

Award Agreement

South Somerset District Council
(The Council Offices, Brympton Way, Yeovil, BA20 2HT)

And

Ilminster Town Council
c/o Joy Norris – Town Clerk
Council Offices
North Street
Ilminster
Somerset
TA19 0DG

Date: 21st October 2019

Award Agreement

Award Agreement Contents

1. Financial Breakdown
2. Project Details
3. Project Objectives
4. Project Conditions
5. Publicity
6. Accepting your Award
Standard Terms and Conditions of Award

In addition you will find attached the following forms:

Acceptance of Award Form
Tender/Quotation Report
Bank Details Form
Capital Project Contacts
Interim Capital Project Claim Form
Final Capital Project Claim Form
Monitoring and Evaluation Reporting Template

The purpose and times for submission of these forms is detailed in the Capital Document Checklist.

Legally Binding Agreement

This Award Agreement, together with the Award Offer Letter and the Standard Terms and Conditions of Award will constitute a binding contract with South Somerset District Council when accepted by Ilminster Town Council.

It is important that you read and understand this document and the Terms and Conditions of Award before you decide to accept your Award Offer.

Accepting your Award

If you are satisfied with the details set out in the Agreement and wish to accept your Award Offer, then sign and return the **Acceptance of Award Form** enclosed, along with any other information requested, to the: **Rob Parr, Locality Officer, South Somerset District Council, The Council Offices, Brympton Way, Yeovil, Somerset, BA20 2HT. Email: rob.parr@southsomerset.gov.uk**

1. Financial Breakdown

Award

South Somerset District Council is pleased to offer a Capital Award of **£44,250** towards your Total Project Cost of **£343,000** and a Revenue Award of **£28,933**. The Award consists of Funding from S106 Agreements secured by South Somerset District Council:

In summary this provides:

- £44,250 towards the construction of a new play equipment and youth facilities.
- £28,933 toward the ongoing maintenance of the equipped play and youth facilities

South Somerset District Council shall retain **10%** of the Capital Funding until such time as your Project reaches a stage of Practical Completion in accordance with Clause 6 of the Standard Terms and Conditions of Award. **South Somerset District Council shall retain 100% of the Revenue Award until the Final Capital Award payment has been made to Ilminster Town Council.**

Breakdown of Costs

The Award will be used solely towards financing the following costs of the Project.

Acquisition of play equipment and installation (as per sketch design)	£273,000
Preliminaries	£ 10,000
Contingency	£ 30,000
Professional Fees	£ 30,000
Project Total Costs (excluding VAT)	£343,000

The S106 Capital & Revenue Award from SSDC is to be funded from the following sources, with the remaining project costs to be funded by Ilminster Town Council from their own funds or other external funding raising.

Source of S106/SSDC Capital & Revenue Award Offer

Award

Equipped Play

Development	Planning No.	Capital Secured	Revenue Secured
Shudrick Lane Dev	06/02906/OUT	£22,361	£18,295
Summerville Medical Centre	14/00025/FUL	£7,371	£4,258
Sub Total		£29,732	£22,553

Youth Facilities

Development	Planning No.	Capital Secured S106	Revenue Secured
North Yard Dev	07/05553/FUL	£1,061	£572
Shudrick Lane Dev	06/02906/OUT	£1,515	£1,392
Canal Way Dev	13/04760/FUL	£10,495	£3,881
Summerville Medical Centre	14/00025/FUL	£1,447	£535
Sub Total		£14,518	£6,380

S106 Total	£44,250	£28,933
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Use of Award

The Award will be used solely towards financing the costs of the Project in accordance with the terms and conditions set out in the Agreement. In particular, your attention is drawn to the obligations under conditions 2 and 3 of the Standard Terms and Conditions of Award as to the operation and implementation of the Award and the accountability of your Organisation as to expenditure of the Award.

2. Project Details

Project Outline

The Award is granted to assist Ilminster Town Council in financing the provision of the following at Ilminster Recreation Ground:

- The construction and maintenance of a new play equipment and youth facilities

Project Specifications

The following information must be provided and written approval of the information issued by South Somerset District Council. Approval must be sought and received prior to Ilminster Town Council placing orders or commissioning any goods and services.

