

Report to :	EXECUTIVE CABINET
Date :	16 December 2015
Executive Member / Reporting Officer:	Councillor Gerald P Cooney, Executive Member (Learning, Skills and Economic Growth) Damien Bourke – Assistant Executive Director (Sustainable Growth and Assets)
Subject :	ASTLEY SPORTS COLLEGE – FOOTBALL FOUNDATION GRANT – NEW 3G FLOODLIT PITCH
Report Summary :	<p>Astley Sports College (Dukinfield) has been awarded a capital grant from the Football Foundation for the installation of a new floodlit 3G football pitch. The maximum sum awarded is £ 487,227 which is 83% of the total project cost (£587,227).</p> <p>The Council is required to accept the Football Foundation grant conditions (Appendix A) on behalf of Astley Sports College. The request was presented within a report (Investment in Education Buildings) to the Strategic Planning and Capital Monitoring Panel on 30 November 2015. There were a number of assurances required by the Council prior to acceptance of the associated grant terms to ensure the Council is indemnified in the event of any pre or post project completion liabilities (21 year term grant clawback period from date of grant acceptance).</p> <p>This report provides Elected Members with the details of these assurances to support the recommendation.</p>
Recommendations :	Executive Cabinet is recommended to accept the Football Foundation Capital Grant Conditions (Appendix A) relating to the installation of a floodlit 3G football pitch at Astley Sports College, Dukinfield. The Council have received assurances from the College to ensure that the Council will not be subject to any pre or post project completion liabilities (21 year term grant clawback period from date of grant acceptance). The assurances are detailed within the report. The Sports College Governing Body will be required to provide a legally binding agreement to support the indemnification of any project related liabilities to the Council (section 5 refers). This will be required in advance of acceptance of the grant conditions by the Council and will also bind any successors in title to cover the event of academisation.
Links to Sustainable Community Strategy :	The proposals in the report support those elements of the Community Strategy which relate to a Learning and Supportive Tameside.
Policy Implications :	The proposals contained in this report will support the delivery of the community strategy.
Financial Implications : (Authorised by the Section 151 Officer)	The report recommends that the Council accepts the Football Foundation grant conditions (Appendix A) relating to the new 3G floodlit pitch project at Astley Sports College. The Council has received assurance from the Sports College governing body that any associated liabilities that may arise during the subsequent 21 year term grant clawback period (from date of grant acceptance) will be recoverable from the Astley Sports College governing

body. The Sports College Governing Body will be required to accept a legally binding agreement to support the indemnification of any project related liabilities to the Council in advance of acceptance of the grant conditions by the Council (section 5 refers).

There Sports College have provided evidence that the residual £100,000 project capital balance not supported by the Football Foundation grant will be financed via Astley Sports College (£85,000), Cromwell Special School (£10,000) and Yew Tree Primary School (£5,000).

Astley Sports College have provided a revised three year revenue budget plan which demonstrates a cumulative surplus position for the college during this period (section 4.2 table 3 refers). The revised plan includes the annual expenditure and income associated with this new facility.

It is essential that this revised plan is stringently monitored to ensure the actions taken are implemented since the original projected cumulative deficit budget plan was submitted in April 2015. (section 1.5, table 1).

**Legal Implications :
(Authorised by the Borough
Solicitor)**

Executive Cabinet is recommended to accept the Football Foundation Capital Grant Conditions (**Appendix A**) relating to the installation of a floodlit 3G football pitch at Astley Sports College, Dukinfield. The Council have received assurances from the College to ensure that the Council will not be subject to any pre or post project completion liabilities (21 year term grant clawback period from date of grant acceptance). The assurances are detailed within the report. The Sports College Governing Body will be required to accept a legally binding agreement to support the indemnification of any project related liabilities to the Council (section 5 refers). This will be required in advance of acceptance of the grant conditions by the Council and will also be expected to bind any successors in title such as an Academy.

Risk Management :

The Council has received various assurances from Astley Sports College to ensure that the Council is not subject to any pre or post project completion liabilities (21 year term grant clawback period from date of grant acceptance). The assurances are detailed within the report. The Sports College Governing Body will be required to authorise a legally binding agreement to support the indemnification of any project related liabilities to the Council. This will be required in advance of acceptance of the grant conditions by the Council (section 5 refers).

Access to Information :

The background papers relating to this report can be inspected by contacting Stephen Wilde



Telephone:0161 342 3726



e-mail: stephen.wilde@tameside.gov.uk

1 INTRODUCTION

- 1.1 A capital grant has been applied for by Astley Sports College to fund the development of a floodlit 3G football pitch on its grounds. The Football foundation grant comes with a number of conditions (**Appendix A**) which the Council needs to be satisfied have been addressed in advance of accepting the associated grant condition terms.
- 1.2 The Football Foundation has provisionally allocated £487,227 of capital grant towards the project which is 83% of the estimated costs of the project. The remaining balance of the capital funding required is £100,000.
- 1.3 A report (Investment in Education Buildings) was presented to the Strategic Planning and Capital Monitoring Panel on 30 November 2015. This report included a request for the Council to accept the associated grant conditions. However, there were a number of assurances required by the Council prior to acceptance of the grant terms to ensure the Council is not subject to any pre or post project completion liabilities (21 year term grant clawback period from date of grant acceptance).
- 1.4 The School brought forward a deficit revenue balance of £ 82,000 from 2014/15. The three year budget plan received from the school in April 2015 projected the following cumulative revenue balances.

Table 1

Financial Year	Projected Cumulative Revenue Balance () = Deficit £
2015/2016 (Adjusted for correct 2014/15 balance brought forward)	(77,466)
2016/2017	(33,834)
2017/2018	201,476

- 1.5 There was an additional risk identified that the school were unable to finance the ongoing maintenance costs of the pitch for the duration of the grant conditions. The above balances excluded related expenditure and income details associated with the ongoing management of the project.
- 1.6 The Sports College Governing Body were requested to provide an updated and balanced budget plan together with reassurance that the grant conditions (**Appendix A**) will be adhered to for the duration of the grant clawback term (21 years) and that all associated project liabilities will be financed from the Sports College budget.
- 1.7 The new pitch is expected to be completed by September 2016 for use from the commencement of the 2016/17 academic year.

2 CAPITAL GRANT BALANCE (£100,000)

- 2.1 The Football Foundation has provisionally allocated £487,227 of capital grant towards the project which is 83% of the estimated costs of the project. The remaining balance of the capital funding required is £100,000.

- 2.2 Astley Sports College have confirmed £85,000 towards the residual funding required to finance the total project expenditure. £20,000 will be financed in 2015/16 with £ 65,000 financed in 2016/17.
- 2.3 Cromwell Special School have confirmed £10,000 towards the residual project funding required.
- 2.4 Yew Tree Primary School has confirmed £5,000 towards the residual project funding required.
- 2.5 The relevant school contributions are included within the associated school three year approved budget plan.
- 2.6 The financing of any capital related expenditure in excess of the £100,000 balance will be the liability of Astley Sports College.
- 2.7 The Football Foundation has appointed Robinson Low Francis as the organisation who will manage the project. The organisation will manage the associated tender procedures for the construction of the facility once the relevant site planning permission is obtained. The Council in conjunction with the Sports College will ensure that approved Procurement Standing Order thresholds and procedures are adhered to when awarding the associated contract(s) to deliver the project alongside Football Foundation grant conditions.
- 2.8 Astley Sports College will manage the project capital expenditure cashflow. The Sports College will issue a grant claim form to the Football Foundation in advance of any project capital expenditure (with supporting evidence). The Football Foundation will pay the Sports College 83% of the claim/ invoice total within 21 days of receipt. The Sports College we will then pay the total value of invoices received on receipt of the grant together with the 17% contribution balance (identified within the school budget together with contributions received from Cromwell Special School and Yew Tree Primary School as detailed in sections 2.3 and 2.4).

3. REVENUE EXPENDITURE AND INCOME

- 3.1 The Sports College have provided supporting business plan details to the Council associated with the ongoing revenue expenditure and income of the new pitch. The five year summary detailed in table 2 below demonstrates that the facility is projected to deliver excess income compared to expenditure on an annual basis during the initial five years.

