

## LTA OPERATIONS LIMITED

### LOAN AND GRANT GENERAL TERMS AND CONDITIONS

#### TABLE OF CONTENTS

1.	<b>Definitions</b> .....	2
2.	<b>Use of Funding</b> .....	4
3.	<b>Construction of Facilities</b> .....	4
4.	<b>Construction Procurement</b> .....	5
5.	<b>Management and use for the duration of the Clawback period</b> .....	6
6.	<b>Payment of Funds</b> .....	9
7.	<b>Monitoring and Evaluation</b> .....	11
8.	<b>Accounts and Records</b> .....	12
9.	<b>Mortgage, Disposal, Lease or Change of Use of Facilities</b> .....	12
10.	<b>Cessation, Suspension and/or Recovery of Loan, Clawback and Termination</b> .....	13
11.	<b>Deficit/Surplus</b> .....	16
12.	<b>Publicity</b> .....	16
13.	<b>Distributable Profit</b> .....	18
14.	<b>Further Conditions</b> .....	18
15.	<b>Exclusion of Liability/Indemnity</b> .....	18
16.	<b>Duration</b> .....	19
17.	<b>Warranties</b> .....	19
18.	<b>Multiple Parties receiving the Funding</b> .....	20
19.	<b>Law and Jurisdiction</b> .....	20
20.	<b>Assignment</b> .....	20
21.	<b>Rights of Third Parties</b> .....	21
22.	<b>General</b> .....	21
23.	<b>Reimbursement of LTA Operations Legal Fees</b> .....	22

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## 1. Definitions

- 1.1 “Application” means the application submitted by or for the Organisation for Funding in respect of the Project and shall include all written and oral representations made by the Organisation to LTA Operations regarding the Organisation, the Project and the Facilities;
- 1.2 “Business Plan” means the plan enclosed with the Offer Letter as updated by written agreement of the parties;
- 1.3 “Clawback Period” means the period from the date on which the last party signs the Funding Agreement to the later of: i) the expiration of the Standard Clawback Period or ii) the date on which all the Loan and Interest is repaid by the Organisation to LTA Operations;
- 1.4 “Conditions Precedent” means the pre-construction conditions and pre-claim conditions, if any, set out in the Schedule to the Offer Letter;
- 1.5 “Defects Liability Period” means the period after Practical Completion during which the principal contractor must repair any elements of the construction that do not work according to the building specifications;
- 1.6 “Exchequer Funding” means any funding offered to the Organisation through this Funding Agreement which is allocated from the capital funding awarded to LTA Operations Ltd from 1 April 2013 to 31 March 2017 in line with Sport England’s strategic outcome;
- 1.7 “Event of Default” means any of the events detailed in clause 10.1;
- 1.8 “the Facilities” means any facility, equipment, buildings (including fixtures and fittings) and/or land in respect of which the Funding is given as specified in these General Terms and Conditions and shall include, without limitation, any facility, equipment, buildings and/or land proposed to be acquired or improved as a result of the Funding;
- 1.9 “Facilities Operator” means the facilities operator, if any, detailed in the Offer Letter and any replacement operator approved by LTA Operations in accordance with clause 5.3;
- 1.10 “Funding” means together any Loan and Grant offered to the Organisation as detailed in the Offer Letter and its Schedule;
- 1.11 “Funding Agreement” means the agreement entered into by the Organisation and LTA Operations in the form of the Offer Letter and its Schedule, which incorporates these General Terms and Conditions and any documents referred to therein;
- 1.12 “General Terms & Conditions” means these terms and conditions;
- 1.13 “Grant” means the grant sum set out in the Offer Letter to be paid to the Organisation for the Project detailed above and which is subject

to these General Terms and Conditions;

- 1.14 “Interest” means interest payable at a rate of 1% per annum above the Base Rate of Coutts & Company for the time being and from time to time;
- 1.15 “Land Trustee” means the persons or party which holds title to the land for the Organisation;
- 1.16 “Loan” means the sum set out in the Offer Letter to be paid to the Organisation for the Project detailed above which is repayable by the Organisation to LTA Operations;
- 1.17 “LTA Operations” means LTA Operations Limited, a company limited by shares registered in England and Wales, registered company number 7475460, registered office address The National Tennis Centre, 100 Priory Lane, Roehampton, London SW15 5JQ;
- 1.18 “Lawn Tennis Association Limited” means Lawn Tennis Association Limited, a company limited by guarantee registered in England and Wales, registered company number 7459469, registered office address The National Tennis Centre, 100 Priory Lane, Roehampton, London SW15 5JQ;
- 1.19 “Lawn Tennis Association Limited Coach Accreditation and Coach Accreditation+” means the accreditation scheme for tennis coaches organised by the Lawn Tennis Association Limited;
- 1.20 “Offer Letter” means the offer letter sent to the Organisation confirming the Funding;
- 1.21 “Organisation” means the organisation or organisations to which the Funding is offered as set out in the Offer Letter and also (if different) the Land Trustee;
- 1.22 “Practical Completion” means, where the Facilities are land or buildings to be constructed or improved as a result of the Funding, 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;
- 1.23 “Project” means the project or projects described in the Application, the Business Plan and/or the Offer Letter;
- 1.24 “Project Specification” means the most recent specification for the Project supplied by the Organisation and approved by LTA Operations, and enclosed with the Offer Letter;
- 1.25 “Registered Place to Play” means a facility registered as such by the Lawn Tennis Association Limited;
- 1.26 “Standard Clawback” means the relevant period from Practical Completion calculated

Period” as follows:

Award Amount	Standard Clawback Period
£5 million and over	25 years
£50,000 to £5 million	21 years
£0 to £49,999	10 years

1.27 “Tennismark Accreditation Scheme” means the Tennismark accreditation scheme for clubs organised by the Lawn Tennis Association Limited;

1.28 “Uninterruptible Leasehold” means a lease which cannot be terminated by contractual agreement or forfeited except for non-payment of rent or breach of covenant.

