

Date: 12 November 2015

- (1) **The English Sports Council**
- (2) **Right Directions Management Limited**

Contract for Services – SE644



This Contract is made this 12th day of November 2015.

BETWEEN:

- (1) **THE ENGLISH SPORTS COUNCIL** of First Floor, 21 Bloomsbury Street, London WC1B 3HF with registered company number RC000766 ("**Sport England**"); and
- (2) **RIGHT DIRECTIONS MANAGEMENT LIMITED** of The Stables, Unit 2, Whitehouse Farm Business Centre, Gaddesden Row, Hemel Hempstead, Hertfordshire HP2 6HG with registered company number 5043765 ("**Supplier**").

WHEREAS:

- (A) The Supplier is engaged in the business of providing specialist support in both Quality Management and Health and Safety;
- (B) Sport England has a requirement for three key deliverables:
 - 1) To manage and extend the penetration of the Quest Scheme.
 - 2) To manage and extend the penetration of the National Benchmarking Service.
 - 3) Implementation of the recommendations made by the Quest Report on the future development of Quest.
- (C) In reliance upon the Supplier's skill knowledge and experience, Sport England wishes to engage the Supplier to provide the following:
 - 1) To retain and extend the current penetration of Quest (both Facility and Sports Development).
 - 2) To continuously improve the management of the Quest Scheme
 - 3) To increase the profile of Quest with the customer through improved marketing and promotion.
 - 4) To implement the recommendations made by the Quest Review.
 - 5) To retain and extend the current use of the National Benchmarking Service.
 - 6) To continuously improve the management of the National Benchmarking Service
 - 7) To increase the profile of the National Benchmarking Service through improved marketing and promotion.("Services"). The Supplier has agreed to provide the Services upon the terms and conditions of the Contract.

IT IS AGREED as follows:

1 Formation Of Contract

- 1.1 This Contract comprises:
 - 1.1.1 this form of agreement, set out in pages 1 to 3 inclusive (the "**Special Conditions**");
 - 1.1.2 the Terms and Conditions, set out in Schedule 1 ("**Conditions**");
 - 1.1.3 Sport England's Invitation to Tender, set out in Schedule 2;
 - 1.1.4 the Supplier's Tender Response, set out in Schedule 3;
 - 1.1.5 the Schedule of Services, set out in Schedule 4; and
 - 1.1.6 the Schedule of Payment, set out in Schedule 5.
- 1.2 If there is conflict between any of the Schedules and the Special Conditions, the Special Conditions will take precedence over the Schedules. Where there is a conflict between Schedule 3 (*Supplier's Tender Response*) and Schedule 1 (*Conditions*), Schedule 1 will take precedence over Schedule 3.

2 Definitions And Interpretation

- 2.1 Words and expressions used in this Contract shall, save as otherwise defined or as the context may require have the same meanings as appear in Schedule 1(*Conditions*).
- 2.2 The Contract shall be interpreted in the manner set out in Conditions 1.2 to 1.6 of Schedule 1(*Conditions*).

3 Services and Deliverables

- 3.1 The Supplier agrees to provide the Services and supply the Deliverables, as described in Schedule 4 (*Schedule of Services*), in accordance with Schedule 3 (*Supplier's Tender Response*) and the terms of this Contract.
- 3.2 Unless otherwise agreed, the Services shall be performed at Sport England's offices, at the address identified above (the "**Site**").

4 Contract Period

- 4.1 The Contract shall commence on 1 November 2015 and, subject to early termination in accordance with this Contract, remains in force up to and including 31 October 2018 ("**Term**"). To the extent that any of the Services have already been performed by the Supplier before the Term, such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of this Contract.
- 4.2 Sport England may extend the Term of this Contract by giving written notice to the Supplier at least two (2) months prior to expiry of this Contract. If Sport England exercises this option, the extended Contract shall be considered to include this option provision. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) years.

5 Contract Price and Payment

- 5.1 In consideration of the provision of the Services by the Supplier, Sport England shall pay the charges as set out in Schedule 5 (*Fee Arrangements*) in accordance with the Conditions and the terms of Schedule 5.

6 Reviews

- 6.1 Sport England and the Supplier shall hold review meetings on a quarterly basis throughout the Term (or as otherwise agreed in writing between the parties), the first such review to be held on a date to be agreed by the parties.

6.2 Sport England shall notify the Supplier in advance of each review meeting of any reports or other documents which the Supplier is required to provide prior to the review meeting.

7 Contract Management

7.1 Sport England and the Supplier shall each appoint a Contract Manager. The Contract Manager for each party shall be responsible for the overall relationship and performance of the respective contractual obligations of their represented party to this Contract.

7.2 Sport England may change its Contract Manager at any time on providing notice to the Supplier of such change. The Supplier shall not change its Contract Manager without the prior written approval of Sport England, such approval not to be unreasonably withheld or delayed.

7.3 The Contract Manager for Sport England shall be Andy Couves, or such individual as is notified to the Supplier in accordance with this Clause 7. The Contract Manager for the Supplier shall be Caroline Constantine or such other individual as is notified to Sport England in accordance with Clause 7.

Execution

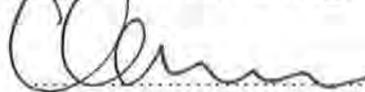
The parties hereto have caused this Contract to be executed as of the date first written above.

Signed for and on behalf of
The English Sports Council



Signature

Signed for and on behalf of
Right Directions Management Limited



Signature

Schedule 1
(Sport England Terms and Conditions)

1. Definitions and Interpretation

1.1 In this Contract the following terms shall have the following meanings:

"Anti-Bribery Requirements" has the meaning given to it in Clause 23.1.1;

"Authorised Service Recipient" means any employee, contractor, agent or representative of Sport England as notified to the Supplier;

"Change Authorisation Note" has the meaning given to it in Clause 24.6;

"Change of Control" means a change in the identity of the person who has Control;

"Change Request" has the meaning given to it in Clause 24.1;

"Claim" means any liabilities, regulatory fines, losses, suits, claims, damages, costs and expenses including any legal fees;

"Confidential Information" means:

- (a) information, including all Personal Data, which (however it is conveyed) is provided by one party (the "**disclosing party**") to the other (the "**receiving party**") pursuant to or in anticipation of this Contract that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the disclosing party or:
 - (i) where the disclosing party is the Supplier, any other entity which it directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with; or
 - (ii) where Sport England is the disclosing party, any government department, non-departmental public body or assembly sponsored public body, non-ministerial department or executive agency with which Sport England or the Supplier interacts in connection with this Contract;
- (b) other information provided by the disclosing party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the receiving party's attention or into the receiving party's possession in connection with this Contract;
- (c) discussions, negotiations, and correspondence between a party or any of its directors, officers, employees, consultants or professional advisers and the other party or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) information derived from any of the above;

"Contract" means the Order and the Supplier's acceptance of the Order;

"Contract Price" means the price payable by Sport England to the Supplier as specified in the Order;

"Control" means the right to control, directly or indirectly, the activities of a person, whether through ownership or the ability to control the voting powers of shares, the ability to control the board or management of such person or otherwise;

"Custom Materials" means the tailor-made Deliverables (including training documentation and reference manuals, training materials, and other materials in written or electronic form, and discoveries, designs, processes and other work) made or created by the Supplier and/or any member of the Supplier's Staff, during the course of or in connection with the provision of the Services;

"Data Breach" means any unauthorised and unlawful processing of, accidental loss of, alteration, unauthorized disclosure or access, destruction of or damage to Personal Data;

"Data Processor" shall have the meaning given in the Data Protection Act 1998;

"Data Controller" shall have the meaning given in the Data Protection Act 1998;

"Deliverables" means the documents, products and materials developed or provided by the Supplier or its agents, sub-contractors and employees in relation to the Services;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"Equality Act" means the Equality Act 2010;

"FOIA" means the Freedom of Information Act 2000;

"Insolvency Event" means where a person ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or undergoes any similar or equivalent process in any jurisdiction;

"Intellectual Property Rights" or **"IPR"** means copyright, patents, trade marks, service marks, design rights, topography rights, database rights, moral rights, rights of confidence, broadcast rights and trades or business names whether registrable or otherwise, (including applications for and the right to apply for registration of any such rights), and any similar rights in any country whether currently existing or created in the future, in each case for their full term, together with any renewals or extensions;

"Non-Custom Materials" means the pre-existing, independently developed, or third party goods and services (including pre-existing, independently developed, or third party prepared courses, training documentation and reference manuals, training materials and other materials in written or electronic form) provided to Sport England by the Supplier during the course of or in connection with the provision of the Services;

"Order" or **"Purchase Order"** means Sport England's written instruction to buy the Services incorporating these Terms and Conditions and any other written specification

detailing the Supplier, the Services, the Contract Price, and where appropriate any Special Conditions;

"Personal Data" shall have the meaning given in the Data Protection Act 1998;

"Process" shall have the meaning given in the Data Protection Act 1998 and "Processed" and "Processing" shall be construed accordingly;

"Requests for Information" a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

"Safety Requirements" means health, safety, fire and environmental requirements (whether legislative or otherwise), codes of practice, guidance and policy;

"Services" means the services to be provided by the Supplier under the Contract as set out in the following Schedules:

- (a) Schedule 2 (*Sport England's Invitation to Tender*);
- (b) Schedule 3 (*Supplier's Tender Response*); and
- (c) Schedule 4 (*Schedule of Services*);

"Special Conditions" means any amendments or additional conditions specified in the Order;

"Sport England" means the English Sports Council of 1st Floor, 21 Bloomsbury Street, London, WC1B 3HF;

"Sport England Background IPR" means IPR which is in existence prior to the effective date of this Contract and either owned by or licensed to Sport England;

"Supplier" means the person, firm or company identified as such in the Order;

"Supplier's Staff" has the meaning given to it in Clause 5.1; and

"VAT" means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In this Contract, unless the context otherwise requires or the contrary intention appears:

1.2.1 headings in this Contract shall not affect their interpretation;

1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.3 a reference to writing or written includes faxes but not e-mail;

1.2.4 any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done;

1.2.5 references to Clauses and Schedules are to the clauses of these Terms and Conditions and to schedules of the Contract;

- 1.2.6 the singular includes the plural and vice versa, and reference to any gender includes the other genders;
 - 1.2.7 references to this Contract or any other agreement or document are to this Contract or such other agreement or document as it may be validly varied, amended, supplemented, restated, renewed, novated or replaced from time to time; and
 - 1.2.8 references to a party to this Contract include a reference to its successors and permitted assigns under this Contract.
- 1.3 If there is any conflict between the Clauses, the Order and the Schedules and/or any annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 the Special Conditions;
 - 1.3.2 the Clauses of these Terms and Conditions;
 - 1.3.3 the Schedules (excluding Schedule 3 (*Supplier's Tender Response*) and Schedule 4 (*Schedule of Services*));
 - 1.3.4 Schedule 4 (*Schedule of Services*); and
 - 1.3.5 Schedule 3 (*Supplier's Tender Response*).