Table 2

Financial Year	Projected Expenditure £	Projected Income £	Projected Annual Surplus £
2016/17	19,140	25,270	6,130
2017/18	35,590	45,320	9,730
2018/19	39,680	48,850	9,170
2019/20	41,160	52,550	11,390
2020/21	42,410	56,430	14,020

- 3.2 The expenditure includes an annual sinking fund contribution of £25,000 (part year 2016/17) to finance a replacement pitch which is estimated to have a useable duration between 10 and 15 years. It is essential that the school maintain this accumulated sum as an identified reserve within the school's annual accounts. It must not be used for any

alternative purpose during the accumulation duration period and should be appropriately monitored and reported to the Governing Body together with the Football Foundation.

- 3.3 The Sports College will be liable for any deficit balance that may arise on an annual basis relating to the facility in the initial five year term and subsequent years should the projected levels of income not materialise

4. SCHOOL BUDGET PLAN

- 4.1 The school have provided a revised budget plan to the Council which incorporates the related expenditure and income for the 3G pitch together with the schools contribution towards the balance of construction expenditure.
- 4.2 Table 3 provides a summary of the revised cumulative estimated revenue balances for the three year period as stated. The school have presented a three year budget which now demonstrates a surplus position during this period. This will require stringent monitoring to ensure the actions taken are implemented since the original projected cumulative deficit budget plan was submitted in April 2015. (section 1.5, table 1)

Table 3

Financial Year	Projected Cumulative Revenue Balance () = Deficit £
2015/2016	34,562
2016/2017	258,919
2017/2018	778,493

5. INDEMNIFICATION OF POTENTIAL LIABILITES

- 5.1 The Sports College Governing Body will be required to accept a legally binding agreement to support the indemnification of any project related liabilities to the Council. This will be required in advance of acceptance of the grant conditions by the Council. The potential liabilities for indemnification include :
- Residual balance of capital project funding not supported by the Football Foundation Grant
 - Annual sinking fund contribution for future pitch replacement (£25,000 as recommended by the Football Foundation)
 - Annual deficit balance which may arise where the related annual pitch hire income is not sufficient to finance associated annual expenditure.
 - Football Foundation legal costs as stated in section 3 (page 12) of the Football Foundation grant conditions (**Appendix A**)

6. RECOMMENDATION

- 6.1 As stated on the front of the report.

Mrs Tracey Marshall
Astley Sports College
Yew Tree Lane
Dukinfield
Cheshire
SK16 5BL

Ref: G82487

Ms Elaine Todd
Tameside Metropolitan Borough Council
Ashton Market Hall
Market Street
Ashton-under-Lyne
OL6 7JU

01 October 2015

Dear Mrs Marshall and Ms Todd

ASTLEY SPORTS COLLEGE AND TAMESIDE METROPOLITAN BOROUGH COUNCIL: NEW 106M X 70M FLOODLIT 3G FTP

The Foundation has approved a capital grant offer of **83%** of a total project cost of £587,227 subject to a **maximum payment of £487,227**; and to **Astley Sports College and Tameside Metropolitan Borough Council** towards a new 106m x 70m floodlit 3G FTP and delivery of the aims and objectives detailed in the Application and the Football Development Plan submitted as part of your application, (which is available at your Grantshot portal) in accordance with the General Terms and Conditions enclosed with and set out in this letter. The definitions in the General Terms and Conditions attached also apply in this letter.

This grant is offered jointly to Astley Sports College and Tameside Metropolitan Borough Council (together the "Organisations" or "Applicant").

1. Additional Conditions

1.1 The Grant is subject to satisfaction of the following additional conditions:

Pre-construction conditions

- That the tender evaluation report and tenders are agreed in writing by the Foundation, prior to the contractor being appointed.
- That a copy of the planning permission/amendment approval is provided to the Foundation prior to the commencement of any works.
- That the School provides evidence of partnership funding from Sport England as soon as any award has been made.
- That Astley Sports College provide a written undertaking before the commencement of works, which confirms that they will underwrite any deficit generated by the 3G FTP.
- That all key community clubs sign an agreement to confirm their intended level of usage before the commencement of works.
- That the 3G FTP meets the standards for full-size pitches contained within the FA Guide to 3G FTP Design Principles and Layouts.
- The Organisation shall at its own cost enter (or permit the Foundation to enter) a restriction on the registered title to the property on which the Facility is being developed ("the Property") as detailed in clause 21 of the General Terms and Conditions or a caution against first registration in the case of unregistered land and, if requested to do so by the Foundation, enter into a deed of dedication in relation to the Property. Further:
 - The Organisation's solicitors must provide a solicitor's undertaking that the Organisation will pay the Foundation's legal costs of putting the restriction or caution and deed of dedication in place as set out in the guidance note provided.

Please Note: No grant will be payable if construction of the Facility starts without written permission to proceed from the Football Foundation.

Pre-claim capital conditions

- That the applicant produces a cashflow forecast which illustrates when the Foundation grant will be drawdown.
- That the Club provides evidence for the bank account that the grant will be paid into before any funds are released. This must be in the form of a copy of a bank statement or paying-in slip.

Pre-opening conditions

- That prior to the facility opening, the programme of use and pricing policy is forwarded to the Foundation, FA and CFA for approval.
- That a steering group is established to monitor and review delivery of the plan once/twice a year, and that Cheshire FA are invited to be part of this. A copy of the Terms of Reference and minutes of this group are to be submitted to the Foundation.
- That a Terms of Reference is drawn up for the Steering Group and forwarded and that the Pitch Supervisor is recruited and appointed to the group, ensuring strong club links to support the FDP.

2. **Acceptance**

- 2.1 The Organisations have **two months from the date of the Grant Offer Letter** to accept the terms and requirements of this Grant. If the Organisations do not accept the terms and requirements of this Grant within two months from the date of this letter, the offer will lapse unless reasons are given for the delay, which are accepted by the Football Foundation. If the offer lapses, your application will be regarded as having been withdrawn. You are bound by this Grant Offer Letter or the General Terms and Conditions attached until such time as you make a claim for payment of the Grant or any payment of Grant is made to you.
- 2.2 No Grant Agreement comes into existence between the Football Foundation and the Organisations, and accordingly the Football Foundation is not bound to make payment of the Grant, unless and until a signed Grant acceptance form has been received by the Football Foundation from both organisations and where applicable the specific requirements set out in paragraph 1.1 above have been fulfilled to the Football Foundation's satisfaction.
- 2.3 If you wish to accept this Grant on the terms stated herein **please return one copy of each of the attached form of acceptance**, duly signed and dated by two authorised signatories to our Technical Project Manager. You should retain the other copy, which, together with this letter, will constitute the Grant Agreement between the Football Foundation and the Organisations.

3. **Payment of the grant**

- 3.1 **Capital Grants.** On compliance with the pre-construction conditions and pre-claim capital conditions set out in paragraph 1.1 and on receipt of appropriately completed claim forms and relevant supporting documents, the Foundation will pay claims at the same percentage rate that the Grant bears to the Project cost. This will continue until 95% of the Grant has been released. The remaining 5% of the Grant will be paid on receipt of written evidence of completion of the Project in accordance with clause 8 or clause 9 of the General Terms and Conditions and any other specific final 5% claim conditions referred to in clause 1.1, if any.
- 3.2 **Revenue Grants.** On compliance with the pre-claim revenue conditions set out in paragraph 1.1 above and on receipt of satisfactory completed revenue claim forms and relevant supporting documents, the Foundation will pay claims six monthly in arrears at the percentage rate detailed in Schedule 1.
- 3.3 The Organisations must ensure that sufficient funds are retained to meet the balance of any costs and to cover the period between the penultimate payment and completion of the work to be funded by the Grant.

- 3.4 Claim forms can be downloaded from the Football Foundation website and completed and returned as the work progresses. Each form must include a completed statement of expenditure and details of the net value of the work completed at each claim stage (excluding voluntary labour, other contributions in kind, contractual retention fees and other non-allowable costs). The form must be counter-signed by an appropriately qualified and authorised person and must be accompanied by appropriate supporting documentation.
- 3.5 Payments will be made by Bankers Automated Clearing Services (BACS) directly into a valid bank account, but you will be sent a remittance advice telling you exactly how much is being transferred into your account and the date.

