

Report to Executive

Agenda
Item:

A.7

Meeting Date: 27th July 2015
Portfolio: Culture, Leisure and Young People
Key Decision: Yes: Recorded in the Notice Ref:KD
Within Policy and
Budget Framework NO
Public / Private Public

Title: CLOSED CIRCUIT CYCLE TRACK DEVELOPMENT
Report of: The Deputy Chief Executive
Report Number: SD 13/15

Purpose / Summary:

This report seeks Carlisle City Council Executive approval to accept up to £650,000 in British Cycling Funding (on completion of a successful 'solicited application' process) in order to develop a 1km closed circuit cycle track in Harraby. The development would be wholly funded by British Cycling with Carlisle City Council's Capital Programme increased to reflect the incoming funding.

Carlisle City Council would be the accountable body for the British Cycling Funding and subject to the terms and conditions of grant and any claw-back conditions. The City Council will also have to increase the size of its lease holding of land at the Harraby Campus site.

Recommendations:

- 1) Executive are asked to approve the completion of a solicited application for British Cycling Funding and the acceptance of up to £650,000 in funding (the final value of the application and grant will be determined via a competitive tendering exercise).
- 2) Executive are asked to approve the increase in the Capital Programme to reflect the award of any British Cycling grant.

- 3) Executive are asked to delegate authority to progress the scheme (and accept final terms and conditions of grant) to the Portfolio Holder for Culture, Leisure and Young People following consultation with the Deputy Chief Executive.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1** The aims and objectives of Carlisle City Council's current Sports Facilities Strategy were based on a needs assessment drawn from local and national evidence, the known and projected numbers of people taking part in various sports and physical activity, and on the aspirations of various National Governing Bodies of sport (NGB'S).
- 1.2** The assessment identified a need for a 1km closed circuit cycle track in the city. There are no closed circuit facilities in Cumbria and clubs locally and countywide have long campaigned for the development of such facilities.
- 1.3** The development of a closed circuit track was, therefore, adopted and features as one of the priority development projects in Carlisle City Council's Sports Facilities Strategy.
- 1.4** British Cycling have been working with Carlisle City Council for a number of years to try and develop a closed circuit facility. The critical challenge in recent years (and certainly since the adoption of the Sports Facilities Strategy) has always been the availability of capital match funding to support any British Cycling Grant.
- 1.5** The development of the Sports Facilities at the Harraby Campus and a change in British Cycling's funding approach currently offer a unique opportunity. British Cycling are willing to acknowledge and accept Carlisle City Council's existing £1.6M investment in the site (particularly the development of the wider sports facilities) as suitable provision of 'match funding' to the degree where British Cycling will fully fund the development of the cycle track itself.
- 1.6** In Spring 2015 Carlisle City Council commissioned an architectural firm to develop the outline proposal (funded from existing revenue budgets and with support from Cumbria County Council as per Portfolio Holder Decision Notice OD.021/15). RNL Building Consultancy (RNL) were appointed following a competitive tendering exercise. Their brief extends to the development of initial proposals, application for planning permission, tendering for the procurement of a construction partner, and management and delivery of the scheme via the construction partner.
- 1.7** Throughout April and May 2015 RNL liaised with Carlisle City Council Officers and representatives from British Cycling to develop a track design that met with British Cycling requirements, and then submitted a planning application for the lighting

columns on the track (the remainder of the scheme did not need planning permission).

- 1.8** Due to the location of the proposed facility (outlined in detail in section 2 of this report) and the absolute requirement to achieve a minimum 1km length (in order to secure British Cycling Funding), the proposed track would have to be built on the site of existing grass football pitches in Harraby. Significant consultation was undertaken with local football teams who are happy with the proposals due to the provision of alternative 3G pitches as part of the wider scheme (the consultation and outcomes are detailed in section 3 of this report). However, the loss of grass pitches resulted in a holding objection being lodged by Sport England. This was lifted when Council Officers demonstrated the increased capacity for pitch sports being offered by the new 3G facilities and updated evidence of need specific to Harraby.
- 1.9** In June 2015 planning permission for the lighting provision was granted, paving the way for the entire development.
- 1.10** On completion of the planning process, RNL have worked with Carlisle City Council Officers (from both the Sports Development and Procurement Teams) and British Cycling to fully specify a scheme ahead of a tendering exercise. RNL estimations of the cost of this scheme are up to £650k, however this has allowed for significant risk, contingency and elements which may prove unnecessary (subject to further ground and site surveys) – such as a SUDS (Soaking Urban Drainage System) drainage pond on site.
- 1.11** A formal tendering exercise will competitively confirm final project costings and the successful tender will form the basis of the final funding application to British Cycling via a solicited application process.
- 1.12** There is a relatively high degree of urgency to this report and to the development proposal as a whole, as one of the conditions of grant for British Cycling is that any scheme must be complete before the end of the 2015/16 financial year. In reality this means commencing in the late summer or very early autumn of 2015.

2. PROPOSALS

2.1 The Track

The proposed development is for a fully floodlit 1km closed circuit cycling track built to British Cycling specification, complete with access and ancillary facilities, and provision for race and club events as well as recreational cycling.

A full plan of the proposed development is attached at Appendix 1 to this report.

The proposed site of the scheme spans the land to the rear of the new Harraby Campus and in front of Waterman's Walk, and continues parallel to Waterman's Walk over the site of the existing junior and senior football pitches behind the current Community Centre.

2.2 Development and Build

As previously outlined a competitive tendering process will be held to identify a preferred contractor and confirm project costs. RNL will be retained to support this process and to act as employer's agent on behalf of Carlisle City Council to manage the construction project.

British Cycling's grant award will be based on final tender costings and will be full and final. However, the specification includes all known risks and accounts for significant elements which may prove unnecessary (such as a SUDS drainage pond). This should almost entirely mitigate the risks of the project exceeding the capital allowance from British Cycling.

The specification prepared for tender is also well over basic specification in terms of British Cycling's minimum requirements and the solicited application process will allow for an ongoing relationship with British Cycling and negotiated value engineering (as necessary) to ensure that there is no capital requirement from Carlisle City Council.

Immediately, and in advance of construction works, there is a requirement to support the County Council in the clearance of the site. Currently there is significant spoil and earth mounds on their land to the rear of the new Harraby Campus. Removal of this will be required to facilitate development. A temporary access road will be necessary (over Carlisle City Council and Harraby Community Association Land) to remove this prior to construction commencing.

2.3 Management and Operations

The newly developed track would be an addition to the range of new sports facilities being developed as part of the Harraby Campus. Operation and management of the cycle track would be incorporated into any arrangements to manage and operate these wider sports facilities.

Greenwich Leisure Limited have developed a fully costed business plan for the existing sports facilities (including maintenance and provision of a sinking fund) and have been asked to update this to reflect the addition of the cycling facilities. However, given the likely low cost of on-going maintenance (outlined below), and the demand from local clubs for a dedicated training and event facility, the preliminary assessment undertaken suggests that cycle track will be revenue generating (even after allowing for costs).

The facility itself is likely to offer free or very low cost open access cycling facilities for individuals whenever the site is not exclusively booked. The principle income stream will come from exclusive bookings for club specific training sessions and competitive events. Supplementary income will be derived from exclusive use bookings from schools (for Bikeability) or other community clubs and groups (youth clubs etc). This is the business model successfully implemented at similar facilities elsewhere in the country (notably Lancaster and Middlesbrough).

2.4 Funding Implications

As outlined above, Carlisle City Council have been invited to complete a solicited application for funding. British Cycling have indicated that subject to the proposed scheme meeting their own specification and the tender submissions satisfying their own value for money assessment then they will offer grant funding to fully cover the costs of the scheme.