2. Application of these Terms and Conditions

- 2.1 Subject to any variation under Clause 24, the terms of the Order shall prevail at all times over all other terms and conditions which the Supplier may purport to apply and to the extent any obligations hereunder have already been performed by either party, then such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of the terms of the Order.
- 2.2 Each Order shall be deemed to be an offer by Sport England to buy the Services subject to these Terms and Conditions and no Order shall be accepted until the Supplier either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order in whole or in part, accepts the offer. The Supplier undertakes to deliver the Services in accordance with the Contract. The Supplier shall notify Sport England immediately if it becomes aware of any likely delay in providing the Services.

3. Services

- 3.1 The Supplier shall provide the Services and deliver the Deliverables to Sport England or to any Authorised Service Recipient in accordance with the Order.
- 3.2 The Supplier shall meet any performance dates specified for the Services.
- 3.3 The Supplier warrants and represents that:
 - 3.3.1 it has the experience, qualifications, staff and capability to and will perform the Services with reasonable care and skill to Sport England's satisfaction in accordance with best commercial practices and professional standards and these Terms and Conditions;

- 3.3.2 it has the power to enter into and perform its obligations under the Contract, and its obligations under the Contract constitute its legal, valid and binding obligations enforceable in accordance with its terms;
 - 3.3.3 it has, will retain and will keep in force all titles, permits, licences, and certificates necessary for it to perform its obligations and duties under the Contract and shall comply with all applicable laws, rules and regulations relating to the Services including Sport England internal regulations and procedures; and
 - 3.3.4 Sport England's receipt, use or possession of the Services or Deliverables or any part of the same in accordance with the terms of the Contract shall not infringe any IPR of any third party.
- 3.4 The Supplier warrants that:
- 3.4.1 the Services will conform with all descriptions and specifications provided to Sport England by the Supplier;
 - 3.4.2 the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force; and
 - 3.4.3 it has, and will continue to have, full legal authority to process the Personal Data and that it will only process the Personal Data strictly in accordance with the terms of this Contract and for the purposes of performing its obligations and exercising its rights under this Contract.
- 3.5 The Supplier warrants that the Deliverables:
- 3.5.1 shall be Euro Compliant. "Euro Compliant" means that any software, hardware or firmware forming part of the Deliverables will be capable of:
 - (a) performing all functions for more than one currency;
 - (b) complying with all legal requirements now or hereafter (at the time of their becoming law) applicable to the Euro including, but without limitation, the rules on conversion and rounding set out in EC Regulation number 1103/97; and
 - (c) displaying and printing and will (at the time of the enactment of law requiring it to be the case) incorporate in all relevant screen layouts all symbols and codes adopted by any government or any other European Union body or other regulatory authority in relation to the Euro.
 - 3.5.2 shall not contain any computer code:
 - (a) designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetically disruptions or distortions, the operation of the Services, or any of Sport England's other associated software, firmware, hardware, computer system or network (sometimes referred to as "viruses" or "worms");
 - (b) that would disable the Services or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral (sometimes referred to as "time bombs", "time locks", or "drop dead" devices); or

- (c) that would permit the Supplier or others to access the Services to cause such disablement or impairment (sometimes referred to as “traps”, “access codes” or “trap door” devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations; and

3.5.3 shall perform in accordance with any relevant specification and/or documentation.

4. Fees and Payment

- 4.1 Sport England shall pay to the Supplier the Contract Price exclusive of VAT (which if applicable shall be applied at the appropriate rate) subject to and in accordance with Clauses 4.2, 4.3, 4.4 and 4.5 below.
- 4.2 The Supplier shall invoice Sport England in accordance with, and at the regularity specified in, Schedule 5 (*Fee Arrangements*) in respect of the Contract Price. The Supplier shall submit invoices to the address specified in the Order and each invoice shall quote the relevant Order number.
- 4.3 Subject to Clause 4.4, Sport England shall pay such sums as are due by 30 days from receipt of the Supplier's invoice, provided that the invoice quotes a valid Purchase Order number and is sent to the address advised on such Purchase Order.
- 4.4 Sport England reserves the right to withhold payment to the extent that the Services have not been provided in accordance with the Contract and shall notify the Supplier accordingly giving reasons for such withholding. Sport England shall only be entitled to withhold that amount indicated as in dispute.
- 4.5 Without prejudice to any other right or remedy, Sport England reserves the right to set off any amount owing at any time from the Supplier to Sport England against any amount payable by Sport England to the Supplier under this contract or any other contract.
- 4.6 Subject to Clause 4.4, if Sport England fails to make an undisputed payment in accordance with Clause 4.2 the Supplier shall be entitled to charge interest from the date specified for payment upon the unpaid amount of the principal sum at the rate of 2 per cent per annum above the Bank of England base rate in force at the time of such failure to make payment until payment of the principal sum is made in full provided that:
 - 4.6.1 the Supplier has given written notice to Sport England that the amount has not been paid, specifying:
 - (a) the total amount of interest owed at the date of the notice, and, if the principal sum has not been paid, the daily rate at which the interest will continue to accrue;
 - (b) the invoice or invoices to which the interest relates; and
 - (c) the addressee to whom and address to which payment should be made; and
 - 4.6.2 in the event that any sum is agreed between the parties or found to be due to the Supplier following the withholding of payment referred to in Clause 4.4 above, Sport England will pay interest on that sum in accordance with Clause 4.6 above from the date on which Sport England should have paid that sum.

- 4.7 Other than where specifically agreed in the Contract, Sport England shall not be obliged to pay any time or materials charges or expenses to the Supplier in addition to the Contract Price in respect of costs which the Supplier may have incurred in the performance of the Contract. Where the Contract does provide that Sport England shall/may reimburse the Supplier Sport England shall only make such payment to the Supplier if the following conditions are met:
- 4.7.1 the expenses have been reasonably, properly and necessarily incurred by the Supplier in the performance of the Contract;
 - 4.7.2 the expenses do not exceed those which a Sport England employee of comparable qualifications and position would have been entitled to incur under applicable Sport England staff expense policy guidelines; and
 - 4.7.3 the Supplier has supplied Sport England with proper supporting evidence.
- 4.8 Where the Supplier is VAT registered the Supplier shall recover VAT on any expenditure incurred in the normal course of its business and shall specify only the net amount of such expenditure in the invoice to Sport England prior to adding VAT thereto at the appropriate rate.

5. The Supplier's Staff

- 5.1 The Supplier warrants that it is an independent contractor and that all the personnel it engages to perform the Services shall be deemed to be the Supplier's employees, agents or sub-contractors (or the employees or agents of any sub-contractor as the case may be) (the "**Supplier's Staff**") and neither the Supplier nor any of the Supplier's Staff shall be employees, agents or partners of Sport England.
- 5.2 The Supplier shall be solely responsible for all tax liabilities, National Insurance and other contributions or deductions which may be due in respect of himself/herself/itself or the Supplier's Staff and all and any claims which may be made by any member of the Supplier's Staff and the Supplier shall indemnify and keep Sport England indemnified against all and any such liabilities and/or other amounts (including any penalties, costs, expenses and interest) which may be assessed on Sport England by reason of any payment made or Services rendered under or in connection with the Contract.
- 5.3 The Supplier shall ensure that the Supplier's Staff comply with such direction, policies, confidentiality, security, health and safety procedures as are reasonably required by Sport England in relation to the Services provided always that such requirements shall not reduce or amend the Supplier's obligations to supervise, manage, direct and control the Supplier's Staff in accordance with the terms of these Terms and Conditions.
- 5.4 Sport England reserves the right (in addition to its specific rights of exclusion) at any time in its absolute discretion to exclude or remove any of the Supplier's Staff from any Sport England site. In the event of any such removal or exclusion, the Supplier will co-operate with Sport England at its own cost in removing such person and will replace or arrange to replace such person without delay upon the request of, and at no additional cost to, Sport England.

6. Intellectual Property Rights

- 6.1 Any IPR and other rights which may exist in any Custom Material shall automatically vest in Sport England upon creation. The Supplier hereby assigns to Sport England as beneficial owner with full title guarantee free from all encumbrances or (as appropriate)

will procure the assignment by any of its employees, agents and sub-contractors, all IPR and other rights in the Custom Material.

- 6.2 The Supplier shall, at its own cost, do everything necessary to assist Sport England in enforcing or protecting any such IPR or other rights in the Custom Material referred to in Clause 6.1, including executing such documents as may be necessary to substantiate, document and protect the rights of Sport England in respect of such IPR.
- 6.3 Sport England grants to the Supplier a fully paid-up, non-exclusive, non-transferable licence during the term of the Contract to copy and modify the Custom Material only to the extent necessary and for the purpose of:
 - 6.3.1 providing the Services to Sport England; and
 - 6.3.2 performing the Supplier's other obligations under this Contract,
and for no other purpose whatsoever.
- 6.4 The Supplier hereby grants to Sport England and its officers, directors, employees, agents and sub-contractors a world-wide, non-exclusive, perpetual, royalty free and irrevocable license to use, reproduce, display, perform, prepare derivative works and distribute copies of Non-Custom Materials for its internal purposes and in the ordinary course of its business in so far as such Non-Custom Materials are incorporated into any Custom Materials or are necessary for the use of the Custom Materials. The Supplier and its licensors shall retain all right, title and interest in IPR in any Non-Custom Materials.
- 6.5 Sport England and its licensors shall retain all right, title and interest in any Sport England Background IPR. Neither the Supplier nor any member of the Supplier's Staff will make any use of Sport England Background IPR except as necessary for the proper provision of the Services and with the prior written consent of Sport England.

7. Intellectual Property Right Indemnity

- 7.1 The Supplier shall defend, hold harmless and indemnify Sport England, its respective officers, directors, employees agents and sub-contractors against all Claims resulting from, arising out of, or in any way connected with its use or possession of the Services, Deliverables or Custom Materials or any part of the same provided by the Supplier in accordance with the Contract where such possession or use infringes or is alleged to infringe any IPR or contractual rights of any third party or breaches or is alleged to breach any statute or statutory obligation or constitutes or is alleged to constitute a tort actionable by a third party.
- 7.2 In the event that Sport England becomes actually aware of a Claim of the type described in 7.1, the parties shall act in accordance with the provisions of Clause 11.2.
- 7.3 In the event that Sport England's use of the Services, Custom Materials or the Deliverables or any part of the Services, Custom Materials or the Deliverables in accordance with the Contract infringes the IPR or contractual rights of a third party or breaches any statute or statutory obligation or constitutes a tort upon a third party, the Supplier shall, at its own expense:
 - 7.3.1 procure the right for Sport England to continue using the Services, Custom Materials or Deliverables or any part of the same;
 - 7.3.2 make or procure on Sport England's behalf such alterations, modifications, adjustments or substitutions to all or any part or parts of Services, Custom

Materials or Deliverables that the same become non-infringing without incurring a diminution in performance or function; or

7.3.3 substitute a non-infringing version of the infringing Services, Custom Materials or Deliverables or the relevant infringing part of the same with versions of equal or better performance as determined by Sport England in its sole discretion.