**2. Use of Funding**

2.1 The Funding shall be used solely towards the Project in accordance with the General Terms and Conditions, and only by the Organisation, and under no circumstances shall it be used for any other purpose (including for the avoidance of doubt redundancy payments).

2.2 The Organisation shall use its best endeavours to deliver the aims and objectives detailed in the Business Plan and co-operate fully with LTA Operations.

2.3 Delivery of the Project shall comply with any Project Specification agreed with LTA Operations.

2.4 The Organisation acknowledges that it has entered into this Funding Agreement wholly or predominantly for the purposes of its business as a provider of tennis facilities.

2.5 The Organisation will not deposit any part of the Award outside ordinary business accounts within the clearing bank system without prior written authorisation for LTA Operations.

**3. Construction of Facilities**

3.1 Where land or buildings are to be constructed or improved as a result of Funding: -

3.1.1 the Facilities must be constructed in accordance with the Project Specification and otherwise fit for purpose in every respect;

3.1.2 the Organisation must have security of tenure of the Facilities and/or the land on which the Facilities are built for the Clawback Period by means of a freehold or Uninterruptible Leasehold before any Funding can be paid. A copy of any relevant lease must be sent to LTA Operations on request;

3.1.3 the construction, improvement and/or development of the Facilities must be supervised throughout by a qualified architect, surveyor or engineer or other competent professional;

- 3.1.4 the Project site including courts, clubhouse and changing rooms must all offer access to disabled players and the Organisation must take into account and make appropriate provision for use and enjoyment of the Facilities by people with disabilities;
- 3.1.5 the Organisation will notify LTA Operations immediately following Practical Completion and at the same time submit to LTA Operations the following:
  - (a) a copy of the certificate issued by the supervising architect, surveyor, engineer or other competent professional;
  - (b) LTA Operations Project Completion Certificate;
  - (c) the WSP forms (if requested by LTA Operations); and
  - (d) a copy of the operation and maintenance manuals.
- 3.2 No changes can be made to the Project or the Project Specification without the prior written consent of LTA Operations.
- 3.3 LTA Operations' representatives and authorised agents will have the right of inspection at all times and will be entitled to attend the site and inspect and monitor the progress of the Project works to satisfy themselves that the works fully comply with the Project Specification.

#### 4. **Construction Procurement**

- 4.1 In respect of the costs of construction and/or development of the Facilities the Organisation shall, if required by law, comply with the Public Procurement Regulations 2006 (as amended or re-enacted from time to time), the Public Services Contract Regulations (as amended from time to time) and the Public Works Contracts Regulations 1991 (as amended from time to time (hereinafter referred to as the "Regulations")) and shall also ensure:
  - 4.1.1 at least three competitive tenders for the provision of the Facilities shall be obtained by the Organisation in accordance with tender and contract procedures and documents approved in advance by LTA Operations;
  - 4.1.2 a written explanation of why the tender was accepted shall be submitted to LTA Operations prior to works being commenced. The explanation must be satisfactory to LTA Operations, failing which the Funding may be withdrawn by LTA Operations at its sole discretion and any Funding monies already paid shall immediately become repayable to LTA Operations;
  - 4.1.3 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. A tender report which prepared by a consultant quantity surveyor, architect or other professional shall also be submitted to LTA Operations; and
  - 4.1.4 the Organisation shall ensure that LTA Operations 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.
- 4.2 In the event that the Organisation uses or may use the Funding in connection with any contract for works or services to which the Regulations apply, the Organisation warrants that:

4.2.1 it has complied with and will comply with all laws as to public procurement including without limitation the Regulations, as if the Organisation were a ‘contracting authority’ as defined in the Regulations;

4.2.2 it shall promptly supply LTA Operations with such information as LTA Operations may from time to time require evidencing the Organisation’s compliance with the Regulations.

4.3 In the event that LTA Operations has reasonable cause at any time to believe that the Organisation has not complied with the Regulations all Funding already paid shall become repayable to LTA Operations on demand and LTA Operations may suspend its obligations or terminate the agreement pursuant to clause 10.

## 5. **Management and use for the duration of the Clawback period**

### *Tennis Facility*

5.1 The Funding is being made available in recognition of the fact that the tennis courts within the Facilities are used only for the playing of tennis or tennis related activities and will remain so for the duration of the Clawback Period.

### *Repair*

5.2 The Organisations shall keep the Facilities in good repair and undertake all things as may be necessary to ensure its proper maintenance.

### *Equipment*

5.3 The Organisation shall make and operate satisfactory arrangements for the safekeeping of any equipment purchased with the aid of the Funding. If any such equipment is lost or otherwise unavailable for its intended use the Organisation will replace it as soon as reasonably practicable at no cost to LTA Operations;

### *Legal compliance*

5.4 The Organisation shall comply with all statutory requirements and other laws and regulations relating to the Facilities and the development and operation thereof, including without limitation all relevant health, safety and employment laws and regulations.

### *Safeguarding Children and Vulnerable Adults*

5.5 The Organisation shall operate a safeguarding policy in accordance with the guidelines issued by the Lawn Tennis Association Limited from time to time or approved by the relevant Local Authority and will provide LTA Operations with a copy on request.

