

Document title: Grant agreement.

DATED

GRANT AGREEMENT

between

THE DISTRICT OF FOLKESTONE & HYTHE

and

THE SPORTS TRUST

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This agreement is dated

Parties

- (1) **THE DISTRICT OF FOLKESTONE & HYTHE** whose principal address is at The Civic Centre, Castle Hill Avenue, Folkestone, Kent, CT20 2QY (**Funder**)
- (2) **THE SPORTS TRUST** registered as a Charity by the Charity Commission with registration number 11555522, whose principal address is at Three Hills Sports Park, Cheriton Road, Folkestone, Kent, CT19 5JU (**Recipient**)

BACKGROUND

- (A) The Funder has agreed to pay the Grant to the Recipient to assist it in carrying out the Project.
- (B) This agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient.
- (C) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.
- (D) The parties confirm that it is their intention to be legally bound by this agreement. The parties further acknowledge and agree that the Grant is not being allocated by the Funder as consideration for the provision of goods, services or works to the Funder.
- (E) This agreement does not infer any obligation by the council for future funding. The intention by providing a one-off capital grant is to remove the need for future requests for grant funding.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Applicable Laws: all applicable laws, statutes, regulations, regulatory guidance and codes from time to time in force.

Asset: any land, building, equipment or other asset that is to be purchased or developed using the Grant, and **Assets** will be construed accordingly.

Anti-bribery Laws: all Applicable Laws relating to anti-bribery and anti-corruption, including the Bribery Act 2010 and any guidance or codes of practice issued by the government pursuant to or concerning the Bribery Act 2010.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Change of Control: any change of control of the Recipient or any person who controls the Recipient. **Control** means the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **controls** will be interpreted accordingly.

Code of Conduct: the Constitution of the Funder and Articles of Association of the recipient, including any subsequent updates from time to time.

Commencement Date: the date on which this agreement takes effect, being completion date -----.

Confidential Information: all information in any medium or format that one party discloses to the other party, whether before or after the Commencement Date, in connection with this agreement and which is designated as confidential or that ought reasonably to be considered to be confidential. It includes information of a confidential nature relating to the business, operations, plans, customers, suppliers, Intellectual Property Rights and know-how of the other party. It does not include information that:

- a) is or becomes publicly known (other than as a result of the receiving party's breach);
- b) can be shown by the receiving party to have been known to it on a non-confidential basis before disclosure by the disclosing party;
- c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- d) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

Data Protection Legislation: all Applicable Laws relating to the processing of personal data and privacy, including the UK GDPR, the Data Protection Act 2018 and the guidance and codes of practice issued by the Information Commissioner.

Default Event: an event or circumstance set out in clause 17.1.

Duplicate Funding: funding provided by a third party to the Recipient that is for the same purpose for which the Grant was made but has not been declared to the Funder.

Eligible Expenditure: the expenditure incurred by the Recipient during the Grant Period for the purposes of delivering the Project and which complies in all respects with the eligibility rules in clause 4.

Financial Irregularity: has the meaning given in clause 9.2.

Financial Year: the period running from 1 April to 31 March in the following year

Grant: the sum or sums to be paid to the Recipient in accordance with this agreement.

Grant Claim: the payment request form submitted by the Recipient to the Funder for payment of the Grant. The form will be in the format and contain the information specified by the Funder from time to time.

Grant Manager: the individual who has been nominated to represent the Funder for the purposes of this agreement.

Grant Period: the period for which the Grant is awarded starting on the Commencement Date and ending on 31 March 2027

Ineligible Expenditure: expenditure incurred by the Recipient which is not Eligible Expenditure, including the non-exhaustive list of ineligible expenditure set out in clause 4.7.

Intellectual Property Rights: all patents, rights to inventions, trade marks, business names and domain names, rights in get-up and logos, copyrights, design rights, database rights, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications for registration and rights to apply for and be granted renewals or extensions of any of these rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Maximum Sum: the maximum amount of the Grant that the Funder will provide to the Recipient for the Project, **being £2,421,250. (Two Million Four Hundred and twenty one thousand, two hundred and fifty pence)**

Prohibited Act:

(1) directly or indirectly offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:

- a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this agreement [or any other agreement with the Funder; or
- b) showing or not showing favour or disfavour to any person in relation to this agreement [or any other agreement with the Funder;

(2) committing any offence:

- a) under the Anti-bribery Laws;
- b) under legislation creating offences in respect of fraudulent acts; or
- c) at common law in respect of fraudulent acts in relation to this agreement [or any other agreement with the Funder; or

(3) defrauding or attempting to defraud or conspiring to defraud the Funder

Project: the project described in **Schedule 1**.

Project Manager: the individual who has been nominated to represent the Recipient for the purposes of this agreement.

Representatives: a party's duly authorised directors, employees, officers, agents, professional advisers and consultants.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax chargeable in the UK.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), and any Crown body.
- 1.3 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.4 A reference to **writing** or **written** includes email but not fax.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression will be interpreted as illustrative and will not limit the sense of the words preceding those terms.

