequer Grant funding specified in the Cost Plan for that item (if any) except as set out in paragraph 3.3 or as approved by Sport England (in its absolute discretion) in writing.
- 3.3 If the Applicant does not wish to draw down the maximum amount for any particular line item then the Applicant may in its discretion re-allocate the shortfall to another line item up to a maximum equal to the lower of:
- (a) £20,000; or
  - (b) 10% of the maximum amount of Exchequer Grant funding specified in the Cost Plan for the line item to which the shortfall is being re-allocated.

#### 4. DRAWDOWN PROCESS

- 4.1 The Exchequer Grant will be drawn down from time to time according to the Applicant's expenditure.
- 4.2 In order to draw down the Exchequer Grant the Applicant will deliver a drawdown notice, in the form set out in Schedule 8, setting out a request for payment of part of the Exchequer Grant (the "**Drawdown Notice**").
- 4.3 The Applicant may not submit a Drawdown Notice for any part of the Exchequer Grant before either the relevant expenditure has been incurred by the Applicant or the Applicant

requires the relevant funding to enable the Applicant to meet its requirements for forthcoming expenditure.

- 4.4 Each Drawdown Notice must include details of the amount being drawn down and the expenditure for which the Applicant will use the amount drawn down.
- 4.5 The Applicant shall also provide such information as Sport England may reasonably require to show:
  - (a) that the relevant drawdown relates to expenditure for which the Applicant is entitled to use the Exchequer Grant in accordance with the terms of this Agreement; and
  - (b) the amounts incurred or, where payment in advance is required, a breakdown of anticipated costs.

## PART 2

### CONDUCT OF PROJECT

#### 1. DEVELOPMENT AND CONSTRUCTION OF FACILITY

1.1 The Applicant shall:

- (a) develop the design of the Facility; and
- (b) construct the Facility,

in accordance with and to meet the Agreed Design and the Design Requirements.

The "**Agreed Design**" means the design drawings included in Schedule 4 (or as may subsequently be approved in writing by Sport England).

The "**Design Requirements**" means the requirements for inclusion in the design of the Facility as set out in Schedule 5 (or as may subsequently be approved in writing by Sport England).

1.2 The Applicant shall ensure that the date upon which the Facility is first opened to the public and is available for public use in accordance with Business Plan (the "**Availability Date**") occurs on or before 31<sup>st</sup> August 2028..

1.3 The Applicant shall keep Sport England informed of the progress of the development and construction of the Facility and shall in any event notify Sport England within five Business Days of the opening of the Facility to the general public.

1.4 Except where approved in writing by Sport England, the Applicant shall not amend or permit the amendment of the Agreed Design or the Design Requirements at any time during the Grant Term.

#### 2. USE AND PROTECTION OF FACILITY

2.1 The Applicant shall ensure that:

- (a) the Facility and the Site are only used to carry out the Project to achieve the Strategic Purpose;
- (b) the Facility is fully operational in all material respects;
- (c) the Facility and the Site are at all times kept in good repair and condition and maintained and operated in accordance with all Applicable Law and relevant codes of practice;
- (d) the Facility and the Site are secured to prevent access by unauthorised persons;
- (e) the Facility and the Site are covered by a comprehensive policy of insurance with reputable insurers to cover the Facility and the Site against all risks it would be prudent to insure against, including terrorism, to its full replacement value (and the Applicant shall provide a copy of the current policy or policies and evidence of premium payment to Sport England on or before the entry into effect of such policies and upon any material changes or replacement of such policy or policies from time to time);
- (f) following construction of the Facility, the Facility and the Site continue to meet the Agreed Design and the Design Requirements; and

- (g) it informs Sport England in writing within five (5) Business Days after it has become aware of any significant loss or damage to the Facility (including any chattel or fixture forming part of the Facility where such loss or damage would have a material adverse effect on the ability of the Applicant to operate the Facility in accordance with this Agreement) and shall effect prompt replacement or repair of the same at no cost to Sport England.

2.2 The Applicant shall ensure that the Facility no later than 12 months after the Availability Date materially achieves, and thereafter materially maintains for the remainder of the Grant Term:

- (a) accreditation to QUEST or such other nationally recognised quality assurance scheme that operates an external assessment of facilities (including a mystery visit or similar method of assessment), and that has been approved by Sport England for this purpose;
- (b) accreditation to the Tackling Inequalities in Leisure Standard (TILS) or such other disability accreditation assessment scheme as may be approved by Sport England from time to time;

a report from Moving Communities which is a benchmarking mechanism for the assessment of sports facilities in England that has been specified by Sport England for this purpose ("**Moving Communities**").

### 3. **Operations**

3.1 The Applicant shall prepare and obtain Sport England's written approval for the Business Plan by the later of the Availability Date or 12 months following the date of this Agreement.

3.2 The Applicant shall operate the Project in accordance with the Strategic Purpose and the Business Plan.

3.3 The Applicant shall ensure that it reviews and updates the Business Plan (with such updates or changes approved in writing by Sport England):

- (a) at least once every 12 months; or
- (b) within three months of a request by Sport England to do so.

3.4 When preparing or updating the Business Plan the Applicant shall:

- (a) ensure that the Business Plan is based on and in accordance with the Strategic Purpose;
- (b) consult with Sport England and take into account any comments or suggestions that either of these bodies may have;
- (c) take into account any published strategy for the development of sport and physical activity in England that applies at the time of the update or will apply at a later date; and
- (d) take into account the objects of:
  - (i) maximising participation in sport and physical activity in and around Wonford;

- (ii) achieving an appropriate balance of elite, regional and community and other usage; and
- (iii) ensuring that usage by the community is representative of the demographics of the public in and around Wonford.

3.5 The Applicant shall not sub-contract or otherwise delegate the operation of the Project (either in whole or in part) to any third party unless Sport England has given its prior written consent to the appointment of any such third party.

#### 4. **KPIs**

The "**KPIs**" mean key performance indicators that will objectively measure the Applicant's achievement of the Strategic Purpose of the Project.

The "**KPI Assessment Method**" means the method of assessing the Applicant's performance in achieving the KPIs.

- 4.1 The Applicant shall prepare, and obtain Sport England's written approval for, the KPIs and KPI Assessment Method no later than 6 months prior to commencement of works at the Site.
- 4.2 The KPIs and the KPI Assessment Method shall only be amended with the prior written approval of Sport England.
- 4.3 The Applicant shall ensure that the KPIs are met within 24 months following the Availability Date and thereafter continue to be met for the remainder of the Grant Term.
- 4.4 The Applicant shall:
  - (a) submit to Sport England a report on a monthly basis based on the KPI Assessment Method and detailing the Applicant's performance against the KPIs and any other objective performance measures specified in the Operations Plan; and
  - (b) where requested by Sport England, meet with Sport England to discuss the Applicant's performance in achieving the KPIs.