7.4 Notwithstanding other rights and remedies available to Sport England, in the event that the Supplier is unable to provide any of the alternatives set out in Clause 7.3 within a reasonable time, Sport England may, at its sole option, terminate the Contract immediately whereby the Supplier shall promptly refund to Sport England any prepaid charges or fees relating to the same.

8. Security and Access

8.1 The Supplier shall obtain from Sport England identity cards or entry permits and shall ensure that the Supplier's Staff display these whilst on Sport England premises. The Supplier shall return these cards and/or entry permits to Sport England upon termination or expiry of the Contract.

8.2 Sport England may request and shall be supplied with identification of the Supplier's Staff and may conduct random security checks, including checking the possessions and vehicle(s) of the Supplier and the Supplier's Staff, whilst on Sport England premises.

8.3 Sport England shall at its discretion give to the Supplier by prior arrangement such access to Sport England premises and such general Sport England facilities (for example, catering and sanitary) at Sport England premises as the Supplier may reasonably require to fulfil its obligations under the Contract.

8.4 The Supplier shall upon the request of Sport England grant Sport England such access to the Supplier's premises or such other premises as Sport England may reasonably require for inspection of any Deliverables and/or Sport England equipment and materials provided under the Contract or for any other reason connected with the performance of the Contract.

9. Health and Safety

9.1 The Supplier shall comply with all current relevant Safety Requirements including but not limited to those issued by the Health and Safety Executive, the Home Office and those issued by Sport England and notified in writing to the Supplier.

9.2 Sport England and the Supplier may agree in writing Safety Requirements in addition to or different from those specified in Clause 9.1.

9.3 Without prejudice to its obligations under Clause 9.1 above, the Supplier shall:

9.3.1 upon the request of Sport England, submit and fully co-operate with any safety vetting process required by Sport England and provide a written statement of the Supplier's own Safety Requirements; and

9.3.2 assess reasonably foreseeable risks to health and safety (including fire) that may affect Sport England or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to Sport England upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with Sport England accordingly.

- 9.4 Sport England shall notify the Supplier of risks to health and safety which are reasonably foreseeable to Sport England and which may affect the Supplier or Sport England arising out of or in any way connected with the activities of Sport England in connection with the Contract, and the Supplier shall have due regard to these.

10. Termination

- 10.1 Sport England may terminate the Contract for any reason by providing 15 days' prior written notice to the Supplier.
- 10.2 Sport England shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract immediately if:
- 10.2.1 the Supplier commits a material breach of any of the provisions of the Contract and:
- (a) the breach is capable of remedy and the Supplier fails to remedy the breach within 30 days (or such shorter period as may be reasonable) of receipt of a written notice specifying the breach and requiring its remedy (in which case Sport England reserves the right to remedy the breach and recover the costs of such breach from the Supplier and terminate the Contract in accordance with this Clause 10); or
 - (b) the breach is not capable of remedy;
- 10.2.2 the Supplier undergoes a Change of Control; or
- 10.2.3 the Supplier undergoes an Insolvency Event.
- 10.3 Either party shall have the right at any time by giving notice in writing to the other party to terminate the Contract immediately if the continued performance by one or both of the parties' obligations under this Contract is prevented by reason of any acts, events, omissions or accidents beyond the reasonable control of Sport England or the Supplier, including strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 10.4 Sport England may only terminate the Contract for a Change of Control pursuant to Clause 10.2.2 within the 6 months following the Change of Control.
- 10.5 The Supplier may terminate this Contract only if Sport England is in material breach of its obligation to pay undisputed fees which are due to the Supplier from Sport England under the Contract following its receipt of a valid invoice in accordance with Clause 4 by giving Sport England at least 90 days' written notice specifying the breach and requiring its remedy.
- 10.6 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Sport England accrued prior to termination.
- 10.7 The following Clauses of this Contract, together with all other provisions of this Contract which are intended to have effect following any expiry or termination of this Contract, shall survive expiry or termination of this Contract to the extent permissible by law: Clause 1 (Definitions and Interpretation), Clause 5.2 (Supplier's Staff), Clause 6 (Intellectual Property Rights), Clause 7 (Intellectual Property Right Indemnity), Clause 10

(Termination), Clause 11 (Indemnities), Clause 12 (Liability), Clause 13 (Insurance), Clause 15 (Confidential Information), and Clause 26 (General).

- 10.8 Upon termination or expiry of the Contract, the Supplier shall promptly deliver up to Sport England at the Supplier's own risk and expense the whole or any part of any Deliverables owned by Sport England, and any Sport England equipment and/or materials, identity cards or entry permits provided or used under the Contract. Sport England shall be deemed to have irrevocably all powers and authority to enter the Supplier's premises or any other premises to recover and remove such items and recover any costs incurred by Sport England in doing so from the Supplier.

11. Indemnities

- 11.1 The Supplier shall defend, hold harmless and indemnify Sport England, its officers, directors, employees, agents and sub-contractors against all Claims resulting from, arising out of, or connected with:
- 11.1.1 any breach by the Supplier of its obligations under Clauses 3.4.2, 14 and 15;
 - 11.1.2 any breach by the Supplier of the warranty in Clause 21.1.2; and
 - 11.1.3 the Supplier's, or any of the Supplier's Staff or any sub-contractor's breach of the Bribery Act 2010.
- 11.2 Sport England shall give notice in writing to the Supplier of any Claims as soon as reasonably practicable after becoming actually aware of the same and the Supplier shall be given control of such Claim. In the event that the Supplier fails to appoint legal counsel within 10 days after Sport England has notified the Supplier of any such claim, or the legal counsel appointed by the Supplier is in Sport England's reasonable judgement not suitably qualified to represent Sport England, Sport England shall have the right to select and appoint alternative legal counsel and the reasonable cost and expense of the same shall be paid by the Supplier.

12. Liability

- 12.1 Neither party limits or excludes its liability in respect of:
- 12.1.1 any death or personal injury caused by its negligence;
 - 12.1.2 any fraud or fraudulent misrepresentation; or
 - 12.1.3 any statutory or other liability which cannot be excluded under applicable law.
- 12.2 Subject to Clauses 12.1, 12.4 and 12.5, the Supplier's total liability arising under or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to the greater of:
- 12.2.1 £1,000,000; and
 - 12.2.2 150% of the Contract Price.
- 12.3 Subject to Clauses 12.1, 12.4 and 12.5, Sport England's total liability arising under or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to 100% of the Contract Price.

12.4 Neither party shall be liable to the other for any indirect or consequential loss arising out of or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence).

12.5 Neither party shall be liable to the other for:

12.5.1 any loss of anticipated savings (whether direct or indirect);

12.5.2 any account of profits (whether a direct or indirect loss); or

12.5.3 any loss of profit or loss of revenue (whether direct or indirect),

arising out of or in connection with this Contract or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence).

12.6 The parties agree that each of Clauses 12.1, 12.2, 12.3, 12.4 and 12.5 are separate and independent terms of this Contract.

13. Insurance

13.1 The Supplier shall arrange and maintain with a reputable insurer adequate public liability insurance, professional indemnity insurance and employers' liability insurance which shall each be no less than £5,000,000 and with scope of cover appropriate to the Services provided under the Contract in respect of any one claim or incident, for a period of 6 years from the date of this Contract.

13.2 The Supplier shall produce to Sport England on demand copies of the insurance policies maintained in accordance with the terms of this Contract, and receipts for premiums required to be paid in relation to such policies.

13.3 Where the Supplier engages a sub-contractor, the Supplier shall either ensure that the insurance requirements as specified in Clause 13.1 extend to cover the legal liabilities of the sub-contractor or that the sub-contractor holds its own insurance of the nature and extent set described in Clause 13.1.

13.4 The Supplier shall be responsible for insuring against loss, damage and liabilities to third parties and anyone carried in or on any equipment including without limitation motor vehicles or mobile plant provided by the Supplier to perform the Contract.

14. Data Protection

14.1 The Supplier shall and shall ensure that all of its officers, employees, agents and sub-contractors comply and continue to comply in all respects with all current data protection legislation, including the Data Protection Act 1998

14.2 If in the reasonable opinion of Sport England, as a result of entering into the Contract, the Supplier becomes a Data Processor and Sport England a Data Controller as defined in the Data Protection Act 1998, then the Supplier shall:

14.2.1 process Personal Data in accordance with the eight Data Protection Principles and, in particular, in order to comply with the Seventh Data Protection Principle, shall, and shall procure that its sub-contractors and any other person within the control of the Supplier, shall:

(a) process Personal Data only in accordance with lawful instructions from Sport England and will not (i) assume any responsibility for determining the

purposes for which and the manner in which the Personal Data is processed or (ii) process the Personal Data for its own purposes;

- (b) at all times: (i) process the Personal Data only for the purpose of providing the Services and in accordance with Sport England's lawful instructions; and (ii) not divulge the whole or any part of the Personal Data to any person, except to the extent necessary for the proper performance of this Contract or otherwise in accordance with Sport England's lawful instructions;
- (c) take reasonable steps to ensure the reliability of any employees who have access to Personal Data;
- (d) take and have in place such technical and organisational security measures against Data Breaches as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, alteration, disclosure, access destruction or damage and the nature of the data to be protected;
- (e) provide an adequate level of protection for Personal Data that it processes on behalf of Sport England in accordance with the requirements of the Data Protection Act 1998. The Supplier will not transfer any Personal Data outside of the European Economic Area unless and until it has taken all such measures and done all such things as Sport England considers necessary to ensure an adequate level of protection for the Personal Data that it will transfer (which may include, without limitation, entering into a data transfer agreement with Sport England on the basis of model contract clauses adopted by the European Commission);
- (f) provide all assistance reasonably required by Sport England to enable Sport England to respond to, comply with or otherwise resolve any request, question or complaint received by Sport England from (i) any living individual whose Personal Data is processed by the Supplier on behalf of Sport England or (ii) any applicable data protection authority;
- (g) immediately notify Sport England in the event of a Data Breach and do all such acts and things as Sport England considers necessary in order to remedy or mitigate the effects of the Data Breach and will continuously update Sport England of developments relating to the Data Breach. In the event that any Personal Data is lost, damaged or destroyed as a consequence of a Data Breach, the Supplier shall promptly restore such Personal Data to the last available backup; and
- (h) grant to Sport England such access as is reasonably necessary to enable Sport England to verify that the Supplier is performing its obligations under this Clause 14; and

14.2.2 only sub-contract processing of Personal Data under this Contract to a third party provided that: (i) the Supplier obtains the prior written consent of Sport England to any such sub-contracting; (ii) the Supplier flows down its obligations under this Clause 14 to protect the Personal Data in full to any sub-contractor it appoints, such that the data processing terms of the sub-contract are no less onerous than the data processing terms set out in this Clause 14; and (iii) the Supplier will remain fully liable to Sport England for the acts, errors and omissions of any sub-contractor it appoints to process the Personal Data.

14.2.3 where applicable, comply with the provisions of the Privacy and Electronic Communications Regulations (EC Directive) (Amendment) Regulations 2011 regarding unsolicited direct marketing.