2. Purpose of Grant

- 2.1 The Recipient will use the Grant only for the delivery of the Project and in accordance with the terms and conditions set out in this agreement.
- 2.2 The Recipient will not make any significant change to the Project without the Funder's prior written agreement.
- 2.3 The Funder may at its entire discretion change the activities supported by the Grant, including by increasing or decreasing the Maximum Sum, changing the payment schedule for the Grant or removing activities supported by the Grant. Any variation made under this clause **2.3** will not take effect until 30 days after being notified by the Funder to the Recipient.

3. Payment of Grant

- 3.1 Subject to the rest of this clause 3 and the Recipient's full compliance with the provisions of this agreement, the Funder will make Grant payments to the **Recipient up to the maximum instalment amounts set out in Schedule 2.**
- 3.2 The Funder will pay within 30 days of the Funder approving the Recipient's Grant Claim. The Recipient must submit each Grant Claim in accordance with **Schedule 2**. The Funder reserves the right not to pay any Grant Claim that is not submitted within the period set out in **Schedule 2** or which is incomplete, incorrect or submitted without the required supporting documents.
- 3.3 The Recipient will provide any proof of expenditure and other supporting documents or information that the Funder may require to process a Grant instalment.
- 3.4 The Recipient accepts that payments of the Grant will not be made if the Funder does not have available funds or is for any other reason unable or not permitted to provide the funds.
- 3.5 The Funder will only pay the Grant to the Recipient in respect of Eligible Expenditure incurred by the Recipient to deliver the Project. The Funder will not make any Grant payment until the Funder is satisfied that:
- (a) the payment will be used in full to reimburse Eligible Expenditure already incurred in the delivery of the Project
 - (b) any previous Grant payments have been used for Eligible Expenditure only.
- 3.6 The Maximum Sum will not be increased in the event of any overspend by the Recipient in its delivery of the Project.
- 3.7 The Funder will have no liability to the Recipient for any losses caused by a delay in the payment of the Grant however arising.
- 3.8 The Recipient must hold the Grant in a separate bank account, in the name of the Recipient, which must be an ordinary business bank account. The Recipient must not transfer any part of the Grant to any other bank accounts except as necessary to carry out the Project.
- 3.9 The Recipient must promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Recipient.

4. Use of Grant

- 4.1 The Recipient may only use the Grant for the delivery of the Project in accordance with the agreed budget set out in **Schedule 3**. The amount of the Grant that the Recipient may spend on any item of Eligible Expenditure listed in column 1 of **Schedule 3** must not exceed the corresponding sum of money listed in column 2 without the prior written agreement of the Funder.
- 4.2 The Recipient must not use the Grant to:
- (a) purchase or improve any Asset(s) [at an individual or cumulative cost exceeding the total cumulative value of the grant sum in this agreement
 - (b) spend on advertising, communications, consultancy or marketing; or
 - (c) pay for any expenditure commitments of the Recipient entered into before the Commencement Date,
- unless this has been approved in writing by the Funder.
- 4.3 The Recipient must not spend any part of the Grant on the delivery of the Project after the Grant Period without the prior written consent of the Funder.
- 4.4 If any part of the Grant remains unspent at the end of the Grant Period on early termination of this agreement, the Recipient must ensure that those unspent monies are promptly returned to the Funder unless otherwise directed in writing by the Funder.
- 4.5 The Recipient will be the sole recipient of the Grant. The Recipient will be responsible for managing the Grant as between itself and any third parties involved in performing the Project. This includes securing the re-payment of the Grant if requested by the Funder in accordance with this agreement.
- 4.6 Eligible Expenditure comprises:
- (a) the items in **Schedule 3** up to the maximum amounts specified in **Schedule 3**;
 - (b) fees charged to the Grant Recipient by external auditors or accountants for certifying that the Grant paid was applied for its intended purposes in accordance with clause **8.5**; and
- 4.7 The Grant must not be used for any of the following non-exhaustive list of items:
- (a) paid for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) intended to influence Parliament, government or political activity or attempting to influence legislative or regulatory action;
 - (b) using the Grant to enable one part of government to challenge another on topics unrelated to the agreed purpose of the Grant;

- (c) using the Grant to petition for additional funding;
- (d) expenses, such as for entertaining, specifically aimed at exerting undue influence to change government policy;
- (e) input VAT reclaimable by the Recipient from His Majesty's Revenue and Customs (HMRC);
- (f) payments for activities of a political or exclusively religious nature;
- (g) interest payments or service charge payments for finance leases;
- (h) gifts;
- (i) statutory fines, criminal fines or penalties;
- (j) payments for work or activities which the Recipient, or any associated entity, has a statutory duty to undertake or that are fully funded by other sources;
- (k) bad debts to related parties;
- (l) the depreciation, amortisation or impairment of assets; and
- (m) novel or contentious payments [without the prior written consent of the Funder]. This includes any payment that could cause embarrassment to the Funder (for example, any excessive severance payment, unfair dismissal costs or other compensation).