### PART 3

#### RESTRICTIONS ON ASSETS

1. **NO DISPOSAL OF OR ENCUMBRANCE IN PROTECTED ASSETS**
- 1.1 The "**Protected Assets**" are:
  - (a) the Site;
  - (b) the Facility;
- 1.2 Except as expressly permitted by this Agreement or approved in writing in advance by Sport England, during the Grant Term the Applicant shall not (and shall ensure that no third party shall):
  - (a) create, or permit to be created, any encumbrance, charge (fixed or floating), debenture, third party claim, mortgage, pledge, lien, assignment by way of security, trust arrangements for the purpose of providing security, or any other security interest agreement or arrangement of any kind or any agreement to create any of these things;
  - (b) grant to any person any rights that would give that party a prior ranking debt over any debts that may become due to Sport England;
  - (c) make a Disposal; or
  - (d) make a Grant of Rights.
- 1.3 The Applicant is permitted to do any of the following without the approval of Sport England:
  - (a) the grant by the Applicant, the Contractor or a Subcontractor to a third party not connected to the person granting the interest of:
    - (i) an occupational lease or an agreement to do so for a term not exceeding 7 years at an open market rent (without fine or premium);
    - (ii) a licence to occupy personal to the licensee at an open market rent or peppercorn rent or equivalent service fee; or
    - (iii) a tenancy at will only which is personal to the tenant at an open market rent or peppercorn rent or equivalent service fee, of any part of the Site,
    - (iv) the grant of easements or rights, transfer, lease or dedication to a local or other public authority pursuant to a requirement in an agreement or unilateral undertaking under section 106 of the Town and Country Planning Act 1990; or
    - (v) the grant of easements or rights, transfer, lease or dedication to a highways authority to comply with highways requirements or in connection with the adoption or dedication of public highway; or
    - (vi) the grant of easements or rights, transfer, lease or dedication to a utilities company for an electricity substation, gas governor, sewage or water pumping station, drainage balancing device or other similar matters for the provision of services;

provided that any such grant is for the purpose of achieving the Strategic Purpose or providing such services as would be expected to be provided in a world class sports facility with a regional catchment.

**2. NOT USED**

**3. RESTRICTION ON TITLE IN FAVOUR OF SPORT ENGLAND**

- 3.1 Within 15 Business Days following the date of this Agreement, the Applicant shall apply to the Land Registry for a restriction to be noted on the Applicant's registered title to the Site to protect Sport England's interest in the Site pursuant to this Agreement in the form set out below (or such other form as meets the requirements of the Land Registry with the equivalent effect as may be approved by Sport England, such approval not to be unreasonably withheld or delayed):

*"No disposition of that part of the registered estate [shown edged [●] on plan [●]] by the proprietor of the registered estate is to be registered without a written consent signed by the English Sports Council of SportPark, 1<sup>st</sup> Floor, 3 Oakwood Drive, Loughborough Leicestershire LE11 3QF with registered company number RC000766 ("Sport England"), or their conveyancer."*

- 3.2 The Applicant shall following submission of the Land Registry application at 3.1 provide Sport England with a copy of the Land Registry submission receipt showing the application reference number and as soon as possible following confirmation of the completed registration of the restriction on title to the Site from the Land Registry provide Sport England with a copy of the title register to the Site showing the registration of the restriction.
- 3.3 Sport England shall provide its written consent to a disposition of the relevant registered estate to the extent that such consent is necessary to enable the Applicant to carry out transactions that are expressly and specifically permitted by this Agreement.
- 3.4 Sport England shall provide its written consent to the removal of the restriction on title and all such other assistance as the Applicant may reasonably require to procure the removal of the restriction from the registered title to the Site within 20 Business Days of receipt of a request to do so from the Applicant following the expiry of the Grant Term or earlier termination of this Agreement PROVIDED ALWAYS that the Applicant has paid in full all amounts due and owing for repayment to Sport England pursuant to this Agreement.
- 3.5 The Applicant shall notify Sport England prior to applying for or permitting any restriction to be noted on the Applicant's registered title to the Site for the benefit of any person other than Sport England.
- 3.6 The Applicant shall provide Sport England with any other documentation requested by Sport England (and in the format specified by Sport England) relating to the restriction on title, including but not limited to a certificate on title.

**4. INTELLECTUAL PROPERTY**

To the extent that the Protected Assets include Intellectual Property then the Applicant will take all necessary steps to protect such Intellectual Property against claims from third parties including:

- (a) registering the Applicant's ownership of such Intellectual Property in the UK to the extent that such ownership is capable of registration; and
- (b) taking reasonable steps to defend ownership of such Intellectual Property.

## PART 4

### PROJECT REVENUES

#### 1. PROCEEDS OF DISPOSAL

1.1 "Ringfenced Proceeds" means a proportion of the net sale proceeds from a Disposal or a Grant of Rights, determined as follows:

the net sale proceeds will mean the gross sale proceeds from a Disposal or a Grant of Rights less:

- (i) repayment of any debt that the Applicant and Sport England expressly agree in writing has a prior ranking (at the date of this Agreement there is no prior ranking debt);
  - (ii) any tax arising as a result of the Disposal or Grant of Rights; and
  - (iii) other incidental and reasonable costs incurred wholly and exclusively for the purpose of the Disposal or Grant of Rights;
- (b) the relevant proportion will be equal to (at Sport England's discretion):
- (i) the proportion of the original cost of the relevant Protected Assets that was met through the Exchequer Grant; or
  - (ii) the proportion of the costs of the Project as a whole that were met through the Exchequer Grant.
- 1.2 The Applicant shall ensure that any Disposal or Grant of Rights is at full market value.
- 1.3 The Applicant shall, within 5 Business Days following a Disposal or Grant of Rights, notify Sport England of the net sale proceeds and provide any supporting evidence that Sport England may reasonably require.
- 1.4 Sport England will determine, in its sole but reasonable discretion, how much of the Ringfenced Proceeds should be:
- (a) paid to Sport England;
  - (b) used for the purpose of delivering the Project and/or achieving the Strategic Purpose;
  - (c) used for alternative community sporting purposes as the parties may agree and on terms agreed by the parties;
  - (d) released for the Applicant to use as the Applicant wishes; or
- applied for a combination of the above.
- 1.5 The Applicant will apply the Ringfenced Proceeds as determined by Sport England pursuant to clause 0 above.
- 1.6 This Part 4 is without prejudice to the provisions of Part 3 of this Agreement. In particular nothing that Sport England does or communicates in connection with this Part

4 will constitute a waiver of the Applicant's obligation to obtain Sport England's prior written consent to a Disposal or Grant of Rights under Part 3.

