

DATED

2019

**(1) THE SCARBOROUGH BOROUGH COUNCIL**

and

**(2) HOPE LEARNING TRUST**

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**AGREEMENT RELATING TO PINDAR LEISURE CENTRE**

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**THIS DEED OF AGREEMENT** is made the                      day of                      2018

**BETWEEN**

- (1) **THE SCARBOROUGH BOROUGH COUNCIL** of the Town Hall, St Nicholas Street, Scarborough, YO11 2HG ("the Council") and
- (2) **HOPE LEARNING TRUST, YORK** of Manor CE Academy, Millfield Lane, Nether Poppertton, North Yorks, YO26 6PA (the "MAT")

**WHEREAS**

- (A) The Council has powers to commission or provide sport and leisure services within the Borough of Scarborough
- (B) In 1994/5 the Council provided funding in the sum of £275,000 toward the establishment of Leisure Facilities at the College and Sport England made a grant of £50,000 toward the total cost of £600,000.
- (C) On 11 January 1995 the Council entered into a Joint Use Agreement with the North Yorkshire County Council (the "County Council") and the Governing Body of George Pindar School (the "Governing Body") for the provision of Leisure Facilities from the Property. Under that Joint Use Agreement the Leisure Facilities were made available to the community for a term of 21 years under which it managed the provision of sport out of school hours.
- (D) In 1998 Sport England agreed to make a grant towards the cost of the All Weather Pitch of £310,000 and the Foundation for Sport and the Arts made a grant of £40,162. The Governing Body raised the sum of £30,000 towards the cost of the All Weather Pitch.
- (E) In 1999 Sport England were made a party to the Joint Use Agreement and provision was made for the inclusion of the All Weather Pitch within the Leisure Facilities.
- (F) On 1 April 2008 the George Pindar School (the "School") become a Foundation School with a Foundation within the meaning of section 23A School Standards and Framework Act 1998 and the Trust was formed to hold the land on which the School is located and the assets of the School.
- (G) The Governing Body had powers and duties pursuant to s27 of the Education Act 2002 to provide any facilities or services that will benefit pupils, their families or people working/living in the locality of the school (the "Community Facilities Power"). The Governing Body used the Community Facilities Power to provide leisure services to the Community from the School.
- (H) In April 2008 the George Pindar Community Sports College Trust (the "Community Trust") attained Foundation status and consequently the buildings and grounds at George Pindar School should have transferred from the County Council to the Foundation Trust.
- (I) The Council transferred on 1<sup>st</sup> December 2008 its obligations under the Joint Use Agreement for the management of the Leisure Facilities at the School on the understanding that the School will subsequently provide and manage the Leisure Facilities for the use of both the School and residents and visitors to the Borough for the term of the Joint Use Agreement.

- (J) On 01 April 2012 the Governing Body transferred back its obligations to the Council by way of this Agreement to the Council on the Commencement Date on the understanding that the Council will manage and provide the Leisure Facilities for the Residents and Visitors to the Borough and for the College on similar terms.
- (K) The School will convert to academy status on 1 January 2019 where the Foundation and Governing Body will transfer the Leisure Facilities to the MAT.
- (L) This Agreement provides the framework under which such Services are now intended to be provided and identifies the terms under which those Services transferred at the Commencement Date will be provided by the Council.
- (M) In the event of termination this Agreement provides for continuation of the use of the Leisure Facilities by the MAT upon equivalent terms to those within the Joint Use Agreement dated 11 January 1995 (as amended in 1999) save that the MAT will be substituted as a party to that Joint Use Agreement in place of its predecessor in title the County Council.

**AGREEMENT**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the Schedules.

In this Agreement the following words and expressions shall have the following meanings:

|                      |   |
|----------------------|---|
| “Agreement”          | means this Agreement and the Schedules attached hereto  |
| “All Weather Pitch”  | the All Weather Pitch shown on the Plan   |
| “Annual Report”      | The annual report prepared in accordance with clause 18   |
| “Borough”            | means the Borough of Scarborough  |
| “the Business”       | the business of managing and operating leisure services to the community from the Leisure Facilities  |
| “the School”         | means the George Pindar School situated within the Borough of Scarborough   |
| “Commencement Date”  | [ ] 2019  |
| “Termination Notice” | a notice of termination (irrespective of any right of termination under the provisions of clause 7) from the Council to the MAT in respect of the whole of the Business of the Leisure Facilities |