14.3 If the Deliverables contain Personal Data governed by the Data Protection Act 1998 then the Supplier warrants that such Personal Data was obtained by the Supplier and is supplied to Sport England in compliance with the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations (EC Directive) (Amendment) Regulations 2011.

14.4 Upon termination of this Contract for whatever cause, the Supplier shall return to Sport England upon Sport England's request or destroy upon Sport England's request any copy of the Personal Data in hard copy and/or electronic form.

15. Confidential Information

15.1 Subject to Clause 15.2, each party shall treat all Confidential Information as strictly confidential and shall not disclose Confidential Information to any person.

15.2 A party may disclose Confidential Information if and to the extent:

15.2.1 subject to Clause 16, it is required to be disclosed in accordance with the FOIA;

15.2.2 it is required by law or order of the courts or by any securities exchange or regulatory or governmental body to which such party is subject, wherever situated (whether or not the requirement for information has the force of law);

15.2.3 it is disclosed on a necessary basis to the insurers, professional advisers, auditors and bankers of such party;

15.2.4 the Confidential Information has come into the public domain other than by a breach of any obligation of confidentiality; or

15.2.5 with the prior written approval of the other party.

15.3 The restrictions contained in this Clause 15 shall continue to apply after the termination or expiry of this Contract (however arising).

16. Freedom of Information

16.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information.

16.2 The Supplier acknowledges that Sport England is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with Sport England to enable Sport England to comply with its information disclosure obligations.

16.3 The Supplier shall and shall procure that any of its sub-contractors involved in the provision of the Services shall:

16.3.1 transfer to Sport England all Requests for Information that it receives as soon as practicable and in any event within 2 working days of receiving a Request for Information;

16.3.2 provide Sport England with a copy of all information in its possession or power, in the form that Sport England requires within 5 working days (or such other period as Sport England may specify) of Sport England's request; and

16.3.3 provide all necessary assistance as reasonably requested by Sport England to enable Sport England to respond to the Request for Information within the time for compliance in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

16.4 Where the Supplier considers that any information it has provided to Sport England is exempt from disclosure under the FOIA, it must tell Sport England and refer to the relevant exemption and give reasons why it is so exempt.

16.5 Notwithstanding Clause 16.4, Sport England shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.

16.6 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for Sport England to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the contract, to the general public.

16.7 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by Sport England.

17. Assignment and Sub-contracting

17.1 The Supplier shall not without the prior written consent of Sport England assign or sub-contract any of its rights or obligations under the Contract to any third party.

17.2 The Supplier shall remain fully responsible and liable to Sport England for all acts and omissions of its sub-contractors.

18. Good Faith

18.1 The Supplier shall act in good faith at all times and shall neither bring Sport England into disrepute or offend the community or public morals and shall at all times throughout the Contract respect public conventions and morals. The Supplier shall not make any reference to Sport England in any advertising, promotional or published material, nor speak in public about Sport England or its affairs without the prior written consent of Sport England.

19. Information Provision

19.1 If requested by Sport England, the Supplier shall provide evidence of compliance with any of its obligations under the Contract.

20. Equal Opportunities Requirements

20.1 The Supplier shall:

20.1.1 comply with all current relevant anti-discriminatory legislation (including all legislation relating to race relations, equal pay, fair employment and disabled persons employment and the minimum wage);

20.1.2 at Sport England's option, where the Supplier employs more than 100 individuals and its registered office is in the United Kingdom, the Supplier shall provide a written statement of the Supplier's equal opportunities policy and an adequate explanation of how the policy will be effected over time upon written request from Sport England;

20.1.3 use all reasonable endeavours to adhere to the current relevant codes of practice published by the Equality and Human Rights Commission, the Department for Work and Pensions and the Equality Commission for Northern Ireland.

21. Disability Discrimination

21.1 Where the Supplier provides Deliverables directly to the public or a section of the public and is therefore a "provider of services" for the purposes of Part III of the Equality Act, the Supplier, with respect to the Deliverables:

21.1.1 shall comply with all the relevant provisions of the Equality Act; and

21.1.2 warrants that the Deliverables shall comply with the Equality Act at no additional expense to disabled persons or Sport England.

22. Prevention of Corruption and Fraud

22.1 The Supplier shall not offer or give, or agree to give, to Sport England or any other public body or any person employed by or on behalf of Sport England or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with Sport England or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

22.2 The Supplier warrants that it has not paid commission or agreed to pay commission to Sport England or any other public body or any person employed by or on behalf of Sport England or any other public body in connection with the Contract.

22.3 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its officers (including its shareholders, members and directors), employees, agents, suppliers and sub-contractors in connection with receipt of monies from Sport England.

22.4 If the Supplier, its officers (including its shareholders, members and directors), employees, agents, suppliers and sub-contractors or anyone acting on behalf of the Supplier engages in conduct prohibited by Clauses 22.1 and 22.3 Sport England may terminate the Contract.

23. Anti-Bribery

23.1 The Supplier undertakes to Sport England that it:

23.1.1 will fully comply with, and will procure that all sub-contractors and the Supplier's Staff fully comply with:

(a) the Bribery Act 2010; and

- (b) Sport England's fraud and anti-bribery policy so far as it relates to the Supplier (as amended from time to time).

(the "**Anti-Bribery Requirements**");

23.1.2 will not do, or omit to do, any act that will cause Sport England to be in breach of the Anti Bribery Requirements;

23.1.3 has in place, and shall maintain in place throughout the term of this Contract, policies and procedures to ensure compliance with the Anti-Bribery Requirements and will enforce them where appropriate. At Sport England's request, the Supplier will disclose such policies and procedures to Sport England;

23.1.4 will make it clear to those providing services for the Supplier, including the Supplier's Staff and sub-contractors, that the Supplier does not accept or condone the payment of bribes on the Supplier's behalf.

24. Change Control

24.1 At any time, Sport England or the Supplier may request changes to any part of the Contract or the Schedules, including additions, deletions or other amendments by way of written notice specifying the nature of such changes to the other party (a "**Change Request**").

24.2 Following the receipt of a Change Request by either party, the Supplier shall submit a written estimate to Sport England as soon as reasonably practicable (and in any event within 10 working days) specifying:

24.2.1 the impact of implementing the proposed change or changes on the Services;

24.2.2 whether any new third party contracts would need to be entered into by the Supplier as part of the proposed change or changes;

24.2.3 any material changes which will be required to the Contract as part of the proposed change or changes;

24.2.4 any impact on the Contract Price;

24.2.5 its reasonable additional costs required to implement the proposed change or changes; and

24.2.6 the cost savings or cost reductions resulting from the proposed change or changes,

(the "**Impact Notice**")

24.3 The Supplier shall investigate the impact of implementing the proposed change or changes and prepare the Impact Notice at no charge to Sport England.

24.4 After receipt of an Impact Notice by Sport England, it shall decide in its absolute discretion whether to:

24.4.1 accept the Impact Notice, in which case the parties shall follow the procedure set out in 24.6; or

24.4.2 withdraw or reject the proposed change in which case the Contract shall continue in force unchanged.

24.5 The Supplier shall, acting reasonably, have the right to reject a change requested by Sport England, in which case the Supplier shall notify Sport England specifying the reasons for its rejection within 10 working days of receiving a Change Request.

24.6 If Sport England accepts the Supplier's Impact Notice pursuant to Clause 24.4.1, the Supplier shall prepare two copies of a document setting out the agreed changes in full (the "**Change Authorisation Note**") as soon as practicable after receiving notice of Sport England's approval of the Impact Notice, which it shall sign and deliver to Sport England for its signature. Following receipt by Sport England of a valid and accurate Change Authorisation Note, Sport England shall sign both copies and return one copy to the Supplier.

24.7 Following signature of a Change Authorisation Note by both parties, the Contract shall be deemed to be varied accordingly.

24.8 Until a change is formally agreed in writing and signed by the parties in accordance with this Clause 24, the Supplier shall continue to perform its obligations under the Contract as if the change had not been proposed.

25. Notices

25.1 Any notice required to be given pursuant to the Contract shall be in writing, addressed to:

25.1.1 where such notice is sent by the Supplier, the nominated individual as notified by Sport England to the Supplier from time to time or in the absence of Sport England nominating such an individual, Sport England's Head of Legal Services; or

25.1.2 an authorised official of the Supplier (as notified by the Supplier to Sport England) where such notice is sent by Sport England.

25.2 Notices shall be sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post to the relevant address specified in the Order, or by fax confirmed by first class post to Sport England or the Supplier at the relevant address specified in the Order, and any such notice shall be deemed to have been received by the addressee at the time of delivery or, in the case of prepaid first class post, two days after posting.

26. General

26.1 The failure of either party to exercise or enforce any right conferred upon it by the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement of any such right at any time(s) thereafter, as a waiver of another or constitute a continuing waiver. Each right or remedy of a party under this Contract is without prejudice to any other right or remedy of that party under this Contract or at law.

26.2 Nothing in the Contract shall be deemed to constitute either party as the agent of the other or create a partnership or joint venture between the parties and the Supplier shall have no power to bind Sport England or to contract in the name of or create a liability against Sport England in any matter whatsoever.

26.3 Any amendment or variation to the Contract shall have no effect unless expressly agreed in writing and duly executed by or on behalf of both parties.

- 26.4 If any provision of this Contract is declared by any competent court or body to be illegal, invalid or unenforceable under the law of any jurisdiction, or if any enactment is passed that renders any provision of this Contract illegal, invalid or unenforceable under the law of any jurisdiction this shall not affect or impair the legality, validity or enforceability of the remaining provisions of this Contract.
- 26.5 Without prejudice to the rights of either party in respect of actions relating to fraud (including fraudulent misrepresentation) the Contract and any appendices and any documents referred to therein constitutes the entire understanding between the parties with respect to the subject matter and supersedes all prior agreements, negotiations and discussions between the parties relating thereto.
- 26.6 This Contract does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Contract.
- 26.7 This Contract and any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

Schedule 2
(Sport England's Invitation to Tender)



**SPORT
ENGLAND**

Creating sporting opportunities in every community

**INVITATION TO TENDER FOR
Quest Scheme Management and Booking Advice and Administration
Service for the National Benchmarking Service**

SPORT ENGLAND CONTRACT REFERENCE: 644

Table of Contents

Section 1: Introduction	3
Section 2: Sport England	3
Section 3: Instructions to Tenderers.....	3
Section 4: Tender Evaluation.....	9
Section 5: Award of Contract.....	10
Section 6: Specification	11
Section 7: Specification Response Requirements.....	12
Section 8: Commercial Response Requirements	13
Schedule 1: Form of Tender.....	14
Schedule 2: Collusive Tendering.....	15
Schedule 3: Canvassing.....	16
Schedule 4: Questionnaire.....	17

Section 1: Introduction

Sport England is seeking to appoint a Provider for Quest Scheme Management and Booking Advice and Administration Service for the National Benchmarking Service. The Contract has an anticipated value of £400,000

Section 2: Sport England

Sport England is the brand name of the English Sports Council which was established by Royal Charter on 19th September 1996 as one of the two successor bodies to the Sports Council. Sport England is the government agency responsible for building the foundations of sporting success, by creating a world-leading community sport system of clubs, coaches, facilities and volunteers.