Carlisle City Council would be the accountable body for this funding, and would remain so for the duration of the funding claw-back period (15 years). This would mean that Carlisle City Council would be responsible for the meeting of the terms and conditions of grant and any supplementary Community Use Agreement (which will include access and maintenance requirements) mandated by British Cycling. These are bid specific and would be negotiated and finalised during the application process. However, British Cycling's Standard Terms and Conditions of Grant and a template Community Use Agreement have both been included for reference at Appendices 2 and 3 respectively. Both have been used to inform the operations and management and maintenance liabilities of this report.

Given that the terms and conditions mentioned above remain indicative at this stage it is recommended that final authority to accept any funding and proceed with the project is delegated to the Portfolio Holder for Culture, Leisure and Young People upon receiving satisfactory assurance on the business planning of Carlisle South Sports and that any returning liabilities could be met from within existing resources.

2.5 Ongoing Maintenance

The specification of the track will be such that it's natural lifespan is in excess of the claw-back period on British Cycling's funding (15 years) and the ongoing maintenance and repair costs (as mandated by British Cycling's Community Use Agreement) are minimal. Typical maintenance requirements are outlined in British Cycling's standard terms and conditions which also accompany this briefing note (Appendix 2).

British Cycling do not mandate the provision of a sinking fund but GLL will be asked to increase the sinking fund already allocated within the business plan for the wider facilities to allow for full refurbishment / restoration at the end of the track' expected life span.

3. CONSULTATION

- 3.1** Direct consultation has been held with British Cycling, Sport England and the Border City Wheelers Cycling Club who all support the scheme.
- 3.2** Direct consultation has been held with Harraby Community Association who support the scheme and the addition to the Sports Facilities and believe it will significantly strengthen the local offer.
- 3.3** Direct consultation has been held with Harraby FC (the sole current users of the existing grass football pitches) who support the scheme subject to them being granted an access agreement and a period of priority and subsidised usage of the new 3G pitch
- 3.4** Formal consultation was held with local residents as part of the planning application process. This was supplemented by a residents meeting convened by ward councillors and the Sports Development Team. Some residents had reservations / objections to the proposals. Amendments were made to the scheme as a result of this, and more notably planning conditions were placed on development regarding the timing and usage of floodlighting as a result of these concerns.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

4.1 In order to help Carlisle City Council deliver one of the priority projects within it's Sports Facilities Strategy; leverage in full funding from British Cycling; and expedite the process (to comply with British Cycling's timetable) while still ensuring due diligence on the sustainability and financial risks of accepting a British Cycling grant the following recommendations are made:

- 1) Executive are asked to approve the completion of a solicited application for British Cycling Funding and the acceptance of up to £650,000 in funding (the final value of the application and grant will be determined via a competitive tendering exercise).
- 2) Executive are asked to approve the increase in the Capital Programme to reflect the award of any British Cycling grant.
- 3) Executive are asked to delegate authority to progress the scheme (and accept final terms and conditions of grant) to the Portfolio Holder for Culture, Leisure and Young People following consultation with the Deputy Chief Executive.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

5.1 “We will develop vibrant sports, arts and cultural facilities, showcasing the City of Carlisle.”

Contact Officer: Darren Crossley **Ext:** 7004

Appendices attached to report:	Appendix 1 Plan, Appendix 2 Terms & Conditions Appendix 3 Community Use Agreement Template
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Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- None

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's -

Deputy Chief Executive –

Economic Development –

Governance – A suite of legal documents will need to be considered and approved and particular account should be taken of the fact that the proposed draft funding agreement contains clawback provisions. Consideration needs to be given to management arrangements which will need to be codified in a legal agreement and any necessary procurement undertaken. Finally, legal documentation will be needed to grant a licence over the Council's adjacent land to the County Council in order that they can access and remove the spoil.

Local Environment –

Resources – The scheme to develop a cycle track on the Harraby campus site is to be fully funded with the Council acting as the accountable body. The scheme will cost £650,000 and will be required to be added to the capital programme. As it is fully funded the grant award will also be added to the programme as a source of funding.

The procurement of a contractor will need to be undertaken by the Council in accordance with normal contracting and tendering procedures.

Future liabilities for the track for the period the Council is required to be the accountable body (15 years) can be mitigated by transferring these responsibilities to the Harraby Community Association, but the ultimate responsibility to meet any future liabilities would remain with the Council for the period of any potential clawback.

There are conditions around monitoring of use within the grant conditions and as such the grant will be added to the grants and external funding register to ensure that any monitoring requirements are fulfilled so as not to trigger any likelihood of clawback of the grant.

BRITISH CYCLING WHOLE SPORT PLAN

Facilities Awards General Terms and Conditions

1. Definitions

For the purposes of the Award Agreement (as defined below) the following expressions shall have the following meaning:

“Application”	means the funding application submitted by the Award Recipient for an Award in respect of the Project and shall include all written and oral representations made by the Award Recipient to British Cycling regarding the Award Recipient, the Project and the Facilities;
“Award”	means the sum referred to in the Award Letter awarded to assist in financing the Project which may consist of Capital Funding and/or Revenue Funding;
“Award Assets”	means any property (i) whose acquisition, creation or improvement is funded in whole or in part by the Award; and (ii) that has an acquisition cost or value (whichever is higher) of £1,000 or above; and (iii) that has an economic life of three years or more (based on normal accounting practice);
“Award Agreement”	means the agreement entered into between the Award Recipient and British Cycling regarding the Project in the form of an Award Letter, the Schedule to the Award Letter, the Project Documents and these General Terms and Conditions;
“Award Letter”	means the Award offer letter sent to the Award Recipient confirming the Award;
“Award Recipient”	means the organisation or persons specified in the Award Letter to which the Award is made;
“British Cycling”	means the British Cycling Federation (registered company number 3943494); whose registered office is at Stuart Street, Manchester M11 4DQ;
“Business Plan”	means a business plan prepared by the Award Recipient relating to the financial and operational management and marketing of the Project and the Facilities following Practical Completion;
“Capital Funding”	means the Award (or part of it) referred to in the Award Letter that relates to funding which is to be used for the purchase, construction or development of Facilities and/or Award Assets;

“Clawback Period”

means the period of years from the date of acceptance of the Award set out in the table below:

Capital Award Amount	Clawback Period
£5million and over	30 yrs
£1million to £5million	20 yrs
£250,001 to £1million	15 yrs
£100,001 to £250,000	10 yrs
£50,001 to £100,000	7 yrs
£25,001 to £50,000	5 yrs

“Cycling Development Plan”

means a plan prepared by the Award Recipient setting out the aims, objectives, responsibilities and timescales relating to the development of cycling in the area in which the Facilities are situated;

“Cash Flow Forecast”

means the cash flow forecast in respect of the Project delivered by the Award Recipient and approved by British Cycling at the date hereof and as may be varied from time to time during the Project upon the written approval of British Cycling;

“Defects”

means any defects or ‘snagging’ points indentified by the Project Professional at the date of or prior to Practical Completion;

“Defects Liability Period”

means, if the Award is less than one hundred thousand pounds (£100,000), the period of six (6) months commencing from the Date of Practical Completion and if the Award is more than one hundred thousand pounds (£100,000) the period of twelve (12) months commencing from the Date of Practical Completion;

“Facilities”

means any facility, capital equipment (including Award Assets), buildings (including fixtures and fittings) and/or land in respect of which the Award is made as more particularly specified in the Award Offer Letter and shall include, without limitation, any facility, equipment, buildings and/or land proposed to be acquired or improved as a result of the Award;

“Funder(s)”

means any organisation(s) responsible for funding any part of the Award from time to time including without limitation Sport England, British Cycling and the Exchequer, as applicable.