|   |  |
|---|--|
| “Foundation Trust”                      | The George Pindar Community Sports College Trust formed to hold the land on which the College and Leisure Facilities are situate   |
| “Joint Use Agreement”                   | has the meaning given to in Schedule 11  |
| “Leisure Facilities”                    | the Pindar Leisure Centre comprising the sports hall, and fitness suite located at the Pindar Leisure Centre   |
| “Maintenance Costs and Operating Costs” | means those costs from time to time agreed between the Council and the MAT and initially set out in Schedule 14 and not including life cycle replacement costs.  |
| “the Property”                          | means the site of the School   |
| “Regulations”                           | The Transfer of Undertakings (Protection of Employment Regulations) 2006   |
| “School Gymnasium”                      | means the gymnasium which forms part of the School   |
| “School Hall”                           | means the school hall which forms part of the School   |
| “the Services”                          | all those services as set out in Schedule 1 to be undertaken by the Council in return for which the MAT is providing consideration as set out in this Agreement  |
| “the 2008 Services Agreement”           | means the Agreement between the Council, the Governors of George Pindar Community Sports College, George Pindar Community Sports College Trust and the English sports Council dated 1st December 2008 for the management of the Leisure Facilities |
| “Sinking Fund”                          | means the fund described in clause 4.1 (b)   |
| “Term”                                  | the term of this Agreement more particularly described in clause 2   |
| “Termination Date”                      | the earlier of <ul style="list-style-type: none"> <li>(i) termination under the provisions of clause 6; or 4 June 2027</li> <li>(ii) such later date as the parties may agree in writing</li> </ul>  |
| “the 1999 Act”                          | the Local Government Act 1999  |
| “the Undertaking”                       | the Leisure Facilities operated at the date of this Agreement by the Council from the Leisure Facilities   |

- 1.2 References to numbered Clauses and Schedules are to the relevant Clause or Schedule of this Agreement (unless specifically stated otherwise).
- 1.3 References in this Agreement to statutory provisions shall be construed as references to those provisions as modified or re-enacted from time to time (whether before or after the date of this Agreement) and any subordinate legislation made under such provisions and shall include reference to any repealed provision which has been so re-enacted (whether with or without modification).
- 1.4 The headings use of bold type and underlining in this Agreement are for convenience only and shall not affect the construction of this Agreement.
- 1.5 References to persons shall include bodies corporate unincorporated associations and partnerships and except where the context otherwise requires words set out in the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.6 Words denoting an obligation on the parties to do any act or matter or thing including an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit an infringement of that restriction.

## **2. COMMENCEMENT AND TERMINATION**

- 2.1 The Parties confirm their mutual agreement to annul any previous agreements between the Council, the Governing Body, the Foundation Trust and Sport England previously entered into on 1<sup>st</sup> December, 2008 and replace it with this Agreement provided that the MAT shall be responsible for the obligations and liabilities of the Governing Body in respect of the operation of the Leisure Facilities from 1 January 2012 to the Commencement Date as if performed or arising under this agreement
- 2.2 This Agreement shall come into force on the Commencement Date and continue until the Termination Date.

## **3. LICENCE**

- 3.1 Subject to the provisions of this Agreement the MAT permits (in so far as it is able) the Council including its agents, subcontractors or invitees to occupy the Property together with such rights of way as are necessary for the purposes of this Agreement only in common with MAT and all others so authorised by the MAT.

## **4. CONSIDERATION**

- 4.1 In consideration of the:
  - (a) the establishment and maintenance of a sinking fund by the Council to fund any necessary life cycle replacement of the All Weather Pitch during the Term and as agreed by the parties with annual contributions being made by the Council of £12k and by the MAT of £8k.
  - (b) the grant to the Council by the MAT of a licence pursuant to clause 3 of this Agreement to enter the Property for the purposes of this Agreement ;
  - (d) continued payment by the MAT of 40% of the Maintenance Costs and Operating Costs of the Leisure Facilities and the Council's continued payment of 60% of the Maintenance Costs and Operating Costs or in respect of both the Council and

the MAT formal written agreement to pay differing proportions of costs for the whole or any agreed identified part of the Leisure Facilities. For the avoidance of doubt the Council and the MAT understand and envisage changes to the actual Maintenance Costs and Operating Costs over time and will agree those Maintenance Costs and Operating Costs wherever possible using reasonable endeavours at the end of every six months from the Commencement Date;