4. Signage and Publicity

- 4.1 Please note that you have been awarded the grant from the Premier League & The FA Facilities Fund (PL/FA:FF), and not the Football Foundation (which is the delivery organisation of this Fund). Accordingly, please ensure that you describe this funding as coming from the PL/FA:FF in all public communications, such as websites, press releases and newsletters.
- 4.2 Your attention is drawn to the provisions of clause 10 of the General Terms and Conditions. The Foundation will provide official signs to give recognition to the financial support provided by the PL/FA:FF. Your Technical Project Manager will be liaising with you to begin the process of ordering and installing this signage.
- 4.3 Please be aware that the Foundation will be communicating the award of your grant, alongside all grants that have been awarded in this funding window, in the form of one main press release. Additionally, we will be writing to your local MP to inform them of your grant award.
- 4.4 You are asked to contact the Foundation's Communication Team a minimum of six weeks prior to the provisional date of any event you hold to officially open your new facility. The Communications Team can be contacted on 0345 345 4555 or at events@footballfoundation.org.uk.

5. Project Monitoring

Further payments of the Grant are dependent on the satisfactory fulfilment of the Foundation's monitoring requirements, for the duration of the Grant Agreement (see clause 11 of the General Terms and Conditions for more details). The current evaluation requirements can be found on the Foundation's website.

6. Increased Costs and VAT

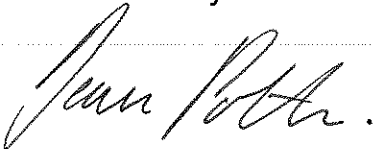
- 6.1 If at any time the total expenditure for the Project exceeds the estimated amount stated in the Grant Offer Letter there will be no corresponding increase in the Grant even if additional costs arise that were previously unforeseen and in particular the Foundation will not increase its Grant if VAT becomes payable. You should seek specific advice about your Organisation's VAT status and the Project's liability to VAT.
- 6.2 The Foundation also reserves the right, if the final total allowable expenditure is less than the estimated expenditure to review the amount of the Grant and, where it considers appropriate, to reduce the Grant payable or to demand a refund of part of the Grant. The amount of such reduction or refund shall be determined by the Foundation at its discretion but shall not exceed the amount of the under-spend.
- 6.3 The Foundation pays its Grant as a percentage of Project costs subject to a maximum sum. The amount of the Grant payable by the Foundation will therefore be less than the maximum stated if your Project is delivered under budget.

7. Privacy and Data Protection Statement

- 7.1 Please ensure that you are familiar with the Football Foundation's Privacy and Data Protection statement which explains how information about you will be processed and stored. By applying for a grant from the Football Foundation you are agreeing to us being able to record and process relevant information about you. A link to the statement can be found here: <http://www.footballfoundation.org.uk/privacy-statement>.

If you have any questions about this letter, please contact your Technical Project Manager, Lee Davies, on 0345 345 4555 Ext 4254. **All correspondence regarding your project should also be addressed to your Technical Project Manager.**

Yours sincerely



Dean Potter
Head of Grant Management

cc: Chris Smith, Regional Facilities and Investment Manager, The FA
Mark Hardcastle, Regional National Game Manager, The FA
Alex Bedford, Development Manager, Cheshire County FA

Schedule 1
Schedule of payments for Revenue Grant

Not applicable

ACCEPTANCE OF GRANT CONTRACT

ASTLEY SPORTS COLLEGE: NEW 106M X 70M FLOODLIT 3G FTP

First signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exist until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Second signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exists until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Ref: G82487

Astley Sports College and Tameside
Metropolitan Borough Council

ACCEPTANCE OF GRANT CONTRACT

ASTLEY SPORTS COLLEGE: NEW 106M X 70M FLOODLIT 3G FTP

First signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exist until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Second signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exists until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Ref: G82487

Astley Sports College and Tameside
Metropolitan Borough Council

ACCEPTANCE OF GRANT CONTRACT

TAMESIDE METROPOLITAN BOROUGH COUNCIL: NEW 106M X 70M FLOODLIT 3G FTP

First signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exist until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Second signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exists until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Ref: G82487

Astley Sports College and Tameside
Metropolitan Borough Council

ACCEPTANCE OF GRANT CONTRACT

TAMESIDE METROPOLITAN BOROUGH COUNCIL: NEW 106M X 70M FLOODLIT 3G FTP

First signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exist until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Second signature:

I am pleased to accept the Grant offer on the terms of the Grant Offer Letter and the General Terms and Conditions attached to it. I understand that no legal obligations to the Football Foundation exists until such time as we make a claim to draw down the Grant. I am empowered to sign this acceptance form on behalf of the Organisation.

Name (BLOCK CAPITALS) _____

Position _____

Signature _____ Date _____

Ref: G82487

Astley Sports College and Tameside
Metropolitan Borough Council

FOOTBALL FOUNDATION

Guidance note for Applicant's Solicitors

1. The Football Foundation's solicitors will need the information and documents set out below:
 - 1.1 Where the Football Foundation will be taking a charge over the Applicant's property:
 - 1.1.1 Details of any existing charges over the property.
 - 1.1.2 Details of other funders requiring a charge in connection with the project.
 - 1.1.3 The Applicant's solicitors will need to provide a certificate of title in the Football Foundation's standard form, a copy of which is attached.
 - 1.2 In the case of land owned by a public authority (e.g. Parish Council or Local Authority), where a charge cannot be taken, a restriction must be entered on the title to the Applicant's property. The Applicant will need to provide the full address and postcode and the Land Registry title number of the property.
 - 1.3 Where, in the case of land owned by a public authority, a restriction cannot be entered because the land is unregistered, a caution against first registration must be lodged at the Land Registry and the Applicant may be required to enter into a deed of dedication in the Football Foundation's standard required form. The Applicant will need to provide the full address and postcode and the title deeds or an epitome of title for the property.
2. The solicitors acting for the Football Foundation are:

Bates Wells & Braithwaite London LLP
2-6 Cannon Street, London EC4M 6YH
DX 42609 (Cheapside 1)
Reference: Jane Lougher
Tel: 0207 551 7683
Email: j.lougher@bwblp.com
3. Under the general terms and conditions of grant, the Applicant is responsible for its own legal fees and will also be required to pay the Football Foundation's legal fees as follows:
 - 3.1 For a legal charge – £1,000 plus VAT and disbursements.
 - 3.2 For a restriction – £500 plus VAT and disbursements.
 - 3.3 For a caution against first registration and deed of dedication – £750 plus VAT and disbursements.

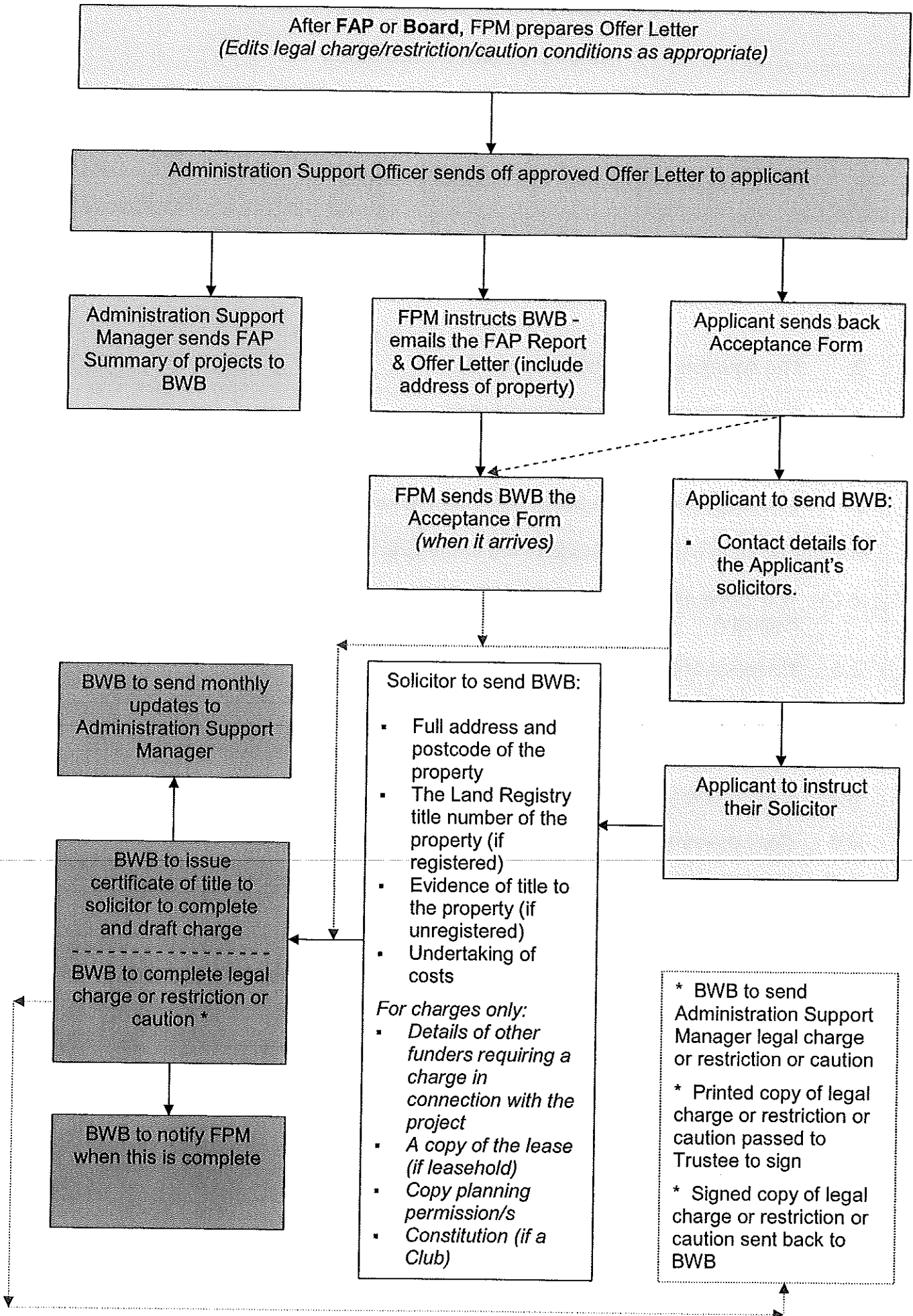
The Applicant's solicitors will need to provide an undertaking to be responsible for fees up to the limits set out above before legal work is commenced by the Football Foundation's solicitors.

