

DATED

SOUTH SOMERSET DISTRICT COUNCIL

AND

HUISH EPISCOPI ACADEMY

AND

ENGLISH SPORTS COUNCIL

SHARED USE AGREEMENT

RELATING TO HUISH EPISCOPI ACADEMY SPORTS CENTRE

Version 12. – 18 January 2013

THIS AGREEMENT is made as a Deed the [] day of [] 2013.

BETWEEN

- 1 SOUTH SOMERSET DISTRICT COUNCIL** of Council Offices, Brympton Way, Yeovil, Somerset BA20 2HT (the “**District Council**”)
- 2 HUISH EPISCOPI ACADEMY** of Wincanton Road, Langport, Somerset TA10 9SS. (Company No. 07341553) (the “**Academy**”); and
- 3 ENGLISH SPORTS COUNCIL** of London WC1 0QS (the “**Sports Council**”).

BACKGROUND

- (A) The District Council has primary responsibility for the provision of sport and recreation facilities in the area of South Somerset for use by and for the benefit of the community. It has an existing agreement with the County Council and the Huish Episcopi Association dated 16th December 1991 relating to the joint use of leisure facilities at the Academy associated with the grant of £250,000 towards the cost of building an extension to the existing sports hall which was varied by a Deed of Variation dated 3rd July 1997 between the District Council, the County Council, the Huish Episcopi Association and Sport England (“the 1991 Agreement”).
- (B) By virtue of the Academies Act 2010, Section 40 and Schedule 13 of the School Standards and Framework Act 1998 (“the 1998 Act”) the Academy has control over its premises subject to the 125 year lease given by the County Council. The obligations under the 1991 Agreement have been novated to the Academy by the County Council with effect from 3rd April 2012 in a letter of novation dated 10th February 2012.
- (C) The District Council, the Academy and the Sports Council have mutually agreed to terminate the 1991 Agreement following the demise of the Huish Episcopi Association, a body established as part of the 1991 Agreement to assist in the provision and management of the Facility. This agreement shall in all respects supersede the 1991 Agreement.

The Academy has established the Company to deliver community leisure services at the Facility. The Academy has entered into an agreement with the Company dated 9th July 2012 which governs the sharing of resources between the Academy and the Company (the “Resources Agreement”). The parties are entering into this Agreement to record the terms agreed hereby between them as to the shared use of the Facility.

IT IS HEREBY AGREED AS FOLLOWS

1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following definitions shall apply:

Academy	means Huish Episcopi Academy;
Academy Use	means use by the Academy as specified in Schedule 2;
Agreed Term	means the period up to 16 th December 2021;
Agreement	means this agreement (including any schedule to it);
Casual Use	means the availability for any individual(s) or group to book the Facility at relatively short notice for use on a pay-as-you-play basis;
Commencement Date	means the date of this Agreement;
Community Users	means the members of the general public in the community using the Facility;
Community Use	means use of the Facility by the Community Users during the time periods this Agreement stipulates that the Facility will be available for use by the community, as specified in Schedule 2;
Company	means the company set up by the Academy to deliver community leisure services at the Facility on behalf of the Academy of which the company number is 7963908;

Confidential Information	means any commercial or technical information in whatever form including, without limitation, business, statistical, financial, marketing and personnel information which is disclosed by one party to the other party and marked as 'Confidential' or if disclosed orally, is identified as confidential at the time of disclosure confirmed in writing within 14 days and marked as "Confidential";
County Council	means Somerset County Council
Facility	means the Original Facilities and the Funded Facilities which are together edged in red on the plan set out in Schedule 1;
Financial Year	means the period of 1 September 2012 to 31 August 2013 and subsequent periods of 12 months ending on 31 August in each year;
Force Majeure Event	means an event beyond the reasonable control of a party including but not limited to: <ul style="list-style-type: none"> a) acts, defaults or omissions of suppliers, or subcontractors; b) strike, lock out or other form of industrial action; c) acts of God; d) outbreak of hostilities, riot, civil disturbances or acts of terrorism; e) fire, explosion or flood; or f) theft and malicious damage; g) compliance with a law or governmental order, regulation or direction, provided that no event shall be treated as a Force Majeure Event if it is attributable to a wilful act or omission or any failure to take reasonable precautions by a party or any failure to take reasonable steps to overcome the event;