- (e) continued maintenance by the MAT of the Leisure Facilities to a standard Agreed with the Council and as a minimum to comply with all applicable laws, Regulations, directives and the insurance requirements of the Council and the MAT;
- (f) payment by the Council of 100% of the Maintenance Costs and Operating Costs of the All-weather Pitch;
- (g) payment by the MAT of 100% of the Maintenance Costs and Operating Costs of the School Gymnasium and School Hall

the Council agrees to provide the Services from the Commencement Date until the Termination Date in accordance with the provisions of this Agreement.

- 4.2 The MAT warrants that it will continue to maintain the Leisure Facilities and the School Gymnasium, and School Hall in accordance with the requirements of this Agreement.
- 4.3 The MAT shall throughout the Term meet the obligations so far as is reasonably practicable recorded in Schedule 11 hereto. For the avoidance of doubt the terms of this Agreement shall have priority over the terms of the Joint Use Agreement wherever a conflict may arise;

## **5. OBLIGATIONS OF THE COUNCIL**

Throughout the Term the Council shall:

- 5.1 at all times in carrying out its obligations under this Agreement use all reasonable endeavours to maximise the efficient use of the resources available to it;
- 5.2 meet the obligations so far as is reasonably practicable formerly contained within the Joint Use Agreement for the site and now recorded in Schedule 11 hereto. For the avoidance of doubt the terms of this Agreement shall have priority over the terms of the Joint Use Agreement wherever a conflict may arise;
- 5.3 not use any funds or assets received from the MAT for the purposes of giving any loan or guarantee and not, in any event, to give any loan or guarantee which might threaten the ability of the Council to provide the Services as envisaged by this Agreement;
- 5.4 not sell lease licence mortgage charge or otherwise dispose of or share or part with possession of or occupation or any part of the Property without the prior written consent of the MAT, such consent not to be unreasonably withheld or delayed;
- 5.5 notify the MAT of significant litigation which might affect the School as soon as reasonably practicable;
  - 5.5.1 conduct its affairs in a prudent and business-like manner;

- 5.5.2 maintain a complaints procedure for members of the public and users of the Services provided by the Council as part of the Business which shall be in such form as the Council shall reasonably determine.

## **6. TERMINATION**

- 6.1 In any event of the service of a Termination Notice the MAT and the Council shall not later than the expiry date of the Termination Notice use all reasonable endeavours to ensure that all appropriate arrangements are put in place to give effect to the Termination Notice and the Council shall consult with the MAT on all aspects of any transfer and shall take note of any suggestions made by the MAT in relation to the same.
- 6.2 Unless otherwise agreed, in writing, by the Council and the MAT at the expiry of the Term a transfer of the business of management of the Leisure Facilities to the MAT shall occur.

**PROVIDED THAT** both the Council and MAT shall take all reasonable steps necessary to mitigate all costs associated with the application of this clause 6.

## **7. VAT**

- 7.1 Any payments made in accordance with this agreement are exclusive of Value Added Tax ("VAT") and for the avoidance of doubt VAT shall be added to any payments where appropriate.

## **8. DEFAULT AND TERMINATION**

- 8.1 If in the reasonable opinion of the Council or the MAT the other party commits a material breach of any of the provisions of this Agreement the Council or the MAT shall be entitled to notify the other party in writing of the nature and extent of such breach together with details of the action required to remedy such breach (including where appropriate a reasonable timescale for such action). For the avoidance of doubt material breach includes any breach of clause 4 above and breach of clause 4 may for the avoidance of doubt give rise to the issue of a Termination Notice.
- 8.2 If within 28 days of the service of a notice under Clause 8.1 the MAT or the Council shall not have remedied or substantially commenced to remedy the breach complained of then the other party shall be entitled to terminate this Agreement on notice with immediate effect.
- 8.3 If the MAT or the Council commit a material breach of any of the provisions of this Agreement which in the other party's reasonable opinion is incapable of remedy in accordance with the provisions of Clause 8.1 then the other party may terminate this Agreement by notice with immediate effect.
- 8.4 The Council may terminate this Agreement by notice with immediate effect in the following additional circumstances:-

8.4.1 the MAT passes a resolution for winding up (otherwise than for the purpose of solvent amalgamation or reconstruction where the resulting entity assumed all the obligations of the MAT under this Agreement and where the Council has consented to the same) or a court shall make an order to that effect.