**Part 5**  
**GENERAL TERMS**

**1. CONDUCT OF PROJECT**

- 1.1 The Applicant will undertake the Project diligently and in good faith, and will comply with all Applicable Law in connection with the Project.
- 1.2 The Applicant may delegate performance of parts of the Project to one or more third parties, but will at all times retain overall control of and responsibility for the Project.

**2. USE OF FUNDING**

- 2.1 The Applicant will not use the Exchequer Grant for any purpose other than funding the Project to achieve the Strategic Purpose in accordance with this Agreement, including in accordance with any ring-fencing or allocation in the Cost Plan (or otherwise) of specific amounts towards specific expenditure. The Exchequer Grant may not in any circumstances be used (in whole or in part) towards redundancy or similar payments.
- 2.2 The Applicant will not use the Exchequer Grant to fund retrospectively any costs or liabilities incurred prior to the date of this Agreement, even if the relevant cost or liability is itemised in the Cost Plan.
- 2.3 The Applicant will not distribute any part of the Exchequer Grant as grant funding to third parties except where specifically approved in writing in advance by Sport England.
- 2.4 The Applicant will comply with any applicable procurement law and in any event adopt a commercially competitive tendering process if delegating the performance of any part of the Project.
- 2.5 The Applicant will comply with applicable Subsidy law and associated regulation.

**3. GOOD GOVERNANCE**

- 3.1 The Applicant will ensure that it has an appropriate equality policy and, if the Project involves work with children, young people or adults at risk, it will also have an appropriate safeguarding policy and procedure. The Applicant will obtain all approvals and licences and any profile checks required by law or by Sport England from time to time. The Applicant will procure that any Subcontractor or other person that is managing or carrying out services related to the Project complies with the obligations in this clause 3.1, and will provide the Applicant with a copy of its equality and/or safeguarding policy.
- 3.2 The Applicant will at all times maintain and operate a conflict of interest policy that is appropriate for an organisation that is receiving, using and dispensing public funds. Such policy must include provisions ensuring that members of any decision-making committee or body of the Applicant are not placed in a position where their personal interests might differ from those of the Applicant. The Applicant will provide a copy of that policy to Sport England upon request.
- 3.3 The Applicant will comply with Sport England's "A Code for Sports Governance ([https://www.sportengland.org/media/11193/a\\_code\\_for\\_sports\\_governance.pdf](https://www.sportengland.org/media/11193/a_code_for_sports_governance.pdf))" insofar as it applies to the Applicant. The Applicant will progress and achieve the requirements of the action plan agreed between the Applicant and Sport England setting out the actions, steps required and timescales for compliance with the "A Code for Sports Governance". If the Applicant fails to achieve the requirements of its Governance Action Plan, it will be deemed to be in material breach of this Agreement.

- 3.4 The Applicant will seek Sport England's written consent before making any significant changes to its governance. The Applicant will provide Sport England with any such documentation and/or assistance that Sport England may require to consider such requests and enable due diligence to take place without unnecessarily putting at risk potential investment. Sport England will not unreasonably withhold or delay its consent.
- 3.5 The Applicant will ensure that there is no promotion, advertising, sponsorship, merchandising or sale of tobacco-based products, arms, gambling, payday loans, energy drinks or pornography ("**Restricted Products**"), whether by the Applicant or any other person, in connection with the Project.
- 3.6 The Applicant will not seek or accept any financial investment (whether for the Project or otherwise) from any person who is:
- (a) subject to any government sanctions; or
  - (b) involved in the production, distribution or promotion of Restricted Products.
- 3.7 The Applicant will not act, or permit any person associated with the Project to act, in any way which could bring the Project or Sport England into disrepute. The Applicant will notify Sport England immediately and provide full details if it believes that any such act has taken place.

#### 4. **RECOGNITION OF EXCHEQUER FUNDING**

- 4.1 The Applicant recognises and will continue to recognise the contribution made by Sport England and the Exchequer Grant to the Project and to the implementation of the Project as reasonably required by Sport England.
- 4.2 The Applicant will acknowledge the Exchequer Grant publicly including:
- (a) in its annual report;
  - (b) in media interviews and press releases
  - (c) on social media (including above and below the line advertising, twitter and facebook), using the appropriate handles (guidance on this use of social media can be found at <https://brandtoolkit.sportengland.org/social-media/>);
  - (d) at events or competitions and in publications including promotional material, and on-line publications; and
  - (e) as otherwise reasonably requested by Sport England.

In each case the guiding principle will be to give appropriate and proportionate credit to the Exchequer Grant as an investment in the Project

- 4.3 The Applicant will display appropriate Sport England signage in a prominent position on any building or other facility which is constructed or upgraded with the Exchequer Grant as follows:
- (a) for buildings – one inside, one outside;
  - (b) for other facilities (for example lighting and pitch upgrades) – in a prominent position adjacent to the facility.

During any construction work the Applicant (or the third party if applicable) will display temporary signage. Such temporary signage will be replaced by permanent signs after completion and in any event before the official opening.

- 4.4 As and where appropriate, the Applicant must feature the Sport England logo on all major publications and marketing materials including the Applicant's websites. Guidance on the use of these logos can be found at <http://brandtoolkit.sportengland.org/>.
- 4.5 Sport England may also request from time to time that the Applicant will develop case studies or stories promoting the Project or for use by Sport England in promoting Exchequer funding. To the extent that development or use of these case studies involves the processing of personal data the parties shall agree controls and protection for such personal data. In any event:
- (a) each party shall take appropriate technical and organisational measures against any unauthorised or unlawful processing of personal data and against the loss or destruction of, or damage to, personal data;
  - (b) a party shall notify the other party if it becomes aware of a data breach relating to the personal data; and
  - (c) each party shall comply with all applicable laws and regulations relating to data protection, privacy and security, including the Data Protection Act 2018, the GDPR, the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, Directive 2002/58/EC and any successor legislation, as implemented in the United Kingdom (the "**Data Protection Laws**").
- 4.6 Sport England warrants that Sport England has all rights and authorities required to license the Applicant's use or display of the logos as described in clause 4.4.
- 4.7 The Applicant will keep Sport England informed of any sponsorship relating to an event, programme or facility wholly or substantially funded by the Exchequer Grant, will use its best endeavours to include in any such sponsorship agreement(s) entered into after the date of this Agreement a clause prohibiting the sponsor ambushing Sport England's grant of the Exchequer Grant by taking credit due to Sport England for that funding, and will use all reasonable endeavours to prevent ambush marketing tactics by the sponsor. For the avoidance of doubt, this clause will not prevent the sponsor taking full credit for its own funding.
- 4.8 Nothing in this Agreement will be construed as a transfer of ownership of any Intellectual Property held by Sport England or its subsidiaries or the Applicant.
- 4.9 The Applicant shall own any Intellectual Property developed by or on behalf of the Applicant in performing the Project.
- 4.10 Sport England may use the Applicant's name and logo(s) to promote Sport England's funding of the Project. The Applicant warrants that the Applicant has all rights and authorities required to license Sport England to do this.