5. Other funding

- 5.1 Where the Recipient has obtained funding from a third party in relation to its delivery of the Project (including funding for associated administration and staffing costs) before the Commencement Date, the Recipient confirms that:
- (a) it has declared this funding to the Funder and obtained the Funder's approval for it; and
 - (b) the amount of this funding is included in **Schedule 3** together with a clear description of what that funding will be used for.
- 5.2 Where the Recipient intends to apply to a third party for other funding for the Project, it will notify the Funder in advance of its intention to do so and provide the Funder with details of the source, amount and purpose of that funding.
- 5.3 The Recipient must not apply for or obtain Duplicate Funding in respect of any part of the Project or any related administration costs that the Funder is funding in full under this agreement. The Funder may exercise its rights under clause **17** should the Recipient do so and refer the Recipient to the police should it dishonestly obtain or attempt to obtain Duplicate Funding.

6. Grant review

- 6.1 The Funder will review the Grant annually. The Funder will take into account the Grant Recipient's delivery of the Project against the agreed outputs in **Schedule 1** and the reports produced by the Recipient under clause **8.2**.
- 6.2 Each review may result in the Funder deciding to take one or more of the following steps:
- (a) allowing this agreement to continue in line with existing plans;
 - (b) increasing or decreasing the Maximum Sum;
 - (c) requesting the Recipient to re-define the outputs of the Grant or carry out remedial activity to improve delivery of the Project;
 - (d) recovering any Grant monies that have not been spent by the Recipient;
 - (e) terminating this agreement under clause **25**; or
 - (f) taking any other action deemed reasonable in the circumstances.
- 6.3 If the Recipient is requested to carry out remedial activity pursuant to clause **6.2(c)**, it will submit a plan to the Funder setting out the steps it proposes to take to rectify the areas identified by the Funder and the timetable for taking those steps.
- 6.4 The Recipient may make representations to the Funder regarding its decision under clause **6.2**. The Funder is not obliged to take those decisions into account. Its decision will be final and at its absolute discretion.

7. Accounts and records

- 7.1 The Recipient must ensure that the Grant is shown in its accounts as a restricted fund and is not included under general funds.
- 7.2 The Recipient will keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 7.3 The Recipient will keep all invoices, receipts, accounts and other relevant documents relating to the expenditure of the Grant for a period of at least [six] years following receipt of any Grant monies to which they relate.
- 7.4 At any time during the Grant Period and for up to [six] years after it, the Funder may review the Recipient's accounts and records that relate to the expenditure of the Grant and may take copies of those accounts and records. The Recipient grants to the Funder and its Representatives full access to the Recipient's accounts, records and premises for the purposes of carrying out an audit under this clause **7.4**.

7.5 The Recipient will provide the Funder with a copy of its annual accounts within [six] months of the end of each Financial Year in which the Grant is paid.

7.6 The Recipient will comply, and facilitate the Funder's compliance, with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.

8. Monitoring and reporting

8.1 The Recipient will closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the aims and objectives of the Project are being met and that this agreement is being adhered to.

8.2 The Recipient will provide the Funder with a financial report and an operational report on its use of the Grant and delivery of the Project every **quarter**. Each report will be in the format, and contain the information, reasonably required by the Funder. The Recipient will provide the Funder with each report within **one** month of the last day of the quarter to which it relates. Delay in providing the required information may lead to Grant payments being withheld, reduced or withdrawn.

8.3 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient will include the amount of that funding in its financial reports together with details of what that funding has been used for.

8.4 During the Grant Period and for **24** months after it, the Recipient will:

- (a) permit any person authorised by the Funder reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of this agreement; and
- (b) provide the Funder or any person authorised by the Funder, on request, with any information, explanations or documents that the Funder may reasonably require to establish that the Grant has been used properly in accordance with this agreement.

8.5 During the Grant Period and for 24 months after it, the Funder may request, and the Recipient will provide, independent assurance that the Grant has been used for delivery of the Project. To satisfy this requirement, the Recipient will provide, if reasonably requested by the Funder (including where the Funder suspects that the Grant has been misused), a report from an independent and appropriately qualified auditor certifying whether the Grant paid to the Grant Recipient was applied in accordance with this agreement.

8.6 The Recipient will provide the Funder with a final report on completion of the Grant Period which will confirm whether the Project has been successfully and properly completed.

8.7 Community Offer. The recipient will provide details of actual visits and participation at the Facility monthly basis

8.8 The information to be provided consists of:

(a) Participants: total number of known unique individuals that have visited the Facility to do an activity in the relevant month broken down into the following categories on a monthly basis

(i) Age – age group

(ii) Gender

(iii) IMD (deprivation decile) based on home postcode of participant

(iv) Ethnicity; and

(v) Disability; and

(b) Visits: total number of visits to the facility in the relevant month, including a breakdown of the activity undertaken in each instance

8.9 The recipient will provide a strong community offer for residents including but not limited to swimming lessons, aqua fit, family swim, lane swimming and rehabilitation sessions.