8.5 This Agreement unless extended by the Parties in writing shall terminate on the Termination Date. For the avoidance of doubt any variation to the Agreement which extends the Termination may also vary such other clauses in this Agreement as the Parties may agree.

8.6 Any termination of this Agreement howsoever caused shall not affect the rights or liabilities of any party which have accrued prior to the Termination Date.

#### **9-13 NOT USED**

#### **14. RECORDS**

14.1 Each party hereby indemnifies and shall keep indemnified the other from and against all losses, costs, demands, actions, fines, penalties, awards and liabilities in connection with any claim arising from:

14.1.1 any actual or alleged breach by the other party of the Data Protection Act 2018 and any related Code of practice or Council Directive 95/46/EC;

14.1.2 any actual or alleged breach by the other party of the Human Rights Act 1998;

14.1.3 any actual or alleged breach by the other party of any duty or obligation (whether in statute, tort, contract or otherwise) to any person in respect of the holding, processing, transfer, use or any other obligation in relation to information or data held or processed by the other party about or in respect of any person.

#### **15. FREEDOM OF INFORMATION**

15.1 The MAT and the Council acknowledges and agrees that each other are subject to legal duties under the Freedom of information Act 2000 ("FOIA") and insofar as each other holds records and information on behalf of the other in relation thereto shall:

15.1.1 in respect of such records and information comply with the other's 's instructions and directions, including its publication scheme adopted pursuant to the FOIA and any amendments thereof (of which each party will promptly inform the other) and any policies and codes of practice issued by it from time to time in relation to FOIA.

15.1.2 in respect of such records and information promptly and properly comply with any valid lawful access requests pursuant to the other party's 's publication scheme from time to time and notify the other party of any requests in respect of such records or information received by the other party from any individual and, subject to any applicable exemptions relating to disclosure of such records and information under the FOIA, assist the other party in providing any such records and information as the other party may require to respond to any such requests.

#### **16. WARRANTIES**

16.1 The MAT warrants with the Council as set out in Schedule 4.

16.2 The Council warrants with the MAT as set out in Schedule 6.



## **17. COUNCIL'S STATUTORY ROLE**

- 17.1 Nothing contained in this Agreement or done hereunder shall affect the rights and/or powers of the Council as local planning authority or in any other capacity whatsoever under or by virtue of any legislation from time to time in force or shall relieve the Parties from the necessity to obtain all such approvals or consents from time to time as shall be requisite from the Council in any of its aforementioned capacities.

## **18. VARIATIONS AND WHOLE AGREEMENT**

- 18.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of the Parties.
- 18.2 This Agreement and the Schedules all constitute the entire Agreement and understanding between the Parties with respect to all matters which are referred to.
- 18.3 This Agreement is intended to bind any successor body to either Party as it applies to the named Party's themselves.

## **19. WAIVER**

- 19.1 No failure to exercise or delay in exercising or enforcing any right or remedy under this Agreement shall constitute a waiver thereof and no single or partial exercise or enforcement of any right or remedy under this Agreement shall preclude or restrict the further exercise or enforcement of any such right or remedy. The rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **20. DISPUTES**

- 20.1 In the event of a dispute which cannot be resolved by discussion between the Parties, the Parties will seek the assistance of a mediator appointed by the Centre for Effective Dispute Resolution to resolve the dispute. The decision taken as a result of this process will be binding on both parties.

## **21. GOVERNING LAW AND JURISDICTION**

- 21.1 This Agreement shall be governed by English law and shall be deemed to have been made in England.
- 21.2 The Parties hereby submit to the exclusive jurisdiction of the High Court of Justice in England in relation to any proceedings arising out of or in connection with this Agreement and hereby agree for the purposes of such proceedings that any process may be served on any of them at the address and in the manner provided for in Clause 22.