## 5. **REPORTING AND MONITORING**

- 5.1 The Applicant will report on the progress of the Project in accordance with Schedule 9 or as Sport England may otherwise reasonably request from time to time.
- 5.2 The Applicant will allow Sport England (or its representatives) to:

- (a) monitor the conduct and progress of the Project and the achievement of the objectives set out in this Agreement; and
- (b) monitor compliance with the terms of this Agreement.

5.3 In order to enable the monitoring referred to in clause 5.2 the Applicant will:

- (a) allow Sport England (or its representatives) to have access at reasonable times to the offices of the Applicant or any other locations at which the Project is being carried out; and
- (b) provide such other reasonable assistance as Sport England (or its representatives) may request.

5.4 The Applicant will take appropriate steps to monitor its own success in completing the Project and achieving the objectives set out in this Agreement.

## 6. **DATA**

6.1 The Applicant will cooperate and collaborate with Sport England, the Open Data Institute and other sports bodies in the development, adoption and maintenance of data standards for the collection of sports data. As and when reasonably required by Sport England, the Applicant will provide Sport England with data generated through the Project which can be used to support any Sport England and sector wide projects (such as the Sport England Data Hub) which are designed to help members of the public search for, book and play sports and, among other things, help Sport England and the Applicant obtain a greater insight into the patterns of consumption of various sporting offers. For the avoidance of doubt, the Applicant is not obliged to provide any data where doing so would result in the Applicant breaching any Data Protection Laws.

6.2 The Applicant will work with Sport England to agree a protocol on the sharing of data generated through the Project to help produce insight into consumer preferences.

6.3 The Applicant will ensure that in undertaking the Project it will comply with all Data Protection Laws. Without prejudice to the generality of the preceding sentence, the Applicant will ensure that it has in place appropriate and compliant data processing agreements with any relevant third party, including Delivery Partners.

6.4 Except as set out in clause 4.5 or as otherwise expressly agreed between the parties, the Applicant will not provide any personal data (as defined in the Data Protection Laws) to Sport England. Consequently, the Applicant will ensure that any data that it provides to Sport England as part of its reporting or other obligations has, if applicable, been anonymized to such an extent that it does not constitute personal data.

## 7. **WARRANTIES**

7.1 On the date of this Agreement the Applicant warrants and represents to Sport England that:

- (a) the Applicant is legally entitled to enter into and perform this Agreement and undertake the Project;
- (b) entry into and performance of this Agreement and performance of the Project will not infringe and has not infringed any Applicable Law or any rights of a third party;
- (c) except as notified in writing to Sport England prior to entry into this Agreement, the Applicant has obtained all permissions (including licences or approvals from government authorities) and has made all registrations or notifications which, at the

time at which this warranty and representation is given, are required to enable the performance of the Project;

- (d) the Applicant is not aware of any fact or information which has not been disclosed to Sport England and which would reasonably be expected to be material to Sport England making available the Exchequer Grant for the Project on the terms set out in this Agreement;
- (e) all of the information that the Applicant has provided (or which has been provided on behalf of the Applicant) to Sport England is complete and accurate in all material respects; and
- (f) there are no legal proceedings or other proceedings pending or threatened before any court, tribunal or commission which might have a material adverse effect on either the Applicant's ability to perform its obligations under this Agreement or the financial and operational viability of the Project.

7.2 Each of the warranties and representations set out in clause 7.1 will be deemed to be repeated each time that the Applicant submits a Drawdown Notice to Sport England.

## 8. VAT

8.1 The Exchequer Grant does not represent consideration for a taxable supply to Sport England and is therefore not subject to Value Added Tax ("**VAT**"). If HM Revenue and Customs rules that VAT is payable, then the amount of the Exchequer Grant payable by Sport England will be deemed to be inclusive of VAT. The Applicant acknowledges that Sport England will not be obliged to make any further payment in addition to the Exchequer Grant in respect of any VAT.

8.2 Any and all liability to pay VAT in relation to the Project and any right to recover such VAT is the sole responsibility of the Applicant. The Applicant will use reasonable endeavours to minimise the payment of VAT and/or to recover the VAT attributable to the costs of the Project as set out in the Cost Plan.

8.3 No amount of the Exchequer Grant will be used by the Applicant to fund the payment of VAT payable by the Applicant in relation to the costs of the Project unless such VAT is:

- (a) payable and irrecoverable by the Applicant; and
- (b) the amount of such VAT is specifically identified as being irrecoverable in the Cost Plan ("**Funded VAT**").

8.4 The Applicant warrants that it genuinely and reasonably believes that any Funded VAT is irrecoverable.

8.5 If at any time it is determined that any Funded VAT is not payable or is recoverable then, unless otherwise agreed by Sport England:

- (a) the Exchequer Grant will be reduced by an amount equal to the amount of Funded VAT that is recoverable (or is not payable);
- (b) the Applicant will not then draw down any amount of the Exchequer Grant to pay for such Funded VAT save that if the Applicant has already drawn down funds against the Exchequer Grant to pay for such Funded VAT it will promptly repay to Sport England an amount equal to the amount drawn down; and

- (c) the Applicant will submit to Sport England, for approval, a revised version of the Cost Plan that reflects the removal of such Funded VAT.

**9. AVAILABILITY OF FUNDING**

- 9.1 Sport England will not be obliged to make any payment of the Exchequer Grant after the expiry of the Availability Period.
- 9.2 Sport England will not be obliged to make payment of the Exchequer Grant to the extent that there are insufficient Exchequer funds available to Sport England to fund that payment.