### *Club Access*

5.6 Where the Organisation:

5.6.1 is a members’ club no-one will be denied membership of or access to the Organisation or the Facilities on the grounds of race, creed, colour, sex, occupation, religion or political persuasion; or

5.6.2 is not currently a members' club no-one will be denied access to the Organisation, Project or Facilities on the grounds of race, age, gender identity, creed, colour, sex, occupation, religion or political persuasion. The Organisation may sell membership packages in order to offer preferential booking arrangements and court fees subject to LTA Operations' written agreement. However, the Organisation shall not operate the Project site or the Facilities as a private members' club without the prior written consent of LTA Operations and shall operate fair procedures in relation to any individuals who are either denied inclusion or who are removed for any reason from the Project. The Organisation will not exclude anyone from participating in the Project on the grounds of race, religion, colour, sex, occupation, disability or political persuasion other than in accordance with lawful justification or where positive discrimination is permitted.

5.7 The Organisation will comply with all statutory requirements and other laws and regulations relating to the implementation and development of the Project (including recruitment and participation), including without limitation, all relevant equal opportunities, discrimination, child protection and safeguarding, human rights and health, safety and employment related laws and regulations and with such guidelines and/or codes of practice which LTA Operations may notify to the Organisation from time to time.

#### ***Dress Code***

5.8 There will be no dress code for users of the Facilities although Organisations are able to specify what type of footwear can or cannot be used.

#### ***Insurance***

5.9 The Organisation must take out and keep in force a fully comprehensive policy of insurance with reputable insurers to cover the Project, the Facilities, equipment bought using the Funding, their use and any activities carried out thereon against and in respect of all usual risks (including third party, public, employer and occupier's liability) to their full replacement value (where relevant), and a copy of the current policy, which must have an endorsement noting LTA Operations' interest as mortgagee, and evidence of premium payment shall be provided to LTA Operations upon request;

5.10 The Organisation shall ensure that the appointed contractor has a fully comprehensive policy of insurance with reputable insurers to cover the Project, the Facilities, equipment bought using the Funding any services related to the Project and any activities carried out thereon against and in respect of all usual risks (including third party, public, employer, professional indemnity and occupier's liability) associated with the Project to their full replacement value (where relevant) or otherwise to a level of cover standard in their industry and a copy of the current policy and evidence of premium payment shall be provided to LTA Operations upon request;

#### ***Legal compliance***

5.11 The Organisation must comply with all statutory requirements and other laws and regulations relating to the Facilities and the development and operation thereof, including without limitation, the national minimum wage, the "Working Time" Directive, health and safety, child protection, data protection, intellectual property, human rights and religious, political, race, sex and disability discrimination requirements, laws and regulations and with such guidelines and/or codes of practice which LTA Operations may notify to the Organisation from time to time.

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### ***Constitution***

- 5.12 The Organisation confirms that it has power to enter into this Funding Agreement and that the Organisation's constitution contains an express power to borrow money.
- 5.13 Except where the Organisation is a local authority, the Organisation shall make no changes to its constitution during the Clawback Period without first obtaining the prior written consent of LTA Operations.

### ***Delay***

- 5.14 The Organisation must inform LTA Operations in writing of anything that materially threatens, makes unlikely, or delays the completion or success of the Project and the Facilities.

### ***Registered Place to Play***

- 5.15 A Registered Place to Play is a place registered as such by the Lawn Tennis Association Limited. An organisation must be a Registered Place to Play in order to obtain funding from LTA Operations and the Organisation must remain registered throughout the Clawback Period.

### ***Competition***

- 5.16 The Organisation shall comply with the Tennismark Accreditation Scheme requirements regarding the number of competitions it holds and shall offer a variety of competitive opportunities to ensure that players of all ages and standards at the Project site are able to enter.
- 5.17 Competitions should be available on a regular basis and could include box leagues, ladders and staggered draws. Competitions should be organised using Lawn Tennis Association Limited Ratings and results sent to the Lawn Tennis Association Limited for recording.
- 5.18 The Organisation agrees that all competitions held on the Facilities will use the Lawn Tennis Association Limited rating system.

### ***British Tennis Membership and Lawn Tennis Association Limited ratings***

- 5.19 The Organisation shall endeavour to ensure users of the Facilities become members of British Tennis. This provides the user with a Lawn Tennis Association Limited rating.

### ***Management and Use of Facility***

- 5.20 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, the Business Plan, and the Schedule to the Offer Letter and shall not be changed throughout the Clawback Period without the prior written consent of LTA Operations. If there is any inconsistency in the description of the purpose in the Application, the Business Plan, and the Schedule to the Offer Letter then the purpose of the Project set out the Schedule to the Offer Letter shall prevail.

### ***Business Plan and Project Specifications***



5.21 The Organisation shall manage and operate the Project and the Facilities in accordance with the aims, objectives, targets, and timescales set out in the Business Plan and Project Specifications.

## 6. Payment of Funds

6.1 The Organisation may not submit any claim for payment of all or part of the Funding until the Organisation has met the pre-construction conditions in paragraph 7 of the Schedule to the Offer Letter and has provided:

6.1.1 a completed LTA Start on Site Form;

6.1.2 confirmation that work on the Project has commenced;

6.1.3 a completed Cashflow Forecast agreed by LTA Operations; and

6.1.4 a start on site certificate given by a suitably qualified architect, quantity surveyor or project manager.

6.2 The Cashflow Forecast shall exclude any reference to voluntary labour, contributions-in-kind and other non-allowable costs, which shall all be disregarded for the purposes of this Funding Agreement. In the case of Funding that includes Exchequer Funding LTA Operations may not pay out more than 25% of the Funding in the first 2 months of the Project.

6.3 The final claim (other than Retention) will be released upon receipt of the Final Claim Form, Certificate of Practical Completion and LTA Project Completion Certificate.

