

Football Foundation

General Terms and Conditions of Grant

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Football Foundation

General Terms and Conditions of Grant

1. Definitions

1.1 For the purposes of these Grant (as defined below) terms and conditions and the accompanying Grant Contract (as defined below) the following expressions shall have the meanings respectively ascribed to them:

“Agreement”	means the contractual arrangements set out in the Grant Contract and these Grant terms and conditions
“Applicant”	means the organisation or organisations to which the Grant is made
“Application”	means the application submitted by the Applicant for a Grant in respect of the Project and shall include all written and oral representations made by the Applicant to the Foundation regarding the Applicant, the Project and the Facilities
“Business & Management Plan”	means a plan prepared by the Applicant relating to the financial and operational management and marketing of the Project and the Facilities
“Clawback Period”	means the period of years from the date of acceptance of the Grant calculated in accordance with the table appearing in the Schedule
“Facilities”	means any facility, equipment, buildings and/or land in respect of which the Grant is made as specified in the Grant Contract 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 Applicant 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 25 Soho Square, London W1D 4FF and references to the Foundation shall

include the Foundation, its staff and any other person representing the Foundation

“Foundation Funders”	means the New Opportunities Fund, the English Sports Council, the Football Association Limited and the Football Association Premier League Limited
“Grant”	means the sum referred to in the Grant Contract awarded to assist in financing the Project
“Grant Assets”	means any property (i) whose acquisition, creation or improvement is funded in total or in part by the Grant; (ii) that has an acquisition cost or value (whichever is higher) of £500 or above; and (iii) that has an economic life of three years or more (based on normal accounting practice)
“Grant Contract”	means the contract entered into between the Applicant and the Football Foundation in the form of a letter, which incorporates these terms and conditions
“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 described in the Grant Contract
“Sign Contractor”	means the person named in the Grant Contract 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 Applicant.

1.2 References in this 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 this Agreement so numbered.

2. Use of Grant

The Grant will be used solely towards the Project in accordance with these terms and conditions, and only by the Applicant, and under no circumstances shall it be used for any other purpose.

3. Construction of Facilities

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

4. Construction/Development of the Facilities

Where the costs of construction and/or development of the Facilities are estimated to exceed £25,000:

- 4.1 at least three competitive tenders for the provision of the Facilities shall be obtained by the Applicant 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;
- 4.4 the Applicant 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

- 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 Contract and shall not be changed throughout the Clawback Period without the prior written consent of the Foundation.
- 5.2 The Applicant 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 & Management Plan.
- 5.3 The Applicant 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 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, 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 acquired or improved as a result of the Grant. If any such equipment is lost or otherwise unavailable for use the Applicant 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 Applicant 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. *Payment*

- 6.1 Payments of Grant will only be paid into an ordinary business bank account in the name of the Applicant. Cheques from the account must be signed by at least two individuals.
- 6.2 The Applicant 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.
- 6.3 The Foundation reserves the right to call for proof of payment.
- 6.4 Payments of Grant will be made in accordance with the schedule of payments and the procedures contained in the Grant Contract.
- 6.5 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.
- 6.6 The Applicant 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 terms and conditions of Grant have been complied with by the Applicant.
- 6.7 The Applicant must request the first payment of Grant within six months of the date of the Grant Contract, unless otherwise agreed in writing. If this date cannot be met, the Applicant 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 Applicant within 12 months of the date of the Grant Contract, the Grant will automatically lapse without the Foundation providing any additional warning or other form of notification to the Applicant.

Thereafter, the Foundation will not be liable for making any future Grant payments and the Grant Contract shall terminate immediately provided always that termination of the Grant Contract for whatever cause shall not prejudice or affect the rights of one party against the other in respect of any breach of the Grant Contract.

7. *Project publicity*

7.1 Throughout the Project and during the Clawback Period the Applicant will 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.

7.1.1 The Applicant will contact and liaise with the Sign Contractor in order to ensure prompt installation of appropriate signs and will keep the Foundation informed about such communications at all times.