“General Terms and Conditions”

means these terms and conditions;

“Long Stop Date”

means the date set out in the Award Letter as the latest date by which the Project must be completed;

“Practical Completion”	means the date specified in any certificate issued by the supervising architect, surveyor, engineer or other competent professional as the date on which work on the Facilities was practically completed under the terms of the relevant building contract;
“Project”	means the design, development and build project or projects described in the Award Letter;
“Project Documents”	means the Business Plan, the Cashflow Forecast, the Cycling Development Plan and the Project Specifications
“Project Professional”	means a qualified architect, surveyor, engineer, project manager or employer’s agent or other competent professional (whose identity has been approved by British Cycling) employed by the Award Recipient to supervise and project manage the Project;
“Project Specification”	means the most recent specification for the Project supplied by the Award Recipient and approved by British Cycling;
“Retention”	means the money to be retained from each payment of the Award in accordance with Clause 7.2;
“Revenue Funding”	means the Award (or part of Award) referred to in the Award Letter that relates to funding which is to be used for management or development of projects and/or the purchase of equipment that does not constitute Award Assets;
“RPI”	means the all items retail prices index compiled and published by the Office of National Statistics (UK);
“Sign Contractor”	means British Cycling’s authorised supplier of signs as may from time to time be notified by British Cycling to the Award Recipient;
“Sport England”	means the English Sports Council a company incorporated by Royal Charter (company number RC000766) and any successor to it; and
“Statement of Final Account”	means the statement of final account signed by the Award Recipient and the Project Professional confirming that the total project costs of the Project have been agreed.

2. Use of Award

- 2.1 The Award will be used solely towards the Project and Facilities in accordance with the terms of Award Agreement, and only by the Award Recipient, and under no circumstances shall it be used for any other purpose.

- 2.2 The Award Recipient will use its best endeavours to deliver the aims and objectives detailed in the Cycling Development Plan and in accordance with the Business Plan.
- 2.3 Delivery of the Project will comply with the Project Specification.

3. Construction of Facilities

- 3.1 Where land or buildings are to be acquired, constructed or improved as a result of the Award:
 - 3.1.1 the highest standard of Facilities must be aimed for;
 - 3.1.2 the Award Recipient must have security of tenure of the Facilities and/or the land on which the Facilities are built throughout the Clawback Period by means of a freehold or uninterruptible leasehold interest. If leasehold, the terms of the relevant lease must be approved by British Cycling and a copy of the executed lease sent to British Cycling request; and
 - 3.1.3 the construction, improvement and/or development of the Facilities must be supervised throughout by a Project Professional.
- 3.2 The Project Professional will be fully authorised by the Award Recipient to communicate with British Cycling on all aspects of the Project and shall not fail or refuse to disclose information to British Cycling on the basis that British Cycling is not a client of the Project Professional or for reasons of professional confidentiality.
- 3.3 The date of Practical Completion of the Project must be no later than the latest date specified for completion in the Project Specification or the Long Stop Date (whichever is the sooner) and all Defects must be remedied within the Defects Liability Period.

4 Procurement Process

- 4.1 In respect of the costs of construction and/or development of the Facilities at least three competitive tenders for the provision of the Facilities shall be obtained by the Award Recipient in accordance with normal tender and contract procedures.
- 4.2 If requested by British Cycling (and to the extent that British Cycling shall require) an explanation of the tender accepted shall be submitted to British Cycling prior to Project works being commenced. The explanation must be satisfactory to British Cycling, failing which the Award, which is made on condition that a satisfactory tender process is followed, may be withdrawn by British Cycling at its sole discretion and any Award monies already paid shall immediately become repayable to British Cycling.
- 4.3 A copy of the original “form of tender” from the appointed contractor for the construction works shall be submitted to British Cycling, together with a list of the identities of the entities that submitted unsuccessful tenders. On Facilities where a “tender report” is prepared by any consultant quantity surveyor, architect, or other professional (including the Project Professional), a copy of this report shall also be submitted to British Cycling.
- 4.4 The Award Recipient shall ensure that British Cycling has the right to inspect and copy the relevant documents and records of all persons from whom tenders have been obtained in relation to the Project.

- 4.5 British Cycling wishes to ensure that all the applicable provisions of the Public Contracts Regulations 2006 (the "Regulations") are complied with in respect of the Project and therefore the Award Recipient warrants and agrees that:
- 4.5.1 it has complied with and will comply with all relevant and applicable laws as to public procurement including without limitation the Regulations;
 - 4.5.2 it shall promptly supply British Cycling with such information as British Cycling may from time to time require evidencing the Award Recipient's compliance with the Regulations.
- 4.6 If the Award Recipient fails to comply with any relevant and applicable laws relating to public procurement (including without limitation the Regulations) in relation to any contract, the Award Recipient may not use any Award monies to make payments under such contract and shall repay to British Cycling upon demand an amount equivalent to any Award funding used to make payments under such contract.

5 *Management & Use of Project and Facilities*

- 5.1 The purpose of the Project, the arrangements for management and community use of the Facilities and the purpose for which the Facilities are used shall be as set out in the Application and the Award Agreement (including without limitation the Cycling Development Plan) and shall not be changed throughout the Clawback Period without the prior written consent of British Cycling (which may be granted or withheld, or if granted may be made subject to conditions, as British Cycling shall in its discretion decide).
- 5.2 Where Revenue Funding is to be used for the employment of staff or consultants the Award Recipient shall:
- 5.2.1 advertise for the post and supply details of the post, the recruitment process and any recruitment advertisements to British Cycling;
 - 5.2.2 obtain the prior written consent of British Cycling to the matters in clause 5.2.1;
 - 5.2.3 throughout the selection, recruitment and appointment process apply equal opportunity policies; and
 - 5.2.4 supply to British Cycling details of the terms of employment if requested by British Cycling.
- 5.3 The Award Recipient undertakes, warrants and agrees to use its best endeavours to manage and operate the Project and the Facilities in accordance with the aims, objectives, targets, and timescales set out in the Cycling Development Plan and the Business Plan (as they may be amended from time to time with the prior written agreement of British Cycling).
- 5.4 The Award Recipient shall at all times throughout the Project and the development of the Facilities and until the expiry of the Clawback Period:
- 5.4.1 ensure that, unless British Cycling has given its prior written consent, the fees and charges for use of the Project and the Facilities by members of the public do not increase beyond any increase in the RPI from the date on which the Application was approved by British Cycling;

- 5.4.2 keep the Facilities, and all facilities, fittings or equipment used in connection with them in good repair and condition and undertake all things as may be necessary to ensure their proper maintenance;
 - 5.4.3 decorate all internal and external parts of the Facilities following their construction as often as may be necessary in the opinion of British Cycling;
 - 5.4.4 take out and keep in force a comprehensive policy of insurance with reputable insurers to cover the Project, the Facilities, the Award Assets, their use and any activities carried out thereon against and in respect of all usual risks to their full replacement value (where relevant, and including third party, public, employee and occupier's liability), and a copy of the current policy and evidence of premium payment shall be provided to British Cycling upon request;
 - 5.4.5 make and operate satisfactory arrangements for the storage and safekeeping of any equipment, or Award Assets, acquired or improved as a result of the Award or utilised by the award Applicant in connection with the Facility and reasonably required by users of the Facility to make effective use of the Facility. If any such equipment is lost or otherwise unavailable for use the Award Recipient shall replace it as soon as reasonably practicable (at no cost to British Cycling);
 - 5.4.6 ensure that no-one will be denied access to use the Project or the Facilities on grounds of disability, race, creed, colour, sex, occupation, sexual orientation, religion or political persuasion; and
 - 5.4.7 comply with all statutory requirements and other laws and regulations relating to the Project and the Facilities and the development and operation thereof, including without limitation employers' liability insurance, the national minimum wage, the "Working Time" Directive, health and safety, child protection, data protection, intellectual property, and religious, political, race, sex and disability discrimination requirements, laws and regulations.
- 5.5 The Award Recipient must inform British Cycling in writing of anything that materially threatens, makes unlikely, or delays the completion or success of the Project and the Facilities.