- Specifications – Details provided must include as a minimum the materials to be used, dimensions, method of construction and sequence of works
- Play equipment– including manufacturer, equipment reference numbers and all pre-information required by BS EN 1176
- Impact absorbing surfacing certification to EN1177

3. Project Objectives/Requirements

Your Play Area Project will be measured by the detailed Key Performance Indicators (KPIs) listed below. You will be required to submit baseline figures and targets for the first year of operation to South Somerset District Council when returning the Acceptance of Award form.

KPI	Baseline	Year 1
Construction of Play Area and Youth Facilities and issuing by SSDC of a completion certificate no later than 31 st December 2020		

PROJECT SPECIFIC REQUIRMENTS

You will also endeavour to ensure that your Project meets the following specific objectives:

Your objectives are listed below

1. Consult local residents and young people on the new facilities that will go into Ilminster Recreation Ground;
2. Meet the requirements of BS EN1176 & 1177 and relevant Youth Facility standards where applicable.

Progress Measures

Your Organisation will be measured by the detailed KPIs developed through your application. You will be required to submit a progress report every 6 months and KPI data for the duration of the project.

4. Project Conditions

The Award is subject to the Standard Terms and Conditions of Award attached. In addition, the Award is also subject to the specific requirements and conditions set out in this section 4 (the '**Project Conditions**'), which the Organisation agrees to observe and perform. In the event that, in the reasonable opinion of South Somerset District Council, there is a failure or unacceptable delay in complying with all or any of the Project Conditions, South Somerset District Council reserves the right in its absolute discretion to terminate the Agreement forthwith.

South Somerset District Council is not required to make payment of all or any part of the Award until all the Project Conditions set out in this section 4 have been fulfilled to South Somerset District Council's satisfaction. South Somerset District Council shall not under any circumstances be liable for costs incurred by you in complying or attempting to comply with any or all of the Project Conditions. You should therefore note that if you incur any cost in attempting to satisfy any of the Project Conditions, but fail to comply with them, no Award shall be paid to you. You will therefore have incurred costs but will not be entitled to receive the Award.

Similarly, if you proceed with the purchase of property, goods or services before the fulfilment of the Project Conditions (or without the prior written consent of South Somerset District Council) you do so entirely at your own risk and expense.

Conditions to be fulfilled

You shall be required to fulfil all of the following general conditions to South Somerset District Council's approval as stated below:

1. The construction of the Play Area & Youth Facilities is to be completed by 31st December 2020.
2. The Award is secured inline with Clause 17 of the Standard Terms and Conditions of Award.
3. Not to place any orders or commit to any purchase of goods, materials and construction work before you receive written approval from the SSSDC Officer that the Play Area designs/specifications and public consultation is acceptable. Once approved Ilminster Town Council must seek and obtain the written approval of South Somerset District Council for any changes or modifications to the Play Area & Youth Facility designs or specifications.
4. The Play Equipment & Youth Facilities must be certificated by a test house such as the British Standards to EN1176 & 1177.
5. Ilminster Town Council must commission a Post Installation Inspection of the Play Area & Youth Facilities by a RPII registered inspector.

- Not to place any orders or commit to any purchase of goods, materials and construction work before supplying SSDC with evidence that Ilminster Town Council have ownership/tenure of the relevant part of the recreation ground.

Payment Conditions

- Payment of all or any part of the Capital Funding shall be conditional upon your fulfilment of the following requirements by the dates stated:

Condition	Date Required
Provided and had approved by SSDC, drawings and specifications for the Play Area & Youth Facilities	Prior to placing orders
Before any retention of capital funds is paid to the applicant they must carry out a Post Installation Inspection	Prior to practical completion
Supply SSDC with evidence that Ilminster Town Council have ownership/tenure of the Recreation Ground	Prior to placing orders
The value of each funding claim shall not be more than SSDC has awarded to the project. Any overspends on this project will not be funded by SSDC.	
Submission of satisfactory Monitoring and Evaluation progress reports and KPI data to the Locality Officer.	6 monthly reports throughout the life of the project.
<p>The following forms are satisfactorily completed and submitted to the agreement of South Somerset District Council:</p> <ul style="list-style-type: none"> - Acceptance of Award Form - Bank Details Form - Tender/Quotation Report 	<p>Within 3 months of receipt of the Award offer letter and prior to tender/quotation.</p> <p>Before first payment</p> <p>Before contract issued</p>

The following additional items of information are satisfactorily completed and submitted to the agreement of South Somerset District Council:	
- Written confirmation from Ilminster Town Council that that the Play Area & Youth facilities funded by this Award will be free and open access for the general public's use.	Prior to first payment.
- A ten year repairs and maintenance plan for the new facilities including details of sinking fund arrangements.	Prior to first payment.
- Project plans/drawings and tender/quotation specification.	Prior to first payment
- Written notification of commencement of the project.	Prior to first payment

5. Publicity

It is important for you and South Somerset District Council to maximise publicity relating to the success of the Project. To achieve this we expect you to:

Arrange an official opening ceremony for the Facility within a reasonable period after completion of the Facility, at which South Somerset District Council must be invited to send representatives. You should contact the SSDC Communications Team to agree a date of and the arrangements for the opening ceremony.