**10. CLAWBACK AND TERMINATION**

- 10.1 The Applicant will repay such amount as Sport England may reasonably determine, up to a maximum amount equal to the amount of the Exchequer Grant that has been drawn down by the Applicant, if any of the following (each a "**Clawback Event**") occurs at any point during the Grant Term:
  - (a) the Applicant fails to complete or satisfy the Conditions within 18 months of the date of this Agreement;
  - (b) the Applicant materially breaches any of the terms of this Agreement;
  - (c) the Applicant or any of its personnel has committed an offence under the Bribery Act 2010 in connection with the Project;
  - (d) any of the following occurs in relation to the Applicant:
    - (i) the Applicant suspending, or threatening to suspend, payment of its debts, or being unable to pay its debts as they fall due or admitting inability to pay its debts, or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    - (ii) the Applicant commencing negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Applicant with one or more other companies or the solvent reconstruction of the Applicant;
    - (iii) a petition being filed, a notice being given, a resolution being passed, or an order being made, for or in connection with the winding up of the Applicant other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the Applicant
    - (iv) an application being made to court, or an order being made, for the appointment of an administrator, or notice of intention to appoint an administrator being given or an administrator being appointed, over the Applicant;
    - (v) the holder of a qualifying floating charge over the assets the Applicant becoming entitled to appoint or has appointed an administrative receiver;
    - (vi) a person becomes entitled to appoint a receiver over the assets of the Applicant or a receiver being appointed over the assets of the Applicant; or

- (vii) a creditor or encumbrancer of the Applicant attaching or taking possession of, or a distress, execution, sequestration or other such process being levied or enforced on or sued against, the whole or any part of the Applicant's assets;
  - (e) any of the Exchequer Grant has been used for a purpose other than the Strategic Purpose;
  - (f) there is any change in ownership or control of the Applicant or any material change in its membership, organisation, constitution or activities, either of which Sport England at its sole discretion believes materially impacts on the Applicant's ability to achieve the Strategic Purpose or its suitability to receive Exchequer funding;
  - (g) Sport England, acting reasonably, believes that the Strategic Purpose is unlikely to be fulfilled; or
  - (h) the Applicant provided any information to Sport England dishonestly or in a way which was materially misleading.
  - (i) where it is determined by a relevant authority that any part of the Lottery Grant is an unlawful Subsidy.
- 10.2 The Applicant will notify Sport England if it becomes aware that a Clawback Event has occurred.
- 10.3 The Applicant will not, without Sport England's prior written consent, grant to any party any rights that would give that party a prior ranking debt over any debts that may become due to Sport England pursuant to clause 10.1 or otherwise.
- 10.4 Sport England may, in its absolute and sole discretion, terminate this Agreement at any time if:
- (a) either Sport England or the Applicant is legally prevented from performing this Agreement; or
  - (b) a Clawback Event occurs.
- 10.5 Sport England may in its sole discretion (but acting reasonably) amend or terminate this Agreement to reflect:
- (a) any change in Sport England's entitlement to distribute Exchequer funding;
  - (b) any requirement issued pursuant to any legislation; or
  - (c) any directions issued to Sport England by any central government department.
- 10.6 Following the end of the Grant Term or termination of this Agreement for any reason:
- (a) Sport England will have no further obligation to make any payment of the Exchequer Grant;
  - (b) the Applicant will, except where approved otherwise by Sport England, repay to Sport England any part of the Exchequer Grant that Sport England has paid to the Applicant and which the Applicant has not spent; and
  - (c) the following clauses of this Agreement will continue to have effect: 6, 8, 10, 11, 12, 13, 14, 15 and 16.

10.7 If the Applicant fails to claim all or any part of the Exchequer Grant in accordance with the provisions of this Agreement, Sport England will be entitled to retain the Exchequer Grant or reduce the amount accordingly.

## 11. **LIABILITY**

To the extent permitted by law:

- (a) Sport England will not have any liability to the Applicant in respect of any advice, statement or comments made by Sport England or its personnel in connection with the Project;
- (b) the extent of Sport England's liability under or in connection with this Agreement (including for negligence) is limited to its obligation to pay the Exchequer Grant in accordance with the provisions of this Agreement; and
- (c) the Applicant will indemnify and keep indemnified Sport England in respect of any losses incurred by Sport England in connection with any claim made by a third party in connection with the Project, except to the extent that the losses arise from Sport England's negligence or breach of contract.

## 12. **NOTICES**

12.1 A "**Formal Notice**" means any notice from a party to the other party:

- (a) alleging that the other party is in breach of this Agreement; or
- (b) terminating or purporting to terminate this Agreement.

For the avoidance of doubt Formal Notice will not include Drawdown Notices.

12.2 Any Formal Notice will be valid and effective only if it is:

- (a) signed by or on behalf of the person giving it; and
- (b) delivered by hand or sent by recorded delivery post, with a copy sent by email, to the relevant party to the contact, postal address and email address set out in clause 12.3, or to such other contact, address and email address as the recipient party has notified from time to time.

12.3 The parties' contact details are as follows:

### **Sport England:**

Address: SportPark, 3 Oakwood Drive, Loughborough Leicestershire LE11 3QF

Contact: Chief Executive

Email: [legalservices@sportengland.org](mailto:legalservices@sportengland.org)

### **Applicant:**

Address: [ ]

Contact: [ ]

Email: [ ]

12.4 Unless there is evidence that it was actually received earlier, a Formal Notice is deemed to have been delivered:

- (a) if delivered by hand or commercial courier, at the time of delivery; or
- (b) if sent by recorded delivery post, at 09.00 on the second Business Day after the day of posting.

### 13. **RECORDS AND AUDIT**

13.1 The Applicant will, throughout the Grant Term and for at least three years following the end of the Grant Term, maintain full accounts, books and records relating to the Project, including details of all expenditure of the Exchequer Grant. The Applicant will supply to Sport England such financial or other information and records as Sport England may reasonably require from time to time in respect of the Applicant's delivery of the Project.

13.2 During the Grant Term and for two years following the end of the Grant Term (or such longer period as may be required by Applicable Law), the Applicant will enable Sport England and its authorised representative(s), nominee(s) or external auditors (including, without limitation, the Comptroller and Auditor General and the National Audit Office and the Parliamentary Health and Service Ombudsman) to access, upon not less than seven (7) days' written notice, the offices of the Applicant and/or its affiliates and/or the Delivery Partners, for the purpose of inspecting the books and records of the Applicant (and of any such affiliate or Delivery Partner) that relate to the use of the Exchequer Grant and delivery of the Project, including (without limitation) the accounts and financial records referred to at clause 13.1 above, and take copies of the same.

13.3 If Sport England has a reasonable concern that the Applicant has acted fraudulently or otherwise engaged in any illegal or inappropriate conduct in connection with the Project, then the time limits set out in clause 13.2 will not apply.

13.4 In addition to the reporting obligations under clause 5, the Applicant will supply to Sport England such financial or other information and records as Sport England may reasonably require from time to time in respect of the Applicant's performance of its obligations pursuant to this Agreement.

13.5 The Applicant will notify Sport England if there is any material adverse change in the financial position or prospects of the Applicant.

### 14. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

14.1 Subject to the following provisions of this clause 14 neither party will, without the other party's prior written consent, disclose any confidential information relating to the other party which it learns as a consequence of entering into or performing this Agreement or delivering the Project.