7.1.2 The Applicant will ensure that the Sign Contractor and such persons as may be authorised by it are allowed appropriate access to the premises at which any sign is to be installed, and any other premises to which access is required for this purpose, for the purpose of surveying and inspecting the premises and installing the sign.

7.1.3 The Foundation will not be liable for indirect or consequential loss sustained by the Applicant nor for any loss occasioned to the Applicant arising out of damage to or destruction of any property of any type on the Applicant's premises occasioned by the installation of the sign. Nothing in this clause shall restrict liability for defects in the goods or works due to the negligence of the Sign Contractor which causes death or personal injury.

7.1.4 The Applicant shall be responsible for ensuring compliance with any requirement, statutory or otherwise, concerning health, safety or welfare on such premises during any such survey, inspection and installation.

7.1.5 The Applicant shall facilitate installation of the sign by the Sign Contractor and such persons as may be authorised by it and shall indemnify the Foundation for any costs caused by their delay.

7.1.6 The Applicant 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 and shall indemnify the Foundation against: -

- (a) any liability arising from installation or attempted installation of the sign before any required approvals or consents have been obtained; and
 - (b) all losses arising from refusal of any such approvals or consents in the event of refusal.
- 7.1.7 On delivery of any sign to the Applicant the sign will become the property of the Applicant which will maintain all signs to a satisfactory condition. The Applicant will notify the Foundation and the Sign Contractor immediately if there are any defects in the sign or its installation.
- 7.1.8 The Applicant will ensure the signs do not constitute a safety hazard.
- 7.1.9 All signage must contain the name and/or logo of the Foundation, and if required by the Foundation, the names and/ or logos of such of the Funders as the Foundation shall specify.
- 7.1.10 All such signs shall be appropriately located to attract awareness.
- 7.2 The Applicant must officially acknowledge the support of the Foundation in: -
 - 7.2.1 all annual reports and accounts covering the period of the Grant;
 - 7.2.2 all materials which refer to the Project; and
 - 7.2.3 all written or spoken public presentations about the Project;and shall include (where appropriate or where requested by the Foundation) the Foundation's logo and, if required 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.
- 7.3 The Applicant 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 Applicant 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.
- 7.4 The Applicant 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 Applicant shall liaise with the Foundation to agree a date of and the arrangements for the opening ceremony.

7.5 The Foundation shall have the right to promote its association with the Applicant, the Project and Facilities publicly and a licence without charge to use the name and image of the Applicant without restriction for this purpose.

8. *Project monitoring*

8.1 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 are being met, that Grant terms and conditions and recommendations are adhered to and that the Project and the Facilities represent good value for money.

8.2 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 terms and conditions of Grant. The Applicant 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 the Facilities at any time.

8.3 The Applicant 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 Applicant and its activities. The Applicant will complete any questionnaires requested by and respond promptly to any questions raised by the Foundation.

8.4 The Applicant shall evaluate and monitor the Project and the Facilities and 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 Applicant 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.

8.5 The Applicant 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.

8.6 The Foundation may call for the views of any appropriate organisation or person on the progress of the Project.

9. *Accounts and Records*

- 9.1 If all or any part of the Grant is awarded for the purchase of Grant Assets the Applicant 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).
- 9.2 The Applicant 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.
- 9.3 The Applicant must have its accounts externally audited (or independently evaluated, where appropriate, in the case of charities) and must deliver a copy of the audit (or evaluation) report and the annual accounts to the Foundation as soon as possible after and in any event within ten months of the year end.
- 9.4 The Applicant must meet any relevant statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.
- 9.5 The Grant must be shown in the Applicant's accounts as a restricted fund and not be included under general funds.