The Football Foundation's solicitors will require further undertakings for payment of fees should the fees exceed the amount for which the initial undertaking was given.

4. Up to £2,000 is allowed out of the grant for the payment of legal fees, so the Applicant would be entitled to reclaim the fees paid to its solicitors and to the Football Foundation's solicitors up to this limit. If the legal fees exceed £2,000 the Applicant will be responsible for paying the fees and cannot reclaim any additional amount for fees from the Football Foundation.
5. Work cannot start on the project site until the charge, restriction or caution is in place. It is therefore important to progress matters quickly to avoid delays in the project timetable.

Bates Wells & Braithwaite London LLP
23 March 2012

Legal Charge or Restriction or Caution Process with applicant and BWB



FOOTBALL FOUNDATION CHARGES

Note for Football Foundation

Property Information to be provided to BWB

1. The Football Foundation will need to provided:

- 1.1 The offer letter and the acceptance form
- 1.2 The Grass Roots Project Assessment Executive Summary

2. The Applicant will need to provide:

- 2.1 Contact details for the Club's solicitors.

3. The Applicant's solicitors have been asked to provide:

- 3.1 Full address and postcode of the property to be charged
- 3.2 The Land Registry title number of the property (if registered at the Land Registry)
- 3.3 Evidence of title to the property (if unregistered)
- 3.4 Undertaking of costs

For charges only

- 3.5 *If the property is leasehold, a copy of the lease*
- 3.6 *Copy planning permission for the project*
- 3.7 *The Club's constitution documents*
- 3.8 *Details of any existing charges over the property*
- 3.9 *Details of other funders requiring a charge in connection with the project*

CLAIM FOR GRANT AID – PREMIER LEAGUE & THE FA FACILITIES FUND

Please note that within your Grantshot portal, under the Delivery and Payment tab, you will be able to manage and monitor the progress of your claim. This will provide you with details of your claim including the received date, your estimated payment date and the amount approved.

SECTION A

Foundation Reference:	G	Your Name:	
Organisation:			
Email Address:			
Claim Number (If final, please insert "F"):		Telephone:	

BANK ACCOUNT DETAILS (A PAYMENT CANNOT BE MADE WITHOUT THESE DETAILS PRESENT)

Account Name:			
Account Number:		Sort Code:	

DECLARATION (TO BE SIGNED IN ACCORDANCE WITH YOUR ACCEPTANCE)

On behalf of.....we wish to claim grant aid from the Foundation in respect to the expenditure described in the Claim Summary. The Organisation will notify the Foundation immediately should any subsequent discounts or rebates be obtained relating to the expenditure described in the Claim Summary. The information given to support this claim is accurate and complete.

PLEASE NOTE

- a) Original signed forms are required and must be sent to us in hard copy by post (photocopies are not accepted).
- b) Please ensure that the form is signed by two authorised signatories before submission.

Signed

Name:	
Date:	

Signed

Name:	
Date:	

Football Foundation use only
Date Received

SECTION B**CLAIM SUMMARY**

Please tell us about the expenditure you want to claim for. You **MUST** send us supporting documentation, such as invoices, receipts or interim certificates, for each item you want to claim for (use a continuation sheet if necessary).

Please assign each invoice with a number.

	Supplier	Invoice No.	Description	£-p
1				
2				
3				
4				
5				
6				
7				
8				
VAT (If applicable*)				£
Total Expenditure				£
Grant % (as shown within offer letter)				%
Total Claim Amount				£

*If VAT was included within the total project cost identified within the grant offer letter, then please indicate the non-recoverable VAT relative to the expenditure detailed in this claim here. If there is no non-recoverable VAT on your project, then please leave this blank.

SECTION C

Please Note:

- The completed form and enclosures should be returned to:
The Football Foundation
Finance Department
Whittington House
19-30 Alfred Place
London
WC1E 7EA
- Claim forms downloaded from the Football Foundation website should not be altered in any way.
- All sections of the claim form must be completed and signed by the signatories (unless otherwise agreed) to the grant acceptance form (unless otherwise agreed).
- Only original claim forms supported with copies of supporting documentation or invoices will be accepted.
- Failure to comply with the above instructions may delay the payment of your claim.
- Keep copies of your claims and supporting documentation for your records.
- Please note that payments are made by the BACS TRANSFER within 28 working days of receipt of your claim form, providing all the relevant paperwork is received.
- You must request the first payment of your grant within six months of the date of your offer letter.
- You must request the last payment of the grant within 12 months of the date that the first claim is paid by the Foundation.
- Should you require assistance filling out this form, please visit the 'conversations' link within your Grantshot portal.
- Upon receipt of a claim form and supporting documents or invoices, the Foundation will make payment based upon the percentage given in the offer letter. This will continue until 95% of the grant has been released. The final 5% will be withheld until we have completed a site visit and received all completion information appropriate to the project



Department
for Culture
Media & Sport

Football Foundation

PL/FA:FF Grants

General Terms and Conditions of Grant

Table of contents

1. Definitions
2. Use of Grant (All grants)
3. Construction of Facilities (Capital)
4. Construction/Development of Facilities (Capital)
5. Management & Use of Project and Facilities (Capital)
6. Management of the Project (Revenue)
7. Payment
8. Claiming Capital Funding
9. Claiming Revenue Funding
10. Project Publicity
11. Project Monitoring
12. Accounts and Records
13. Mortgage, Disposal, Lease or Change of Use of Facilities (Capital)
14. Cessation or Suspension of Grant and Termination
15. New Application
16. Further Conditions
17. Duration
18. Warranties
19. Multiple Organisations receiving the Grant
20. Exclusion of Liability/Indemnity
21. Security (Capital)
22. Law and Jurisdiction
23. Rights of Third Parties
24. Funders

1. Definitions

1.1 For the purposes of the Grant and the Grant Agreement (as defined below) the following expressions shall have the meanings respectively ascribed to them:

"Organisation Application"	means the application submitted by or for the Organisation for a Grant in respect of the Project and shall include all written and oral representations made by the Organisation to the Foundation regarding the Organisation, the Project and the Facilities
"Business Plan"	means a plan prepared by the Organisation relating to the financial and operational management and marketing of the Project and the Facilities
"Capital Funding"	means the Grant (or part of Grant) referred to in the Grant Offer Letter that relates to funding which is to be used for the purchase, construction or development of Facilities and/or Grant Assets
"Clawback Period"	means the period of 21 years from the date of acceptance of the Grant
"Facilities"	means any facility, capital equipment (including Grant Assets), buildings (including fixtures and fittings) and/or land in respect of which the Grant is made as specified in the Grant Agreement and shall include, without limitation, any facility, equipment, buildings and/or land proposed to be acquired or improved as a result of the Grant
"Football Development Plan"	means a plan prepared by the Organisation setting out the aims, objectives, responsibility and timescales relating to the development of football in the area in which the Facilities are situated
"Foundation"	means the Football Foundation (registered company number 3876305; registered charity number 1079309) whose registered office is at 30 Gloucester Place, London W1V 8FF and references to the Foundation shall include the Foundation, its staff and any other person representing the Foundation
"Funders"	means the Big Lottery Fund, the Exchequer, Sport England, the Football Association Limited and the Football Association Premier League Limited, as applicable
"General Terms and Conditions"	means these terms and conditions