14.2 The limitations in clause on disclosure in clause 14.1 will not apply to information disclosed by either party pursuant to:

- (a) the requirements of a governmental authority or judicial order or legal requirement e.g. disclosure required under the Freedom of Information Act 2000, provided that, to the extent reasonably practicable, a party consults with the other party before disclosing any information pursuant to this clause (a); or
- (b) information already in the public domain (otherwise than as a result of a breach of confidence by a party).

- 14.3 The parties acknowledge and agree that Sport England is a public authority and as such may be subject to certain statutory or other obligations to permit access to information held by Sport England (or by the Applicant on Sport England's behalf). Such information may extend to the contents of this Agreement and other documents and information relating to it. The Applicant will without charge promptly provide all such assistance as Sport England may reasonably require in order that Sport England may comply with lawful and proper requests for access to documents and information held by the Applicant on Sport England's behalf.
- 14.4 To the extent reasonably practicable Sport England will give the Applicant notice of and an opportunity to make representations in respect of any requests for access to documents or information relating to this Agreement, provided always that the decision whether or not to permit access to such documents or information will remain within the absolute discretion of Sport England.
15. **MISCELLANEOUS**
- 15.1 If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or in part the remainder of this Agreement will continue to be valid and enforceable.
- 15.2 Sport England may assign, novate or otherwise transfer all of its rights, obligations and liabilities under this Agreement to a successor body to Sport England or to any successor distributor of Exchequer funding, and the Applicant will consent to any such assignment, novation or other transfer. The Applicant will not assign, novate or otherwise transfer any of its rights, obligations or liabilities under this Agreement to any person.
- 15.3 Delegation by the Applicant of the performance of this Agreement or the Project to a third party will not relieve the Applicant of any of its obligations to Sport England under this Agreement.
- 15.4 If requested by Sport England from time to time, the Applicant will do anything (including execute documents in a form satisfactory to Sport England) that Sport England may reasonably consider necessary in order to give full effect to this Agreement.
- 15.5 Neither this Agreement nor the Exchequer Grant nor the activities conducted by the parties in connection with this Agreement will constitute a partnership between Sport England and the Applicant, or constitute either the Applicant or Sport England as the other's agent.
- 15.6 Subject to clause 15.7, this Agreement (together with the documents referred to in it) represents the entire agreement between the parties and supersedes all prior agreements, understandings or arrangements (both written and oral) relating to the subject matter of this Agreement.
- 15.7 Nothing in this Agreement limits or excludes any liability for fraud or any other liability which cannot be limited or excluded by law.
- 15.8 No failure or delay in exercising rights under this Agreement will operate as a waiver of such rights. Any variation to this Agreement must be in writing and signed by an authorised representative of each party.
- 15.9 No person other than a party may enforce or rely on this Agreement for the purposes of the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 15.10 This Agreement, and all non-contractual matters arising in connection with this Agreement, will be governed by English law. The courts of England have exclusive jurisdiction over any disputes arising in connection with the Exchequer Grant and this Agreement.

15.11 Irrespective of any conditionality in this Agreement that applies to the payment of the Exchequer Grant, Sport England will pay to the Applicant the sum of £1 on demand.

16. **INTERPRETATION**

16.1 The words "including" and "in particular" and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions.

16.2 Any covenant by the Applicant not to do an act or thing will be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.

**SCHEDULES**

1. Definitions
2. Strategic Purpose
3. Cost Plan
4. Agreed Design
5. Design Requirements
6. Site Plan
7. Business Plan
8. Form of Drawdown Notice
9. Reporting
10. Conditions
11. Disclosures

## **SCHEDULE 1**

### **DEFINITIONS**

<b>Account</b>	has the meaning given in clause 2.5(a) of Part 5;
<b>Agreed Design</b>	has the meaning given in clause 1.1 of Part 2;
<b>Applicable Law</b>	the laws of England and Wales;
<b>Availability Date</b>	has the meaning given in clause 1.2 of Part 2;
<b>Business Day</b>	any day (other than a Saturday, Sunday or public holiday) when banks are open for business in the City of London. Banks shall not be deemed to be "open" for the purposes of this definition by virtue of the availability of automatic telling machines, telephone banking or online banking facility;
<b>Business Plan</b>	a plan as approved in writing by Sport England from time to time for the operation of the Facility following the date upon which the Facility is first opened to the public and is available for public use comprising the strategy, policies, programmes and other documents set out in Schedule 7 ( <i>Business Plan</i> );
<b>Clawback Event</b>	has the meaning given in clause 10.1 of Part 5;
<b>Contractor</b>	being the special purpose company or companies appointed by the Applicant to deliver the Project;
<b>Cost Plan</b>	the item by item statement of anticipated revenue expenditure by the Applicant on the Project as set out in Schedule 3 ( <i>Cost Plan</i> ) or as may be agreed in writing by the parties from time to time;
<b>Delivery Partners</b>	any third party including any Contractor or Subcontractor who materially assists the Applicant in delivering the Project;
<b>Design Requirements</b>	has the meaning given in clause 1.1 of Part 2;
<b>Disposal</b>	the selling, transferring, assigning, granting or otherwise disposing of any interest (including a freehold or leasehold interest) in the Protected Assets;
<b>Drawdown Notice</b>	has the meaning given in clause 4.2 of Part 1;
<b>Funded VAT</b>	has the meaning given in clause 8.3(b) of Part 5;
<b>Governance Action Plan</b>	the action plan agreed between the Applicant and Sport England setting out the actions, steps required and timescales for compliance with the "A Code for Sports Governance" as referred to in clause 3.3 of Part 5;
<b>Grant of Rights</b>	the granting of any exclusive rights in the Protected Assets, including through the grant of any naming rights or sponsorship rights for any part of the Protected Assets;
<b>Intellectual Property</b>	patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, copyright (including rights in computer software) and moral rights, database rights, semi-conductor topography rights, utility models, codes of practice, descriptions, specifications, rights in know-how and other intellectual property rights, in each

case whether registered or unregistered, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