10. *Mortgage, Disposal, Lease, or Change of Use of Facilities*

- 10.1 During the Clawback Period, subject to the terms of any charge or charges to which the Foundation shall previously have consented the Facilities or any part of them may only be sold, transferred, leased, licensed or otherwise disposed of, or cease to be used for the purposes previously approved by the Foundation (whether by the Applicant or any party or any owner with a legal or equitable interest in the Facilities) with prior written approval of the Foundation's chief executive. Such approval shall be conditional upon the provisions of the following sub-clauses being satisfied. The Applicant shall give written notice to the Foundation a reasonable period before it enters into any such sale, transfer, lease, disposal or change of use or any agreement for the same.
 - 10.1.1 If the Facilities are sold, transferred, leased, licensed or otherwise disposed of the Applicant shall ensure that the sale, transfer, lease, licence or other disposal will be at full market value, such valuation to be assessed by an independent surveyor (for buildings, property or land) or another appropriately qualified expert (for equipment including, without limitation, vehicles) experienced in the valuation of

sporting facilities and approved in writing by the Foundation. An appropriate proportion of the proceeds (determined by the Foundation by reference to the proportion of the original purchase and/or development cost of the Facilities met by the Grant and taking account of the period of use) will be surrendered to the Foundation unless otherwise agreed in writing in advance by the Foundation;

10.1.2 If the Facilities cease to be used for the purposes approved by the Foundation, the market value of the Facilities shall be assessed by an independent surveyor approved in writing by the Foundation and an appropriate proportion of such value (determined by the Foundation by reference to the proportion of the original purchase and development cost of the Facilities met by the Grant and/or taking account of the period of use) shall be surrendered to the Foundation on demand unless otherwise agreed in writing in advance by the Foundation.

10.2 The Facilities are not and shall not be subject to any mortgage, debenture, pledge, loan or legal charge secured upon the whole or any part of them, and shall not be subject to any lien or other encumbrance which affects or will affect any part of the Facilities during the Clawback Period without the prior written consent of the Foundation's chief executive which consent at present only extends to the existing or proposed charge or charges referred to in the Grant Contract.

11. *Cessation or Suspension of Grant and Termination*

11.1 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 Applicant (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:

11.1.1 The Applicant 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.

11.1.2 The Applicant 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.

- 11.1.3 Within the Clawback Period the Applicant fails to comply with any of the terms and conditions of the Grant.
- 11.1.4 In the reasonable opinion of the Foundation or any of the Funders the Applicant fails to apply any part of the Grant for the intended purpose.
- 11.1.5 In the reasonable opinion of the Foundation or any of the Funders the Applicant 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).
- 11.1.6 Any of the circumstances described in clause 12.1 occur without the Foundation's prior approval of a new application as required by that clause.
- 11.1.7 The Applicant 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.
- 11.1.8 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 Applicant has, with the prior written consent of the Foundation, contracted for goods and services and it is not practically possible to cancel such arrangements.)
- 11.1.9 There is evidence of financial mismanagement, breakdown of budgetary control or any other irregularity, within the Applicant organisation.
- 11.1.10 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 Applicant to the Foundation were fraudulent, incorrect or misleading, or if the Applicant 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.
- 11.1.11 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 Applicant has not informed the Foundation of the change.

- 11.1.12 The Applicant, any member of the governing body, volunteer or member of staff of the Applicant, any person acting under the control or authority of the Applicant 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.
- 11.1.13 The Applicant, any member of the governing body, volunteer or member of staff of the Applicant, any person acting under the control or authority of the Applicant, 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.
- 11.1.14 The Applicant is offered for public subscription to flotation on the stock market.
- 11.1.15 Any of the following circumstances occur without the Applicant 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 Applicant to a third party;
 - (b) merger or amalgamation by Applicant with another body (including a company established by the Applicant);
 - (c) any change to the composition, structure or key personnel of the Applicant; or
 - (d) any change to the Applicant'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).
- 11.2 Without prejudice to sub-clause 11.1 the Foundation may suspend all or any of its obligations hereunder while investigations are carried out into any matter referred to in sub-clause 11.1.
- 11.3 If the Foundation chooses to suspend this Agreement pursuant to this clause and the Applicant remains in default of any of the provisions of sub-clause 11.1, or indicates its intention to remain in default of any

such provision, the Foundation may terminate this Agreement immediately upon notice in writing to the Applicant.