"Grant"	means the sum referred to in the Grant Offer Letter awarded to assist in financing the Project which may consist of Capital Funding and/or Revenue Funding
"Grant Assets"	means any property (i) whose acquisition, creation or improvement is funded in total or in part by the Grant; and (ii) that has an acquisition cost or value (whichever is higher) of £1,000 or above; and (iii) that has an economic life of three years or more (based on normal accounting practice)
"Grant Agreement"	means the agreement entered into between the Organisation and the Football Foundation in the form of a Grant Offer Letter, which incorporates these General Terms and Conditions
"Grant Offer Letter"	means the grant offer letter sent to the Organisation confirming the Grant
"Organisation"	means the organisation or organisations to which the Grant is made
"Practical Completion"	means, where the Facilities are land or buildings to be constructed or improved as a result of the Grant, the date specified in any certificate issued by the supervising architect, surveyor, engineer or other competent professional as the date on which work on the Facilities was practically completed under the terms of the relevant building contract
"Project"	means the project or projects described in the Application, the Football Development Plan and/or the Grant Offer Letter
"Project Specification"	means the most recent specification for the Project supplied by the Organisation and approved by the Foundation
"Revenue Funding"	means the Grant (or part of Grant) referred to in the Grant Offer letter that relates to funding which is to be used for management or development of projects and/or the purchase of equipment that does not constitute Grant Assets
"Sign Contractor"	means the person named in the Grant Agreement as the Foundation's authorised supplier of signs, or such other person as may from time to time be notified by the Foundation to the Organisation; and
"Sport England"	means The English Sports Council.

- 1.2 References in the Grant Agreement to any clause, sub-clause or Schedule without further designation shall be construed as a reference to the clause, sub-clause or Schedule to the Grant Agreement so numbered.

2. Use of Grant (All Grants)

- 2.1 The Grant will be used solely towards the Project in accordance with the Grant Agreement, and only by the Organisation, and under no circumstances shall it be used for any other purpose.
- 2.2 The Organisation will use its best endeavours to deliver the aims and objectives detailed in the Football Development Plan and in accordance with the Business Plan.
- 2.3 Delivery of the Project will comply with any Project Specifications agreed with the Foundation.

3. Construction of Facilities (Capital Funding Only)

Where land or buildings are to be acquired, constructed or improved as a result of the Grant: -

- 3.1 the highest standard of Facilities must be aimed for;
- 3.2 the Organisation must have security of tenure of the Facilities and/or the land on which the Facilities are built for the Clawback Period by means of a freehold or uninterruptible leasehold. A copy of any relevant lease must be sent to the Foundation on request;
- 3.3 the construction, improvement and/or development of the Facilities must be supervised throughout by a qualified architect, surveyor or engineer or other competent professional;

- 3.4 the Organisation must take into account and make appropriate provision for use and enjoyment of the Facilities by people with disabilities; and
- 3.5 the Organisation will notify the Foundation immediately following Practical Completion.

4. Construction/Development of the Facilities (Capital Funding Only)

In respect of the costs of construction and/or development of the Facilities:

- 4.1 at least three competitive tenders for the provision of the Facilities shall be obtained by the Organisation in accordance with normal tender and contract procedures;
- 4.2 an explanation of the tender accepted shall be submitted to the Foundation prior to works being commenced. The explanation must be satisfactory to the Foundation, failing which the Grant may be withdrawn by the Foundation at its sole discretion and any Grant monies already paid shall immediately become repayable to the Foundation;

- 4.3 a copy of the original "form of tender" from the appointed contractor for the construction works shall be submitted, together with a list of the unsuccessful tenders. On Facilities where a "tender report" is prepared by a consultant quantity surveyor, architect, or other professional, a copy of this report shall also be submitted; and
- 4.4 the Organisation shall ensure that the Foundation has the right, in its absolute discretion, to inspect and copy the relevant documents and records of all persons from whom tenders have been obtained in relation to the Project.
- 5. Management & Use of Project and Facilities (Capital Funding Only)**
- 5.1 The purpose of the Project, the arrangements for management and community use of the Facilities and the purpose for which the Facilities are used shall be as set out in the Application and the Grant Agreement and shall not be changed throughout the Clawback Period without the prior written consent of the Foundation.
- 5.2 The Organisation undertakes, warrants and agrees to use its best endeavours to manage and operate the Project and the Facilities in accordance with the aims, objectives, targets, and timescales set out in the Football Development Plan and the Business Plan.
- 5.3 The Organisation shall at all times throughout the Project and the development of the Facilities and until the expiry of the Clawback Period:
- 5.3.1 ensure that, unless the Foundation has given its prior written consent, the fees and charges for use of the Project and the Facilities by members of the public do not increase beyond any increase in the Retail Price Index from the date on which the Application was approved by the board of the Foundation;
- 5.3.2 keep the Facilities, and all facilities, fittings or equipment used in connection with them in good repair and condition and undertake all things as may be necessary to ensure their proper maintenance;
- 5.3.3 decorate all internal and external parts of the Facilities following their construction as often as may be necessary in the opinion of the Foundation;
- 5.3.4 take out and keep in force a comprehensive policy of insurance with reputable insurers to cover the Project, the Facilities, the Grant Assets, their use and any activities carried out thereon against and in respect of all usual risks (including third party, public, employee and occupier's liability) to their full replacement value (where relevant), and a copy of the current policy and evidence of premium payment shall be provided to the Foundation upon request;
- 5.3.5 make and operate satisfactory arrangements for the storage and safekeeping of any equipment, or Grant Assets, acquired or improved as a result of the Grant. If any such equipment is lost or

otherwise unavailable for use the Organisation shall replace it as soon as reasonably practicable at no cost to the Foundation;

- 5.3.6 take into account and make appropriate provision for use and enjoyment of the Project and the Facilities by people with disabilities;
 - 5.3.7 ensure that no-one will be denied access to use the Project or the Facilities on grounds of disability, race, creed, colour, sex, occupation, sexual orientation, religion or political persuasion;
 - 5.3.8 comply with all statutory requirements and other laws and regulations relating to the Project and the Facilities and the development and operation thereof, including without limitation employers' liability insurance, the national minimum wage, the "Working Time" Directive, health and safety, child protection, data protection, intellectual property, and religious, political, race, sex and disability discrimination requirements, laws and regulations.
- 5.4 The Organisation must inform the Foundation in writing of anything that materially threatens, makes unlikely, or delays the completion or success of the Project and the Facilities.

6. Management of the Project (Revenue Funding Only)

- 6.1 The purpose and the duration of the Project shall be as set out in the Application and the Grant Agreement and shall not be changed without the prior written consent of the Foundation.
- 6.2 The Organisation undertakes, warrants and agrees to use its best endeavours to manage and operate the Project in accordance with the Football Development Plan and the Business Plan.
- 6.3 The Organisation shall at all times throughout the Project:
 - 6.3.1 ensure that, unless the Foundation has given its prior written consent, the fees and charges for the use or participation in the Project by members of the public do not increase beyond any increase in the Retail Price Index from the date on which the Application was approved by the board of the Foundation;
 - 6.3.2 take out and keep in force a comprehensive policy of insurance with reputable insurers to cover the Project in respect of all the usual risks and provide a copy of the current policy and evidence of premium payment to the Foundation upon request; and
 - 6.3.3 comply with the provisions of 5.3.5 to 5.3.8 and 5.4 in relation to the Revenue Funding.
- 6.4 Where Revenue Funding is to be used for the employment of staff or consultants the Organisation shall:

- 6.4.1 advertise for the post and supply details of the post, the recruitment process and any recruitment advertisements to the Foundation; and
- 6.4.2 obtain the prior written consent of the Foundation to the matters in clause 6.4.1; and
- 6.4.3 throughout the selection, recruitment and appointment process apply equal opportunity policies; and
- 6.4.4 supply to the Foundation details of the terms of employment if requested by the Foundation.