Funded Facilities	means that part of the Premises towards which the Grant Award was made and which includes the fitness studio, exercise studio, squash courts and ancillary reception and offices;
Grant Award	the capital grant of £250,000 provided by the District Council accepted by the County Council as part of the 1991 agreement;
Lease	means the Lease of the Facility between the Academy and the County Council;
Notice	includes any notice, demand, consent or other communication;
Original Facilities	means that part of the Premises which include the sports hall, sports hall changing rooms, swimming pool, and multi-use games area (“MUGA”);
Premises	means the land and buildings of the Academy;
Safety Legislation	means the Health and Safety At Work etc Act 1974, and current United Kingdom and European safety legislation (including subordinate legislation and European Community legislation to the extent that it has direct effect in Member States) imposing legal requirements as to the safety of all or any of the activities which form part of the Services and as to the safety of the Facility;
Services	means the community leisure services provided at the Facility;
Students	means the students on the Academy’s roll;
Term Time	means the academic term dates set from time to time by the Academy
Timetable	means the timetable specifying the hours of Community Use and Academy Use during Term Time set out in Schedule 2.

2 INTERPRETATION

In this Agreement, unless the context otherwise requires:

- a) Words in the singular include the plural and vice versa and words in one gender include any other gender
- b) a reference to a statute or statutory provision includes:
 - (i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it;
 - (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and
 - (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it whether such statute or statutory provision comes into force before or after the date of this Agreement;
- c) a reference to:
 - any party includes its successors in title and permitted assigns;
 - (i) clauses and schedules is to clauses and schedules of this Agreement;
 - (ii) references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear, and;
 - (iii) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
- d) The table of contents and headings are for convenience only and shall not affect the interpretation of this Agreement;
- e) If there shall, at any time, be a contradiction between the terms of schedule and a clause, the terms of the schedule shall prevail.

3 DURATION

- 3.1 This Agreement shall come into effect on the Commencement Date and shall remain in effect for the Agreed Term unless terminated earlier in accordance with this Agreement. Upon expiry of the Agreed Term this Agreement shall continue in force from one Financial Year to another until determined by the Academy or the District Council by one year's prior notice to the other parties.

4 AIMS

- 4.1 The parties agree to enter into this Agreement in consideration of the Grant Award and in order to pursue the following aims:
- a) To increase and improve the quality of sporting and physical activity opportunities for Students and other children and young people in curricular and extra-curricular sports activities;
 - b) To provide opportunities for members of the community and sports organisations to participate in sport and physical activity and to develop their skills;
 - c) To recognise the Academy's role as strategic partner of the District Council and the Facility as the focus for future development of leisure provision in the South Somerset area.

5 OBJECTIVES

- 5.1 The Academy shall:
- a) make the Facility available for Community Use for a minimum of 40 hours per week during Term Time in accordance with the Timetable set out in Schedule 2;
 - b) make the Facility available for Community Use at the weekends and during the Academy's holidays;
 - c) use reasonable endeavours to promote and maximise the use of the Facility for the maximum benefit of the residents of South Somerset;
 - d) use reasonable endeavours to provide a balanced programme of use which provides for a wide range of community activities;
 - e) use reasonable endeavours to provide opportunities for:
 - a) beginners;
 - b) people wishing to improve their skills via programmes of coaching,

training and competition; and c) the development of coaches, volunteers and officials;

- f) use reasonable endeavours to provide specific activities aimed at attracting new participants from priority groups identified by the District Council and Sports Council from time to time;
- g) use reasonable endeavours to ensure that the scale of charges, fees, membership rates and concession prices are affordable for all parts of the community to maximise access, involvement and participation;
- h) maintain and repair the Facility in accordance with its obligations under the Lease;
- i) use reasonable endeavours to ensure that the Facility is not closed for public use for more than two weeks during any Financial Year except for essential planned maintenance works.