6.4 LTA Operations reserves the right to call for proof that the Funding monies have been spent on the Project.

6.5 No Funding shall be payable until the Conditions Precedent and clauses 6.1.1 to 6.1.4 have been complied with.

6.6 The Funding will be paid to the Organisation as set out in the Schedule to the Offer Letter subject to the Organisation complying with these General Terms and Conditions.

### *Claiming Funding*

6.7 Subject to our written instructions, the Funding must be claimed in the following order:

6.7.1 Exchequer Funding (if any);

6.7.2 Loan (if any);

6.7.3 remaining Grant (if any);

6.7.4 Retention.

### *Payment*

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- 6.8 The Funding will be paid using Bankers Automated Clearing Scheme (BACS), or similar method, directly into the Organisation's bank account.
- 6.9 The Funding will only be paid into an ordinary business bank account in the name of the Organisation.
- 6.10 No Funding instalment will be paid until LTA Operations is satisfied (acting reasonably) that such payment will be in relation to proper expenditure for the Project; unless LTA Operations otherwise agrees this means that payments will only be made after receipt of a contractor's invoice or supervising officer's certificate.
- 6.11 If the Organisation fails to claim all or any part of the Funding in accordance with the provisions of this Agreement LTA Operations shall be entitled to retain all or any part of the Funding not claimed by the Organisation and reduce the amount of the Funding accordingly or demand immediate repayment of the Funding.
- 6.12 The Organisation must promptly repay to LTA Operations any Loan instalment or Grant incorrectly paid to it as a result of any administrative error. This includes (without limitation) situations where either an incorrect value of Funding payment has been released or where a Funding payment has been released in error before all applicable terms of the Funding Agreement have been complied with by the Organisation.
- 6.13 The final instalment of the Funding will not be paid until the requirements of clause 3.1.5 have been complied with by the Organisation.
- 6.14 The Funding (other than the Retention) shall be paid out in arrears by monthly instalments against:
- 6.14.1 a certificate as to work carried out and payments made from a suitably qualified (by experience or qualification) architect, quantity surveyor or project manager ("the Supervising Officer"); and
  - 6.14.2 copy invoices
- provided that the amount paid out in any month shall not exceed the amount detailed in the Cashflow Forecast.
- 6.15 Subject to 6.16, the Retention shall be paid 12 months after receipt of the:
- 6.15.1 Final Claim Form;
  - 6.15.2 Certificate of Practical Completion; and
  - 6.15.3 LTA Project Completion Certificate.
- 6.16 In the event that the total Project cost is less than that detailed in the Offer Letter, LTA Operations reserves the right not to make payment of all or any part of the outstanding amount of the Retention and to reduce the Funding accordingly.
- 6.17 In the event that LTA Operations does not receive evidence of a statement of final account signed by the Supervising Officer within three (3) months of the expiry of the Defects Liability Period, LTA Operations reserves the right not to make payment of the outstanding amount of the Retention and to reduce the amount of the Funding accordingly. Such a failure

to provide the statement of final account shall be deemed to be a breach of the Funding Agreement and shall entitle LTA Operations to demand immediate repayment of the Funding.

- 6.18 The substantial work associated with payment of the Retention must be delivered and completed by 31 March of any given Financial Year of the award. Provided that the work has been delivered, the value of the work must be accounted for in the Organisation's annual accounts.

***Repayment of Loan and Interest payable***

- 6.19 Where the Funding includes a Loan:

6.19.1 The Organisation will repay the Loan as set out in the Offer Letter.

6.19.2 Loan repayments must be made by direct debit and the Organisation agrees that it will not suspend or alter payments without the prior written consent of LTA Operations.

6.19.3 No part of the Loan will be released until the Organisation has completed and returned to LTA Operations a direct debit mandate for repayment of the Loan

6.19.4 LTA Operations reserves the right to charge the Organisation Interest on the outstanding balance of the Loan. The relevant body within LTA Operations will annually make a decision as to whether to charge Interest on the outstanding balance of the Loan for the following 12 month period (the timing of this decision is not dependent on the date of this agreement). LTA Operations shall inform the Organisation should the decision be made to charge Interest. Should LTA Operations decide to charge Interest, such Interest will be collected at the same time as the capital repayments and will accrue on a day to day basis and be compounded on a six monthly basis.

**7. Monitoring and Evaluation**

- 7.1 The Project and the Facilities may be monitored by LTA Operations throughout the Clawback Period to ensure that the aims and objectives specified in the Application, Business Plan and Project Specification are being met, that the General Terms and Conditions are adhered to and that the Project and the Facilities represent good value for money.

- 7.2 The Organisation will promptly and regularly provide to LTA Operations any information and/or reports (including without limitation regular progress reports) requested by LTA Operations in connection with the Project, the Facilities or the Organisation and its activities within two weeks of such request. The Organisation will comply with LTA Operations' online self service monitoring and evaluation procedure and input data about use of the Facilities and will update this information every 3 months during the Clawback Period.

- 7.3 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), LTA Operations and any person authorised by LTA Operations may make unannounced visits (including without limitation site visits, site audits and compliance visits) and may request meetings or further information from key members of its staff, for the purposes of monitoring the Project and the Facilities and monitoring compliance with the General Terms and Conditions. The Organisation will facilitate and co-operate in the provision of information or the arrangement and conduct of such visits and meetings, and shall allow LTA Operations and any person authorised by LTA Operations access to inspect the Project and/or the Facilities at any time.