8.10 PWTAG COMPLIANCE

The Recipient shall ensure that all capital works proposed and carried out as part of the Swimming pool Project and funded (in whole or in part) by the Grant are properly designed, specified, installed and completed so as to bring the swimming pool facility into full compliance with the latest standards and guidance issued by the Pool Water Treatment Advisory Group (PWTAG), as applicable at the date of Completion of the works.

The Recipient shall, upon reasonable request by the Funder provide such information, evidence and/or certification as the Council may reasonably require to demonstrate compliance with this clause

9. Financial management

9.1 The Recipient must at all times comply with Anti-bribery Laws.

9.2 The Recipient must have sound administration and audit processes, including internal financial controls, to safeguard against fraud, theft, corruption, money laundering, terrorist financing or any other impropriety or mismanagement in connection with the administration of the Grant (**Financial Irregularity**).

- 9.3 The Recipient must notify the Funder of all cases of Financial Irregularity (whether proven or suspected) relating to the Project or in the use of the Grant as soon as they are identified. The Recipient will:
- (a) explain to the Funder what steps are being taken to investigate the irregularity;
 - (b) keep the Funder informed about the progress of any investigation;
 - (c) assist the Funder in any investigations it initiates; and
 - (d) refer the matter to external auditors or another third party if required to do so by the Funder.
- 9.4 If the Funder suspects any Financial Irregularity in relation to the Project, the Funder may do one or more of the following:
- (a) suspend future payments of the Grant;
 - (b) insist that the Recipient addresses the Financial Irregularity; and
 - (c) require the Recipient to provide any assistance required by the Funder to recover misused Grant funds.
- 9.5 The recipient shall provide the Council with evidence that any Contractors or works have been appointed in accordance with all applicable procurement rules
- 9.6 For works totalling more than £100,000 a full tender process should be completed
- 9.7 For works totalling under £100,000 three quotes should be sought and obtained.

10. Conflicts of interest

The Recipient will not engage, and will ensure that none of its Representatives engage, in any personal, business or professional activity which conflicts or could conflict with any of its or their obligations in relation to this agreement.

11. Acknowledgement and publicity

- 11.1 The Funder consents to the Recipient using its name and logo to publicise the Grant and the Project, provided that this does not in any way weaken or damage the reputation and image of the Funder.
- 11.2 The Recipient must acknowledge the support of the Funder, including an acknowledgement of the Funder as the source of the Grant, in:
- (a) its annual report and accounts;
 - (b) any other materials that refer to the Project; and
 - (c) any written or spoken public presentations about the Project.

Each acknowledgement must include the Funder's name and logo.

- 11.3 In using the Funder's name and logo, the Recipient must comply with all reasonable branding guidelines issued by the Funder from time to time.
- 11.4 The Funder may publicise the Grant and details of the Project, using the Recipient's name and logo and any information gathered from its initial Grant application or any reports submitted to the Funder under this agreement, without prior notice.
- 11.5 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated or organised by the Funder.
- 11.6 The Recipient will comply with all reasonable requests from the Funder to facilitate visits and provide reports, statistics, photographs and case studies that will assist the Funder in its promotional and fundraising activities relating to the Project.

12. Intellectual Property Rights

- 12.1 All rights, title and interest in or to any Intellectual Property Rights owned by or licensed to the Funder or the Recipient before the Commencement Date, or developed by either party during the Grant Period, will remain the property of that party.
- 12.2 Other than as expressly set out in this agreement, neither party will have any right to use any of the other party's Intellectual Property Rights without the other party's prior written consent.
- 12.3 The Recipient grants to the Funder a non-exclusive, perpetual, irrevocable, royalty-free, sub-licensable, worldwide licence to use all materials produced by the Recipient or its Representatives in relation to the Grant (including all reports provided to the Funder on the Grant).
- 12.4 Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including its name and logo), the Recipient must, on termination of this agreement, cease to make any further use of those Intellectual Property Rights [and return or destroy materials containing those Intellectual Property Rights as requested by the Funder].

13. Confidentiality

- 13.1 Each party undertakes that it will, during the term of this agreement and for a period of two years after termination or expiry of it, keep secret and confidential all Confidential Information of the other party and will not disclose that information to any person except where disclosure is expressly permitted by this agreement or expressly authorised in

writing by the other party.(Unless the GDPR or freedom of Information Act stipulates otherwise)

- 13.2 The Recipient may disclose the Funder's Confidential Information to those persons who need to know that information for the purposes of carrying out the Project (**Permitted Recipients**). The Recipient must ensure that its Permitted Recipients are aware of and comply with its obligations of confidentiality in this agreement. The Recipient must not, and must procure that its Permitted Recipients do not, use any of the Funder's Confidential Information for any purpose other than as necessary for the Project.
- 13.3 Nothing in this clause 13 prevents the Funder from disclosing any Confidential Information of the Recipient:
- (a) for the purpose of the examination and certification of its accounts or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Funder has used its resources;
 - (b) to any public authority or any of its Representatives or suppliers, provided that the Funder only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence where appropriate; or
 - (c) where disclosure is required by Applicable Law, including under clause 14.