<b>KPI Assessment Method</b>	has the meaning given in clause 4.1 of Part 2;
<b>KPIs</b>	has the meaning given in clause 4.1 of Part 2;
<b>Exchequer Grant</b>	the grant made by Sport England to the Applicant of a maximum amount as set out on the first page of this Agreement;
<b>Primary Conditions</b>	has the meaning given in clause 2.1 of Part 1;
<b>Protected Assets</b>	has the meaning given in clause 1.1 of Part 3;
<b>QUEST</b>	the Sport England recommended continuous improvement tool for leisure facilities and sports development teams, designed to measure how effective organisations are at providing customer service;
<b>Restricted Products</b>	has the meaning given in clause 3.5 of Part 5;
<b>Retention Amount</b>	means a part of the grant, in the amount set out on the first page of this Agreement, that is to be retained by Sport England subject to the Applicant's achievement of certain conditions;
<b>RIBA</b>	Royal Institute of British Architects
<b>Ringfenced Proceeds</b>	has the meaning given in clause 1.1 of Part 4;
<b>Ringfenced Profit</b>	has the meaning given in clause 2.1 of Part 4;
<b>Secondary Conditions</b>	has the meaning given in clause 2.2 of Part 1;
<b>Strategic Purpose</b>	the purpose for which this Exchequer Grant was granted as set out in Schedule 2 ( <i>Strategic Purpose</i> );
<b>Subcontractor</b>	a person having a direct contractual arrangement with the Contractor for the purpose of performing one or more of the Applicant's obligations under this Agreement;
<b>Subsidy</b>	Has the meaning given to that term in the Subsidy Control Act 2022
<b>Tackling Inequalities in Leisure Standard (TILS)</b>	Assessment by QUEST with the aim to help leisure operators provide more inclusive and accessible physical activity opportunities for people from a range of inequality groups;
<b>VAT</b>	has the meaning given in clause 8.1 of Part 5.

## **SCHEDULE 2**

### **STRATEGIC PURPOSE**

Wonford Community and Sports Centre is an existing facility in Wonford, Exeter, which provides a range of community, youth and sports services. Built in the 1980s the centre is unwelcoming visually, has poor circulation/access and isn't well used by the local community.

The Council has a clear vision to transform the facility, through new and refurbished provision "to create a single hub facility to act as a focal point in the community".

The area has been part of one of our Local Delivery Pilots, now Place Partnerships, with Wonford recognised as the most deprived part of Exeter with low levels of participation. Through the place work there are key health and wellbeing partnerships in place to deliver the outcomes targeted at those less active. Community engagement has been a key part of the Place work and the development of this project, informing the design and the facility mix. The project was identified as a capital priority for the place.

**SCHEDULE 3**

**COST PLAN**

**SCHEDULE 4**

**AGREED DESIGN**

To be provided in accordance with Condition 29 Part A of Schedule 10.

**SCHEDULE 5**

**DESIGN REQUIREMENTS**

To be provided in accordance with Condition 30 Part A of Schedule 10.

**SCHEDULE 6**

**SITE PLAN**

**SCHEDULE 7**

**BUSINESS PLAN**

**TO BE PROVIDED IN ACCORDANCE WITH CONDITION 33 PART A OF SCHEDULE 10.**

**SCHEDULE 8**

**FORM OF DRAWDOWN NOTICE**

Claim Form to be supplied by Sport England, as updated from time to time

## **SCHEDULE 9**

### **REPORTING**

#### **1. FINANCIAL**

- 1.1 The Applicant will provide details of actual financial performance on a monthly basis in the format provided in Appendix 1 to this Schedule. The Applicant will provide the information directly into Sport England's Moving Communities platform.
- 1.2 The information will be provided for each Operator covering all Facilities operated by that Operator, and if requested by Sport England broken down for each Facility.
- 1.3 The information must be provided to Sport England for a period of 25 years starting from the Availability Date (or such shorter time as Sport England may determine). The Applicant will use reasonable endeavours to provide the information within 20 days, and in any event will provide the information within 30 days, after the end of the previous month.

#### **2. FACILITY INFORMATION**

The Applicant will provide any material changes to the capacity or opening hours of the Facility as part of its monthly updates.

#### **3. PARTICIPATION**

- 3.1 The Applicant will provide details of actual visits and participation at the Facilities on a monthly basis in the format provided in Appendix 2 to this Schedule. The Applicant will provide the information directly and in an automated fashion into Sport England's Moving Communities platform. The information will be provided separately for each individual Facility.
- 3.2 The information to be provided consists of:
  - (a) **PARTICIPANTS:** Total number of unique individuals that have visited the Facility to do an activity in the relevant month
  - (b) **VISITS:** Total usage figures for the Facility in the relevant month
- 3.3 The information on visits and participants will be broken down into the following categories on a monthly basis:
  - (a) Age / age group
  - (b) Gender
  - (c) IMD (deprivation decile)
  - (d) Ethnicity
  - (e) Disability
  - (f) Concessionary
  - (g) Activity

The information will be provided to Sport England for a period of 25 years starting from the Availability Date (or such shorter time as Sport England may determine). The Applicant will use reasonable endeavours to provide the information within 20 days, and in any event will provide the information within 30 days, after the end of the previous month.

**4. SERVICE DELIVERY**

4.1 The Applicant shall ensure that the Facility no later than 12 months after the Availability Date materially achieves, and thereafter materially maintains for the remainder of the Grant Term:

- (a) accreditation to QUEST or such other nationally recognised quality assurance scheme that operates an external assessment of facilities (including a mystery visit or similar method of assessment), and that has been approved by Sport England for this purpose;
- (b) accreditation to the Tackling Inequalities in Leisure Standard (TILS) or such other disability accreditation assessment scheme as may be approved by Sport England from time to time;

**5. Data analysis**

5.1 Sport England may share any information provided by the Applicant relating to the operation of the Facilities with third parties (including Leisurenent, 4Global, Sport Industry Research Group with Sheffield Hallam University) to enable data analysis in relation to participation and performance.

**APPENDIX 1 TO SCHEDULE 9**

**FINANCE REPORTING**



finance\_template  
(3).xlsx

**APPENDIX 2 TO SCHEDULE 9**

**USAGE REPORTING**



usage\_template  
(2).xlsx

## SCHEDULE 10

### CONDITIONS

#### PART A: PRIMARY CONDITIONS

Pursuant to clause 2.1 of Part 1, the following conditions must be achieved, to the satisfaction of Sport England, prior to the drawdown of the Exchequer Grant or any part of it:

1. The Applicant shall obtain full planning permission in respect of the Site to allow the construction of the Facility and all other aspects involved in the fulfilment of the Project in accordance with the terms of this Agreement, by commencement of the Project;
2. The Applicant shall provide evidence of full compliance with, and the discharge of all planning conditions save where any such planning condition is a continuing obligation and therefore incapable of being discharged, by commencement of the Project;
3. The Applicant shall enter into and be legally bound by a contract with the Contractor for the design and construction of the Facility on terms satisfactory to Sport England (the "**Project Agreement**"), and a copy be provided to Sport England, by commencement of the Project;
4. The Applicant shall obtain all necessary approvals and authorisations to fund the fulfilment of the Project and its payment obligations under the Project Agreement, by commencement of the Project;
5. The Applicant shall secure binding commitments from funding partners (and/or any other person where applicable) that will enable it to draw down, and to the extent applicable providing evidence that it has sufficient available committed revenue funding to meet, the other funding for the Project within a timescale that will enable it to fulfil its obligations under this Agreement, by commencement of the Project;
6. The Applicant shall supply to Sport England copies of resolutions or minutes (certified by an authorised officer) passed at a duly convened meeting of the Applicant's councillors, in each case approving the entering into and execution of this Agreement, by the date of this Agreement;
7. The Applicant shall supply to Sport England documentary evidence demonstrating that the Applicant has the capacity and authority to enter into this Agreement and perform their obligations under this Agreement, accept any liabilities arising from this Agreement, that this Agreement will be legally binding on them and that Sport England may enforce the terms of this Agreement against the Applicant, by the date of this Agreement;
8. The Applicant, by commencement of the Project, shall obtain Sport England's approval for the design of the Facility at each of:
  - (a) RIBA Stages 4, 5 and ; and