## **22. NOTICES**

- 22.1 All notices and other communication under this Agreement shall be in writing and shall be deemed to have been duly given:

22.1.1 when delivered if delivered by messenger during normal business working hours of the recipient;

22.1.2 on the third business day following mailing if mailed by certified or registered mail postage pre-paid in each case addressed as follows:

To the Council for the attention of the Director of Democratic & Legal Services, Scarborough Borough Council, Town Hall, St Nicholas Street, Scarborough YO11 2HG

To The MAT for the attention of the CEO, Hope Learning Trust, Manor CE Academy, Millfield Lane, Nether Popperton, North Yorks, YO26 6PA.

### **23. ASSIGNMENT**

23.1 This Agreement shall be binding on and endure for the benefit of the successors of the parties but shall not be assignable, save with the prior written consent of the other party (such consent not to be reasonably delayed).

### **24. COUNTERPARTS**

24.1 This Agreement may be executed in any number of counterparts by the different parties on separate counterparts each of which when executed and delivered shall constitute an original but all of which shall together constitute one and the same instrument.

### **25. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

25.1 Nothing in this Agreement, save where expressly permitted in writing and agreed by all the Parties, shall be subject to the provisions of the Contracts (Rights of Third) Parties Act 1999.

**EXECUTED AS A DEED** on the date stated at the commencement of this Agreement.

**EXECUTED AS A DEED** by **THE** )  
**SCARBOROUGH BOROUGH COUNCIL** )  
in the presence of:-

Authorised Signatory:

**EXECUTED AS A DEED** by )  
**HOPE LEARNING TRUST YORK** )  
in the presence of:-

Director

Director

**SCHEDULE 1**  
**THE SERVICES**

**1. SCOPE**

The Services involve the Council undertaking:

- 1.1 during Opening Times contained in Schedule 8 to manage and operate the Leisure Facilities and All weather pitch in accordance with this Agreement for the benefit of residents of the borough; and
- 1.2 by agreement the Council may have access to the School Gymnasium and School Hall (and such other facilities at the School as the parties may agree) to undertake the Services provided the Council is responsible for compensating the MAT for any damage caused to the School Gymnasium and School Hall (or such other facilities at the School as the parties have agreed) during times of agreed Council access and where such damage has arisen out of the Council's negligence.

**2. AIMS**

- 2.1 The provision of the Services includes but is not limited to fulfilling the following aims:

- 2.1.1 the promotion of the health and fitness of residents within the Borough;

- 2.1.2 the provision of the sports facilities for community use, including:

- A fitness suite

- A sports hall

- All Weather Pitch

- Access to the School Gymnasium and School Hall and such other facilities at the School as Council may be given access to for the purposes of this Agreement by prior agreement with the MAT

- the encouragement of the development of local "sports clubs" in the town of Scarborough, through the provision of facilities which enable such sports to be undertaken at the Leisure Facilities.

**3. SERVICE OBLIGATIONS**

For the duration of the contract the Council shall provide the Services which shall include the following:

- 3.1 keeping the Leisure Facilities and All Weather Pitch open to the public for at least the times specified in Schedule 8;
- 3.2 undertaking an annual programme of activities targeted at the promotion of health and fitness of Borough residents.

- 3.3 employing as instructors only those who have appropriate experience or qualifications and who are assessed as appropriate to work with children following consideration of response to enquiries from the Disclosure and Barring Service.
- 3.4 permitting links between websites managed respectively by the MAT and the Council thus providing users and potential users of the Services with an effective source of relevant information upon the provision of sport within the Borough.
- 3.5 by way of an identified objective seeking Accreditation with the Sport England Club Mark General Award for Clubs and to use reasonable endeavours to maintain that Accreditation
- 3.6 keeping the Leisure Facilities in a tidy state (excluding the School Gymnasium, School Hall save where the Council has had use of these Facilities in which case the Council will be responsible for ensuring they are left in a tidy state after use) including the All Weather Pitch
- 3.7 adopt a reasonable and affordable fees and charges policy which offers discounted access to disadvantaged residents
- 3.8 ensuring the provision and maintenance of an adequate lighting system to enable evening use of the All Weather pitch at all times of the year
- 3.9 maintaining an emergency plan in relation to the operation of Leisure Facilities and All Weather Pitch during the Opening Hours