Display appropriate South Somerset District Council signage. You will be required to have a permanent South Somerset District Council sign displayed (to be provided by South Somerset District Council).

Continuously promote the facility grant aided by SSDC, branding within all marketing and promotion material for the Project in accordance with Condition (12) of the Standard Terms and Conditions of Award.

6. Accepting your Award

Please ensure that you read and understand the **Award Offer Letter**, the **Award Agreement** and the **Standard Terms and Conditions of Award**.

You have **3 months** from the date of the Award Offer Letter to accept the Award Agreement and Standard Terms and Conditions of Award. After this 3-month period this offer will lapse unless valid and acceptable reasons are given for the delay before the end of this period and South Somerset District Council agrees in writing to extend it. If this offer lapses, the Award Offer will be regarded as having been automatically withdrawn. Please note that **NO** agreement comes into existence between South Somerset District Council the Organisation unless and until the above documentation has been duly completed and received by South Somerset District Council.

Next steps

When South Somerset District Council has received all of the duly completed forms and documents requested within this Award Agreement it can process the Award. Payments of the Award will be made and distributed subject to the terms and conditions of the Agreement

We look forward to hearing from you. The Locality Officer will remain your point of contact for any queries. If there is any part of the Award Agreement that is unclear, please contact the Locality Officer for assistance.

Capital Document Checklist

Should you wish to accept your Award Offer you will need to complete the following items and return them to South Somerset District Council unless otherwise stated:

Title	Description	South Somerset District Council to receive
Terms and Conditions	Before accepting your award read through the terms and conditions thoroughly. By accepting the award you are entering into a legally binding contract.	_____
Acceptance of Award Form	This form enters you into a contract and confirms that everything submitted with your acceptance is true, correct and you accept the terms and conditions.	3 months from the date of the Award Offer Letter
Tender/Quotation Report	When completing a capital project at least three competitive tenders/quotations for the provision of the facility must be obtained. This form should be completed when the tenders/quotations have been received and assessed.	Before contract is issued.
Project Contacts Form	This form must be completed by you and sent back to South Somerset District Council with your acceptance of award form	With Acceptance of Award Form
Bank Details Form (BACS)	This form must be completed by you and returned to South Somerset District Council with your acceptance form.	Before 1 st payment
Interim Claim Form	This is the first payment request form that you need to fill in. The Final retention form does not need to be sent until you are requesting the final payments of the project.	For 1 st and subsequent grant instalments (not final payment)
Final Capital Claim Form	This form must be completed and submitted on Completion of the project to claim the <u>final</u> instalment of the grant.	When claiming final grant instalment
Project Reporting Template	This form provides you with the format of reporting we require on the project every 6 months and enables consistent reporting across all projects with the appropriate KPI framework.	Every 6 months from project start date until Practical Completion

Standard Terms and Conditions of Award

1. This document contains the Standard Terms and Conditions of your Award.

Definitions

For the purposes of these Award Terms and Conditions and the accompanying Award Offer Letter and Award Agreement the following expressions shall have the meanings respectively ascribed to them:

'Agreement'	Means the contractual arrangements set out in the Award Offer Letter, the Award Agreement and these Standard Terms and Conditions of Award;
'Annual Review'	Means that review described in condition 3.2;
'Authorised Signatory "	Means an officer/member of the Organisation possessing the necessary power and authority to sign and enter the Agreement on behalf of the Organisation;
'Award'	Means the total amount of the grant(s) referred to in the first paragraph of the Award Offer Letter awarded to assist the Organisation to finance the Project;
'Award Agreement'	Means the basic contractual provisions relating to the Project for which the Award is made and as set out in the document entitled Award Agreement and sent with the Award Offer Letter;
'Award Offer Letter'	Means the award letter sent to the Organisation confirming the Award and enclosing the Award Agreement and Standard Terms and Conditions of Award;
'Capital Funding'	Means the Award as referred to in Section 1 of the Award Agreement that relates to Capital Funding and which funding is to be used for the purchase, construction or development of Facilities;
'Certificate of Completion of Making Good Defects'	Means the certificate issued at the end of the Defects Liability Period by the Supervising Officer confirming that the defects (if any) have been made good;
'Certificate of Practical Completion'	Means the certificate issued by the Supervising Officer upon practical completion of the works comprising the Project;
'Clawback Period'	Means the period of fifteen (15) years from the Date of Acceptance;
'Commencement Date'	Means the commencement date for the construction and/or development of the Facility as advised in writing by the organisation;
'Date of Acceptance'	Means the date upon which the Authorised Officer signed the Acceptance of Award form;
'Date of Practical Completion'	Means the date certified as such in the Certificate of Practical Completion;

'Defects Liability Period'	Means, if the Award is less than one hundred thousand pounds, the period of six (6) months commencing from the Date of Practical Completion and if the Award is more than one hundred thousand pounds the period of twelve (12) months commencing from the Date of Practical Completion;
'Duration of the Project'	Means the total number of months (rounded up) between the Commencement Date and the Long Stop Date;
'Facility'	Means the sporting facility/equipment/building in respect of which the Award is made as specified in Section 2 of the Award Agreement;
'In Principle Funding'	Means that element of funding identified as such in Part 1 of the Award Agreement;
'Invoices'	Means those invoices submitted by the Organisation for the duration of the Project for those costs incurred which are not covered by the Supervising Officer's Certificate;
'Long Stop Date'	Means the date by which the construction and/or development of the Facility is to be completed as set out in Section 4 of the Award Agreement;
'Material Change'	Means a substantive improvement in the financial position of the organisation; a change in ownership of the Organisation or a change to the nature or delivery of the Project Objectives, any of the foregoing of which may reasonably lead South Somerset District Council to conclude during the Annual Review that is, or is likely to be, a material increase or diminution in the organisation's level of financial need;
'Organisation'	Means the organisation to which the Award is made (sometimes referred to as "you" or "your", as the context requires, throughout this Agreement);
'Parties'	Means South Somerset District Council and the Organisation (each a "Party");
'Project'	Means the project to which the Award relates and as described in Section 2 of the Award Agreement;
'Project Measures'	Means those measures applicable to the Project Objectives as set out in Section 3 of the Award Agreement;
'Project Objectives'	Means those objectives set out in Section 3 of the Award Agreement which the Parties have agreed shall be applicable to the Project;
'Project Specifications'	Means those specifications for the Project as set out in Section 2 of the Award Agreement;
'Retention'	Means the monies to be retained by South Somerset District Council as set out in Section 1 of the Award Agreement, and where applicable, to be paid to the Organisation in accordance with condition 6.2;

'South Somerset District Council'	Means South Somerset District Council of the Council Offices, Brympton Way, Yeovil, BA20 2HT and sometimes referred to as "we", "us" or "our" (as the context requires) throughout this Agreement;
'Statement of Anticipated Total Project Costs'	Means the statement of the anticipated total project costs signed by the Organisation and its quantity surveyor or Supervising Officer;
'Statement of Final Account'	Means the statement of final account signed by the Organisation and the Supervising Officer confirming that the total project costs of the Project have been agreed;
'Supervising Officer'	Means a suitably qualified architect, project manager, employer's agent or other officer employed by the Organisation to supervise or project manage the development/construction of the Facility;
'Supervising Officer's Certificate'	Means that document referred to in Condition 5.4.

2 Operation and Implementation

- 2.1 The Award will be used solely towards financing the Project in accordance with the details set out in Section 2 of the Award Agreement or as may be otherwise agreed in writing with South Somerset District Council. Without prejudice to the generality of the foregoing, the Organisation acknowledges and agrees that the Award may not in any circumstances be used (in whole or in part) towards redundancy payments or the like which South Somerset District Council does not recognise as Project costs.
- 2.2 The Organisation will co-operate fully with South Somerset District Council at all times in the implementation of the Project and will use its best endeavours to meet the Project Objectives.
- 2.3 Delivery of the Project will comply fully with the Project Specifications, the contents of which shall not be altered materially without the prior written consent of South Somerset District Council.
- 2.4 The Organisation will not deposit any part of the Award outside ordinary business accounts within the clearing bank system without prior written authorisation from South Somerset District Council.
- 2.5 The provisions of this Agreement will apply throughout the Clawback Period.
- 2.6 The Organisation will 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 (except where the Project relates to participants of one gender only, for example, women's football) occupation, disability or political persuasion other than in accordance with lawful justification or where positive discrimination is permitted.
- 2.7 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, anti-racism, child protection, human rights and health, safety and employment related laws and regulations and with such guidelines and/or codes of practice which South Somerset District Council may notify to the Organisation from time to time.