5.2 The District Council:

- a) agrees that, in recognition of the fact that it has primary responsibility for the provision of sport and recreation facilities in the South Somerset area for use by and for the benefit of the community, it will consider grant applications for funds by the Academy for the maintenance, development and enhancement of the Facility; and
- b) shall take all reasonable steps to work with the Academy for the installation of a synthetic pitch at the Academy but for the avoidance of doubt this shall not be deemed to or require the District Council to provide any funding towards the cost thereof.

6 STRATEGIC MANAGEMENT

6.1 The delivery of the community leisure services and operation of the Facility will be directed by the Company whose directors shall be comprised of three representatives of the Academy, two representatives of the District Council, the Academy's Principal, the Academy's Business Manager and a Community User representative.

6.2 The Academy shall appoint the three representatives of the Academy, the Academy's Principal, the Academy's Business Manager and a Community User representative to each be a director of the Company and shall ensure,

as far as is reasonably possible, that such appointments are maintained during the Agreed Term Provided Always that the appointment of the Community User representative shall be subject to the prior approval of the Company's board (such approval not be unreasonably withheld or delayed).

6.3 The board of the Company shall be responsible to the Academy for:

- a) deciding the services, service standards, programme, timetable, pricing, rules of use, and other operating policies and procedures in accordance with the aims and objectives of this Agreement;
- b) preparing a written business plan, annual budget and annual accounts in relation to the Facility;
- c) monitoring the operation and financial performance of the Facility;
- d) ensuring appropriate insurance is in place for the Facility.

6.4 The Articles of Association for the Company in Schedule 3 save as so excluded or varied by the Parties, shall direct the proceedings of the Company.

7. **FINANCE**

In recognition of the Grant Award made by the District Council through the "1991 Agreement" and in any event, the Academy acknowledges that, except to the extent provided for in Clause 8.3 and Clause 8.4, the District Council has no financial responsibility, liability or obligation in connection with this agreement whatsoever and howsoever arising .

8 **TIMETABLE**

8.1 The Facility shall be made available for Community Use during the Term Time as specified in the Timetable set out in Schedule 2.

8.2 The Academy is entitled to make reasonable requests to the District Council to change the Timetable at any time during an academic year.

8.3 In the event of a local, regional or national civil emergency situation or in the event of an emergency planning exercise, the District Council shall be entitled to request use of all or part of the Facility, and consent to such a request is

not to be unreasonably withheld by the Academy. In the event that the Facility or part of it is used under this clause neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other. The Academy is not entitled to charge the District Council in these circumstances, save that the District Council shall be responsible for all outgoings and expenses relating to the Facility during the period of such access or use.

- 8.4 The District Council shall be entitled to use the Facility for local and national election polling during the academic year and shall give the Academy reasonable notice of the dates required. The Academy is entitled to charge the District Council in these circumstances and such charge shall include all outgoings and expenses relating to the Facility or part thereof during the period of such access or use.

9 MAINTENANCE

The Academy shall keep the Facility and its associated equipment in good and substantial repair and condition in accordance with its obligations under the Lease. In so doing the Academy will undertake a premises condition survey every five years and submit to the Company and the District Council for discussion a rolling five year costed and assigned programme of works on an annual basis.

10 FACILITY ADDITIONS OR ALTERATIONS

Subject to the terms of the Lease, any addition or alteration, application to a third party for grant funding or consent to the terms and condition of funding to the Funded Facilities is subject to the prior written agreement of SSDC such agreement not to be unreasonably withheld or delayed.

11 HEALTH AND SAFETY

Subject to the terms of the Lease the Academy shall take reasonable steps to comply, in the course of this Agreement, with its responsibilities under the Safety Legislation.

12 INSURANCE

The Academy undertakes and agrees to ensure that insurance cover is taken out to cover its liabilities under this Agreement, including Public Liability insurance, for an amount not less than £10 million, for any one occurrence or series of occurrences consequent upon one event or original cause and agrees to produce at the request of the District Council a copy of the insurance policy or policies.