**SCHEDULE 2**

**Not Used**

**SCHEDULE 3**

**Not used.**

## **SCHEDULE 4**

### **MAT WARRANTIES**

The MAT hereby warrants to the Council that:

- (a) It has the power to enter into the obligations contained in this Agreement and has taken all necessary action to authorise the execution and completion of this Agreement and that no limit on the powers of the MAT will be exceeded as a result of entering into such obligations and that this Agreement when executed by the MAT will constitute a legal binding obligation of the MAT enforceable in accordance with its terms.
- (b) To the best of the MAT's knowledge information and belief it has had no notice of any action suits or proceedings pending or threatened against the MAT before any court commission governmental agency or department (either in the United Kingdom or elsewhere) the outcome of which would have a materially adverse effect on the performance by the MAT of its obligations under this Agreement.



**SCHEDULE 5**

**Not Used**

## **SCHEDULE 6**

### **COUNCIL WARRANTIES**

1. The Council hereby warrants to MAT that:
  - (a) It has the power to enter into the obligations contained in this Agreement and has taken all necessary action to authorise the execution and completion of this Agreement and that no limit on the powers of the Council will be exceeded as a result of entering into any such obligations under this Agreement and when executed by the Council will constitute a legal binding obligation of the Council enforceable in accordance with its terms.
  - (b) The execution and completion of this Agreement and the performance of the obligations arising under this Agreement do not and will not constitute a breach of an existing law binding upon or regulation bye-laws or standing order of the Council or any contract or other undertaking which is binding on the Council or any of the assets of the Council.
  - (c) Any consent licence approval or authorisation whether of any government department authority agency or otherwise which is required in connection with the execution completion performance validity or enforceability of this Agreement or the acceptance of its terms has been obtained and has not been withdrawn.
2. Where any of the Statements (if any) set out above is qualified by the expression "to the best of the knowledge information and belief of the Council" or any similar expression that statement shall be deemed to include an additional statement that it has been made after full and careful enquiry and where relevant after taking appropriate advice.

**SCHEDULE 7**

**Not Used**

## **SCHEDULE 8**

### **OPENING TIMES**

Each Weekday during Term time between 5.30pm to 10.00pm

Each Weekday during School Holidays between 9.30am to 10pm

Each Saturday between 9.00am to 5.00pm

Each Sunday between 10.00am to 7.30pm

The Council reserves the right to amend the opening times in respect of all recognised Bank and Public Holidays or for any ad hoc public holiday from time to time declared by state decree or operation of statute or where the Council would normally close any similar premises within the Borough not being a Bank or Public Holiday.

Where it is not possible to open the Leisure Facilities to the public for safety reasons or lack of appropriately qualified staff the parties agree that the Leisure Facilities may close, but the Council must take reasonable steps to re open the Leisure Facilities as soon as practicable.

**SCHEDULE 9**

**Not Used**

**SCHEDULE 10**

**Not Used.**

**SCHEDULE 11**  
**JOINT USE AGREEMENT**

**PARTIES**

1. **HOPE LEARNING TRUST, YORK** of Manor CE Academy, Millfield Lane, Nether Popperton, North Yorks, YO26 6PA (the “MAT”)
2. **THE COUNCIL OF THE BOROUGH OF SCARBOROUGH** of Town Hall St Nicholas Street Scarborough North Yorkshire YO11 2HG (“the Borough Council”)

**BACKGROUND**

- A. The Borough Council has agreed with the other parties to manage the Leisure Centre and the All Weather Pitch upon the terms set out in this Agreement.

**THE AGREEMENT**

**Part 1**

**GENERAL**

**1.0 INTERPRETATION**

- 1.1 The following terms and expressions shall have the following meanings through this Agreement:

|                      |   |
|----------------------|---|
| Facilities           | the All Weather Pitch the Leisure Centre  |
| All Weather Pitch    | the All Weather Pitch shown for identification purposes only coloured yellow on the Plan  |
| Leisure Centre       | the Leisure Centre including the sports hall and the fitness suite shown for identification purposes only coloured orange on the Plan |
| Leisure Centre Costs | the costs incurred by the MAT in respect of the matters referred to in 4.1 of Part 2 of this Agreement                                |
| Opening Times        | contained in Schedule 8   |
| Plan                 | the Plan attached   |
| Primary Parties      | the Borough Council and the MAT   |
| School               | George Pindar School Scarborough North Yorkshire  |
| School Days          | Mondays to Fridays inclusive during school term time  |

Term [ ] until 4 June 2027 (or such later date as may be agreed by the parties in writing)

- 1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **Part 2**

### **THE LEISURE CENTRE**

#### **1.0 GENERAL**

- 1.1 This part of the Agreement applies to the Leisure Centre only.