6 Payment

- 6.1 Payments of the Award will only be made into an ordinary business bank account in the name of the Award Recipient. Cheques from the account must be signed by at least two individuals whose identity will be disclosed to British Cycling and agreed with them.
- 6.2 The Award Recipient shall not deposit any part of the Award outside ordinary business accounts within the UK clearing bank system.
- 6.3 British Cycling reserves the right to call for proof that the payment of the Award satisfies the requirements of 6.1 and 6.2.
- 6.4 No part of the Award will be paid until British Cycling is satisfied (acting reasonably) that such payment is in respect of proper expenditure on the Project or Facilities actually incurred by the Award Applicant in accordance with the provisions of these General Terms and Conditions.

- 6.5 The Award Recipient must promptly repay to British Cycling any part of the Award incorrectly paid to the Award Recipient as a result of any administrative, clerical or financial error. This includes (without limitation) situations where either an incorrect value of Award has been released or where Award monies have been released in error before any applicable term(s) of the Award Agreement have been complied with by the Award Recipient.
- 6.6 The Award Recipient shall on request from British Cycling repay to British Cycling any part of the Award incorrectly paid to the Award Recipient as a result of error as described in clause 6.5. Any monies incorrectly paid to the Award Recipient in excess of the total Award amount shall be repaid by the Award Recipient to British Cycling immediately upon the Award Recipient becoming aware of such error. This clause shall survive termination of this Award Agreement.
- 6.7 In the event that the Project involves the purchase of land the Award Recipient shall submit a copy of the Land Valuation and Surveyor's Report of the proposed project site. the Award Recipient shall submit a copy the contract for the purchase of the land, a copy of any Invoice of the final cost, including reasonable legal fees. However, if the monies are required in advance of completion, payment will be made on submission of the Invoice accompanied by the written notification by the solicitor acting for the Award Recipient of the proposed completion date and the details of the client account number, the name of the bank and the sort code, together with an undertaking from him/her addressed to British Cycling confirming that:
- 6.7.1 pending completion the Award monies paid will be retained in his/her firm's client account on trust for British Cycling; and
 - 6.7.2 the Award monies paid will be used only towards the completion of the purchase of the property specified in the Award Agreement; and
 - 6.7.3 if not so applied towards the completion of the purchase of the property within three days of the notified completion date the Award monies paid shall be returned to British Cycling immediately together with all accrued interest;
- 6.8 When the purchase has been completed the final cost should be confirmed by the Award Recipient's solicitor by submission to British Cycling of a certified copy of the property transfer and a completion statement detailing all monies paid out and all funds received and the source of those funds.

7 Drawdown of the Award

- 7.1 The Award will be paid in monthly instalments in accordance with the Cash Flow Forecast, subject to provision of claim forms in accordance with clause 7.3, save that British Cycling shall be entitled to agree that any money not claimed in accordance with the Cash Flow Forecast amount in any month may be carried forward to the next month or subsequent months provided that this would not lead to either a requirement to vary the Cash Flow Forecast or the Project not completing within the Long Stop Date.
- 7.2 At each stage that payment is made to the Award Recipient 10% of the Award instalment (unless a different percentage figure is agreed in the Award Letter) shall be retained by British Cycling and shall only be paid to the Award Recipient in accordance with this Clause.

- 7.3 Claim forms will be provided by British Cycling and should be completed and returned as the work progresses. Each form must include a completed statement of expenditure and details of the net value of the work completed at each claim stage (excluding voluntary labour, other contributions in kind, contractual retention fees and other non-allowable costs). The form must be counter-signed by an appropriately qualified and authorised person and must be accompanied by appropriate supporting documentation.
- 7.4 Without prejudice to the generality of British Cycling's supervisory powers, British Cycling shall be entitled to inspect the following documents and make payment of any part of the Award conditional on them being satisfactory in all respects to British Cycling:
- 7.4.1 a certificate confirming all relevant Building Control Regulations have been complied with and any mechanical and electrical test certificates;
 - 7.4.2 written confirmation from the relevant local authority planning department confirming the discharge of any conditions attached to the planning approval;
 - 7.4.3 documents evidencing the satisfaction any other condition that remains outstanding at any time as specified in the Award Letter.
- 7.5 British Cycling shall pay the final instalment of the Award and the Retention to the Award Recipient upon receipt of the following documents in a form satisfactory to British Cycling all signed by the Project Professional;
- 7.5.1 the Final Certificate or signed Statement of Final Account;
 - 7.5.2 the Final Claim Form; and
 - 7.5.3 the Certificate of Practical Completion (or equivalent).
- 7.6 The Award Recipient must ensure that sufficient funds are retained to meet the balance of any costs and to cover the period between the penultimate payment and completion of the work to be funded by the Award (including in respect of any defects that are not completed to the satisfaction of British Cycling and are not for whatever reason paid for by the relevant contractor during the effects Liability Period).
- 7.7 In the event that the relevant figure set out in the Statement of Final Account/Final Certificate is less than the amount of the Award, British Cycling will reduce the amount of the Award accordingly and thereafter make payment of such part of the Retention as may be then due.
- 7.8 If the Award Recipient fails to claim all or any part of the Award in accordance with Cash Flow Statement without the approval of British Cycling, British Cycling shall be entitled to retain any part of the Award not claimed by the Award Recipient and reduce the amount of the Award accordingly

8 Project publicity

- 8.1 Where Capital Funding has been received:
- 8.1.1 throughout the Project and during the Clawback Period the Award Recipient will be asked to erect at the site of the Project and/or at the Facilities such

internal and/or external signs reflecting the Award as may be supplied to it by the Sign Contractor on behalf of British Cycling;

- 8.1.2 the Award Recipient shall be responsible for obtaining all approvals or consents for installation of the sign as may be required by statute, contract, landlord permission or otherwise;
 - 8.1.3 on delivery of any sign to the Award Recipient the sign will become the property of the Award Recipient, which will maintain all signs to a satisfactory and safe condition. The Award Recipient will notify British Cycling and the Sign Contractor immediately if there are any defects in the sign or its installation;
 - 8.1.4 without limitation to clause 8.1.1 the Award Recipient shall for the Clawback Period officially acknowledge the support of British Cycling and the Funders in accordance with the applicable publicity strategy notified to the Award Recipient by British Cycling from time to time, including without limitation in all materials which refer to the Project or Facilities, and in all spoken public presentations about the Project or Facilities; and shall include (where appropriate or where requested by British Cycling) British Cycling's logo and, if required by British Cycling, the names and/or logos of such of the Funders as British Cycling shall specify, provided always that British Cycling's logo may only be used with the prior written consent of British Cycling;
 - 8.1.5 the Award Recipient will co-operate with British Cycling in respect of publicity for the Award. British Cycling will co-ordinate media activity in respect of the Award. The Award Recipient shall not issue any public release nor hold any press conference about the Award, Project or the Facilities without the prior written consent of British Cycling; and
 - 8.1.6 the Award Recipient shall arrange an official opening ceremony for the Project and/or the Facilities (in the latter case within a reasonable period after completion of the Facilities), which British Cycling may attend. The Award Recipient shall liaise with British Cycling to agree a date of and the arrangements for the opening ceremony.
- 8.2 The Award Recipient will keep British Cycling informed of any sponsorship relating to an event, programme or facility wholly or substantially funded by the Award, will use its best endeavours to include in any such sponsorship agreement(s) entered into after the date of this Agreement a clause prohibiting the sponsor ambushing British Cycling's Award or by taking credit due to British Cycling or its Funders for that funding and will use all reasonable endeavours to prevent ambush marketing tactics by the sponsor and ensure British Cycling and its Funders receive appropriate credit proportionate to the amount of funding it has contributed. For the avoidance of doubt, this clause shall not prevent a sponsor taking full credit for its own funding.
- 8.3 For all Awards British Cycling shall have the right to promote its association with the Award Recipient, the Project and Facilities publicly and the Award Recipient hereby grants British Cycling a licence without charge to use the name, logo and image of the Award Recipient without restriction for this purpose.