13 **TERMINATION**

This Agreement may be terminated by mutual consent of the parties during the Agreed Term and, thereafter, by either the District Council or the Academy giving one year's prior written notice to the other parties. Upon giving notice to the other after the expiry of the Agreed Term there shall be no financial adjustment between the parties save in circumstances where the Academy gives the said one year's prior written notice (other than where such notice is given on account of any breach of this Agreement by the District Council) the Academy shall (unless otherwise agreed in writing in advance by the District Council) pay to the District Council a sum equivalent to 84% of the then current open market value of the Funded Facilities constructed under the contract referred to in the 1991 Agreement which sum represents the same percentage contribution made by the District Council to the provision of the Funded Facilities.

14 **DISPUTE RESOLUTION**

- 14.1 If a dispute arises between the parties in connection with this Agreement, the parties shall use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level
- 14.2 If a dispute is not resolved within fourteen (14) days of referral under clause 14.1 then either party may refer it to an appropriate nominated officer for each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 14.3 Provided that the parties consent, a dispute not resolved in accordance with clauses 14.1 and 14.2, shall next be referred at the request of any party to a single arbitrator to be agreed by the parties or in default of an agreement to be nominated by the President of the Chartered Institute of Public Finance

and Accountancy in accordance with the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force. The cost of the mediation determined by the arbitrator.

14.4 Nothing in this clause 14 shall preclude any party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

15 **FORCE MAJEURE**

15.1 The parties shall not be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is caused by a Force Majeure Event.

15.2 The party affected by any Force Majeure Event shall immediately give the other parties written notification of the nature and extent of the Force Majeure Event and the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.

16 **CONFIDENTIALITY**

16.1 Except as provided otherwise in this Agreement, the parties shall not disclose to any third party, and shall treat as strictly confidential all Confidential Information received or obtained as a result of entering into or performing this Agreement.

16.2 The parties may disclose Confidential Information to the extent:

- a) it is required to do so by law;
- b) it considers necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
- c) the information has come into the public domain through no fault of the relevant party; or
- d) the party to whom it relates has given its consent in writing.

16.3 The provisions of this clause shall survive the termination of this Agreement howsoever caused.

17 **FREEDOM OF INFORMATION AND DATA PROTECTION**

17.1 The parties agree that they must comply with their duties under the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004 ("the Acts").

17.2 Each party shall assist the other parties to this Agreement in meeting any requests for information made under "the Acts" that are connected to this Agreement or the goods and services provided under the Agreement and any statutory modification or re-enactment thereof.

18 **VARIATION**

Any variations to this Agreement must be agreed by the parties and recorded in writing signed by each of the parties.

19 **WAIVER**

Failure by any party at any time to enforce any one or more of the provisions of this Agreement or to require performance by any party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of this Agreement or any part of it or the right of the parties to enforce any provision in accordance with its terms.

20 **SEVERANCE**

If any provision of this Agreement shall become or shall be found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

21 **NO PARTNERSHIP**

Nothing contained in this Agreement, and no action taken by the parties pursuant to this Agreement, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. No party has, nor may it represent that it has, any authority to act or make any commitments on any other party's behalf.

22 ENTIRE AGREEMENT

This Agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of this Agreement.

23 NOTICES

23.1 All notices under this Agreement shall be in writing and shall be served on the respective party, either by hand, first class post or prepaid recorded delivery to the address of that party appearing at page 3 of this Agreement or such other address as may be notified to the other parties in writing.

23.2 Any notice shall be deemed to have been received by the addressee 2 working days following the date of despatch of the notice by post, or where the notice is delivered by hand, simultaneously with delivery. The deemed service of this sub-clause shall not apply to notices served by post if there is a national or local disruption of postal services which affects the giving of the notice.

23.3 Service may not be effected by email.

24 EXCLUSION OF THIRD PARTY RIGHTS

No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

25 COUNTERPART

25.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

25.2 Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

26 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

27 ASSIGNMENT AND NOVATION

No party may assign, transfer, subcontract or novate any or all of its rights and obligations under this Agreement to any other body without the prior written approval of the other parties.