#### **2.0 INTERPRETATION**

- 2.1 The definitions in Part 1 of this Agreement shall apply to Part 2

#### **3.0 USE OF LEISURE CENTRE**

- 3.1 The Borough Council will manage and operate the Leisure Centre for sports and recreation use by residents of and visitors to the Borough during the Agreed Time.

- 3.2 (a) The MAT may close the Leisure Centre during agreed times for a maximum period of 21 days in any year for the purposes of annual maintenance. The School and the MAT shall use their reasonable endeavours to ensure that the maintenance work is completed without undue delay or avoidable inconvenience to the Borough Council

(b) The MAT shall give at least 3 months' notice to the Borough Council of the time or times during which the closure referred to in 3.1(a) is to take place

(c) The MAT reserve the right to close the Leisure Centre in an emergency at any time without notice.

#### **4.0 ADMINISTRATION, MAINTENANCE AND CARETAKING**

- 4.1 The MAT agree with the Borough Council:

(a) to pay the charges relating to the Leisure Centre in connection with water electricity sewerage refuse disposal and rates

(b) to maintain the Leisure Centre in accordance with an annual maintenance programme agreed by the Borough Council and to use all reasonable endeavours to ensure that the Leisure Centre are available and in good working order and to be responsible for heating and lighting the Leisure Centre

(c) to provide the caretaking services in Appendix 1 of this Agreement (the standards and times of such services to be agreed between the Primary Parties



- 4.2 The MAT shall review the provision of the caretaking services on the prior request of the Borough Council
- 4.3 (a) With the agreement of the MAT the Borough Council may carry out works of improvement or maintenance to the Leisure Centre
- (b) The costs of the work in 4.3(a) shall be borne by the Borough Council or by the Primary Parties in such proportions as they may agree except where such costs are £100 or less where the written consent of the MAT shall not be necessary and such costs will automatically be charged on the basis of 60% Borough Council and 40% MAT.

**5.0** Not Used

### **Part 3**

#### **THE ALL WEATHER PITCH**

##### **1.0 GENERAL**

1.1 This part of the Agreement applies to the All Weather Pitch only

##### **2.0 INTERPRETATION**

2.1 The definitions in Part 1 of this Agreement shall apply to Part 3.

##### **3.0 USE OF ALL WEATHER PITCH**

3.1 The MAT grant to the Borough Council the right to use the All Weather Pitch as a sports recreation and leisure resource for use by the public during the Opening Times

3.2 The MAT reserve the right to close the All Weather Pitch in an emergency at any time without notice.

##### **4.0 ADMINISTRATION AND MAINTENANCE**

4.1 The Borough Council agrees with the MAT:

(a) to maintain the All Weather Pitch in accordance with an annual maintenance programme agreed in consultation with the School

(b) to pay the costs of electricity chargeable for the floodlighting on the All Weather Pitch

### **Part 4**

#### **THE ALL WEATHER PITCH AND THE LEISURE CENTRE (THE FACILITIES)**

##### **1.0 GENERAL**

1.1 This part of the Agreement applies to the Facilities

## **2.0 MANAGEMENT AND USE OF THE FACILITIES**

2.1 The Borough Council shall make such arrangements for public recreation during Agreed Time on the facilities as it sees fit and shall be responsible for the management supervision and administration of public use of the Facilities

2.2 The Borough Council shall not permit any activity to take place on the Facilities during the Opening Times which:

(a) is likely to damage the Facilities or any part of them

(b) increase the need for maintenance of the Facilities or any part of them

without having first obtained the written consent of MAT

2.3 The Borough Council in consultation with the MAT shall employ sufficient suitable and responsible staff to ensure the smooth operation of the Facilities during the Opening Times. The Borough Council shall take account of any reasonable representation made by the MAT to the Borough Council relating to the suitability of any potential member of staff or relating to any potential user of the Facilities.