9 Project monitoring

- 9.1 The Project and the Facilities may be monitored by British Cycling throughout the Clawback Period to ensure that the aims and objectives specified in the Application,

the Cycling Development Plan, Business Plan and Project Specification are being met, that the Award Agreement is adhered to and that the Project and the Facilities represent good value for money.

- 9.2 Wherever it requires during the Clawback Period (including without limitation at any time both during the development and/or construction phases of the Project and the Facilities and after completion of the Project and the Facilities), British Cycling and any person authorised by British Cycling may make unannounced visits (including without limitation site visits, site audits and compliance visits). British Cycling may request meetings for the purposes of monitoring the Project and the Facilities and monitoring compliance with the Award Agreement. The Award Recipient will facilitate and co-operate in the arrangement and conduct of such visits and meetings, and shall allow British Cycling and any person authorised by British Cycling access to inspect the Project and/or the Facilities at any time.
- 9.3 The Award Recipient will promptly provide to British Cycling any information and/or reports (including without limitation regular progress reports) requested by British Cycling in connection with the Project, the Facilities or the Award Recipient and its activities. The Award Recipient will complete any questionnaires requested by and respond promptly to any questions raised by British Cycling.
- 9.4 The Award Recipient shall evaluate and monitor the Project and the Facilities, their use and success, and shall cooperate with and provide all the assistance required by British Cycling to allow British Cycling to evaluate and monitor the Project and the Facilities and their use and success. In particular, but without limitation, the Award Recipient shall keep records of the number of jobs created by the Project and Facilities, the number of users and other beneficiaries of the Project and the Facilities, and such other information as British Cycling shall require from time to time.
- 9.5 The Award Recipient will provide a final report on the capital expenditure (build) phase of the Project, in such form as is required by British Cycling, which confirms that the Project has been properly completed.
- 9.6 British Cycling may at any time call for the views of any appropriate Award Recipient or person on the progress of the Project.
- 9.7 The Award Recipient shall on request provide British Cycling with contact details of an individual who shall liaise with Sport England to provide the contact details of users of the Project to allow Sport England to monitor and evaluate use of the Project. In providing this information to both British Cycling and Sport England, the Award Recipient shall comply with relevant data protection legislation.

10 Accounts and Records

- 10.1 The Award Recipient shall maintain a detailed register of the Award Assets throughout the Clawback Period and shall supply British Cycling with a copy of this annually, or when new assets are acquired or disposed of (whichever is the sooner).
- 10.2 The Award Recipient 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 throughout the Term and the Clawback Period. Any person or persons authorised by British Cycling shall be given access, at British Cycling's request, to these accounts and financial records and British Cycling and such

person(s) authorised by it shall have the right to take copies of such accounts and records.

- 10.3 The Award Recipient must have its accounts externally audited (or independently evaluated, where appropriate) and if requested by British Cycling must provide a copy of the audit (or evaluation) report and the annual accounts to British Cycling.
- 10.4 The Award Recipient must meet any relevant statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns.
- 10.5 The Award must be shown in the Award Recipient's accounts as a specific Project fund and where appropriate a restricted fund and not be part of the Award Applicant's general funds.

11 *Mortgage, Disposal, Lease, or Change of Use of Facilities*

- 11.1 During the Clawback Period, subject to the terms of any charge or charges to which British Cycling shall have consented to prior to entering into the Award Agreement, the Award Recipient shall not without the prior written approval of British Cycling:
 - 11.1.1 transfer, sell, lease, licence or otherwise dispose of all or any part of the Facility or any interest in it;
 - 11.1.2 grant any charge, mortgage or other form of security or encumbrance over all or any part of the Facility or any interest in it; or
 - 11.1.3 cease to use or change the use of the Facility from those purposes previously approved by British Cycling.
- 11.2 The Award Recipient shall give written notice to British Cycling a reasonable period before it proposes to take any action that requires consent under clause 11.1.
- 11.3 British Cycling may give consent in accordance with clause 11.1 subject to any or all of the following conditions:
 - 11.3.1 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 British Cycling;
 - 11.3.2 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 British Cycling to ensure that the new owner is obliged to comply with the terms of the Award Agreement in place of the Award Recipient;
 - 11.3.3 the Award Recipient repays to British Cycling a sum equivalent to the Award or at the discretion of British Cycling a sum equivalent to the Award increased in line with inflation as determined by RPI or such other sum as British Cycling at its discretion deems appropriate; or
 - 11.3.4 termination of the Award Agreement.
- 11.4 Failure to obtain consent as required by clause 11.1 or failure to comply with any conditions imposed in accordance with clause 11.3 shall entitle British Cycling to terminate the Award Agreement and to receive repayment from the Award Recipient of a sum equivalent to the Award or at the discretion of British Cycling a sum

equivalent to the Award increased in line with inflation as determined by the Retail Price Index or such other sum as British Cycling at its discretion deems appropriate.

12 Cessation or Suspension of Award and Termination

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

12.1.1 the Award Recipient 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;

12.1.2 the Award 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, or any of its members are surcharged or a manager is appointed on behalf of a creditor in respect of its business or a part thereof, or it is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as amended;

12.1.3 within the Clawback Period the Award Recipient fails to comply with the Award Agreement;

12.1.4 in the reasonable opinion of British Cycling the Award Recipient fails to apply any part of the Award for the intended purpose;

12.1.5 in the reasonable opinion of British Cycling the Award Recipient fails to complete the works to be carried out in executing the Project in accordance with the terms of and to the standard indicated in the Application (unless any variation has been previously approved in writing by British Cycling);

12.1.6 any of the events described in clause 11.1 occur without British Cycling's prior approval;

12.1.7 the Award Recipient fails to complete the Project on time or within any reasonable additional period that British Cycling may (but is not obliged to) agree or it appears that the Project is unlikely to be completed on time or within such period;

12.1.8 after considering the purpose of the Award, in British Cycling's opinion further payment of the Award would not constitute good value for money (however, British Cycling shall, subject to the other terms of this Agreement, continue to pay the Award to the extent that the Award Recipient has, with the prior written consent of British Cycling, contracted for goods and services and it is not practically possible to cancel such arrangements);

- 12.1.9 there is evidence of financial mismanagement, breakdown of budgetary control or any other irregularity, within the Award Recipient organisation;
- 12.1.10 in the reasonable opinion of British Cycling, any of the assurances given or representations or information contained in the Application or other documents submitted by the Award Recipient to British Cycling were fraudulent, incorrect or misleading, or if the Award Recipient acts fraudulently. Any attempts to defraud British Cycling by any means will be pursued rigorously: a report will be submitted to the appropriate body and any other necessary action taken;
- 12.1.11 any assurance, representation, release of information or statement made regarding the Application or the Project has changed in a manner that has a materially adverse effect on the Project and the Award Recipient has not informed British Cycling of the change;
- 12.1.12 the Award Recipient, or any member of the governing body, volunteer or member of staff of the Award Recipient, or any person acting under the control or authority of the Award Recipient or any partner or partnership Award Recipient connected in any way with the Application, the Project or the Facilities have acted fraudulently or negligently at any time or in a manner which might have a detrimental effect on the Project, or the completion, development or management of the Facilities;
- 12.1.13 the Award Recipient, any member of its governing body, volunteer or member of staff of the Award Recipient, any person acting under the control or authority of the Award Recipient, or any partner or partnership Award Recipient connected in any way with the Application, the Project or the Facilities does anything which may bring British Cycling into disrepute;
- 12.1.14 there is a material change in the constitution and/or corporate structure of the Award Recipient or there is any attempt to offer membership (including shares) for public subscription in such a way as to capitalise the value of the Assets for the benefit of any of its members; or
- 12.1.15 any of the following circumstances occur without the Award Recipient first notifying British Cycling and obtaining its prior written consent and British Cycling reasonably considers such circumstances to be materially detrimental to the Project:
- (a) a transfer of assets from the Award Recipient to a third party;
 - (b) merger or amalgamation by Award Recipient with another body (including a company established by the Award Recipient);
 - (c) except where the Award Recipient is a local authority or parish council any change to the composition, structure or key personnel of the Award Recipient; or
 - (d) except where the Award Recipient is a local authority or parish council, any change to the Award Recipient's constitution, in particular but without limitation as regards its purposes, payment to members and members of its governing body, distribution of assets (whether on dissolution or not) or admissions of members (where it has a membership).