7. Payment

- 7.1 Payments of Grant will only be paid into an ordinary business bank account in the name of the Organisation. Cheques from the account must be signed by at least two individuals.
- 7.2 The Organisation shall not deposit any part of the Grant outside ordinary business accounts within the clearing bank system, without the prior written consent of the Foundation.
- 7.3 The Foundation reserves the right to call for proof of payment.
- 7.5 No Grant will be paid until the Foundation is satisfied (acting reasonably) that such payment will be in relation to proper expenditure for the Project.
- 7.6 The Organisation must promptly repay to the Foundation any Grant incorrectly paid to it as a result of any administrative error. This includes (without limitation) situations where either an incorrect value of Grant has been released or where Grant has been released in error before all applicable General Terms and Conditions of Grant have been complied with by the Organisation.
- 7.7 The Organisation must request the first payment of Grant within six (6) months of the date of the Grant Offer Letter, unless otherwise agreed in writing by the Foundation. If this date cannot be met, the Organisation must promptly send the Foundation a written explanation as to the reasons for the delay in requesting payment. If the first payment of Grant is not requested by the Organisation within six (6) months of the date of the Grant Offer Letter, the Grant will automatically lapse without the Foundation providing any additional warning or other form of notification to the Organisation. Thereafter, the Foundation will not be liable for making any future Grant payments and the Grant Agreement shall terminate immediately provided always that termination of the Grant Agreement for whatever cause shall not prejudice or affect the rights of one party against the other in respect of any breach of the Grant Agreement.
- 7.8 The Organisation must request the last payment of the Grant within twelve (12) months of the date that the first claim is paid by the Foundation, unless otherwise agreed in writing by the Foundation. If not requested within such

twelve (12) month period the Foundation will have no obligation to make any further payment(s) pursuant to the Grant Agreement.

8. Claiming Capital Funding

8.1 Capital Funding to purchase, construct or develop Facilities shall be paid as follows:

8.1.1 on compliance with any pre-construction conditions and pre-claim capital conditions set out in paragraph 1.1 of the Offer Letter and on receipt of appropriately completed claim forms and accompanying invoices the Foundation will pay claims at the same percentage rate that the Grant bears to the Project cost as set out in the Grant Offer Letter. This will continue until 95% of the Capital Funding has been released. The remaining 5% of the Capital Funding will only be paid:-

- (a) on receipt of an independent auditors certificate (or, where previously agreed with the Foundation, a statement confirming the relevant accounts have been independently examined);
- (b) on receipt of a certificate of practical completion;
- (c) on receipt of a certificate confirming all relevant Building Control Regulations have been complied with and any mechanical and electrical test certificates;
- (d) on receipt of written confirmation from the planning department confirming the discharge of any conditions attached to the planning approval; and
- (e) on completion of a site visit by the Foundation or its agent; and
- (f) on satisfaction any other condition that remains outstanding specified in the Grant Offer Letter.

8.1.2 the Organisation must ensure that sufficient funds are retained to meet the balance of any costs and to cover the period between the penultimate payment and completion of the work to be funded by the Capital Funding; and

8.1.3 claim forms will be provided by the Foundation and should be completed and returned as the work progresses. Each form must include a completed statement of expenditure and details of the net value of the work completed at each claim stage (excluding voluntary labour, other contributions in kind, contractual retention fees and other non-allowable costs). The form must be counter-signed by an appropriately qualified and authorised person and must be accompanied by appropriate supporting documentation.

9. Claiming Revenue Funding

- 9.1 On compliance with the pre-claim revenue conditions set out in paragraph 1.1 of the Offer Letter and on receipt of satisfactory completed revenue claim form and relevant supporting documents, the Foundation will pay claims six monthly in arrears in accordance with and at the same percentage rate detailed in Schedule One to the Grant Offer Letter.
- 9.2 Where Capital Funding is being provided then notwithstanding clause 9.1, no Revenue Funding will be paid unless the first claim under the Capital Funding element has been paid.

10. Project publicity

10.1 Where Capital Funding has been received:

- 10.1.1 throughout the Project and during the Clawback Period the Organisation will be asked to erect at the site of the Project and/or at the Facilities such internal and/or external signs reflecting the Grant as may be supplied to it by the Sign Contractor on behalf of the Foundation;
- 10.1.2 the Organisation shall be responsible for obtaining all approvals or consents for installation of the sign as may be required by statute, contract, landlord permission or otherwise;
- 10.1.3 on delivery of any sign to the Organisation the sign will become the property of the Organisation, which will maintain all signs to a satisfactory and safe condition. The Organisation will notify the Foundation and the Sign Contractor immediately if there are any defects in the sign or its installation;
- 10.1.4 the Organisation shall for the Clawback Period officially acknowledge the support of the Foundation in all materials which refer to the Project, and all spoken public presentations about the Project; and shall include (where appropriate or where requested by the Foundation) the Foundation's logo and, if asked by the Foundation, the names and/or logos of such of the Funders as the Foundation shall specify, provided always that the Foundation's logo may only be used with the prior written consent of the Foundation.;
- 10.1.5 the Organisation will co-operate with the Foundation in respect of publicity for the Grant. The Foundation will co-ordinate media activity in respect of the Grant. The Organisation shall not issue any public release nor hold any press conference about the Grant or the Facilities without the prior written consent of the Foundation; and
- 10.1.6 the Organisation shall arrange an official opening ceremony for the Project and/or the Facilities (in the latter case within a reasonable period after completion of the Facilities), which the Foundation may

attend. The Organisation shall liaise with the Foundation to agree a date of and the arrangements for the opening ceremony.

- 10.2 The Organisation will keep the Foundation informed of any sponsorship relating to an event, programme or facility wholly or substantially funded by the 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 the Foundation's Grant or by taking credit due to the Foundation or its Funders for that funding and will use all reasonable endeavours to prevent ambush marketing tactics by the sponsor and ensure the Foundation and its Funders receive appropriate credit proportionate to the amount of funding it has contributed. For the avoidance of doubt, this clause shall not prevent a sponsor taking full credit for its own funding.
- 10.3 Where Revenue Funding has been received the Organisation will give appropriate recognition for the financial contribution provided by the Foundation for the duration of the Project.
- 10.4 For all Grants the Foundation shall have the right to promote its association with the Organisation, the Project and Facilities publicly and the Organisation shall grant the Foundation a licence without charge to use the name and image of the Organisation without restriction for this purpose.

11. Project monitoring

- 11.1 The Project and the Facilities shall be closely monitored by the Foundation throughout the Clawback Period to ensure that the aims and objectives specified in the Application, Football Development Plan, Business Plan and Project Specification are being met, that the Grant Agreement is adhered to and that the Project and the Facilities represent good value for money.
- 11.2 Wherever it requires during the Clawback Period (including without limitation at any time both during the development and/or construction phases of the Project and the Facilities and after completion of the Project and the Facilities), the Foundation and any person authorised by the Foundation may make unannounced visits (including without limitation site visits, site audits and compliance visits) and may request meetings, for the purposes of monitoring the Project and the Facilities and monitoring compliance with the Grant Agreement. The Organisation will facilitate and co-operate in the arrangement and conduct of such visits and meetings, and shall allow the Foundation and any person authorised by the Foundation access to inspect the Project and/or the Facilities at any time.
- 11.3 The Organisation will promptly provide to the Foundation any information and/or reports (including without limitation regular progress reports) requested by the Foundation in connection with the Project, the Facilities or the Organisation and its activities. The Organisation will complete any questionnaires requested by and respond promptly to any questions raised by the Foundation.

- 11.4 The Organisation shall evaluate and monitor the Project and, where Capital Funding has been provided, the Facilities, their use and success, and shall cooperate with and provide all the assistance required by the Foundation to allow the Foundation to evaluate and monitor the Project and the Facilities and their use and success. In particular, but without limitation, the Organisation shall keep records of the number of jobs created by the Project and Facilities, the number of users and other beneficiaries of the Project and the Facilities, and such other information as the Foundation shall require from time to time.
- 11.5 The Organisation will provide a final report on the Project, in such form as is required by the Foundation, which confirms that the Project has been properly completed.
- 11.6 The Foundation may call for the views of any appropriate organisation or person on the progress of the Project.
- 11.7 The Organisation shall on request provide the Foundation with contact details of an individual who shall liaise with Sport England to provide the contact details of users of the Project to allow Sport England to monitor and evaluate use of the Project. In providing this information to both the Foundation and Sport England, the Organisation shall comply with all relevant data protection legislation.