14. Freedom of information

- 14.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (*SI 2004/3391*) (**EIRs**). In this clause, **Request for Information** means a request for information or an apparent request under the FOIA or the EIRs.
- 14.2 The Recipient will:
- (a) provide all necessary assistance and co-operation as reasonably requested by the Funder to enable the Funder to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Funder all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two Business Days of receipt;
 - (c) provide the Funder with a copy of all information requested in the Request for Information which is in its possession or control in the form that the Funder requires within five Business Days (or any shorter period that the Funder may reasonably specify) of the Funder's request for that information; and

- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Funder.
- 14.3 The Recipient acknowledges that the Funder may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. The Funder will take reasonable steps to notify the Recipient of a request for information that directly relates to the Recipient (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so. Notwithstanding any other provision in this agreement, the Funder will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 14.4 The Recipient acknowledges and agrees that the Funder may:
 - (a) publish this agreement, including any changes to it, in any medium in its entirety (but with any Confidential Information redacted); and
 - (b) share details of the Grant, including the Recipient's name and the purpose of the Project, with the UK government and other public authorities and publish details of the Grant on government databases and public registers.

15. Data protection

- 15.1 In this clause, the terms **controller**, **data subject**, **personal data**, **personal data breach**, **processing** and **appropriate technical and organisational measures** have the meaning given to them in the Data Protection Legislation.
- 15.2 This clause sets out the framework for the sharing of personal data between the parties as controllers. The Funder may use personal data that the Recipient shares about its Representatives, business partners [and [ANY OTHER DATA SUBJECTS]] to administer the Grant and exercise its rights under this agreement. The Recipient may use personal data that the Funder shares about its Representatives to manage the Grant and its relationship with the Funder. The personal data to be shared by one party with the other party under this clause 15 is the **Shared Personal Data**. The permitted uses of Shared Personal Data set out in this clause 15 are the **Agreed Purposes**.
- 15.3 Each party will comply with all applicable requirements of Data Protection Legislation that arise in connection with the operation of this agreement. In particular, each party will:
 - (a) ensure that it has all necessary notices and consents and lawful bases in place to enable the lawful transfer of Shared Personal Data to the other party for the Agreed Purposes;
 - (b) ensure that it only shares personal data with the other party to the extent required in connection with the Grant;

- (c) process the other party's Shared Personal Data only for the Agreed Purposes; and
- (d) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Shared Personal Data received from the other party and against accidental loss or destruction of, or damage to, that personal data.

15.4 Each party will assist the other in complying with all applicable requirements of the Data Protection Legislation in relation to the Shared Personal Data. In particular, each party will:

- (a) provide the other party with reasonable assistance in complying with any request from a data subject to exercise any of their rights under Data Protection Legislation in relation to Shared Personal Data (**data subject rights request**);
- (b) promptly inform the other party about the receipt of any data subject rights request where the request is directed to the other party or relates to its processing of personal data and forward the request to the other party;
- (c) provide the other party with reasonable assistance in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- (d) notify the other party promptly [and in any event within 24 hours], on becoming aware of any personal data breach relating to Shared Personal Data provided by the other party and do all things reasonably necessary to restore security and assist the other party in mitigating the effects of the personal data breach and informing regulators and data subjects; and
- (e) not retain or process the other party's Shared Personal Data for longer than is necessary to perform this agreement, unless otherwise required by Applicable Law.

16. Assets

16.1 The Recipient must keep a register of all Assets acquired or developed with the Grant. Each entry in the register will include a description of the Assets, the date of acquisition or improvement, cost and location, and any other information reasonably required by the Funder.

16.2 All Assets must only be used for delivery of the Project.

16.3 Assets will be owned by the Funder unless otherwise agreed in writing by the Funder. The Funder reserves the right to determine the outcome of any Asset.

- 16.4 The Recipient must not charge or agree any security over any Assets without the prior written consent of the Funder.
- 16.5 The Recipient must not transfer or dispose of any Assets [below market value] without the prior written consent of the Funder.
- 16.6 Unless otherwise agreed in writing by the Funder, the Recipient must pay to the Funder the proportion of the proceeds of any Asset sale that is equivalent to the proportion of the purchase or development costs of the Asset that was funded by the Grant.