## **4.0 INSURANCE**

4.1 The MAT shall insure the Facilities against loss or damage by fire lightning explosion riots civil commotion malicious damage earthquake storm tempest flood burst overflowing of water tanks pipes apparatus and impact

4.2 The insurance taken out shall be to the full reinstatement value of the Facilities, subject only to an agreed excess

4.3 If damage is caused to the Facilities the MAT shall refer the claim to its insurer and apply any funds received from it towards the cost of repairing such damage

4.4 If damage is not covered by insurance, for example by reason of the cost of repair falling within the insurance excess, the MAT; and the Borough Council shall meet the costs of the repair jointly in the proportions of 40% and 60% respectively except where the MAT and the Borough Council establish beyond doubt that the damage was caused during School Time or the Opening Times in which case the MAT or the Borough Council respectively shall meet the costs of such repair

4.5 The MAT agree to each to take out and maintain public liability insurance to cover any claims that may be made against them in respect of the use of the Facilities

## **5.0 PARKING**

5.1 The MAT grants the Borough Council its agents sub contractors and invitees during Agreed Time only and at such other times as the School may agree:

(a) such rights of way as are necessary for the purposes of this Agreement

(b) subject to the directions and requirements of the MAT the right to park vehicles within the area shown blue for identification purposes only on the Plan

## **6.0 VARIATION IN TIMES OF USE**

- 6.1 The MAT and the Borough Council may agree to permit the other to use the Facilities (or any part of them) during School Time and the Opening Times respectively
- 6.2 Such agreement may include provision for reimbursement and such other matters as the MAT and the Borough Council consider appropriate

## **7.0 INTERFERENCE**

- 7.1 Neither the MAT nor the Borough Council shall cause or permit to be caused any avoidable nuisance interference or inconvenience to the other parties or users of the Facilities or their respective employees invitees or any neighbouring or adjoining property which they constitute a breach of any statutory rule order or regulation
- 7.2 The MAT and the Borough Council agree to use their best endeavours to ensure that the Facilities are kept free of litter during School Time and the Opening Times respectively

## **8.0 COSTS AND INCOME**

- 8.1 For the avoidance of doubt where any part of the Leisure Centre Costs is chargeable in respect of the School Site in its entirety the Borough Council shall meet 21% of such charges (being the percentage proportion which the floor area of the Leisure Centre bears to the floor area of the School as a whole)
- 8.2 Before 1 November in each year of the Term the MAT shall submit estimates of the Leisure Centre Costs for the next financial year to the Borough Council
- 8.3 The estimates shall be agreed between the Primary Parties before any expenditure is increased for the following financial year
- 8.4 The MAT shall submit invoices for the estimated costs to the Borough Council on 15 May 15 August 15 November and 15 February each year
- 8.5 Before 1 May each year the MAT shall calculate the actual costs which have been incurred in the previous financial year and shall issue a reconciliation statement to the Borough Council. The Borough Council (or MAT as the case may be) shall pay its proportion of the costs to the MAT (or to the Borough Council as the case may be) before 1 June in each year
- 8.6 The Primary Parties acknowledge that all income received by the Borough Council in respect of the use of the Facilities during the Opening Times shall belong to the Borough Council

## **APPENDIX 1**

### **The Caretaking Services – The Leisure Centre**

#### **Caretaking**

1. The MAT shall ensure that the Leisure Centre is heated to an adequate level during Agreed Time
2. The MAT shall be responsible for the unlocking of the Leisure Centre (when required) before Agreed Time
3. The Borough Council shall be responsible for locking the Leisure Centre at the end of Agreed Time

#### **APPENDIX 2**

**Not Used.**

#### **APPENDIX 3**

**Not Used.**

**SCHEDULE 12**

**Not Used**

**SCHEDULE 13**

**Not Used**

## SCHEDULE 14

### Maintenance Costs and Operating Costs

|   |
|---|
| Rates   |
| Water Sewage  |
| Gas   |
| Electricity   |
| Buildings Insurance   |
| Miscellaneous <ul style="list-style-type: none"><li>• Caretaking Charges</li><li>• Trade Refuse</li><li>• Domestic Supplies</li><li>• Repairs and Maintenance Charges</li><li>• Other (as agreed between the parties)</li></ul> |