12. Accounts and Records

- 12.1 If all or any part of the Grant is awarded for the purchase of Grant Assets the Organisation shall maintain a detailed register of the Grant Assets throughout the Clawback Period and shall supply the Foundation with a copy of this annually, or when new assets are acquired or disposed of (whichever is the sooner).
- 12.2 The Organisation shall keep separate, full, proper and up-to-date accounts and records regarding the development, purchase, financial trading and use of the Project and the Facilities. Any person or persons authorised by the Foundation shall be given access, at the Foundation's request, to these accounts and financial records and the Foundation shall have the right to take copies of such accounts and records.
- 12.3 The Organisation must have its accounts externally audited (or independently evaluated, where appropriate) and if requested by the Foundation must provide a copy of the audit (or evaluation) report and the annual accounts to the Foundation.
- 12.4 The Organisation must meet any relevant statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.
- 12.5 The Grant must be shown in the Organisation's accounts as a restricted fund and not be included under general funds.

13. Mortgage, Disposal, Lease, or Change of Use of Facilities (Capital Funding Only)

13.1 During the Clawback Period, subject to the terms of any charge or charges to which the Foundation shall previously have consented, the Organisation shall not without the prior written consent of the Foundation's Chief Executive:

13.1.1 transfer, sell, lease, licence or otherwise dispose of all or any part of the Facility;

13.1.2 grant any charge, mortgage or other form of security or encumbrance over all or any part of the Facility; or

13.1.3 cease to use the Facility for the purposes previously approved by the Foundation.

The Organisation shall give written notice to the Foundation a reasonable period before it proposes to take any action that requires consent under this clause.

13.2 The Foundation may give consent in accordance with clause 13.1 subject to any or all of the following conditions:

13.2.1 the sale, lease, licence or other disposal is made at full market value as determined and evidenced by an independent professional valuation by an appropriately qualified expert approved in writing by the Foundation;

13.2.2 prior to the completion of the transfer, lease, licence, sale or other disposal the proposed new owner of the Facility enters into a deed of novation with the Foundation to ensure that the new owner is obliged to comply with the terms of the Grant Agreement in place of the Organisation;

13.2.3 the Organisation repays to the Foundation a sum equivalent to the Grant or at the discretion of the Foundation a sum equivalent to the Grant increased in line with inflation as determined by the Retail Price Index or such other sum as the Foundation at its discretion deems appropriate;

13.2.4 termination of the Grant Agreement;

13.3 failure to obtain consent as required by clause 13.1 or failure to comply with any conditions imposed in accordance with clause 13.2 shall entitle the Foundation to terminate the Grant Agreement and to receive repayment from the Organisation of a sum equivalent to the Grant or at the discretion of the Foundation a sum equivalent to the Grant increased in line with inflation as determined by the Retail Price Index or such other sum as the Foundation at its discretion deems appropriate.

14. Cessation or Suspension of Grant and Termination (all Grants)

14.1 Without prejudice to the Foundation's other rights and remedies, (a) the Foundation's obligation to make any payments of Grant shall forthwith cease; (b) the Foundation may make all further payments of Grant subject to such conditions as it may specify; (c) the Foundation may require the full amount of Grant released to the Organisation (or such other sum as the Foundation may require) to be repaid to the Foundation on demand and (d) the Foundation shall have the right at any time during the Clawback Period to terminate this Agreement forthwith or suspend all or any of its obligations hereunder upon such terms and for such period as the Foundation shall at its absolute discretion determine; if:

14.1.1 the Organisation ceases to operate for any reason, or it passes a resolution (or the Court makes an order) that it be wound up (other than for the purpose of a bona fide reconstruction or amalgamation), or, if it was a charity at the time that the Application was made, it ceases to be a charity;

14.1.2 the Organisation becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or any of its members are surcharged or a manager is appointed on behalf of a creditor in respect of its business or a part thereof, or it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as amended;

14.1.3 within the Clawback Period the Organisation fails to comply with any of the General Terms and Conditions of the Grant Agreement;

14.1.4 in the reasonable opinion of the Foundation or any of the Funders the Organisation fails to apply any part of the Grant for the intended purpose;

14.1.5 in the reasonable opinion of the Foundation or any of the Funders the Organisation fails to complete the works to be carried out in executing the Project in accordance with the terms of and to the standard indicated in the Application (unless any variation has been previously approved in writing by the Foundation);

14.1.6 any of the circumstances described in clause 15.1 occur without the Foundation's prior approval of a new application as required by that clause;

14.1.7 the Organisation fails to complete the Project on time or within a reasonable period (when no time is specified) or it appears that the Project is unlikely to be completed on time or within such period;

- 14.1.8 after considering the purpose of the Grant, in the Foundation's opinion further payment of the Grant would not constitute good value for money. (However, the Foundation shall, subject to the other terms of this Agreement, continue to pay the Grant to the extent that the Organisation has, with the prior written consent of the Foundation, contracted for goods and services and it is not practically possible to cancel such arrangements.);
- 14.1.9 there is evidence of financial mismanagement, breakdown of budgetary control or any other irregularity, within the Organisation;
- 14.1.10 in the reasonable opinion of the Foundation or any of the Funders, any of the assurances given or representations or information contained in the Application or other documents submitted by the Organisation to the Foundation were fraudulent, incorrect or misleading, or if the Organisation acts fraudulently. Any attempts to defraud the Foundation by any means will be pursued rigorously: a report will be submitted to the appropriate body and any other necessary action taken;
- 14.1.11 any assurance, representation, release of information or statement made regarding the Application or the Project has changed in a manner that has a materially adverse effect on the Project and the Organisation has not informed the Foundation of the change;
- 14.1.12 the Organisation, any member of the governing body, volunteer or member of staff of the Organisation, any person acting under the control or authority of the Organisation or any partner or partnership organisation connected in any way with the Application, the Project or the Facilities have acted fraudulently or negligently at any time or in a manner which might have a detrimental effect on the Project, or the completion, development or management of the Facilities;
- 14.1.13 the Organisation, any member of the governing body, volunteer or member of staff of the Organisation, any person acting under the control or authority of the Organisation, or any partner or partnership organisation connected in any way with the Application, the Project or the Facilities does anything which may bring the Foundation into disrepute;
- 14.1.14 the Organisation is offered for public subscription to flotation on the stock market; or
- 14.1.15 any of the following circumstances occur without the Organisation first notifying the Foundation and obtaining its prior written consent and the Foundation reasonably considers such circumstances to be materially detrimental to the Project: -
- (a) a transfer of assets from the Organisation to a third party;

- (b) merger or amalgamation by Organisation with another body (including a company established by the Organisation);
- (c) except where the Organisation is a local authority or parish council any change to the composition, structure or key personnel of the Organisation; or
- (d) except where the Organisation is a local authority or parish council, any change to the Organisation's constitution, in particular but without limitation as regards its purposes, payment to members and members of its governing body, distribution of assets (whether on dissolution or not) or admissions of members (where it has a membership).

14.2 Without prejudice to sub-clause 14.1 the Foundation may suspend all or any of its obligations under the Grant Agreement while investigations are carried out into any matter referred to in sub-clause 14.1.

14.3 If the Foundation chooses to suspend this Agreement pursuant to this clause and the Organisation remains in default of any of the provisions of sub-clause 14.1, or indicates its intention to remain in default of any such provision, the Foundation may terminate the Grant Agreement immediately upon notice in writing to the Organisation.

15. New Application

15.1 Without prejudice to clause 14, a new application must be submitted to the Foundation if prior to full payment of the Grant:

15.1.1 the Organisation proposes to change or vary the Application, the Project, its implementation, the works carried out or to be carried out in the execution of the Project, the Facilities or the purpose of the Facilities;

15.1.2 the Organisation proposes to dispose of the whole or any part of the Facilities;

15.1.3 there is a change to the ownership of the Facilities;

15.1.4 the legal structure or ownership of the Organisation changes;

15.1.5 it is proposed that the legal identity of the Organisation should change; or

15.1.6 there is a material change in the financial circumstances of the Organisation.

15.2 While the new application is being considered, no payments of the Grant shall be made and any payments made or liabilities incurred by the Organisation in respect of the Facility shall be at their sole risk and expense. In the event of the Grant being rescinded, the Foundation shall, at its sole discretion, be

entitled to demand a full or partial refund of any payments of Grant already made.