17. Withholding, reducing and repayment of Grant

- 17.1 The Funder's intention is that the Grant will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may exercise its rights in clause 17.2 if:
- (a) the Recipient uses the Grant for Ineligible Expenditure;
 - (b) the Recipient fails to comply with any of its obligations under this agreement and that failure is material or persistent in the Funder's [reasonable] opinion;
 - (c) the delivery of the Project does not start within [three months] of the Commencement Date and the Recipient has failed to provide the Funder with a reasonable explanation (in the Funder's [reasonable] opinion) for the delay;
 - (d) the Funder [(acting reasonably)] considers that the Recipient has not made satisfactory progress with the delivery of the Project;
 - (e) the Recipient is, in the [reasonable] opinion of the Funder, delivering the Project in a negligent manner, which includes failing to prevent or report actual or anticipated Financial Irregularity;
 - (f) the Recipient applies for or obtains Duplicate Funding for the Project;
 - (g) the Recipient obtains funding from a third party which, in the [reasonable] opinion of the Funder, undertakes activities that are likely to bring the reputation of the Project or the Funder into disrepute;
 - (h) the Recipient provides the Funder with any materially misleading or inaccurate information or any of the information provided as part of its application for grant funding is found to be materially misleading or inaccurate;
 - (i) the Recipient commits or has committed a Prohibited Act;
 - (j) the Funder determines [(acting reasonably)] that the Recipient or any Representative or member of the governing body of the Recipient has (a) acted dishonestly or negligently at any time and to the detriment of the Funder; or (b) taken any actions which bring or are likely to bring the Funder's name or reputation into disrepute or which pose a risk to public money;

- (k) the Recipient transfers, assigns or novates this agreement to any third party (or attempts to do so) without the Funder's consent;
- (l) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (m) the Recipient 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 (other than for the purpose of a bona fide and solvent reconstruction or amalgamation), or it is unable to pay its debts as they fall due;
- (n) any court, tribunal or independent body or authority of competent jurisdiction requires any Grant paid to be recovered due to a breach of (i) any Applicable Laws relating to subsidy control; or (ii) the UK's obligations under any international agreement in relation to state subsidies; [or]
- (o) [the Recipient breaches the Code of Conduct or fails to report an actual or suspected breach of the Code of Conduct by the Recipient or its Representatives in accordance with clause 19; or]
- (p) the Recipient undergoes a Change of Control which the Funder[, acting reasonably,] considers will be materially detrimental to the Project.

17.2 Where the Funder determines that a Default Event has or may have occurred, the Funder will notify the Recipient to that effect, setting out any relevant details and any action it intends to take or has taken. The Funder may take any one or more of the following actions:

- (a) suspend or withhold payment of the Grant;
- (b) reduce the Maximum Sum;
- (c) require the Recipient to repay all or any part of the Grant previously paid to the Recipient; and
- (d) terminate this agreement.

17.3 If a Default Event has or may have occurred and the Funder believes it is capable of being remedied, the Funder will not exercise its rights under clause 17.2(c) [or clause 17.2(d)] unless the Recipient fails to rectify the default to the reasonable satisfaction of the Funder within 14 days of receiving written notice requiring it to do so]. The Funder may conclude that a Default Event is a material failure, incapable of remedy or both where it is one of multiple Default Events that demonstrate (in the Funder's reasonable opinion) that the Recipient is unwilling to comply, or unable to comply, with the terms and conditions of this agreement.

17.4 Wherever any sum of money is recoverable from the Recipient under this agreement, the Funder may deduct that sum from any sums due to the Recipient under this agreement or any other agreement with the Funder.

17.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this agreement, it will notify the Funder as soon as possible so that, if possible and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Grant monies.

18. Compliance with law

18.1 The Recipient must carry out the Project and its obligations under this agreement in accordance with all Applicable Laws, including all Applicable Laws:

- (a) relating to equality or prohibiting any form of discrimination; or
- (b) concerning health and safety in relation to people working on the Project.

18.2 The Recipient must take all reasonable steps to ensure that its Representatives and all third parties, such as suppliers, engaged on the Project comply with all Applicable Laws in carrying out the Project.

19. Code of Conduct

19.1 The Recipient will comply with the Code of Conduct and ensure that its Representatives undertake their duties in connection with the Project in a manner consistent with the principles set out in the Code of Conduct.

19.2 The Grant Recipient will immediately notify the Funder if it becomes aware of any actual or suspected breach(es) of the principles outlined in the Code of Conduct.

20. Environment

20.1 The Recipient will carry out the Project with due regard to the protection of the environment, including by:

- (a) minimising waste, air and water pollution and the release of greenhouse gas emissions and other substances damaging to health and the environment;
- (b) conserving the use of raw materials, water, energy and other resources;
- (c) adopting circular economy and zero waste methods wherever possible, including by using recovered or recycled goods and environmentally friendly production methods; and
- (d) limiting the Project's impact on biodiversity and nature.

20.2 The Recipient will take all possible precautions to ensure that any materials used in the Project do not contain any damaging or hazardous substances unless this is unavoidable in which case the Recipient must notify the Funder in advance of their use.

21. Limitation of liability

21.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from the withdrawal, withholding, suspension or reduction of the Grant.