- (b) the Contractor's final design proposed to the Applicant pursuant to the Project Agreement;
9. The Applicant to provide evidence of, and confirmation that the Design at the award of a construction contract complies with Sport England Design Guidance.
  10. The Applicant shall provide Sport England with evidence that the Applicant is the owner of the Site, by the date of this Agreement.
  11. The Applicant shall provide to Sport England evidence of the Applicant's safeguarding policy which covers children, young people and adults at risk, by the commencement of the Project.
  12. The Applicant shall provide Sport England with three complete sets of the agreed contract documents with the Contractor (prior to construction commencing). This shall include all specifications and drawings. The documentation should demonstrate compliance with relevant Sport England design guidance.
  13. The Applicant shall engage with Sport England and their professional advisors to agree an acceptable solution to any design issues that arise in respect of compliance with Sport England design guidance. Any proposed derogation from the guidance must be in writing. The Applicant is to maintain a schedule of derogations agreed with Sport England.
  14. In the event of the need to undertake value engineering at any stage of the Project, the Applicant shall engage with Sport England and their professional advisors to achieve and agree any necessary financial savings to the satisfaction of Sport England.
  15. The Applicant shall obtain Sport England's approval of the procurement strategy for a construction contractor.
  16. The Applicant shall appoint an independent professional Construction Project Manager, suitably qualified, and experienced on similar projects, to manage the project on behalf of the Applicant for RIBA Stages 5 - 7 inclusive. The appointment to be approved by Sport England.
  17. The Applicant shall provide Sport England with a report evidencing that the Contractor was appointed in accordance with all applicable procurement rules and legislation; demonstrating that the project is affordable to the satisfaction of Sport England, provides sufficient transparency on the rationale for the contract awarded to the Contractor and demonstrates that the agreed contract sum with the Contractor provides value for money.
  18. The applicant shall advise Sport England on the particular aspects of the project which focus on environmental sustainability and positive actions to offset climate change. This may include policies, initiatives or processes which increase biodiversity, reduce energy and water consumption and carbon footprint. Sport England advice and guidance can be found here - <https://www.sportengland.org/how-we-can-help/facilities-and-planning/sustainability>
  19. The Applicant is to ensure that all the outdoor sports surfaces (if applicable) are designed by a suitably experienced specialist consultant and is to obtain Sport England's approval for the consultant prior to their appointment.
  20. The Applicant shall provide Sport England with a strategy setting out how any shortfall in project funding will be financed.

21. The Applicant shall provide Sport England with monthly progress reports prepared by their professional project manager or Contractor. As a minimum the reports must include a commentary on overall project progress including design, cost and affordability, and the review of a risk register. Reports shall be provided to Sport England on a monthly basis up until Project completion and with the issue of the Building Regulations Final Certificate.
22. The Applicant shall provide Sport England with a quantified and costed risk register for the Project identifying all key risks to the Project and the measures for risk mitigation.
23. The Applicant shall agree to the project being monitored by Sport England who will observe the provisions in Clause 13.
24. The Applicant shall agree to the project being used as a case study in accordance with Sport England requirements and agrees to the publication of it on Sport England's website without any cost or charge to Sport England. The Applicant shall obtain all permissions on behalf of Sport England for images, illustrations and photographs included in the study.
25. The Applicant to provide information for a Case Study, if requested by Sport England, and to the Satisfaction of Sport England, prior to drawing down Sport England funding.
26. The Applicant shall provide the certificate anticipated by clause 3.6 of Part 3 to Sport England before the satisfaction of this Part A Condition 23.
27. The Applicant shall develop of a delivery plan for the active environments work to be designed to Sport England active design principles. The final active environment proposals must be approved by Sport England prior to implementation.
28. The Applicant shall provide written evidence of the Project's VAT status and provide an estimate of the VAT based on professional advice.
29. The Applicant shall submit proposals to Sport England for alternative Project delivery if there is a shortfall in the level of secured funding against the Total Project Cost.
30. The applicant shall provide full details of collateral warranties for designers and any contractor design portions.
31. The Applicant shall provide confirmation that the project meets the Acoustic Requirements of Sport England design guidance notes.
32. The Applicant shall provide to Sport England the details of the Agreed Design to Sport England's satisfaction prior to commencement of the Project.
33. The Applicant shall provide to Sport England the details of the Design Requirement to Sport England's satisfaction prior to commencement of the Project.
34. The Applicant shall provide evidence that all match funding required to deliver the Project is confirmed no later than 30<sup>th</sup> June 2026. Progress to secure the relevant levels of match funding shall be reviewed by Sport England in June 2025, September 2025, December 2025, April 2026 and June 2026. If progress towards the match funding target is not made to Sport England's satisfaction at each milestone, then Sport England will consider decommitting the Exchequer Grant offer at that point.
35. The Applicant shall produce an updated Business Plan for the project to the satisfaction of Sport England. This shall form Schedule 7 of this Agreement.
36. The Applicant shall agree the operational plan for the Facility to the satisfaction of Sport England.

37. The Applicant to provide evidence that any lease and sub lease issues relating to the Project are resolved to the satisfaction of Sport England.

**PART B: SECONDARY PROJECT CONDITIONS**

Pursuant to clause 2.1 of Part 1, the following conditions must be achieved prior to the drawdown of the Retention Amount of the Lottery Grant.

38. The Applicant shall provide written evidence of Building Regulation Approval.
39. The Applicant shall register the restriction on title set out in clause 3 of Part 3 at the Land Registry.
40. The Applicant shall ensure that the Operating Contract for the project is outcome focussed to Sport England's satisfaction.
41. The Applicant to provide a statement on how the long-term maintenance and condition of the facilities will be addressed in terms of management and cost over a period of not less than 25-years from the date of this Agreement to Sport England's satisfaction. This must include demonstration of how the costs will be met.

**SCHEDULE 11**

**DISCLOSURES**