- 12.2 Without prejudice to sub-clause 12.1 British Cycling may suspend all or any of its obligations under the Award Agreement while investigations are carried out into any matter referred to in sub-clause 12.1.
- 12.3 If British Cycling chooses to suspend this Agreement pursuant to this clause and the Award Recipient remains in default of any of the provisions of sub-clause 12.1, or indicates its intention to remain in default of any such provision, British Cycling may terminate the Award Agreement immediately upon notice in writing to the Award Recipient.

13 *New Application*

- 13.1 Without prejudice to clause 12, a new application must be submitted to British Cycling if prior to full payment of the Award:
- 13.1.1 the Award Recipient proposes to change or vary the Application, the Project, its implementation, the works carried out or to be carried out in the execution of the Project, the Facilities or the purpose of the Facilities;
- 13.1.2 the Award Recipient proposes to dispose of the whole or any part of the Facilities;
- 13.1.3 there is a change to the ownership of the Facilities;
- 13.1.4 the legal structure or ownership of the Award Recipient changes;
- 13.1.5 it is proposed that the legal identity of the Award Recipient should change; or
- 13.1.6 there is a material change in the financial circumstances of the Award Recipient.
- 13.2 While the new application is being considered, no payments of the Award shall be made and any payments made or liabilities incurred by the Award Recipient in respect of the Facility shall be at their sole risk and expense. In the event of the Award being rescinded, British Cycling shall, at its sole discretion, be entitled to demand a full or partial refund of any payments of Award already made.

14 *Further conditions*

- 14.1 The Award Recipient acknowledges and agrees that the Award is to be paid out of public money and that British Cycling is accountable for its distribution and accordingly British Cycling may amend the terms of the Award upon notice to the Award Recipient if required to do so by any Funder, in order to comply with any directions issued in relation to such public funding, or if the terms upon which such funding is made available to British Cycling materially alter.
- 14.2 The Award Recipient acknowledges and agrees that payment of the Award is subject to British Cycling:
- 14.2.1 remaining entitled to receive and distribute funds on the same or substantially the same terms as exist on the date of the Award Agreement; and
- 14.2.2 having access to sufficient funds to meet Award payments at the time of the Award Recipient requesting payment of the Award or any part thereof

provided that British Cycling will notify the Award Recipient as soon as it becomes aware of any of the situations described in this clause 14.2 arising.

- 14.3 British Cycling may, on giving prior written notice to the Award Recipient, assign or transmit the benefit and burden of the Award Agreement to any successor body of British Cycling or to Sport England.
- 14.4 The Award Recipient acknowledges that the Award and the Award Agreement are personal to it and not transferable.
- 14.5 The Award Recipient must notify British Cycling in writing of any legal actions, claims or proceedings made or threatened against it (including any actions, claims or proceedings made or threatened against members of its governing body or staff) during the Clawback Period. Such notification shall be made as soon as practicable and in writing.
- 14.6 If the Award Recipient is not registered for VAT then VAT on supplier's invoices may be considered as part of the eligible project cost. Should the Award Recipient subsequently become registered for VAT, and be able to reclaim that element of expenditure, the reclaimed tax will be repaid to British Cycling. British Cycling will not increase the amount of the Award if VAT is or becomes payable and/or unrecoverable and as a result the Project costs are increased. The Award Recipient takes the sole risk with regard to the VAT treatment of any aspect of the Project and is advised to seek its own advice on its own and the Project's status as regards VAT.
- 14.7 British Cycling shall have the right in its absolute discretion to disclose and make available for inspection and copying any information, documents, accounts and/or records relating to or concerning the Project, the Facilities and the Award Recipient to third parties including, without limitation, Sport England, the National Audit Office and any person authorised by any of them. British Cycling is obliged under the terms of agreements with Sport England to disclose certain information, documents, accounts and/or records relating to or concerning the Project, the Facilities and the Award Recipient to appropriate third parties.
- 14.8 Any failure, relaxation, forbearance, delay or indulgence by British Cycling in enforcing any of the terms or conditions of the Award Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and nor shall the Awarding of any time by British Cycling prejudice or affect or restrict any of its rights arising under the Award Agreement or be deemed a waiver by British Cycling of any breach or subsequent or continuing breach.

15 *Duration*

The Award Agreement will apply from the date on which the Award Letter is accepted by the Award Recipient and continue for the duration of the Clawback Period.

16 *Warranties*

The Award Recipient warrants, undertakes and agrees that:

- 16.1 it has all necessary resources and expertise to carry out the Project;
- 16.2 it has and will keep in place adequate procedures for dealing with any conflicts of interest;

- 16.3 it has and will keep in place systems to deal with the prevention of fraud;
- 16.4 all financial and other information concerning the Award Recipient comprised in the Application or otherwise disclosed to British Cycling is to the best of its knowledge and belief, true and fair;
- 16.5 it is not under any contractual or other restriction within its own or any other Award Recipient's rules, regulations or otherwise which may prevent or materially impede meeting its obligations in connection with the Award;
- 16.6 it is not aware of anything in its own affairs, which it has not disclosed to British Cycling or any of its advisers, which might reasonably have influenced the decision of British Cycling in making the Award on the terms contained in the Award Agreement; and
- 16.7 since the date of the most recent accounts disclosed to British Cycling there has been no change in the financial position or prospects of the Award Recipient.

17 *Multiple Award Recipients receiving the Award*

Where there is more than one Award Recipient receiving the Award and/or delivering the Project:

- 17.1 where any standard, obligation, representation or warranty under this Agreement is expressed to be undertaken or adhered to by the Award Recipient, each Award Recipient shall be jointly and severally responsible for it;
- 17.2 British Cycling may release or compromise the liability of any of the Award Recipients acting as the Award Recipient under this Agreement or Award any time or other indulgence without affecting the liability of any of the other Award Recipients; and
- 17.3 any consent or authority given by the Award Recipient under or in connection with this Agreement shall bind all the Award Recipients.

18 *Exclusion of Liability/Indemnity*

- 18.1 British Cycling, 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 Award Recipient for any loss or damage arising directly or indirectly as a result of the compliance by the Award Recipient with the Award Agreement.
- 18.2 The Award Recipient will indemnify and hold harmless British Cycling, 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 Project, the Facilities and any activities carried out thereon except where such injury, death, loss or damage have resulted from the negligent act or omission of British Cycling or its employees or agents. In this latter case, the Award Recipient shall provide prompt notice to British Cycling of any such claim, and British Cycling shall have the sole right to control the defence of any such claim.
- 18.3 British Cycling has no liability for losses or costs arising from failure to make any payment of the Award on any agreed date.

19 *Security*

19.1 In the event that the construction or development of the Facility or purchase of land for the Facility exceeds £150,000 in value, and as security for the payment of any money due from the Award Recipient under the Award Agreement, British Cycling may require that the Award Recipient to:

19.1.1 permit British Cycling to enter a restriction in respect of the relevant property at HM Land Registry in respect of the registered title; and/or

19.1.2 grant or cause to be granted to British Cycling a legal charge over the relevant Asset in such form as British Cycling may require;

19.1.3 in either case the Award Recipient shall (at its own cost) execute such further documents and provide such assistance as British Cycling may reasonably require in order to effect either of the foregoing and make necessary registrations at Companies House and/or HM Land Registry and supply British Cycling's solicitors with evidence of such registrations; and

19.1.4 in the case of a charity, comply with the provisions of s.38 of the Charities Act 1993 (as amended).