3 Accounting

- 3.1 The Organisation will keep full and proper accounts and records in respect of the implementation of the Project. Any representative(s) or nominee(s) authorised by South Somerset District Council will be given access, at South Somerset District Council's request, to these accounts and financial records. The Organisation shall provide such documentation and assistance as South Somerset District Council may reasonably require in order to undertake periodic reviews.
- 3.2 The Organisation will notify South Somerset District Council during the financial assessment of any interest earned on the Award and South Somerset District Council 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 South Somerset District Council's funds.

4 Payment – all Awards

- 4.1 South Somerset District Council shall pay the Award to the Organisation in accordance with the terms and conditions of the Agreement and without prejudice to the generality of the foregoing by reference in particular to Condition 2.1 and Section 1 and Section 4 of the Award Agreement.
- 4.2 The Award will be paid using Bankers Automated Clearing Scheme (BACS), or similar method, directly into the Organisation's bank account. The Organisation will be sent remittance advice informing it as to how much will be transferred into the account and the date of transfer.
- 4.3 If the Organisation fails to claim all or any part of the Award in accordance with the provisions of this Agreement South Somerset District Council shall be entitled to retain the Award or reduce the amount accordingly.
- 4.4 South Somerset District Council shall be entitled to suspend or cease payment of the Award in the following situations:
 - 4.4.1 Upon the occurrence of any of the events set out in Condition 14.1 and such event is continuing or is not capable of being remedied;
 - 4.4.2 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 Award;
 - 4.4.3 Where the Award has been terminated in accordance with Condition 14.1;
 - 4.4.4 Where, after considering the purpose of the Award, in South Somerset District Council's reasonable opinion, further payment of the Award would not constitute good value for money (provided that South Somerset District Council will continue to pay the Award to the extent that the Organisation has contracted for goods and services and it is not practically possible to cancel such arrangements);

4.4.5 Where the conditions set out in 17.2 cease to prevail and South Somerset District Council reasonably determines that it has insufficient funds available to it to continue with the payment of the Award to the Organisation;

4.4.6 Where any of the events set out in Condition 11.1 or 11.2 has occurred.

4.5 The Organisation shall repay to South Somerset District Council any part of the Award incorrectly paid to it as a result of an administrative error including (without limitation) where either an incorrect value of the Award has been released or where the Award has been released in error before all applicable terms and conditions of the Agreement have been complied with by the Organisation.

5 Claiming Capital and Revenue Funding

5.1 The following provisions of this clause shall apply to all Capital and Revenue Funding:

5.2 The Organisation may not submit any claim for payment of all or part of the Award until it has provided a confirmed in writing the **project start date**.

5.3 The Capital Award (other than the Retention) shall be paid out in instalments to be agreed with South Somerset District Council against the **Supervising Officer's Certificate** and/or the **Invoices** provided that the amount paid out in any month shall not exceed the aggregate of the Monthly Instalment for that month. To claim any part of the Capital Award (other than the Retention) the Organisation shall submit **the Interim Claim Form** together with the Supervising Officer's Certificate and/or the Invoices as may be appropriate.

6 Capital Funding – Retention

6.1 As set out in Section 1 of the Award Agreement a specified proportion of the Award referable to the Capital Funding shall be retained by South Somerset District Council (the "**Retainer**") and shall only be paid to the Organisation in accordance with Condition(s) [6] hereof.