21.2 The Recipient will indemnify the Funder against all liabilities, damages, losses (including loss of reputation), expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and [reasonable] professional costs and expenses) suffered or incurred by the Funder in connection with:

- (a) the acts or omissions of the Recipient in relation to the Project;
- (b) the non-fulfilment of any obligations of the Recipient under this agreement; or
- (c) the performance or non-performance of any obligation of the Recipient to any third party in relation to the Project.

21.3 Subject to clause 21.1 and clause 21.4 the Funder's liability under this agreement is limited to the amount of the Grant outstanding.

21.4 Nothing in this agreement limits any liability which cannot legally be limited.

22. Insurance

22.1 The Recipient will, during the Grant Period and for a period of six years after termination or expiry of this agreement, effect and maintain adequate insurance with a reputable insurance company to cover claims under this agreement and any other claims that may be brought against it in connection with the Project, including for death or personal injury, loss of or damage to property or any other loss (**Required Insurance**).

22.2 The Recipient will (on request) supply to the Funder evidence from its insurers that the Required Insurance is in place and confirmation that the relevant premiums have been paid.

23. VAT

23.1 The Grant is not consideration for any taxable supply for VAT purposes.

23.2 If VAT is held to be chargeable in respect of this agreement, all payments will be deemed to be inclusive of VAT and the Funder will not be obliged to pay any additional amount by way of VAT.

24. Duration

This agreement will apply from the Commencement Date and continue until the expiry of the Grant Period unless it is terminated earlier in accordance with its terms.

25. Termination

Without prejudice to the Funder's other rights to terminate this agreement, only the funder may terminate this agreement by giving at least three months' prior written notice to the other party.

26. Consequences of termination or expiry

- 26.1 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this agreement will survive expiry or termination and continue in full force and effect.
- 26.2 Termination or expiry of this agreement will be without prejudice to any rights or remedies accrued under it before termination or expiry. Nothing in this agreement will prejudice the rights of the Funder to recover any amount of the Grant previously paid to the Recipient following termination or expiry.
- 26.3 Any liabilities arising at the end of the Project or on termination or expiry of this agreement must be managed and paid for by the Recipient using its own resources. There will be no additional funding available from the Funder for this purpose. The Funder will not be liable to pay any of the Recipient's costs or those of any supplier of the Recipient related to any transfer or termination of employment of any employees engaged in the Project.
- 26.4 Subject to clause 26.3 the recipient will repay such amount as the Council may reasonably determine up to a maximum amount equal to the amount of the Capital Grant that has been drawn down by the recipient, if any of the following (each a "clawback event") occurs at any point during the Grant Term
- (a) The recipient materially breaches any of the terms of the Agreement
 - (b) The recipient or any of its personnel has committed an offence under the Bribery Act 2010 in connection with the facility
 - (c) Any of the following occurs in relation to the Recipient
 - (i) The Recipient suspending or threatening to suspend payment of its debts, or being unable to pay its debts as they fall due or admitting inability to pay its debts, or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986

- (ii) The recent commencing of negotiations with all or any class of its creditors with a view to rescheduling any of its debts or making a proposal for or entering into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Recipient with one or more other companies or the solvent reconstruction of the Recipient.
 - (iii) A petition being filed, a notice being given, a resolution being passed, or an order being made, for or in connection with the winding up of the Recipient other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of the Recipient
 - (iv) An application being made to court or an order being made for the appointment of an administrator, or notice of intention to appoint an administrator being given or an administrator being appointed, over the Recipient
 - (v) The holder of a qualifying floating charge over the assets. The Recipient becoming entitled to appoint or has appointed an administrative receiver
 - (vi) A person becomes entitled to appoint a receiver over the assets of the Recipient or a Receiver being appointed over the assets of the Recipient
 - (vii) A creditor or encumbrancer of the Recipient attaching or taking possession of, or a distress, execution, sequestration or other such process being levied or enforced on or sued against, the whole or any part of the Recipient 's assets
- (d) Any of the Capital Grant has been used for a purpose other than towards Eligible Expenditure
 - (e) The Recipient sells, transfers, assigns, creates or disposes of any freehold or leasehold interest in all or any part of the facility (or permits any of these things) without the Councils prior approval in writing.
 - (f) There is any change in ownership or control of the Recipient or any material change in its membership, organisation, constitution or activities, either of which the Council at its sole discretion believes materially impacts on the Recipients ability to operate the Facility or its suitability to receive the funding from the Council; or
 - (g) The Recipient provided any information to the Council dishonestly or in a way which was materially misleading

26.5 Should the Facility close within 10 years of opening the Council reserves the right to reclaim x amount of the Capital Grant from The Recipient. Each year to be completed from the end

26.6	YEAR	CLAWBACK
26.7	Before the End Year 1	100%
26.8	Before the End Year 2	90%
26.9	Before the End Year 3	80%
26.10	Before the End Year 4	70%
26.11	Before the End Year 5	60%
26.12	Before the End Year 6	50%
26.13	Before the End Year 7	50%
26.14	Before the End Year 8	40%
26.15	Before the End Year 9	40%
26.16	Before the End Year 10	30%
26.17	The recipient agrees unequivocally to add a restriction in the Leasehold title at the Land Registry, as worded below to protect the Funder as creditor;	
	“ No disposition of the registered estate (other than a charge) is to be registered without a certificate signed by or on behalf of the Funder that the provisions of clause 26.6 - 17 of the grant agreement dated -----made between the Funder and recipient have been complied with or do not apply.	