- 7.4 In consultation with LTA Operations the Organisation will agree upon a set of appropriate outcome measures and targets for the Project.
- 7.5 The Organisation will agree to actively monitor the Project and provide regular feedback to LTA Operations. The period for which the targets will be monitored will be agreed with the LTA Operations and may extend beyond the period of Funding if applicable.
- 8. Accounts and Records**
- 8.1 The Organisation shall keep separate, full, proper and up-to-date accounts and records regarding the development, purchase, financial trading and use of the Project and the Facilities. Any person or persons authorised by LTA Operations shall be given prompt access, at LTA Operations' request, to these accounts and financial records and LTA Operations shall have the right to take copies of such accounts and records.
- 8.2 The Funding must be shown in the Organisation's accounts as a restricted fund and not be included under general funds. Any sinking fund for upkeep of the Facilities must be shown in the Organisation's accounts as a designated fund and not be included under general funds.
- 8.3 The Organisation must meet any relevant statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.
- 8.4 During the Clawback Period the Organisation must provide to LTA Operations copies of their annual accounts within six months of the end of each relevant accounting period upon request by LTA Operations. The Organisation agrees to supply such other financial, management or other information relating to the Organisation (including lists of users or members) as LTA Operations may reasonably require.
- 8.5 LTA Operations may undertake regular financial assessments of the Organisation (normally by annual review), to assess the ability of the Organisation to secure other funding or to provide cash partnership funding from either income directly related to the Funding, or from the Organisation's own reserves, towards the Project. LTA Operations reserves the right to reduce the Funding as a result of any such assessment.
- 8.6 The Organisation will notify LTA Operations during the financial assessment of any interest earned on the Funding and LTA Operations shall decide in its reasonable discretion whether such interest may be retained by the Organisation for specified use or whether it should be returned to LTA Operations' funds.
- 9. Mortgage, Disposal, Lease or Change of Use of Facilities**
- 9.1 During the Clawback Period, subject to the terms of any charge or charges to which LTA Operations shall previously have consented, the Organisation shall not without the prior written consent of LTA Operations:
- 9.1.1 transfer, sell, lease, licence or otherwise dispose of all or any part of the Facility;
- 9.1.2 grant any charge, mortgage or other form of security or encumbrance over all or any part of the Facility; or
- 9.1.3 cease to use the Facility for the purposes previously approved by LTA Operations.
- 9.2 The Organisation shall give a reasonable period of written notice to LTA Operations before it proposes to take any action that requires consent under this clause.

- 9.3 LTA Operations may give consent in accordance with clause 9.2 subject to any or all of the following conditions:
- 9.3.1 the sale, lease, licence or other disposal is made at full market value as determined and evidenced by an independent professional valuation by an appropriately qualified expert approved in writing by LTA Operations;
  - 9.3.2 prior to the completion of the transfer, lease, licence, sale or other disposal the proposed new owner of the Facility enters into a deed of novation with LTA Operations to ensure that the new owner is obliged to comply with the terms of the Funding Agreement;
  - 9.3.3 the Organisation repays to LTA Operations a sum equivalent to the Grant or at the discretion of LTA Operations a sum equivalent to the Grant increased in line with inflation as determined by the retail price index;
  - 9.3.4 where the Funding includes a Loan, the Organisation immediately repays the Loan and any Interest due;
  - 9.3.5 termination of the Funding Agreement;
  - 9.3.6 any other conditions which LTA Operations in its discretion deems appropriate;
  - 9.3.7 reimbursement of all LTA Operations expenses including but not limited to any legal fees.
- 9.4 Failure to obtain consent as required by clause 9.1 or failure to comply with any conditions imposed in accordance with clause 9.2 shall be an Event of Default under clause 10.1.

## 10. Cessation, Suspension and/or Recovery of Loan, Clawback and Termination

- 10.1 An Event of Default shall mean if:
- 10.1.1 the Organisation ceases to operate for any reason, or it passes a resolution (or the Court makes an order) that it be wound up (other than for the purpose of a bona fide reconstruction or amalgamation), or if it was a charity at the time that the Application was made, it ceases to be a charity;
  - 10.1.2 the Organisation becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or any of its members are surcharged or a manager is appointed on behalf of a creditor in respect of its business or a part thereof, or it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 10.1.3 within the Clawback Period, the Organisation fails to comply with any of the terms set out in the Funding Agreement;
  - 10.1.4 where there is a Loan as part of the Funding, the Organisation fails to repay any part of the Loan that has fallen due as set out in the Funding Agreement;
  - 10.1.5 in the reasonable opinion of LTA Operations, the Organisation fails to apply any part of the Funding for the intended purpose;

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- 10.1.6 in the reasonable opinion of LTA Operations, the Organisation fails to complete the works to be carried out in executing the Project in accordance with the terms of and to the standard indicated in the Project Specification (unless any variation has been previously approved in writing by LTA Operations);
- 10.1.7 the Organisation fails to complete the Project on time or within a reasonable period (when no time is specified) or it appears that the Project is unlikely to be completed on time or within such period;
- 10.1.8 after considering the purpose of the Funding, in LTA Operations' reasonable opinion further payment of the Funding would not constitute good value for money. (However, LTA Operations shall, subject to the other terms of the General Terms and Conditions, continue to pay the Funding to the extent that the Organisation has, with the prior written consent of LTA Operations, contracted for goods and services and it is not practically possible to cancel such arrangements);
- 10.1.9 there is evidence of financial mismanagement, breakdown of budgetary control or any other irregularity, within the Organisation;
- 10.1.10 in the reasonable opinion of LTA Operations, any of the assurances given or representations or information contained in the Application or other documents submitted by the Organisation to LTA Operations were fraudulent, incorrect or misleading;
- 10.1.11 the Organisation or any of its employees or persons acting under the control or authority of the Organisation has acted fraudulently or negligently so as to have a material effect on the completion, development or management of the Facilities or the Project generally;
- 10.1.12 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;
- 10.1.13 the Organisation is offered for public subscription by flotation on the stock market;
- 10.1.14 except where the Organisation is a public authority, any of the following circumstances occur without the Organisation first notifying LTA Operations and obtaining its prior written consent and LTA Operations reasonably considers such circumstances to be materially detrimental to the Project:
- (a) a transfer of assets from the Organisation to a third party;
  - (b) merger or amalgamation by Organisation with another body (including a company established by the Organisation);
  - (c) any change to the composition, structure or key personnel of the Organisation; or
  - (d) any change to the Organisation's constitution, in particular but without limitation with regards its purposes, payment to members and members of its governing body, distribution of assets (whether on dissolution or not) or admission of members (where it has a membership);