12. *New Application*

12.1 Without prejudice to clause 11, a new application must be submitted to the Foundation if prior to full payment of the Grant:

12.1.1 the Applicant 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;

12.1.2 the Applicant proposes to dispose of the whole or any part of the Facilities;

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

12.1.4 the legal structure or ownership of the Applicant changes;

12.1.5 it is proposed that the legal identity of the Applicant should change; or

12.1.6 there is a material change in the financial circumstances of the Applicant.

12.2 While the new application is being considered, no payments of the Grant shall be made and any payments made or liabilities incurred by the Applicant 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.

13. *Deficit/Surplus*

13.1 If at any time the total expenditure for the Project exceeds the estimated amount set out in the Application there will be no corresponding increase in the Grant, unless otherwise agreed in writing by the Foundation in response to an application submitted in advance notifying the Foundation of the revised cost, the reasons for the increase and asking for the level of Grant to be reconsidered.

13.2 If: -

13.2.1 the final total expenditure in respect of the Project is less than the expenditure estimated in the Application;

13.2.2 the aggregate funding for the Facilities, particularly from sources of public grants, exceeds its cost;

13.2.3 the Applicant receives any offers of funding for the Project that duplicate the funding provided by the Grant or any

additional income for the Project (such as interest on grant monies); or

- 13.2.4 for any other reason it becomes apparent that all or any of the Grant is not required to enable the completion of the Project;

the Applicant must inform the Foundation. In such circumstances, the Foundation may review the amount of the Grant and, where it considers appropriate, reduce the Grant payable or demand a refund of all or part of the Grant, at its absolute discretion. The amount of such reduction or refund shall be determined by the Foundation at its absolute discretion.

14. Further conditions

- 14.1 The Applicant agrees and accepts that payments of Grant can only be assured to the extent that the Foundation has available funds.
- 14.2 The Foundation may on giving prior written notice to the Applicant assign or transmit the benefit and burden of the Grant agreement established by virtue of these terms and conditions to any successor body of the Foundation.
- 14.3 The Applicant acknowledges that the Grant and this Agreement are personal to it and not transferable.
- 14.4 The Applicant 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.
- 14.5 If the Applicant is not registered for VAT, this may be considered as part of the eligible project cost. Should the Applicant subsequently become registered for VAT, and be able to reclaim that element of expenditure, the reclaimed tax will be repaid to the Foundation.
- 14.6 Without prejudice to clause 9.2, 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 Applicant 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 Applicant 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 Applicant to third parties.

14.7 Any failure, relaxation, forbearance, delay or indulgence by the Foundation in enforcing any of the terms or conditions of this 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 this Agreement or be deemed a waiver by the Foundation of any breach or subsequent or continuing breach.

15. *Duration*

Except where otherwise specified, these terms and conditions will apply from the date on which they are accepted by the Applicant until the later of:

- 15.1 The period of one year following payment of the last instalment of Grant;
- 15.2 So long as any Grant monies remain unspent by the Applicant;
- 15.3 For the duration of the Clawback Period; and
- 15.4 So long as any of these terms and conditions remain unperformed, or any event referred to in clause 11 has occurred and is continuing.

16. *Warranties*

The Applicant warrants undertakes and agrees that:

- 16.1 it has all necessary resources and expertise to carry out the Project;
- 16.2 it has and will keep in place adequate procedures for dealing with any conflicts of interest;
- 16.3 it has and will keep in place systems to deal with the prevention of fraud;
- 16.4 all financial and other information concerning the Applicant comprised in the Application or otherwise disclosed to the Foundation is to the best of its knowledge and belief, true and fair;
- 16.5 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;
- 16.6 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 Agreement;
- 16.7 since the date of the last accounts there has been no change in the financial position or prospects of the Applicants.