16. Further conditions

- 16.1 The Organisation agrees and accepts that payments of Grant can only be assured to the extent that the Foundation has available funds.
- 16.2 The Foundation may on giving prior written notice to the Organisation assign or transmit the benefit and burden of the Grant Agreement established by virtue of these General Terms and Conditions to any successor body of the Foundation.
- 16.3 The Organisation acknowledges that the Grant and the Grant Agreement are personal to it and not transferable.
- 16.4 Unless otherwise agreed by the Foundation in writing, the Organisation must notify the Foundation in writing of any legal actions, claims or proceedings made or threatened against it (including any actions, claims or proceedings made or threatened against members of its governing body or staff) during the Clawback Period. Such notification shall be made as soon as practicable and in writing.
- 16.5 If the Organisation is not registered for VAT, this may be considered as part of the eligible project cost. Should the Organisation subsequently become registered for VAT, and be able to reclaim that element of expenditure, the reclaimed tax will be repaid to the Foundation. The Foundation will not increase the amount of the Grant if VAT is or becomes payable and/or unrecoverable. The Organisation is advised to seek its own advice on its own and the Project's status as regards VAT.
- 16.6 The Foundation shall have the right in its absolute discretion to disclose and make available for inspection and copying any information, documents, accounts and/or records relating to or concerning the Project, the Facilities and the Organisation to third parties including, without limitation, the Funders, the National Audit Office and any person authorised by any of them. The Foundation will be sensitive to situations where it is aware that confidentiality is a significant matter, but the Organisation acknowledges that the Foundation is obliged under the terms of agreements with the Funders to disclose certain information, documents, accounts and/or records relating to or concerning the Project, the Facilities and the Organisation to third parties.
- 16.7 Any failure, relaxation, forbearance, delay or indulgence by the Foundation in enforcing any of the terms or conditions of the Grant Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and nor shall the granting of any time by the Foundation prejudice or affect or restrict any of its rights arising under the Grant Agreement or be deemed a waiver by the Foundation of any breach or subsequent or continuing breach.

17. Duration

Except where otherwise specified, the General Terms and Conditions of the Grant Agreement will apply from the date on which they are accepted by the Organisation until the later of:

- 17.1 the period of one year following payment of the last instalment of Grant;
- 17.2 so long as any Grant monies remain unspent by the Organisation;
- 17.3 where Capital Funding has been received for the duration of the Clawback Period; and
- 17.4 so long as any General Terms and Conditions of the Grant Agreement remain unperformed, or any event referred to in clause 14 has occurred and is continuing.

18. Warranties

The Organisation warrants, undertakes and agrees that:

- 18.1 it has all necessary resources and expertise to carry out the Project;
- 18.2 it has and will keep in place adequate procedures for dealing with any conflicts of interest;
- 18.3 it has and will keep in place systems to deal with the prevention of fraud;
- 18.4 all financial and other information concerning the Organisation comprised in the Application or otherwise disclosed to the Foundation is to the best of its knowledge and belief, true and fair;
- 18.5 it is not under any contractual or other restriction within its own or any other organisation's rules, regulations or otherwise which may prevent or materially impede meeting its obligations in connection with the Grant;
- 18.6 It is not aware of anything in its own affairs, which it has not disclosed to the Foundation or any of its advisers, which might reasonably have influenced the decision of the Foundation in making the Grant on the terms contained in the Grant Agreement;
- 18.7 since the date of the last accounts there has been no change in the financial position or prospects of the Organisation.

19. Multiple Organisations receiving the Grant

Where there is more than one organisation receiving the Grant and/or delivering the Project: -

- 19.1 where any standard, obligation, representation or warranty under this Agreement is expressed to be undertaken or adhered to by the Organisation, each organisation shall be jointly and severally responsible for it;

19.2 the Foundation may release or compromise the liability of any of the organisations acting as the Organisation under this Agreement or grant any time or other indulgence without affecting the liability of any of the other organisations; and

19.3 any consent or authority given by the Organisation under or in connection with this Agreement shall bind all the organisations.

20. Exclusion of Liability/Indemnity

20.1 The Foundation, its employees, agents, officers or sub-contractors will not at any time be liable to any person for anything in connection with the development, planning, construction, operation, management and/or administration of the Facilities or the Project. In particular but without limitation, it shall not be liable to the Organisation for any loss or damage arising directly or indirectly as a result of the compliance by the Organisation with the General Terms and Conditions of this Grant Agreement.

20.2 The Organisation will indemnify and hold harmless the Foundation, its employees, agents, officers or sub-contractors with respect to all claims of, and liability to, third persons for injury, death, loss or damage of any type arising out of or in connection with the Facilities, the Project and any activities carried out thereon except where such injury, death, loss or damage have resulted from the negligent act or omission of the Foundation or its employees or agents. In this latter case, the Organisation shall provide prompt notice to the Foundation of any such claim, and the Foundation shall have the sole right to control the defence of any such claim.

20.3 The Foundation has no liability for losses or costs arising from failure to make any payment of the Grant on any agreed date.

21. Security (Capital Funding)

21.1 With regard to Capital Funding only, in the event that the construction or development of the Facility or purchase of land for the Facility exceeds £100,000 in value the Foundation may require that the Organisation shall at its own cost, if the Foundation so requires:

21.1.1 enter a restriction in such form as the Foundation may require on the registered title of the relevant property ; and/or

21.1.2 grant or cause to be granted to the Foundation a legal charge over the relevant property in such form as the Foundation may require; and

21.1.3 in either case the Organisation shall execute such further documents and provide such assistance as the Foundation may reasonably require in order to effect either of the foregoing and the Organisation shall make the necessary registrations at Companies House and/or the Land Registry and supply the Foundation's solicitors with evidence of such registrations.

- 21.1.4 in the case of a charity and the giving of a legal charge comply with the provisions of s.38 of the Charities Act 1993 (as amended).
- 21.2 The Organisation shall provide in the case of a legal charge a solicitor's certificate of title confirming good and marketable title in respect of the relevant property in such form as the Foundation may require.
- 21.3 The Organisation shall provide a solicitors' undertaking to be responsible for the Foundation's solicitor's fees in connection with the grant of a legal charge or the entry of a restriction on the registered title or in the case of unregistered land a caution against first registration and the completion of a deed of dedication.

22. Law and Jurisdiction

The construction, validity and performance of the Grant Agreement shall be governed in all respect by English law and be subject to the non-exclusive jurisdiction of the English Courts. The parties undertake to each other to use their best endeavours wherever possible to resolve any dispute, which may arise under the Grant Agreement amicably.

23. Rights of Third Parties

Subject to clause 24 below, a person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Grant Agreement.

24. Funders

- 24.1 The Foundation has been appointed by Sport England to enter into agreements with Organisations for the purpose of distributing Lottery and government funds to Organisations.
- 24.2 The Foundation enters into the Grant Agreement as principal for itself and as agent for and on behalf of Sport England.
- 24.3 The Organisation acknowledges that copies of the Grant Agreement and any other information, documents, accounts and/or records may be disclosed and made available to the Funders, the National Audit Office and any person authorised by them, and their respective representatives.
- 24.4 The Funders have a right to enforce any of the Foundation's rights under the Grant Agreement. Such rights may not be altered or extinguished without the consent of the Funders.
- 24.5 The Funders shall have all rights conferred on the Foundation by the Grant Agreement including without limitation all rights to information, inspection, disclosure, access and clawback.

- 24.6 In the event of any of the events listed in clause 14 of these General Terms and Conditions occurring, the Funders have a right to have the Grant Agreement novated to the Funders or any successor of the Funders to allow them to take the place of the Foundation in relation to this Grant Agreement.
- 24.7 The Funders may disclose any information concerning the Organisation, the Project or the Facilities to any persons.
- 24.8 In the event of any termination of the Foundation's agreement with any Funder:
- 24.8.1 the Organisation will return to the relevant Funder all the documentation relating to the Grant and specified by the Funder at a date to be agreed between the Funder and the Foundation; and
 - 24.8.2 the Organisation shall return to the relevant Funder any part of the Grant provided to the Foundation by such Funder which is unspent on the date that the Funder or the Foundation notified its desire to terminate the agreement between the Funder and the Foundation, subject to the agreed terms of termination.
- 24.9 Any of the Funders may assign all or any of its rights under this Agreement to any successor or such other body as the relevant Funder shall determine.