- 10.1.15 the Organisation is in breach of any covenant, condition, obligation, warranty or representation in the Funding Agreement or any charge in favour of LTA Operations;  
or
- 10.1.16 the Organisation terminates the Agreement because HM Revenue and Customs determines that any part of this Agreement creates a right or obligation which gives rise to the payment of VAT (repayment to LTA Operations of the whole or such part of the Funding as is appropriate in the circumstances, excluding any committed funds).
- 10.2 If an Event of Default occurs, without prejudice to LTA Operations' other rights and remedies:
- 10.2.1 LTA Operations' obligation to make any payments of Funding instalments shall forthwith cease;
- 10.2.2 LTA Operations may make all further payments of Loan and/or Grant instalments subject to such conditions as it may specify;
- 10.2.3 where the Funding includes a Loan, LTA Operations may require the full amount of Loan released to the Organisation (or such other sum as LTA Operations may require) to be repaid to LTA Operations on demand together with any Interest due;
- 10.2.4 LTA Operations may require the Organisation to repay a sum equivalent to the Grant increased in line with inflation as determined by the Retail Price Index or the amount of the Funding released to the Organisation increased in line with inflation as determined by the Retail Price Index;
- 10.2.5 LTA Operations shall have the right at any time during the Clawback Period to terminate the Funding Agreement forthwith or suspend all or any of its obligations hereunder upon such terms and for such period as LTA Operations shall at its absolute discretion determine and/or enforce any security held; and/or
- 10.2.6 without prejudice to sub-clauses 10.2.1 to 10.2.5, LTA Operations may suspend all or any of its obligations hereunder while investigations are carried out into any such Event of Default.
- 10.3 If an Event of Default occurs, LTA Operations may require the Organisation to:
- 10.3.1 submit to LTA Operations a five year and one year monthly cash flow forecast within 30 days of the Event of Default occurring;
- 10.3.2 submit monthly bank statements to LTA Operations of all accounts held in the name of the Organisation;
- 10.3.3 co-operate with and allow full access to premises and records to any agent or employee that LTA Operations sends to review the Organisation's activities; and
- 10.3.4 provide all board minutes and other information regarding board operations to LTA Operations.
- 10.4 LTA Operations shall further be entitled to suspend or cease payment of the Funding in the following situations:

- 10.4.1 whilst investigations are being carried out into any matter that might result in the Organisation being required to repay all or any part of the Funding;
- 10.4.2 where, after considering the purpose of the Funding, in LTA Operations' reasonable opinion, further payment of the Funding would not constitute good value for money (provided that LTA Operations will continue to pay the Funding to the extent that the Organisation has contracted for goods and services and it is not practically possible to cancel such arrangements);
- 10.4.3 where LTA Operations reasonably determines that it has insufficient funds available to it to continue with the payment of the Funding to the Organisation.
- 10.5 If LTA Operations chooses to suspend the Funding Agreement pursuant to this clause and an Event of Default is continuing or the Organisation indicates its intention to permit it to continue or clause 10.4 applies, LTA Operations may terminate the Funding Agreement immediately upon notice in writing to the Organisation.
- 10.6 LTA Operations may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the Organisation against any amounts payable by it to the Organisation.
- 10.7 LTA Operations may carry out any of the actions set out in this clause 10 if LTA Operations is required to do so by law.

## 11. **Deficit/Surplus**

- 11.1 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 Funding, unless otherwise agreed in writing by LTA Operations in response to an application submitted in advance notifying LTA Operations of the revised cost, the reasons for the increase and asking for the level of Funding to be reconsidered.
- 11.2 If:
- 11.2.1 the final total expenditure in respect of the Project is less than the expenditure estimated in the Application;
- 11.2.2 the aggregate funding for the Facilities, particularly from sources of public funds, exceeds its cost;
- 11.2.3 the Organisation receives any offers of funding for the Project that duplicate the funding provided by the Funding or any additional income for the Project (such as interest on Loan monies); or
- 11.2.4 for any other reason it becomes apparent that all or any of the Funding is not required to enable the completion of the Project;

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

## 12. **Publicity**



It is important for the Organisation and LTA Operations to maximise publicity relating to the success of the Project. To achieve this LTA Operations expects you to:

- 12.1 contact your local Regional Tennis Participation Manager in the next few days to discuss how to obtain appropriate press coverage for your award. We can also give you advice about how to write a press release and how to contact the media;
- 12.2 if so requested by LTA Operations, arrange an official opening ceremony for the Facility within a reasonable period after completion of the Facility, to which LTA Operations and Sport England shall be invited. The organisation will liaise with LTA Operations to agree a date of and the arrangements for the opening ceremony;
- 12.3 display appropriate Lawn Tennis Association/Sport England signage. All funded facilities are required to have a permanent Lawn Tennis Association/Sport England funded sign displayed. To order and arrange installation of your sign please contact LTA Operations;
- 12.4 continuously promote the Project during the Clawback Period in accordance with the following conditions:
  - 12.4.1 the Organisation will not issue any substantive public release nor hold any press conference about the Project without giving LTA Operations reasonable prior notice in writing;
  - 12.4.2 the Organisation agrees that during the Clawback Period it will officially recognise and promote the financial contribution provided by LTA Operations, Sport England and the Department for Culture, Media and Sport;
  - 12.4.3 permit LTA Operations and the Lawn Tennis Association Limited the right to promote its association with the Facility and the Organisation and licence LTA Operations and the Lawn Tennis Association Limited, without charge, to use the name and image of the Organisation and the right to disclose information concerning the Facility and the Organisation to third parties while remaining sensitive to situations where confidentiality is a significant issue; and
  - 12.4.4 consult with LTA Operations as to the appropriate permanent signage and temporary construction signage (bearing in mind all relevant financial and legal considerations) to be erected at the Facility in order to acknowledge the support of LTA Operations and Sport England provided that:
    - (a) in the absence of agreement, LTA Operations shall have the final say as to the nature and location of such signage; and
    - (b) in all cases the Organisation will erect a funding plaque to be provided by LTA Operations;
- 12.5 not issue any public release nor hold any press conference about the Funding or the Facilities without prior notice to LTA Operations.
- 12.6 keep LTA Operations informed of any sponsorship relating to the Project and will use its best endeavours to include in any such sponsorship agreement(s) a clause prohibiting the sponsors ambushing LTA Operations' Funding by taking credit due to LTA Operations/Sport England for that Funding and will use all reasonable endeavours to prevent ambush marketing tactics by the sponsor. This shall not prevent the sponsor taking full credit for its own funding.

12.7 References to Sport England and the Department for Culture, Media and Sport in this clause 12 only apply where Exchequer Funding is being provided.

13. **Distributable Profit**

13.1 If at any time within the Clawback Period the operation of the Facilities realises a distributable profit or contributes to the Organisation's overall distributable profit, the Organisation shall notify LTA Operations of that position within 28 days of the date that the Organisation's accounts are published. An appropriate proportion (to be determined by LTA Operations in its sole discretion) of this profit shall be paid to LTA Operations within six months of the date of publishing of the accounts. For the purposes of this clause, "distributable profit" realised by the Facilities shall be ascertained in accordance with generally accepted accounting principles and standards in the United Kingdom.

14. **Further Conditions**

14.1 The Organisation agrees and accepts that payments of Funding can only be assured to the extent that LTA Operations has available funds.

14.2 The Organisation must notify LTA Operations 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) that will inhibit its ability to deliver the Project during the Clawback Period. Such notification shall be made as soon as practicable and in writing.

14.3 Any irrecoverable input VAT may be considered as part of the eligible project cost. Any input VAT that is recovered may not be considered part of the eligible project costs. Should the Organisation subsequently be able to reclaim tax, for example if it subsequently registers for VAT, the reclaimed tax will be repaid to LTA Operations.

14.4 Any failure, relaxation, forbearance, delay or indulgence by LTA Operations in enforcing any of the terms of the Funding Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and nor shall the granting any time by LTA Operations prejudice or affect or restrict any of its rights arising under the Funding Agreement or be deemed a waiver by LTA Operations of any breach or subsequent or continuing breach.

14.5 The Organisation acknowledges that copies of the Funding Agreement and any other information, documents, accounts and/or records about the Project or the Organisation (including its staff and users) may be disclosed by LTA Operations to Sport England or any of its other funders.

15. **Exclusion of Liability/Indemnity**

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

15.2 It is the Organisation's responsibility to satisfy itself as to the quality and capability of the contractors, architects, surveyors and/or other parties engaged by them in relation to the Project and to ensure that the Project is completed to an acceptable standard of safety.

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

15.4 LTA Operations has no liability for losses or costs arising from failure to make any payment of the Funding on any agreed date.

16. **Duration**

Except where otherwise specified, the terms of the Funding Agreement will apply from the date on which the Organisation signs and returns the Offer Letter until the later of:

16.1 the period of one year following payment of the last instalment of Grant;

16.2 so long as any Grant monies remain unspent by the Organisation;

16.3 where the Funding includes a Loan, the day on which the Loan and any Interest is repaid in full to LTA Operations by the Organisation;

16.4 the expiration of the Clawback Period; and

16.5 so long as any of the obligations in the Funding Agreement remain unperformed, or any Event of Default has occurred and is continuing.

17. **Warranties**

17.1 The Organisation warrants, undertakes and agrees that:

17.1.1 it has all necessary resources and expertise to carry out the Project;

17.1.2 it has and will keep in place adequate procedures for dealing with any conflicts of interest;

17.1.3 it has and will keep in place systems to deal with the prevention of fraud;

17.1.4 all financial and other information concerning the Organisation comprised in the Organisation or otherwise disclosed to LTA Operations is to the best of its knowledge and belief, true and fair;

17.1.5 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 it meeting its obligations in connection with the Grant.