17. *Multiple Organisations making up Applicant*

Where there is more than one organisation acting as Applicant with respect to the Project: -

- 17.1 Where any standard, obligation, representation or warranty under this Agreement is expressed to be undertaken or adhered to by the Applicant, each organisation shall be jointly and severally responsible for it;
- 17.2 The Foundation may release or compromise the liability of any of the organisations acting as Applicant under this Agreement or grant any time or other indulgence without affecting the liability of any of the other organisations; and
- 17.3 Any consent or authority given by the Applicant under or in connection with this Agreement shall bind all the organisations.

18. *Exclusion of Liability/Indemnity*

- 18.1 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. In particular but without limitation, it shall not be liable to the Applicant for any loss or damage arising directly or indirectly as a result of the compliance by the Applicant with the terms and conditions of this Grant.
- 18.2 The Applicant 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 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. In this latter connection, the Applicant 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.
- 18.3 The Foundation has no liability for losses or costs arising from failure to make any payment on any agreed date.

19. *Law and Jurisdiction*

The construction, validity and performance of this 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 this Agreement amicably.

20. *Rights of Third Parties*

Subject to clause 21 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 this Agreement.

21. *Funders*

21.1 The Foundation has been appointed by the English Sports Council and the New Opportunities Fund to enter into agreements with Applicants for the purpose of distributing Lottery funds to Applicants for “Grass Roots Football Projects”.

21.2 The Foundation enters into this Agreement as principal for itself and as agent for and on behalf of the English Sports Council.

21.3 The Applicant acknowledges that copies of this 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.

21.4 The Funders have a right to enforce any of the Foundation’s rights under these terms and conditions. Such rights may not be altered or extinguished without the consent of the Funders.

21.5 The Funders shall have all rights conferred on the Foundation by this Agreement including without limitation all rights to information, inspection, disclosure and access.

21.6 In the event of any of the events listed in clause 11 of these terms and conditions occurring, the Funders have a right to have this Agreement novated to the Funders or any successor of the Funders to allow them to take the place of the Foundation in relation to these terms and conditions.

21.7 The Funders may disclose any information concerning the Applicant, the Project or the Facilities to any persons.

21.8 In the event of any termination of the Foundation’s agreement with any Funder:

21.8.1 the Applicant 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

21.8.2 the Applicant 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.

- 21.9 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.

Schedule

Clawback Period

Type of Facility	Total Amount of Grant	Clawback Period
Equipment and vehicles	£500 - £5,000	Reasonable economic life of the Facility as determined by normal accounting principles
	£5,001 - £10,000	Reasonable economic life of the Facility as determined by normal accounting principles or 5 years (whichever is greater)
	£10,000 - £25,000	Reasonable economic life of the Facility as determined by normal accounting principles or 10 years (whichever is greater)
	£25,001 - £50,000	Reasonable economic life of the Facility as determined by normal accounting principles or 15 years (whichever is greater)
	£50,001 and over	Reasonable economic life of the Facility as determined by normal accounting principles or 21 years (whichever is greater)

Land, buildings or other property which are constructed or refurbished as a result of the Grant	<p>Below £5,000</p> <p>£5,001 - £10,000</p> <p>£10,001 - £25,000</p> <p>£25,001 - £50,000</p> <p>£50,001 and over</p>	<p>3 years</p> <p>5 years</p> <p>10 years</p> <p>15 years</p> <p>21 years</p>
Leasehold buildings or land which are purchased as a result of the Grant		<p>The shorter of:</p> <ul style="list-style-type: none"> • the unexpired period of the lease or licence provided that this is greater than 21 years • 80 years <p>The shorter of:</p> <ul style="list-style-type: none"> • the unexpired period of the lease or licence, provided that is greater than 40 years • 80 years
Freehold land or buildings which are purchased as a result of the Grant		80 years