19.2 The Award Recipient shall, in the case of a legal charge, provide to British Cycling a solicitor's certificate of title confirming good and marketable title in respect of the relevant property in such form as British Cycling may require.

19.3 Each party shall bear its own costs in connection with the any of the matters set out above in this clause 19.

20 *Law and Jurisdiction*

The construction, validity and performance of the Award Agreement shall be governed in all respect by English law and be subject to the non-exclusive jurisdiction of the English Courts.

21 *Rights of Third Parties*

Subject to clause 22 below, a person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Award Agreement.

22 *Sport England's interest*

22.1 British Cycling has been appointed by Sport England to enter into agreements with award recipients for the purpose of distributing Lottery and government funds.

22.2 Sport England shall have the benefit of the various Award Recipient obligations under the Award Agreement and shall be entitled to enforce any of British Cycling's rights under the Award Agreement either alone or jointly with British Cycling.

22.3 Sport England shall have all rights conferred on British Cycling by the Award Agreement including without limitation all rights to information, inspection, disclosure, access and clawback.

22.4 In the event of any of the events listed in clause 12 of these General Terms and Conditions occurring, Sport England has a right to have the Award Agreement

novated to itself to allow it to take the place of British Cycling in relation to this Award Agreement.

- 22.5 British Cycling may disclose any information concerning the Award Recipient, the Project or the Facilities to Sport England and Sport England may disclose any such information to any persons.
- 22.6 The Award Recipient acknowledges that copies of the Award Agreement and any other information, documents, accounts and/or records may be disclosed and/or made available to the Funders, the National Audit Office and any person authorised by them, and their respective representatives.
- 22.7 In the event of termination of British Cycling's agreement with any Funder:
 - 22.7.1 the Award Recipient will return to the relevant Funder all the documentation relating to the Award and specified by the Funder at a date to be agreed between the Funder and the Award Recipient; and
 - 22.7.2 the Award Recipient shall return to the Funder any part of the Award provided to British Cycling by the Funder which is unspent on the date that the Funder or British Cycling notified its desire to terminate the agreement between the Funder and British Cycling, subject to the relevant termination provisions.
- 22.8 Sport England may assign all or any of its rights under this Agreement to any successor or such other body.

DATED

[REDACTED]

[REDACTED] [the Awardee] (1)

British Cycling (2)

**FORM OF
COMMUNITY USE AGREEMENT
RELATING TO**

[REDACTED]

DATE

[REDACTED]

PARTIES

- (A) [REDACTED] of ("the Awardee")
- (B) **British Cycling** of National Cycling Centre, Stuart Street, Manchester, M11 4DQ ("British Cycling")

1. RECITALS

- (1) British Cycling has agreed to make available financial support of a capital nature to the sum of £[REDACTED] to the [the Awardee] for investment in the Facility.
- (2) The [the Awardee] has the responsibility to manage and operate the Facility.
- (3) The parties wish to enter into this Agreement in order to make the Facility available for use by the local community in recognition of Sport England's aim in promoting participation in sport and encouraging provision of sports facilities for the community.

2. DEFINITIONS AND INTERPRETATION

In this Agreement the following words or phrases have the corresponding meanings ascribed to them unless the context otherwise requires:

Casual Use	Availability for any individual(s) or group to book the Facility at relatively short notice for use on a pay-as-you-play basis.
Community Use Period	[agreed with the owner / operator].
The Facility	The [name of facility] located at [REDACTED]
[REDACTED] Cycling Development Plan	A programme of activities aimed at (i) attracting and retaining the interest of new participants across a range of sports, including cycling with the overall objective of establishing new clubs or encouraging new participants to join established clubs and (ii) maintaining the quality of provision for regular/established participants in sport.
Marginal Costs	Staff costs and administration, routine maintenance, publicity, insurance premiums, non-capital equipment
Member Clubs	The Cycling Clubs / Groups listed in Schedule 1
People with Disabilities	Any person with a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on

their ability to do normal daily activities, as defined by the Equality Act 2010.

Priority Groups

Those categories of persons identified in Clauses 4.2.2

“RPI”

Means the all items retail prices index compiled and published by the Office of National Statistics (UK)

The Targets

Those targets set out in Schedule 2

3. AIMS

The parties agree to support the development and use of the Facility in order to pursue the following aims:

- 3.1 To provide opportunities at the Facility for local people and sports organisations to participate in sport and physical activity primarily cycling to develop their skills particularly among low participant groups.
- 3.2 Where appropriate to support community cycling clubs/ groups at the Facility to help raise standards of coaching, education and training, administration, volunteering and performance pathways in cycling in the region.

4. OBJECTIVES [standard objectives - to be agreed between each party]

In accordance with the above aims the parties agree to operate and manage the Facility in a manner consistent with achieving the following objectives:

- 4.1 To maximise use of the Facility
- 4.2 To give priority use to achieve the Targets (Schedule 2). These programmes may include but not limited to:
 - 4.2.1 opportunities for beginners, for people wishing to improve their skills via programmes of coaching and competition and training for players coaches and officials
 - 4.2.2 specific activities aimed at attracting new participants to from the following priority groups:
 - 4.2.2.1 16 and under;
 - 4.2.2.2 45 and over;
 - 4.2.2.3 girls and women;
 - 4.2.2.4 Lower socio economic groups;
 - 4.2.2.5 Black and Ethnic Minorities;
 - 4.2.2.6 People with Disabilities;
 - 4.2.2.7 Other specified target groups agreed between the parties to

this Agreement

4.2.3 and a balanced programme of use which provides for a wide range of community cycling including provision for:

4.2.3.1 Development Initiatives;

4.2.3.2 Casual Use

4.2.3.3 League and tournament competition from junior to senior levels

4.2.3.4 Organised club sessions;

4.2.3.5 Coaching and officiating courses;

4.2.3.6 Adult education courses

5. **TARGETS**

The [the Awardee] undertakes with British Cycling and the Member Clubs to use its best endeavours to achieve the Targets.

6. **MANAGEMENT**

The [the Awardee] agrees that it shall:-

6.1 be responsible for the Facility and will resource manage and routinely maintain it in a manner that will allow achievement of the aims and objectives set out in clauses 3 and 4 and the Targets.

6.2 make available the Facility on the occasions and times herein specified for community use subject to reasonable cause, including adverse weather conditions.

6.3 insure and keep insured the Facility against all usual commercial risks including public liability in its full reinstatement value

6.4 effect repairs and make good accidental damage arising out of or occasioned by the use of the Facility or in the event of damage by an insured risk

6.5 establish a practical policy framework for managing and operating the Facility during periods allocated for community use. This framework should seek to enable:

6.5.1 A policy of affordable pricing which clearly demonstrates the capability of achieving the Targets;

6.5.2 The promotion of developmental activities to support the Member Clubs;

6.5.3 Equal opportunities of access for the priority use groups;

6.5.4 Easy and accessible booking arrangements for Casual Use

- 6.5.5 6 monthly review of the programme bookings during the first three years of operations of the Facility under this Agreement
- 6.5.6 Allow British Cycling affiliated organisations to manage and administer junior and senior leagues at the Facility
- 6.6 No later than [REDACTED] in every year during the currency of this Agreement agree cycling targets for the following 12 month period, identifying programming arrangements for key cycling usage of the Facility.
- 6.7 Establish a User Group to agree the matters specified in Clause 6.5 and to review and adopt new procedures and policies related to community use. The committee shall include a representative from the [the Awardee], British Cycling and a representative from the Member Clubs.
- 6.8 Facilitate the implementation of the [REDACTED] Cycling Development Plan.

7. FINANCE

Where it is clear that the running costs of operating the Facility will be recovered, the [the Awardee] agrees to utilise any such excess money recovered towards supporting actions identified in the [REDACTED] Cycling Development Plan.