The focus is around three key strategic outcomes – growing the numbers of people taking part in sport, sustaining the numbers of people taking part in sport and improving talent development to help more people to fulfil their potential.

Sport England works closely with National Governing Bodies of Sport and a portfolio of National Partners to ensure that these strategic outcomes can be delivered effectively including:

- National governing bodies of sport (eg the English and Wales Cricket Board, England Netball, GB Hockey)
- National funded partners (eg Women's Sport and Fitness Foundation, English Federation for Disability Sport)
- Central Government
- Local Government
- County Sport Partnerships
- Higher and Further Education
- The commercial sector

Section 3: Instructions to Tenderers

1. General

- 1.1. These instructions are designed to ensure that all Tenderers are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified. If you have any queries, please contact: [XXX]
- 1.2. Tenderers should read these instructions carefully before completing the Tender documentation. Failure to comply with these requirements for completion and submission of the Tender Response may result in the rejection of the Tender. Tenderers are advised therefore to acquaint themselves fully with the extent and nature of the services specified and contractual obligations. These instructions constitute the Conditions of Tender. Participation in the tender process automatically signals that the Tenderer accepts these Conditions of Participation.
- 1.3. All material issued in connection with this ITT (Invitation to Tender) shall remain the property of Sport England and shall be used only for the purpose of this procurement exercise. All Due Diligence Information shall be either returned to the Sport England or securely destroyed by the Tenderer (at Sport England's option) at the conclusion of the procurement exercise.
- 1.4. The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these instructions and the Conditions of Tender.
- 1.5. The Tenderer shall not make contact with any other employee, agent or consultant of Sport England who is in any way connected with this procurement exercise during the period of this procurement exercise, unless instructed otherwise by Sport England.

- 1.6. Sport England shall not be committed to any course of action as a result of:
 - 1.6.1. Issuing this ITT or any invitation to participate in this procurement exercise
 - 1.6.2. An invitation to submit any Response in respect of this procurement exercise
 - 1.6.3. Communicating with a Tenderer or a Tenderer's representatives or agents in respect of this procurement exercise
- 1.7. Tenderers shall accept and acknowledge that by issuing this ITT Sport England shall not be bound to accept any Tender and reserves the right not to conclude a Contract for some or all of the services for which Tenders are invited.
- 1.8. Sport England reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement exercise.

2. Presentations

As part of the tender evaluation process Tenderers may be required to make a formal presentation of their proposal. Please be advised that Sport England is intending to hold these presentations on 2nd/3rd/4th. Tenderers are required to confirm their attendance in their tenders

3. Confidentiality

- 3.1. Tenderers shall at all times treat the contents of the ITT and any related as confidential, save in so far as they are already in the public domain.
- 3.2. Tenderers shall not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen.
- 3.3. Tenderers shall not use any of the Information for any purpose other than for the purposes of submitting (or deciding whether to submit) a Tender.
- 3.4. Tenderers shall not undertake any publicity activity within any section of the media.
- 3.5. Tenderers may disclose, distribute or pass any of the Information to the Tenderer's advisers, sub-contractors or to another person provided that one or more of the following applies:
 - 3.5.1. This is done for the sole purpose of enabling a Tender to be submitted and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Tenderer
 - 3.5.2. The Tenderer obtains the prior written consent of Sport England in relation to such disclosure, distribution or passing of Information
 - 3.5.3. The disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement
 - 3.5.4. The Tenderer is legally required to make such a disclosure
- 3.6. In paragraph 3.5, the definition of 'person' includes but is not limited to any person, firm, body or association, corporate or incorporate.
- 3.7. Sport England may disclose detailed information relating to Tenders to its officers, employees, agents or advisers and may make any of the procurement documents available for private inspection by its officers, employees, agents or advisers. Sport England also reserves the right to disseminate information that is materially relevant to the procurement to all Tenderers, even if the information has only been requested by one Tenderer, subject to the duty to protect each Tenderer's commercial confidentiality in relation to its Tender (unless there is a requirement for disclosure under the Freedom of Information Act).

4. Freedom of Information

- 4.1. In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), Sport England may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the said Act, or the EIR be required to disclose information submitted by the Tenderer to the Sport England.
- 4.2. In respect of any information submitted by a Tenderer that it considers to be commercially sensitive the Tenderer should:
 - 4.2.1. Explain the potential implications of disclosure of such information
 - 4.2.2. Clearly identify such information as commercially sensitive
 - 4.2.3. Provide an estimate of the period of time during which the Tenderer believes that such information will remain commercially sensitive.
- 4.3 Where a Tenderer identifies information as commercially sensitive, Sport England will endeavour to maintain confidentiality. Tenderers should note, however, that, even where information is identified as commercially sensitive, Sport England may be required to disclose such information in accordance with the FoIA or the Environmental Information Regulations. In particular, Sport England is required to form an independent judgment concerning whether the information is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. Accordingly, Sport England cannot guarantee that any information marked 'confidential' or "commercially sensitive" will not be disclosed.
- 4.4 Where a Tenderer receives a request for information under the FoIA or the EIR during the procurement process, this should be immediately passed on to Sport England and the Tenderer should not attempt to answer the request without first consulting with Sport England.

5. Tender Validity

Your Tender should remain open for acceptance for a period of 60 days. A Tender valid for a shorter period may be rejected.

6. Timetable

Set out below is the proposed procurement timetable. This is intended as a guide and whilst Sport England does not intend to depart from the timetable it reserves the right to do so at any stage.

DATE	STAGE
10 th July 2015	ITT to be issued
12 Noon 11 th August 2015	Closing date and time for receipt of responses to ITT
12 th August 2015 to 1 st September 2015	Evaluation of ITT responses
2 nd /3 rd /4 th September	Provisional date for supplier presentations to Sport England

2015	
11 th September 2015 2015	Notification of award

7. Contact Details

All questions regarding the tender process and Sport England should be made by email to:
[XXX]

8. Preparation of Tender

- 8.1. Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of Tenders. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their Tender and all other stages of the selection and evaluation process. Under no circumstances will Sport England, or any of their advisers, be liable for any costs or expenses borne by Tenderers, sub-contractors, suppliers or advisers in this process.
- 8.2. Tenderers are required to complete and provide all information required by Sport England in accordance with the Conditions of Tender and the Invitation to Tender. Failure to comply with the Conditions and the Invitation to Tender may lead Sport England to reject a Tender Response.
- 8.3. Sport England relies on Tenderers' own analysis and review of information provided. Consequently, Tenderers are solely responsible for obtaining the information which they consider is necessary in order to make decisions regarding the content of their Tenders and to undertake any investigations they consider necessary in order to verify any information provided to them during the procurement process.
- 8.4. Tenderers must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the goods and services and their Tenders, without reliance upon any opinion or other information provided by Sport England or their advisers and representatives. Tenderers should notify Sport England promptly of any perceived ambiguity, inconsistency or omission in this ITT, any of its associated documents and/or any other information issued to them during the procurement process.

9. Submission of Tenders

- 9.1. Tenders must be submitted in the form specified in the Form of Tender instructions at Schedule 1. Failure to do so may render the Response non-compliant and it may be rejected.
- 9.2. Sport England may at its own absolute discretion extend the closing date and the time for receipt of Tenders specified at paragraph 9.6. Any extension granted under paragraph 9.6 will apply to all Tenderers.
- 9.3. Tenderers must submit:
 - 9.3.1. [XXX] original priced hard copies
 - 9.3.2. A priced electronic copy to [XXX]
- 9.4. The Tender and any documents accompanying it must be in the English language.
- 9.5. Price and any financial data provided must be submitted in or converted into pounds sterling. Where official documents include financial data in a foreign currency, a sterling equivalent must be provided.
- 9.6. Tenders are to be returned and received by Sport England at:

1st Floor
Bloomsbury Street
London
WC1B 3HF

FOA [XXX]

no later than 12 Noon hours 11th August 2015. Tenders received after that time may not be accepted.

10. Canvassing

Any Tenderer who directly or indirectly canvasses any officer, member, employee, or agent of Sport England concerning the letting of this Contract or who directly or indirectly obtains or attempts to obtain information from any such officer, member, employee or agent or concerning any other Tenderer, Tender or proposed Tender will be disqualified.

11. Disclaimers

- 11.1. Whilst the information in this ITT has been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.
- 11.2. Neither Sport England, nor their advisors, nor their directors, officers, members, partners, employees, other staff or agents:
 - 11.2.1. Makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT
 - 11.2.2. Accepts any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication
- 11.3 Any persons considering making a decision to enter into contractual relationships with Sport England following receipt of the ITT should make their own investigations and their own independent assessment of Sport England and its requirements for the services and should seek their own professional financial and legal advice.
- 11.4 Any Contract concluded as a result of this ITT shall be governed by English law.

12. Collusive Behaviour

Any Tenderer who:

- 12.1. Fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other party
- 12.2. Communicates to any party other than Sport England the amount or approximate amount of its proposed Tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or insurance or any necessary security)
- 12.3. Enters into any agreement or arrangement with any other party that such other party shall refrain from submitting a Tender
- 12.4. Enters into any agreement or arrangement with any other party as to the amount of any Tender submitted

- 12.5. Offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender, any act or omission

shall (without prejudice to any other civil remedies available to Sport England and without prejudice to any criminal liability which such conduct by a Tenderer may attract) be disqualified.

13. No Inducement or Incentive

The ITT is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Tenderer to submit a Tender or enter into a contractual agreement.

14. Queries Relating to Tender

- 14.1. All requests for clarification about the requirements or the process of this procurement exercise should be made to [XXX] .
- 14.2. Sport England will endeavour to answer all questions as quickly as possible, but cannot guarantee a minimum response time.
- 14.3. Clarification requests must submitted to [XXX]
- 14.4. In order to ensure equality of treatment of Tenderers, Sport England may publish the questions and clarifications raised by Tenderers together with Sport England's responses (but not the source of the questions) to all participants.
- 14.5. Tenderers should indicate if a query is of a commercially sensitive nature – where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if Sport England at its sole discretion does not either; consider the query to be of a commercially confidential nature or one which all Tenderers would potentially benefit from seeing both the query and Sport England's response, Sport England will:
- 14.5.1. Invite the Tenderer submitting the query to either declassify the query and allow the query along with the Authority's response to be circulated to all Tenderers
- 14.5.2. Request the Tenderer, if it still considers the query to be of a commercially confidential nature, to withdraw the query.
- 14.6 Sport England reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests.

15. Amendments to Tender Documents

At any time prior to the deadline for the receipt of Tenders, Sport England may modify the ITT by amendment. Any such amendment will be issued by Sport England to all prospective Tenderers. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, Sport England may, at its discretion, extend the Deadline for receipt of Tenders.

16. Late Tenders

Any Tender received at the designated point after 12 Noon hours 11th August 2015 may be rejected.