6.2 Subject to Conditions 5.3 and 6.3 South Somerset District Council shall pay the Retention to the Organisation as follows;

6.2.1 One half of the Retention shall be paid on receipt of:

6.2.1.1 The **Certificate of Practical Completion** (or equivalent); and

6.2.1.2 The **Statement of Anticipated Total Project Costs** (this must be confirmed and signed by the Applicant and Quantity Surveyor);

6.2.2 The remaining half of the Retention shall be paid on receipt of:

6.2.2.1 The form **Final Claim Form**;

6.2.2.2 The **Certificate of Completion of Making Good Defects**;

6.2.2.3 The **Final Certificate** or signed **Statement of Final Account**.

- 6.3 In the event that the relevant figure set out in the **Statement of Anticipated Total Project Costs** and/or **the Statement of Final Account/final certificate** is less than the amount of the Award, South Somerset District Council reserves the right not to make payment of all or any part of the Retention and to reduce the amount of the Award accordingly.
- 6.4 In the event that South Somerset District Council does not receive the Statement of Final Account/Final Certificate within three (3) months of the expiry of the Defects Liability Period, South Somerset District Council reserves the right not to make payment of the remaining half of the Retention in accordance with Condition 6.2.2 and to reduce the amount of the Award accordingly.
- 6.5 If the Organisation fails to claim all or any part of the Award in accordance with this Condition 4 by the Long Stop Date South Somerset District Council shall be entitled to retain all or any part of the Award not claimed by the Organisation and reduce the amount of the Award accordingly.

7 Monitoring and Evaluation

- 7.1 The Organisation agrees to establish clear lines of communication with South Somerset District Council representatives to carry out this monitoring and evaluation requirement and to respond promptly to any questions raised during the monitoring process.

Progress monitoring

- 7.2 All Projects which receive an Award from South Somerset District Council will be closely monitored to ensure that:
- 7.2.1 The Project Objectives are being met;
 - 7.2.2 The Organisation continues to comply with the terms and conditions of the Agreement;
 - 7.2.3 The Project continues to represent good value for money.
- 7.3 During project initiation and the delivery phase the Organisation must be prepared to receive site visits and permit access to authorised representative(s) and nominee(s) of South Somerset District Council, upon reasonable notice (two working days), to the Organisation's premises and facilities, equipment, documents, contracts and records and to permit South Somerset District Council to discuss any aspect of the Project with key members of its staff;
- 7.4 In consultation with the designated South Somerset District Council officer the Organisation will agree upon a set of appropriate Project Measures and targets for the Project.
- 7.5 The Organisation will agree to actively monitor the Project and provide regular feedback to South Somerset District Council. The period for which the targets will be monitored will be agreed with South Somerset District Council and may extend beyond the period of funding if applicable.

Project reporting

- 7.6 The Organisation shall report to South Somerset District Council (in such format and at such times as South Somerset District Council may reasonably require). Such reports shall include a detailed review of the delivery of the Project against the Project Specifications. Once the Project is up and running the report should include a summary of achievement against the Project Objectives, and other agreed targets set out in the Monitoring and Evaluation process. South Somerset District Council shall use progress reports to assess whether:
- 7.6.1 The Organisation is in breach of any term or condition of the Agreement and/or is failing to satisfactorily deliver the Project;
 - 7.6.2 The financial controls and management of the Award by the Organisation are adequate;
 - 7.6.3 There is some other material default or deficiency by the Organisation in implementing the Project.

Project evaluation and further actions

- 7.7 South Somerset District Council may provide feedback on the progress reports referred to in Condition 7.6 and shall notify the Organisation of any concern(s) arising. The Organisation will respond promptly to any concerns raised and act to remedy the position to South Somerset District Council's satisfaction within 30 days of the date of such notice or any other period as South Somerset District Council may specify.
- 7.8 In the event that the Organisation fails to provide any requested evidence, information or undertakings in connection with Condition 7.6 or South Somerset District Council is not satisfied that the Organisation will be in a position to remedy the default or breach in question or that the measures taken by the Organisation prove to be ineffective in remedying the position, South Somerset District Council reserves the right:
- 7.8.1 Not to make any further payments, and/or
 - 7.8.2 To suspend or reduce the Award for such period and on such terms as South Somerset District Council may deem appropriate; and/or
 - 7.8.3 To claim back from the Organisation the whole or part of the Award which has already been paid and which South Somerset District Council in its reasonable opinion considers to have been inappropriately allocated.
- 7.9 South Somerset District Council shall notify the Organisation in writing of any such decision not to renew and/or to suspend and or reduce and/or claim back elements of the Award and such decision (s) shall be without prejudice to any other rights or remedies that South Somerset District Council may have.
- 8 Construction/Development of Facility**
- 8.1 The Facility will be constructed and/or developed in a good and workmanlike manner in accordance with the requirements and times set out in the Project Specifications

which will not be altered without the prior written consent of South Somerset District Council and which shall be completed by the Long Stop Date.