8. MONITORING AND EVALUATION

- 8.1 The [the Awardee] will on or before 1st April in every year during the currency of this Agreement prepare an annual report showing progress against cycling targets within the [REDACTED] Cycling Development Plan set out in Schedule 2.
- 8.2 British Cycling may occasionally undertake additional monitoring and evaluation of cycling participation at the Facility and the [the Awardee] will co-operate fully and in a timely manner in any such evaluation.
- 8.3 The [the Awardee] will on request supply such information regarding the Facility as British Cycling may reasonably request.

9. REVIEW

- 9.1 The aims and objectives set out in Clauses 3 and 4 of this Agreement shall be reviewed on an annual basis by the parties on or before 1st April each year.
- 9.2 Prior written approval of all the parties to this Agreement will be required before any revisions are made or implemented

10. DURATION OF AGREEMENT

- 10.1 This Agreement will remain in force from the date of this Agreement until [asset liability date].

10.2 The Schedules to this Agreement shall be reviewed and agreed annually by both parties on or before 1st April each Year.

10.3 Each party can terminate the Agreement forthwith;

10.3.1 if there is a fundamental breach by either part of its obligations;

10.3.2 if there is a breach by either party of its obligations which is not remedied within 28 days or such other reasonable period set out in notice in writing.

11. AUTHORITY

Both parties to this agreement warrants that it has the full right and authority to enter into this Agreement

12. NO VARIATIONS

This Agreement may only be varied in writing by a document executed by all the parties hereto

13. NO AGENCY

Nothing in this Agreement shall be construed as creating a partnership, a joint venture, a contract of employment or a relationship of principal and agent between the parties hereto

14. SEVERABILITY

If any term condition or provision contained in this Agreement shall be held to be invalid unlawful or unenforceable to any extent such term condition or provision shall (save where it goes to the root of this Agreement) not affect the validity legality or enforceability of the remaining parts of this Agreement

15. WAIVER

No term or provision of this Agreement shall be considered as waived by any party to this Agreement unless a waiver is given in writing by that party

16. NON-ASSIGNABILITY

This Agreement is personal to the parties and none of them shall assign sub-contract or otherwise deal with their rights or obligations

17. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales

18. APPOINTMENT OF SUB-CONTRACTOR

The [the Awardee] shall have the right to appoint a sub-contractor to carry out the duties of the [the Awardee] under this Agreement. The [the Awardee] will ensure that:

18.1 any sub-contractor appointed is of adequate financial standing and has the necessary technical skills and competence

18.2 the sub-contractor enters into a deed of adherence with British Cycling, the [the Awardee] under which the sub-contractor agrees to be bound by all of the terms of this Agreement

19. A PARTY CEASING TO EXIST

In the event that either the [] or British Cycling ceases to exist or is wound up this Agreement shall continue in force as between the remaining parties and the following provisions shall apply:

19.1 the parties shall procure that the Facility continues to be made available for community use in accordance with this Agreement

19.2 the parties will use its best endeavours to achieve the Targets set out in Schedule 2.

20. DATA PROTECTION AND FREEDOM OF INFORMATION

20.1 [] shall comply with its obligations under the Data Protection Act 1998 in the performance of the Service and provide such information to British Cycling that the [the Awardee] is complying with its obligations.

21. CONFIDENTIALITY

21.1 The parties shall ensure its employees, agents and sub-Agreements do not divulge or dispose or part with possession, custody or control of any confidential information or material provided to the other party unless the prior written consent of the other party is obtained.

22. EQUAL OPPORTUNITIES

22.1 [] shall operate appropriate and acceptable equal opportunities policies and procedures in all aspects of the Service. By implementing these policies and procedures the [the Awardee] shall ensure that it does not discriminate on the grounds of race, ethnic origin, disability, nationality, gender, sexuality, age, class, appearance, religion, responsibility for dependants, unrelated criminal activities, HIV, Aids or any other matter which causes a person to be treated with injustice. It will also ensure that any user of the Facility also complies with the same.

22.2 The [the Awardee] will provide access for all through the objectives of the [] Cycling Development Plan

23. HEALTH AND SAFETY

23.1 The [the Awardee] shall, at all times, comply with the requirements of the Health and Safety at Work Act 1974 and all other acts, regulations, orders relating to health and safety in connection with the provision and use of the Cycle Circuit.

23.2 Member Clubs will review risk assessments annually and pass a current copy to the Site Manager.

24. **RIGHTS OF THIRD PARTIES**

24.1 Nothing in this Agreement will create rights under the Agreements (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Agreement.

IN WITNESS whereof the parties have executed this Agreement the day and year first above written

SIGNED by *(name)* on behalf of)
[])
in the presence of: *(signature of witness)*)
(Address and Description))

SIGNED by *(name)* on behalf of)
British Cycling)
in the presence of: *(signature of witness)*)
(Address and Description))

SCHEDULE 1

The Member Clubs

for the period []

The fees to be charged by the [the Awardee] to the Member Clubs for use of the Cycle Circuit is set for the period [] until [] as set out below:

- [name of cycling club]
- [name of cycling club]
- [name of cycling club]
- British Cycling Regional Go-Ride & Events

[insert fee structure for Affiliated Users] [Example]

Cycle Circuit	** Discounted rate	YS Cycling Partnership	British Cycling affiliated Club	Non British Cycling affiliated Club	Commercial Operator
Per hour	£40.00	£45.00	£50.00	£60.00	£ POA
Half day 3 hours	£110.00	£120.00	£135.00	£360.00	£ POA
All day 8 hours	£280.00	£280.00	£360.00	£440.00	£ POA

Fees will be set annually in line with [the Awardee]'s budget setting process and in consultation with British Cycling. Unless British Cycling has given its prior written consent, the fees and charges for use of the Facility by members of the public do not increase beyond any increase in the RPI.

New clubs wishing to join as a Member Club must apply in writing to British Cycling and [] [the Awardee]. Their acceptance as a Member Club will be considered at the next [] User Group meeting at which a representative of British Cycling, the [the Awardee] and representative of the Member Clubs must be present.

SCHEDULE 2

Targets

[Insert agreed performance measures e.g. from the Award agreement or Business Plan/
Sports Dev Plan for the facility]

[Example]

From time to time the timetable may be subject to change due to events or competitions. Every effort will be made to provide advance notice of any alterations to the programme which will be advertised. Please check our website

www.york-sport.com/circuittimetables

* Subject to possible change during school holidays

Circuit Sessions

Cycle Circuit Members / Pay & Play

These sessions are open to cycle circuit members and non members, non members pay £4.00 (£3.00 concessions) cycle circuit members get FREE admission please bring your card, making cycle circuit membership a great deal at only £59.00 per year. Check our website or speak to our membership team to sign up. Always check our website before travelling, to ensure the sessions is still available www.yorksport.com/circuittimetables

Group Training - Beginner / Intermediate

These sessions are for novice to intermediate riders wanting to learn the craft of chaingang riding, you don't have to be a racing snake to learn and enjoy the benefits of riding in a group. Once you have learnt the basics you will be able to ride further and faster! Session led by British Cycling coaches. Sign on and pay at the cycle circuit

SCHEDULE 4

Schedule of Maintenance

[Example]

Closed Road Circuit / Velodrome

Annual Maintenance Schedule

Circuit Owner

1. The cycle track is mechanically swept quarterly unless otherwise required
2. Quarterly inspection of surrounding fencing & gates
3. The surrounding grass is mown a minimum of every 3 weeks, April and October.
4. Litter picking is undertaken bi monthly or when required
5. Visual inspection of the circuit and associated infrastructure weekly
6. Weed prevention – quarterly treatment to the edges of the circuit surface 500mm from edge
7. Algae treatment to the edges of the circuit surface 500mm from edge after winter period
8. Electrical periodic fixed wiring inspection and testing ever 5 years

Cycling Club / User

1. Visual check before each race/session report any defects to York Sport Village, Duty Manager
2. Manual sweep before each race/session (if necessary).
3. Annual litter pick and tidy up