17. Proposed Amendments to the Contract by the Tenderer

- 17.1. Any proposed amendments to the Contract must be detailed separately, and returned with the Tenderer's ITT Response.
- 17.2. Where Sport England makes changes to the Contract as a result of the proposals received it will circulate the amended terms to all Tenderers.

18. Modification and Withdrawal

- 18.1. Tenderers may modify their Tender prior to the Deadline by giving notice to Sport England in writing or via electronic submission to [XXX]. No Tender may be modified subsequent to the Deadline for receipt.
- 18.2. The modification notice must state clearly how Sport England should implement the modification.
- 18.3. Tenderers may withdraw their Tender at any time prior to the Deadline or any other time prior to accepting the offer of a Contract. The notice to withdraw the Tender must be in writing and sent to Sport England at the address set out in paragraph 9.6.

19. Right to Reject/Disqualify

Sport England reserves the right to reject or disqualify a Tenderer where:

- 19.1. The Tenderer fails to comply fully with the requirements of this Invitation to Tender or is guilty of a serious misrepresentation in supplying any information required in this document
- 19.2. The Tenderer is guilty of serious misrepresentation in relation to its Tender
- 19.3. There is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer.

20. Right to Cancel, Clarify or Vary the Process

Sport England the right to:

- 20.1. Amend the terms and conditions of the Invitation to Tender process
- 20.2. Cancel the evaluation process at any stage
- 20.3. Require the Tenderer to clarify its Tender in writing and/or provide additional information. (Failure to respond adequately may result in the Tenderer not being selected).

21. Notification of Award

Sport England will notify the successful Tenderer(s) of their award in writing.

Section 4: Tender Evaluation

1. Introduction

The Tender process will be conducted to ensure that Tenders are evaluated fairly to ascertain the most economically advantageous tender

2. Evaluation of Tenders

- 2.1. Tenderers' responses to the Questionnaire (Schedule 4) and to the Specification (Section 6) and presentations will be evaluated against the technical/quality criteria and weightings shown in the table below:

Technical / Quality Criteria for Selection of Provider		
Criterion:		Percentage Weighting:
1.	The ability of the Tenderer to manage and extend the penetration of the Quest Scheme.	35%
2.	The ability of the Tenderer to manage and extend the penetration of the National Benchmarking Service	35%
3.	The ability of the Tenderer to provide innovative, but deliverable, solutions to the recommendations of the Quest Board Report with regards the future development of the Quest Scheme	30%

- 3.1. 70% of the maximum weighted score will be available from the assessment of the Tender against the technical/quality criteria shown at paragraph 2.1 above. The remaining 30% will be available from assessment of the price (see Section 8 Commercial Response Requirements).
- 3.2. The successful tenderer will be the one who, in the opinion of Sport England at the conclusion of the evaluation, offers the Most Economically Advantageous Tender (MEAT) to Sport England having regard to both the technical/quality and commercial award criteria.

Section 5: Award of Contract

Sport England will inform all Tenderers not shortlisted for interview as soon as possible after the decision has been made.

Shortlisted Tenderers will be notified of the award at the conclusion of the exercise. Notifications will include details of:

1. The score of the Tenderer
2. The name of the successful Tenderer
3. The score for the successful Tenderer

Section 6: Specification

1. Introduction

Sport England wishes to appoint a consultant to undertake its Quest Scheme Management along with the Booking, Advice & Administration service for the National Benchmarking Service (NBS). A Quest Board was established in 2002 with responsibility for the overall strategic direction and development of the scheme with membership drawn from the four Home Country Sport Councils, Industry representative associations and a number of leading industry individuals who add value as customers of Quest and/or members of the Quest assessment team. Since 1999 Quest has been managed by Sport England on behalf of the other Home Country Sports Councils.

Quest is a tool for continuous improvement in performance which was developed by the industry for the industry aimed primarily at management of sports facilities. Quest defines industry standards and good practice and encourages their ongoing development and delivery within a customer focused management framework. There are two models:

- The Facility Management (FM) model is aimed at the management of any facility which provides an activity for customers; public, private, trust and voluntary sector.
- The Sports Development (SD) model is aimed at the management of any team which provides or facilitates participation in an activity; public, private, trust and voluntary sectors.

The Quest Board has produced a report which outlines its views and recommendations on the future direction and development of Quest. These recommendations Sport England want to see implemented over the course of this contract. A copy of the report recommendations is listed below for information.

The National Benchmarking Service provides Local Authorities with a rigorous, robust and independent assessment on the performance of their sports and leisure centres compared with that of equivalent 'family' facilities elsewhere in the country. The data analysis role is delivered through a separate contract

2. Deliverables

- To manage and extend the penetration of the Quest Scheme
- To manage and extend the penetration of the National Benchmarking Service
- Implementation of the recommendations made by the Quest Report on the future development of Quest

3. Objectives

- To retain and extend the current penetration of Quest (both Facility and Sports Development).
- To continuously improve the management of the Quest Scheme
- To increase the profile of Quest with the customer through improved marketing and promotion.
- To implement the recommendations made by the Quest Review.
- To retain and extend the current use of the National Benchmarking Service.
- To continuously improve the management of the National Benchmarking Service
- To increase the profile of the National Benchmarking Service through improved marketing and promotion.

4. Tasks

Quest Scheme Management

- The provision of an enquiry, information and booking service
- The recruitment, development, management and training of a team of assessors and mystery visitors
- The management of the assessment process
- The upkeep of the scheme database

- The management and provision of a Quest training service
- General Sales, marketing and promotion of the scheme.
- Ensure that suitable reporting arrangements, including a robust assessment and banding system, are provided to clients.
- To provide day to day financial management
- Quarterly management and financial reporting to the Quest Board
- Implement the recommendations of the Quest Report
- To ensure the scheme is managed with high levels of professionalism and integrity

National Benchmarking Service

- Liaison with the contractor who will provide the analysis service.
- The provision of a comprehensive enquiry, information and booking service.
- The upkeep of a scheme database
- To provide day to day financial management
- Ensure that suitable reporting arrangements are in place.
- General Marketing and promotion of the scheme.

4. Key Performance Indicators

- A complete and comprehensive set of Key Performance Indicators (KPIs) will underpin the level of performance required under the Contract. Tenderers are requested to provide suggested KPIs that will deliver the Objectives of the schemes. The final KPIs will be developed and agreed, and will be a key element of the Contract.

5. Quest Board Report - Recommendations

- Quest should be positioned and promoted primarily as an improvement tool but in a way that retains its recognition as a 'badge' defining an organisations commitment to quality services.
- Within the life of the next contract the way that basic operational aspects are assessed and measured should be re-examined to reduce the focus on these aspects without excluding them entirely. In addition there should be a review of the current categories, unsatisfactory, satisfactory, good and excellent.
- Over the life of the next contract efforts should be made to respond to the changing nature of the sector in terms of health, physical activity and wider community engagement by developing further the robustness of its assessment of community outcomes and impact measuring. In doing so helping to position Quest as a vehicle that "Quality Assures" providers of sport and physical activity and gives confidence to commissioners of their services.
- The opportunity to assess whole organisations against their approach to health, physical activity and community engagement alongside individual facilities and /or sports development should be considered.
- Partnerships should continue to be developed in terms of accrediting certain awards and working with other organisations to simplify the landscape and ensure all improvement and staff development initiatives have a common goal and are appropriately coordinated.
- Quest should seek to position itself to be an integral part of any future coordinated improvement activity across the sport and physical activity sector. To this end efforts should be made over the life of the next contract to better integrate the Quest and the NBS products.
- Work should be developed to better inform local authorities and their partners of the purpose and value of Quest.
- Any development of Quest outside the Sport and Physical Activity sector should not take place to the detriment of the core scheme.

Section 7: Specification Response Requirements

- The tenderer will be required to suggest an appropriate methodology for meeting the specification as set out in Section 6 including but not limited to a full and reasoned explanation of the approach to be taken in order to meet the requirement consisting of a management process or series of processes and a methodology for the timely delivery of quality work for example.
- Sport England does not wish to prescribe the process by which this may be fulfilled, and seeks proposals that will meet the requirements and objectives. The tender should, however, detail not only the proposed method but also the outputs that Sport England can expect.

Section 8: Commercial Response Requirements

Please state details of your company's overall pricing structure and enclose with your tender response.

General

1. Prices shown must be inclusive of all expenses
2. Prices must be exclusive of VAT
3. Prices must be fixed for duration of contract

Use a separate row to detail each type/category of service you provide	Tendered rate if chosen as Sport England supplier	Additional comments (if applicable)
To Manage and extend the penetration of the Quest Scheme.		
To manage and extend the penetration of the National Benchmarking Service		
Implementation of the recommendations made by the Quest Report on the future development of Quest.		

Schedule 1: Form of Tender

TO BE COMPLETED BY THE TENDERER

To: Sport England, 3rd Floor, Victoria House, Bloomsbury Square, London WC1B 4SE

Date: [Tenderer to insert date]

PROVISION OF: [CONTRACT TITLE]

REFERENCE NUMBER: [SEXXX]

To: Sport England

From: [Tenderer to insert name of organisation submitting Tender]

Having examined the Invitation to Tender and all other Schedules, and being fully satisfied in all respects with the requirements of the ITT (including the Sport England Terms of Trade), I/we hereby offer to provide [CONTRACT TITLE] as specified. If this offer is accepted I/we will execute documents in the form of the Contract within 30 days of being called upon to do so.

I/We confirm that I/we agree with Sport England in legally binding terms to comply with the provisions relating to confidentiality set out in Section 3 Instructions to Tenderers Paragraph 3.1 to 3.4 of the Invitation to Tender.

In compliance with your requirements as set out in your ITT I have completed and enclose the following documents:

SCHEDULE 1: FORM OF TENDER
SCHEDULE 4: QUESTIONNAIRE
SPECIFICATION RESPONSE
COMMERCIAL RESPONSE

In compliance with the requirements set out in your Invitation to Tender, which I confirm I have read and fully understand. I also confirm that I have complied with the specific requirements set out in the documents detailed in the table below:

SCHEDULE 2: COLLUSIVE TENDERING
SCHEDULE 3: CANVASSING

This Tender shall remain open for acceptance by Sport England for a period of 60 days after the due date for return of tenders specified in the Invitation to Tender.

I warrant that I have all the requisite corporate authority to sign this Tender and confirm that I have complied with all the requirements set out.

Signed for and on behalf of the above named Tenderer:

Signature:

Position:

Signature (Optional)

Position:

Date:

Schedule 2: Collusive Tendering

TENDER FOR SUPPLY OF QUEST SCHEME MANAGEMENT AND BOOKING ADVICE AND ADMINISTRATION SERVICE FOR THE NATIONAL BENCHMARKING SERVICE.

The essence of the public procurement process is that Sport England shall receive bona fide competitive Tenders from all Tenderers. In recognition of this principle and in signing Schedule 1: Form of Tender I/we warrant this is a bona fide Tender, intended to be competitive and that I/we have not fixed or adjusted the amount of the Tender or the rates and prices quoted by or under or in accordance with any agreement or arrangement with any other party.