17.2 it is not aware of anything in its own affairs, which it has not disclosed to LTA Operations or any of its advisers, which might reasonably have influenced the decision of LTA Operations in providing the Funding on the terms contained in this Funding Agreement;

17.3 since the date of the last accounts there has been no change in the financial position or prospects of the Organisation;

- 17.4 the Organisation is solvent and will not as a result of the Funding and granting the legal charge become insolvent;
- 17.5 everything identified in the Project is owned or controlled by the Organisation and the Organisation has access to it to fulfil the Project;
- 17.6 it is the sole beneficial owner of the Organisation's name and logo;
- 17.7 it will comply with all statutory requirements and other laws and regulations relating to the implementation and delivery of the Project, including without limitation, all relevant health, safety and employment related laws and regulations;
- 17.8 it will not act or authorise or permit any person associated with the Project to act in any way, which in the reasonable opinion of LTA Operations, could bring the Project and/or LTA Operations and/or Sport England into disrepute. If the Organisation believes that any such act has taken place, it will notify LTA Operations immediately and provide full details;
- 17.9 for Projects involving equipment purchase, it will not sell or dispose of LTA Operations funded equipment without written authorisation from LTA Operations, who will have the sole discretion to decide whether any proceeds may be retained by the Organisation for specified use within the Project or returned to LTA Operations;
- 17.10 it will from time to time, on being required to do so by LTA Operations, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to LTA Operations as LTA Operations may reasonably consider necessary for giving full effect to the Agreement and securing to it the full benefit of the rights, powers and remedies conferred upon it in the Agreement; and
- 17.11 the representations and warranties in any legal charge entered into are true and accurate.

18. **Multiple Parties receiving the Funding**

Where there is more than one party receiving the Funding and/or delivering the Project:

- 18.1 where any standard, obligation, representation or warranty under the Funding Agreement is expressed to be undertaken or adhered to by the Organisation, each organisation shall be jointly and severally responsible for it;
- 18.2 LTA Operations may release or compromise the liability of any of the Organisations acting as the Organisation under the Funding Agreement or grant any time or other indulgence without affecting the liability of any of the other organisations; and
- 18.3 any consent or authority given by the Organisation under or in connection with the Funding Agreement shall bind all the Organisations.

19. **Law and Jurisdiction**

This Funding Agreement and any non-contractual obligations connected to it shall be governed in all respect by English law and be subject to the exclusive jurisdiction of the English Courts.

20. **Assignment**

- 20.1 This Funding Agreement is personal to the Organisation and may not be assigned by the Organisation.
- 20.2 This Funding Agreement may be assigned by LTA Operations to any successor body to LTA Operations or any third party to whom the benefit of these obligations is assigned.
21. **Rights of Third Parties**
- 21.1 Subject to clause 21.2 a person who is not a party to this Funding Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.
- 21.2 Where any Funding includes Exchequer Funding Sport England may enforce any rights under this Funding Agreement directly.
22. **General**
- 22.1 The Parties agree that the Funding Agreement is the entire agreement between the Parties and supersedes all proposals or prior agreements and undertakings, whether oral or written, and all other communications between the Parties relating to the subject matter of this Agreement.
- 22.2 The Organisation is an independent body and nothing in this Agreement shall be deemed to constitute a partnership, joint venture, relationship of agency or any employment relationship between the Parties nor shall anything in this Agreement be deemed to constitute or place the Parties in the relationship of partners, joint ventures, agent and principal or employer and employee.
- 22.3 This Agreement may only be modified by written agreement duly signed by both Parties.
- 22.4 Nothing in this Agreement is intended to create a VAT taxable supply. The Parties shall cooperate in good faith in resisting any argument by HM Revenue and Customs that VAT is payable in respect of the Funding. In the event, however, that HM Revenue and Customs determines that any part of this Agreement does create a right or obligation which gives rise to the payment of VAT, the Organisation (and not LTA Operations) shall be responsible for such VAT obligations. In such circumstances, the Organisation shall have the right to terminate the Agreement effective 30 days after receipt of notice of termination, upon repayment to LTA Operations of the whole or such part of the Funding already released to the Organisation as is appropriate in the circumstances.
- 22.5 If at any time one or more provisions of this Agreement become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 22.6 Any failure, relaxation, forbearance, delay or indulgence by LTA Operations in enforcing any of the terms or clauses of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision, nor shall the granting of any time by LTA Operations prejudice or affect or restrict any of LTA Operations' rights arising under this Agreement or be deemed a waiver by LTA Operations of any breach or subsequent or continuing breach.
- 22.7 Any notices to be served under this Agreement shall be in writing and served at the addresses set out in this Agreement.
- 22.8 Where the Funding includes Exchequer Funding the Parties acknowledge and agree that LTA Operations is working with Sport England to award this funding. Sport England is a public

authority and as such may be subject to certain statutory or other obligations to permit access to information held by it (or the Organisation on LTA Operations' or Sport England's behalf) which may extend to the contents of this Agreement and other documents and information relating to it. The Organisation shall without charge provide all such assistance as LTA Operations and/or Sport England may reasonably require in order that LTA Operations and/or Sport England may comply with lawful and proper requests for access to such documents and information.

22.9 The Parties undertake to use their best endeavours, wherever practicable, to resolve any dispute arising out of or in connection with this Agreement. Any dispute arising in connection with this Agreement shall be notified in writing by one party to the other and shall first be addressed by direct personal liaison between the respective primary contacts.

22.10 If the dispute cannot be resolved amicably within 14 days of such notification, the Parties shall refer the dispute to the respective Chief Executives (or equivalent) of the Parties for discussion and resolution.

### 23. **Reimbursement of LTA Operations Legal Fees**

23.1 The Organisation shall pay LTA Operations on demand £1,500 per legal charge and £350 per restriction of title to reimburse LTA Operations for legal expenses it incurs. LTA Operations reserves the right to increase these charges should legal or other complications arise causing LTA Operations' legal fees to increase so as to be in excess of £1,500 in respect of a legal charge and £350 in respect of a restriction of title respectively.

23.2 The Organisation shall pay LTA Operations' costs for any application for consent or approval or enforcement of the Funding Agreement and any fees for consultants or other professionals which LTA Operations deem are appropriate.