27. Evaluation

The Funder may itself or through a third party evaluate the Project. The Recipient will, during and after the Funding Period, co-operate with the Funder and any third-party evaluator by responding to requests for information about the Project and providing access to those of its Representatives involved in the Project.

27.1 Recognition of funding. The Recipient recognises and will continue to recognise the contribution made by the Capital Grant to the operation of the Facility as reasonably required by the Council

27.2 The Recipient will acknowledge the Capital Grant publicly including

- (a) In media interviews and press releases
 - (b) On social media (including above and below the line advertising, twitter and Facebook) using the appropriate handles
 - (c) At events or competitions and in publications including promotional material, and on-line publications; and
 - (d) As otherwise reasonably requested by the Council
- 27.3 In each case the guiding principle will be to give appropriate and proportionate credit to the Capital Grant in operating the Facility
- 27.4 The Recipient will, if required by the Council, display appropriate Council Signage in a prominent position of the facility
- 27.5 As and when appropriate, the Recipient must feature the Council logo on all major publications and marketing materials (including websites)
- 27.6 The Council warrants that the Council has all rights and authorities required to licence the Recipients use or display of the logos as described in clause 27.5
- 27.7 Nothing in this agreement will be construed as a transfer of ownership of any intellectual Property held by the Council or the Recipient
- 27.8 The Recipient shall own any intellectual Property developed by or on behalf of the Recipient in operating the facility
- 27.9 The Council may use the Recipient's name and logo(s) to promote the funding of the facility. The Recipient warrants that the Recipient has all rights and authorities required to licence the Council to do this.

28. Change of Control

The Recipient will notify the Funder as soon as the Recipient is aware (or reasonably should be aware) that it is undergoing or has undergone a Change of Control, provided that notification is permitted by Applicable Laws. The Recipient will ensure that its notice sets out full details of the Change of Control, including the circumstances explaining it.

29. Assignment

The Recipient may not, without the prior written consent of the Funder, assign, transfer, novate or in any other way dispose of the whole or any part of this agreement to any third party.

30. Notices

- 30.1 Any notice given to a party under or in connection with this agreement must be in writing and in English and must be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the following address (or an address substituted in writing by the party to be served):
 - (i) Recipient: Three Hills Sports Park, Cheriton Road, Folkestone, Kent, CT19 5JU
 - (ii) Funder: The Civic Centre, Castle Hill Avenue, Folkestone, Kent, CT20 2QY
- 30.2 Any notice will be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (c) if sent by email, at the time of transmission except that if this time is on a non-Business Day or after 5.00 pm on any Business Day it will be deemed received on the next Business Day.

31. Dispute resolution

- 31.1 In the event of any dispute between the parties (which does not relate to the Funder's right to withhold, reduce or recover funds or terminate this agreement), the matter will first be referred for resolution to the Project Manager and the Grant Manager.
- 31.2 Should the dispute remain unresolved within 14 days of the matter being referred to the Project Manager and the Grant Manager, either party may refer the matter to a formal meeting between the Chief Executive of the Funder and the Chief Executive of the Recipient.

32. Governing law

This agreement is governed by and will be construed in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 The Project

1. Background to the Project

The provision of capital works to Folkestone Sports Centre to be carried out by the recipient for the purposes of reopening the swimming pool for community use

The programme of works as timetabled below to be carried out at Folkestone Sports Centre during 2026 for the purpose of reopening the swimming pool for community use

2. Aims and objectives of the Project

To achieve the corporate plan of the Council as a district for improving physical and mental health and wellbeing and increase resilience to climate change

3. Project Activities funded by the Grant

Folkestone Sports Centre Swimming pool refurbishment

4. Outputs and outcomes

The Grant Recipient will produce the following outputs and achieve the following outcomes in connection with the Grant:

Swimming benefits mental and physical well being

Reduces pressure on NHS Services

Actively restores a facility that is out of use

Schedule 2 Payment Schedule

Subject to the Recipient's compliance with the terms of this agreement, the [Funder will make Grant payments **OR** Recipient may request Grant payments] in accordance with the following payment schedule.

Maximum Grant instalment payable	[Date of Payment OR Payment request date]
DETAILS]	[DETAILS]

Schedule 3 Breakdown of Grant

Item of Expenditure	Budget (in UK sterling)
[DETAILS]	[DETAILS]

Other funding

Name of funder	Amount of funding	Use of the funding
[DETAILS]	[DETAILS]	[DETAILS]

Signed by

for and on behalf of THE DISTRICT OF FOLKESTONE & HYTHE Title

Signed by

for and on behalf of THE SPORTS TRUST Title