I/We also confirm that I/we have not done and undertake that I/we will not do at any time any of the following acts:

Communicate to a party other than Sport England the amount or approximate amount of my/our proposed Tender (other than in confidence in order to obtain quotations necessary for the preparation of the Tender and/or insurance), enter into any agreement or arrangement with any other party that he shall refrain from tendering or as to the amount of any Tender to be submitted, or offer or agree to pay or give or pay or give a sum of money inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused any act or omission to be done in relation to any other tender or the proposed Tender.

In this Schedule:

- The word "person" includes any person, body or association, corporate or incorporate
- The phrase "any agreement or arrangement" includes any transaction, formal or informal whether legally binding or not.

Schedule 3: Canvassing

TENDER FOR QUEST SCHEME MANAGEMENT AND BOOKING ADVICE AND ADMINISTRATION SERVICE FOR THE NATIONAL BENCHMARKING SERVICE.

I/We hereby confirm that I/we have not canvassed any member, officer, employee, or agent of Sport England or Other Contracting Body in connection with the award of the Contract for **QUEST SCHEME MANAGEMENT AND BOOKING ADVICE AND ADMINISTRATION SERVICE FOR THE NATIONAL BENCHMARKING SERVICE**.and that no person employed by me/us or acting on my/our behalf has done any such act.

I/We further hereby undertake that I/we will not prior to the conclusion of the Provider selection process canvass or solicit any member, employee, agent or provider of Sport England in connection with the award of the Contract SE644 and that no person employed by me/us or acting on my/our behalf will do any such act.

Schedule 4: Questionnaire for

Quest Scheme Management and Booking Advice and Administration Service for the National Benchmarking Service.

1. Introduction

- 1.1. This Questionnaire sets out the information which is required by Sport England in order to assess the suitability of Potential Providers in terms of their technical knowledge and experience, capability/capacity, organisational and financial standing to meet the requirement.
- 1.2. In assessing the answers to the following questions, Sport England will be seeking evidence of the Potential Provider's suitability to perform the services in terms of economic and financial standing, technical and professional ability. Qualification criteria will be a combination of both financial and non-financial factors and will be in accordance with Regulations 23 to 26 of the Public Contract Regulations 2006.

2. Instructions for Completion

- 2.1. Recipients should complete the attached Questionnaire and to submit it, duly signed, together with the other documentation requested, to Sport England by the due date for return in accordance with the procedures set out in this Invitation to Tender.
- 2.2. "You" / "Your" or "Potential provider" means the business or company which is completing this Questionnaire.
- 2.3. Potential Providers should follow the instructions outlined below when completing this Questionnaire.
- 2.4. You should answer all questions as accurately and concisely as possible in the same order as the questions are presented. Where a question is not relevant to Sport England, this should be indicated, with an explanation.
- 2.5. The information supplied will be checked for completeness and compliance with the instructions before responses are evaluated.
- 2.6. If the question does not apply to you, please write N/A; if you don't know the answer please write N/K. Failure to provide the required information, make a satisfactory response to any question, or supply documentation referred to in responses, within the specified timescale, may result in your application being disqualified.
- 2.7. In the event that none of the responses are deemed satisfactory, Sport England reserves the right to terminate the procurement and where appropriate re-advertise the procurement.
- 2.8. Potential Providers must be explicit and comprehensive in their responses to this questionnaire as this will be the single source of information on which responses will be scored and ranked. Potential Providers are advised neither to make any assumptions about their past or current supplier relationships with Sport England nor to assume that such prior business relationships will be taken into account in the evaluation procedure.

3. Queries about the procurement

- 3.1. If Sport England considers any question or request for clarification to be of material significance, both the question and the response will be communicated, in a suitably anonymous form, to all Potential Providers who have responded have expressed an interest
- 3.2. All responses received and any communication from Potential Providers will be treated in confidence but will be subject to this paragraph.

4. Additional Information

- 4.1. Sport England expressly reserves the right to require a Potential Provider to provide additional information supplementing or clarifying any of the information provided in response to the requests set out in this questionnaire.
- 4.2. We may seek independent financial and market advice to validate information declared, or to assist in the evaluation.
- 4.3. Reference site visits or demonstrations and/or presentations are unlikely to be requested at this stage but Sport England reserves the right to request the same as a part of the evaluation process.

5. Verification of Information Provided

- 5.1. The higher the risk of the procurement, the higher the level of verification is likely to be required. Not all questions require supporting documents up front at this stage (for example certificates, statements with this questionnaire.) However, Sport England may ask to see these documents at a later stage, so it is advisable you ensure they can be made available upon request. You may also be asked to clarify your answers or provide more details about certain issues.

6. Sub-contracting Arrangements

- 6.1. Where a sub-contracting approach is proposed, all information requested should be given in respect of the prime contractor.
- 6.2. Where sub-contractors will play a significant role in the delivery of the services or products under any ensuing contract, Potential Providers should provide details of the composition of the supply chain at paragraph 3.6 of the questionnaire, indicating which member of the supply chain will be responsible for the elements of the requirement.
- 6.3. Sport England recognises that arrangements in relation to sub-contracting may be subject to future change. However, Potential Providers should be aware that where sub-contractors are to play a significant role, any changes to those sub-contracting arrangements may constitute a material change and therefore may affect the ability of the Potential Provider to proceed with the procurement process or to provide the goods and/or services.

7. Consortium Arrangements

- 7.1. If the Potential Provider bidding for a requirement is a consortium, the following information must be provided:
 - 7.1.1. Full details of the consortium
 - 7.1.2. The information sought in this questionnaire in respect of each of the consortium's constituent members as part of a single composite response.
- 7.2. Potential Providers should provide details of the actual or proposed percentage shareholding of the constituent members within the consortium at paragraph 3.6 of the questionnaire. If a consortium is not proposing to form a corporate entity, full details of alternative proposed arrangements should be provided in an Annex. However, please note Sport England reserves the right to require a successful consortium to form a single legal entity in accordance with regulation 28 of the Public Contracts Regulations 2006.

8. Freedom of Information

- 8.1. In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), all information submitted to Sport England may be disclosed in response to a request made pursuant to the FoIA.
- 8.2. In respect of any information submitted by a Potential Provider that it considers to be commercially sensitive the Potential Provider should:
 - 8.2.1. clearly identify such information as commercially sensitive;
 - 8.2.2. explain the potential implications of disclosure of such information;
 - 8.2.3. provide an estimate of the period of time during which the Potential Provider believes that such information will remain commercially sensitive.
- 8.3. Please submit responses to 8.2.1, 8.2.2 or 8.2.3 as an Annex with the completed questionnaire
- 8.4. Where a Potential Provider identifies information as commercially sensitive, Sport England will endeavour to maintain confidentiality. Potential Providers should note, however, that, even where information is identified as commercially sensitive, Sport England might be required to disclose such information in accordance with the FoIA. Accordingly, Sport England cannot guarantee that any information marked 'commercially sensitive' will not be disclosed.

9. Provider Selection

- 9.1. Sport England may disqualify any Potential Provider who fails to:
 - 9.1.1. Comply with the requirements of Regulation 23 and/or fails to certify on the Statement of Good Standing that it has fulfilled these requirements
 - 9.1.2. Provide a satisfactory response to any questions in the Questionnaire or inadequately or incorrectly completes any question
- 9.2. Where a Potential Provider has a valid reason for being unable to provide the information requested in relation to economic, financial and insurance matters, the other information considered appropriate by Sport England will be accepted.

1. Grounds for Mandatory Rejection

In some circumstances Sport England is required by law to exclude you from participating further in a procurement. If you cannot answer 'no' to every question in this section it is very unlikely that your application will be accepted, and you should contact us for advice before completing this form. Please state 'Yes' or 'No' to each question.

Has your organisation or any directors or partner or any other person who has powers of representation, decision or control been convicted of any of the following offences?	Yes / No
1.1. Conspiracy within the meaning of section 1 of the Criminal Law Act 1977 where that conspiracy relates to participation in a criminal organisation as defined in Article 2(1) of Council Joint Action 98/733/JHA (as amended)	
1.2. Corruption within the meaning of section 1 of the Public Bodies Corrupt Practices Act 1889 or section 1 of the Prevention of Corruption Act 1906 (as amended)	
1.3. The offence of bribery	
1.4. Fraud, where the offence relates to fraud affecting the financial interests of the European Communities as defined by Article 1 of the Convention relating to the protection of the financial interests of the European Union, within the meaning of:	
1.4.1. The offence of cheating the Revenue	
1.4.2. The offence of conspiracy to defraud	
1.4.3. Fraud or theft within the meaning of the Theft Act 1968 and the Theft Act 1978	
1.4.4. Fraudulent trading within the meaning of section 458 of the Companies Act 1985 or section 993 of the Companies Act 2006	
1.4.5. Defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994	
1.4.6. An offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or	
1.4.7. Destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968	
1.5. Money laundering within the meaning of the Money Laundering Regulations 2003 or Money Laundering Regulations 2007; or	
1.6. Any other offence within the meaning of Article 45(1) of Directive 2004/18/EC as defined by the national law of any relevant State.	

2. Grounds for Discretionary Rejection

Sport England is entitled to exclude you from consideration if any of the following apply but may decide to allow you to proceed further. If you cannot answer 'no' to every question it is possible that your application might not be accepted. In the event that any of the following do apply, please set out (in a separate Annex) full details of the relevant incident and any remedial action taken subsequently. The information provided will be taken into account by the Authority in considering whether or not you will be able to proceed any further in respect of this procurement exercise.

Please state 'Yes' or 'No' to each question.

Is any of the following true of your organisation?	Yes / No
2.1 (a) <u>being an individual</u> , is bankrupt or has had a receiving order or administration order or bankruptcy restrictions order made against him or has made any composition or arrangement with or for the benefit of his creditors or has not made any conveyance or assignment for the benefit of his creditors or appears unable to pay or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986, or article 242 of the Insolvency (Northern Ireland) Order 1989, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other state;	
2.2 (b) <u>being a partnership constituted under Scots law</u> , has granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate; or	
2.3 (c) <u>being a company or any other entity within the meaning of section 255 of the Enterprise Act 2002</u> has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, or had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of similar procedures under the law of any other state?	
2.4 Has your organisation	
2.5 a) been convicted of a criminal offence relating to the conduct of your business or profession;	
2.6 (b) committed an act of grave misconduct in the course of your business or profession;	
2.7 (c) failed to fulfil obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the relevant State in which you are established;	
2.8 (d) failed to fulfil obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the relevant State in which you are established; or	
2.9 e) been guilty of serious misrepresentation in providing any information required of you under Regulation 23 of the Public Contracts Regulations 2006?	

[Insert any specific criminal offences or misconduct which may be appropriate to draw Potential Providers attention to having regard to the specific sector or circumstances of this procurement. i.e. any offences or misconduct particularly relevant to or prevalent in the sector]	
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3. Organisation Details

Full name of organisation tendering (or of organisation acting as lead contact where a consortium bid is being submitted)	
Registered office address	
Website	

3.1 Contact Details for enquiries about this Questionnaire

Name	
Address	
Tel No	
Mobile	
email	

3.2 Current legal status of the Potential Provider

	Please tick one box
Sole Trader	
Limited Liability Partnership	
Other Partnership	
Public Limited Company	
Limited Company	
Other (please specify)	

3.3 Date and place of formation of the Potential Provider and, if applicable, registration under the Companies Act 2006.¹ Please provide copies of Certificates of Incorporation (where appropriate) and any changes of name, registered office and principal place of business.