AS WITNESSED by the signatures of the duly authorised representatives of the parties on the date of this Agreement.

EXECUTED as a DEED by affixing THE COMMON SEAL of SOUTH SOMERSET DISTRICT COUNCIL in the presence of:

.....
Authorised Signatory

SIGNED as a DEED by authorised to sign on behalf of HUISH EPISCOPI ACADEMY in the presence of:

Signature of witness:
Name:
Address:
Occupation:

SIGNED as a DEED by authorised to
sign on behalf of ENGLISH SPORTS
COUNCIL in the presence of:

Signature of witness:

Name:

Address:

Occupation:

SCHEDULE 1

PLAN OF THE FACILITIES

SCHEDULE 2

TIMETABLE OF COMMUNITY USE AND ACADEMY USE

Use of the Facility

- (a) The use of the Facility will be based on priority use being given to the Academy for certain periods. At all other times the Facility shall be available for use by the community and the times of opening and closure of public use shall be determined by the Academy in consultation with the Company. The arrangements for priority use for the facilities at the Sports Centre are set out in sub-paragraphs (b) – (e) below.
- (b) Sports Hall, MUGA, Ancillary Reception and Changing Areas:
- (i) The Academy will have priority use during Term Time. The Academy's requirement for priority use shall be determined termly in advance and any periods which are not required shall be offered to the Company who may make the facilities available to the public under sub-paragraph (a).
 - (ii) The Academy will have priority use at lunch times during Term Time for the purpose of maintaining representative Academy teams and groups.
 - (iii) The Community will have guaranteed usage of the MUGA for up to 11 hours per week between 0900 and 1600 hours determined in advance subject to the Academy's priority bookings. The MUGA will also be available between 1600 and 1730 hours on three evenings per week for use by community clubs and activities to be booked termly in advance.
 - (iv) The Academy will have priority use between 15.20 and 17.15 on five afternoons per week during the winter and spring terms and on two afternoons per week in the summer term. Such use is on the basis that the team and club coaching available will be open to all members of the community within the relevant age group (where appropriate).
- (c) Fitness Suite and Exercise Studio:

- (i) The Academy will have priority use during Term Time of up to ten hours in any one week.
- (ii) The Academy's requirement of priority use shall be determined termly in advance and any periods which are not required shall be offered to the Company who may make the facilities available to the public under subparagraph (a).
- (iii) The fitness suite and exercise studio shall be available for concurrent Academy and Community Use.

(d) Squash Courts

- (i) Academy use of the Squash Courts can be arranged with the Company Sports Centre Manager.

(e) Swimming Pool

- (i) The swimming pool shall be available between April and October during Term Time in accordance with the table set out below:-

PRE-SCHOOL: To be available for public swimming on a casual access basis (hours and format to be at the discretion of the Company).

ACADEMY SESSIONS: Available to the Academy for priority use during the school day.

LUNCHTIMES: Two lunchtimes during Term Time to be available for priority Academy use, remaining three lunchtimes permitting both Academy and Community Use for recreational swimming on a first come first served basis.

AFTER SCHOOL: Access to be open for full Community Use. 16.00 to 17.30 to be used for swimming, lifesaving and swimming lessons on priority basis at the discretion of the Company.

Evening sessions will involve a mix of activities to be determined by the Company to reflect the balance of needs of the community.

- (ii) At weekends and during the Academy's holidays the swimming pool shall be available to the public as determined by the Company under sub-paragraph (a).

- (f) Notwithstanding the foregoing provisions of this paragraph the Academy shall have the following further use of the Facility:-
 - (i) The Academy will have priority use of the Sports Centre for five evening functions in each academic year such use to be determined termly in advance.

 - (ii) The parties acknowledge the requirement for the Academy to use the gymnasium and sports hall for examination purposes. It is agreed that such use must have priority and any use of the Facility during such use must be programmed to ensure there is no disturbance to examination candidates.

SCHEDULE 3

HUIISH LEISURE LIMITED – ARTICLES OF ASSOCIATION