- 8.2 The construction/development of the Facility shall be properly supervised throughout by the Supervising Officer.
 - 8.3 Save as otherwise agreed in writing by South Somerset District Council, the Organisation shall:
 - 8.3.1 Confirm in writing that it has obtained/will obtain at least three competitive tenders/quotations for the provision of the Facility in accordance with normal tender/quotation and contract procedures;
 - 8.3.2 Submit to South Somerset District Council prior to the commencement of the works a written explanation as to why the successful tender/quote was accepted and the Organisation acknowledges and agrees that if (a) it fails to provide such explanation or (b) the explanation does not meet South Somerset District Council's reasonable approval South Somerset District Council may terminate the Award and the Organisation shall repay to South Somerset District Council any monies already received under the Award;
 - 8.3.3 Submit to South Somerset District Council a copy of the **Tender/Quotation Report** prepared by the Supervising Officer and a copy of the original **Form of Tender/Quotation** from the appointed contractor for the construction works, together with a list of the unsuccessful companies.
 - 8.4 Upon acceptance of the tender/quotation from a contractor for construction/development of the Facility, an elemental cost breakdown, **detailing the total cost of the accepted tender/quotation** for new construction works will be submitted to South Somerset District Council.
 - 8.5 If, during the construction/development/purchase of the Facility, there is a change to the purpose of the Facility, the ownership of the Facility or the legal identity of the Organisation, a new award application must be submitted to enable South Somerset District Council to reconsider the award. While the new application is being considered, no payments of the Award will be made and any payments made or liabilities incurred by the Organisation in respect of the Facility shall be at their sole risk and expense. In the event of the Award being rescinded, South Somerset District Council shall, in its sole discretion, be entitled to demand a full or partial refund of any payments of awards already made.
- 9 Management and use of the Facility**
- 9.1 The arrangements for management and community use of the Facility must be agreed with South Somerset District Council prior to the contract being issued and will not be changed throughout the Clawback Period without the prior agreement of South Somerset District Council.
 - 9.2 The Organisation undertakes to use its endeavours to manage and operate the Facility in accordance with the Project Specifications.
 - 9.3 The Organisation shall at all times throughout development and until the expiry of the Clawback Period:

- 9.3.1 Keep the Facility in good repair and undertake all things as may be necessary to ensure its proper maintenance;
- 9.3.2 Take out and keep in force a comprehensive policy of insurance with reputable insurers to cover the Facility against all usual risks (including third party public employee and occupiers liability) in connection with the use of the Facility and any activities carried out thereon to its full replacement value, and a copy of the current policy and evidence of premium payment shall be promptly provided to South Somerset District Council upon request;
- 9.3.3 Comply with all statutory requirements and other laws and regulations relating to the Facility and the development and operation thereof, including without limitation all relevant health, safety and employment laws and regulations.
- 9.3.4 The Organisation will not deny anyone access to use the Facility on the grounds of disability, race, creed, colour, sex, occupation, sexual orientation, religion or political persuasion.

10 Compliance with procurement regulations

- 10.1 The Parties acknowledge and agree that South Somerset District Council is required to comply with 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**").
- 10.2 In the event that the Organisation uses or may use the Award in connection with any contract for works or services to which the Regulations apply, the Organisation warrants that:
 - 10.2.1 it has complied with and will comply with all relevant laws as to public procurement including without limitation the Regulations, as if the Organisation were a 'contracting authority' as defined in the Regulations;
 - 10.2.2 it shall promptly supply South Somerset District Council with such information as South Somerset District Council may from time to time require evidencing the Organisation's compliance with the Regulations;
- 10.3 In the event that South Somerset District Council has reasonable cause at any time to believe that the Organisation has not complied with the Regulations all Award monies already paid shall become repayable to South Somerset District Council on demand and South Somerset District Council may suspend its obligations or terminate the Agreement pursuant to Condition 14.1.8.

11 Mortgage Disposal, Lease, or Change of Use of the Facility

- 11.1 Subject to the terms of any charge(s) to which South Somerset District Council shall previously have consented the Facility or any part of it may only be sold, transferred, leased or otherwise disposed of, or cease to be used for the play purposes previously approved by South Somerset District Council, with prior written approval of South Somerset District Council. Such approval shall, in part, be conditional upon the provisions of the following paragraph being satisfied. The Organisation agrees to give written notice to South Somerset District Council a reasonable period before it enters