Date of formation	
Place of formation	
Date of registration	
Company or charity registration number	
Principal place of business	

3.4 Ownership structure

3.4.1 Full legal name and address of immediate parent company if applicable

Company Name	
Address	
Company registration number ²	

3.4.2 Full legal name and address of (ultimate) Parent Company if applicable

Company Name	
Address	
Company registration number ³	

¹ Potential Providers established outside the United Kingdom may provide equivalent information. For a list of acceptable equivalent information please refer to in Regulation 23(7) of the Public Contracts Regulations 2006.

² Or, for parent companies established outside the United Kingdom, equivalent information as set out in Regulation 23(7) of the Public Contracts Regulations 2006.

3.4.3 If the Potential Provider is a division or subsidiary, what is its relationship with the Parent Company (ownership, directorship, authority, etc)

Relationship	
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3.4.4 Please provide a one-page chart illustrating the ownership structure of the Potential Provider including relations to any parent or other group or holding companies.

Ownership structure enclosed (please tick <input checked="" type="checkbox"/>)	
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3.5 Organisation History

Brief history of the Potential Provider's organisation, no more than 400 words, including details of any parent and associated companies and any changes of ownership over the last 5 years including details of significant pending developments, changes in financial structure or ownership, prospective take-over bids, buy-outs and closures, etc which are currently in the public domain.	
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3.6 Consortia and Subcontracting. Please tick the box which applies

a	Your organisation is bidding to provide the services required itself	
b	Your organisation is bidding in the role of Prime Contractor and intends to use third parties to provide some services	
c	The Potential Provider is a consortium	

If your answer is (b) or (c) please indicate in the table below (by inserting the relevant company/organisation names) the composition of the supply chain, indicating which member of the supply chain (which may include the Potential Provider solely or together with other providers) will be responsible for the elements of the requirement and, if the Potential Provider is a consortium, details of the actual or proposed percentage shareholding of the constituent members within the consortium. Please refer to paragraph 10 entitled "Sub-contracting Arrangements" and paragraph 11 entitled "Consortium Arrangements" in the Introduction to this Questionnaire.

Requirement	Company/Organisation	Actual or Proposed percentage shareholding if potential provider is a consortium

³ Or, for parent companies established outside the United Kingdom, equivalent information as set out in Regulation 23(7) of the Public Contracts Regulations 2006.

3.7 If your answer to 3.6 is (b) and you are unable to confirm all sub-contractors (complete supply chain) at this stage, you will need to demonstrate a satisfactory methodology and track record of delivering a supply chain. Please give a brief outline on policy regarding the use of sub-contractors and, if applicable, the extent to which it is envisaged they may be used in any contract

Methodology for procuring supply chain ([300] words or fewer)

3.8 VAT registration number

VAT Registration number	
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3.9 Registration with professional body (for completion by non-UK businesses only)

3.9.1	Is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annexes IX A-C of Directive 2004/18/EC) under the conditions laid down by that member state).	
3.9.2	Is it a legal requirement in the State where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement? If yes, please provide details of what is required and confirm that you have complied with this.	

4 Economic & Financial Standing

4.3 Please provide the following financial information. If the organisation is a subsidiary of a group, the information is required for both the subsidiary and the ultimate parent company. Where a consortium or association is proposed, the information is requested for each member company:

- 4.3.1 A copy of the most recent audited accounts for your organisation that cover the last two years of trading or for the period that is available if trading for less than two years.
- 4.3.2 A statement of the organisation's turnover, Profit & Loss and cash flow position for the most recent full year of trading (or part year if full year not applicable) and an end period balance sheet, where this information is not available in an audited form at (4.1.1).
- 4.3.3 Where (4.1.2) cannot be provided, a statement of the organisation's cash flow forecast for the current year and a bank letter outlining the current cash and credit facility position.
- 4.3.4 Alternative means of demonstrating financial status if trading for less than a year.

4.4 Parent company and/or performance bond or other guarantees of performance and financial standing may be required if considered appropriate. Where the potential provider is dependant financially on a parent company to support its application for this procurement, it must indicate in the box below whether a Parent Guarantee is available if requested

Where required, is a Parent Guarantee available?	Yes / No (Please delete)
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4.5 Name and address of principal banker

Bank Name	
Address	

4.4

If requested, would you be willing to provide a Banker's reference?	YES/NO
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5 Insurance

5.1 Employer's Liability

Employers' liability insurance is a legal requirement (except for businesses employing only the owner/close family members) and this should be at least £5 million. Please confirm that you have this in place	Yes / No (Please delete)
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5.2 Sport England will require the following minimum levels of insurance in relation to this contract:

5.2.1 Employers liability £10,000,000

5.2.2 Public liability £5,000,000

5.2.3 Professional indemnity []

5.3 If the Potential Provider does not hold the above levels of cover, please confirm that they would, if awarded the contract, obtain the required level of insurance prior to the contract commencing.

Willing to obtain insurance to the levels required by Sport England (as specified above)	Yes / No (please delete)
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6 Disputes

6.1 Is there any material pending or threatened litigation or other legal proceedings connected with similar projects against the Potential Provider and/or any of its named supply chain members (sub-contractors) that may affect delivery of this project?

Legal proceedings pending	YES / NO (please delete)
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6.2 If you have answered 'Yes' to 6.1 please give an explanatory statement:

Brief statement (300 words or fewer) Either insert required details or state 'None'

6.3 Has there been any material litigation or other legal proceedings connected with similar projects against the Potential Provider and/or any of its named supply chain members (sub-contractors) that may affect delivery of this project in the last three years?

Legal proceedings	YES / NO (please delete)
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6.4 If you have answered 'Yes' to 6.3 please give an explanatory statement:

Brief statement (300 words or fewer) Either insert required details or state 'None'

7. Data protection

7.1 Please describe the extent to which you will be processing personal data when providing services to Sport England and indicate where such data may be shared with others.

Brief statement (300 words or fewer) Either insert required details or state 'None'

7.2 Please describe the specific procedures and controls you have or will put in place to ensure that such personal data is handled in accordance with the Data Protection Act 1998.

Brief statement (300 words or fewer) Either insert required details or state 'Not Applicable'

7.3 Please provide details of the data protection policies and procedures you have in place and details of staff qualified to handle data protection issues

Brief statement (300 words or fewer) Either insert required details or state 'Not Applicable'

8. Capability and Capacity

8.1 Please provide details of the Potential Provider's principal areas of business activity, main products and services

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8.2 Staffing

How many staff does your organisation (including consortia members or named sub-contractors where appropriate) employ relevant to the carrying out of services and/or delivery of goods similar to those required under this contract?	
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8.3 Experience

Please provide details of up to three contracts from either or both the public or private sector, that are relevant to Sport England's requirement. Contracts for the supply of goods or services should have been performed during the past three years. Works contracts may be from the past five years. (The customer contact should be prepared to speak to the purchasing organisation to confirm the accuracy of the information provided below if we wish to contact them). Where the Potential provider is a special purpose vehicle and not intending to be the main provider of the goods or services, the information requested should be provided in respect of the principal intended provider of the goods or services

	Customer name and address	Customer contact name, tel. number and email	1.Contract start date 2.Contract completion date 3.Contract Value	Brief description of contract (max 150 words) including evidence as to your technical capability in this market
8.3.1				
8.3.2				
8.3.3				

8.4 Please provide details of the technicians or technical services available to the Potential Provider to carry out the works or provide the goods or services in the requirement, particularly those involved with quality control, whether or not they are independent of the Potential Provider

Statement of technical services and technicians available to the Potential Provider	
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8.5 In relation to the requirement please provide details of the Potential Provider's available technical facilities, study and research facilities, tools, plant and technical equipment

Statement of available facilities	
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8.6 Where the requirement is for the supply of services or works and the Potential Provider is an individual please provide details of the educational and professional qualifications of:

Potential Provider	
The Potential Provider's managerial staff, if any	
The one or more persons who would be responsible for providing the services or carrying out the works.	

8.7 Please provide details of the Potential Provider's technical ability to perform the contract, including details of skills, efficiency, experience and reliability relevant to the contract

Details of the Potential Provider's technical ability	
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8.8 Please provide details of the Potential Provider's measures for ensuring quality in relation to the goods to be sold or hired or the services provided under the contract

Details of the Potential Provider's measures to ensure quality such as Quality Management systems	
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9. Declaration

I declare that to the best of my knowledge the answers submitted in this Questionnaire are correct. I understand that the information will be used in the process to assess my organisation's suitability to be invited to tender for the Authority's requirement and I am signing on behalf of my organisation. I understand that the Contracting Authority may reject this Questionnaire if there is a failure to answer all relevant questions fully or if I provide false/misleading information		
FORM COMPLETED BY		
8.1	Name:	
8.2	Date:	
8.3	Signature:	

**Schedule 3
(Supplier's Tender Response)**



TENDER SUBMISSION

FOR MANAGEMENT

OF QUEST AND NBS

AUGUST 2015

Contents

TENDER SUBMISSION FOR MANAGEMENT OF QUEST AND NBS AUGUST 2015	1
Specification Submission	4
1. Introduction	4
1.1. Background	5
1.2. Current Position	6
1.3. Why Us – Overview	8
1.4. Our Bid	14
2. Manage & Extend the Penetration of Quest	16
2.1. Provision of an Enquiry, Information & Booking Service	16
2.2. Recruitment, Development, Management & Training of a Team of Assessors & Mystery Visitors	18
2.3. Management of the Assessment Process	21
2.4. Upkeep of the Scheme Database	22
2.5. Management & Provision of a Quest Training Service	22
2.6. General Sales, Marketing & Promotion of the Scheme	24
2.7. Suitable Reporting Arrangements, including a Robust Assessment & Banding System for Clients	28
2.8. Day to Day Financial Management	31
2.9. Quarterly Management & Financial Reporting to the Quest Board	31
2.10. Implement the Recommendations of the Quest Board	31
2.11. Ensure the Scheme is managed with High Levels of Integrity & Professionalism	32
3. Management of National Benchmarking Service	33
3.1. Retention and Extension of the National Benchmarking Service	33
3.2. Current Situation	33
3.3. Enquiry, Information and Booking Services	35
3.4. Contractor Liaison for Analysis Service	35
3.5. Continuous Improvement of National Benchmarking Service Management	36
3.6. Increased National Benchmarking Service Profile	37
4. Quest Report Recommendations	39
4.1. Improvement Tool (& a badge)	39
4.2. Operational Aspects	41
4.3. Community Outcomes & Impacts	43
4.4. Health, Physical Activity & Community Engagement Assessment	45
4.5. Partnerships	45
4.6. Quest & NBS Product Integration	47
4.7. Local Authorities & their Partners	48