

T: 0131-244 [redacted]
E: [redacted]@gov.scot

Mr Dominic McKay
Chief Operating Officer
Scottish Rugby Union

Dominic.McKay@sru.org.uk

Dear Mr McKay

20 January 2021

Scottish Rugby Union – Offer of Grant

I am pleased to be able to confirm funding to support rugby clubs across Scotland that have been affected by the COVID-19 pandemic.

The funding approved by Scottish Ministers is intended to ensure rugby clubs at all levels of the game across Scotland are better able to cope with the financial challenges that COVID-19 has brought until such a time as spectators are able to return safely to sports events in larger numbers.

The Scottish Ministers in exercise of their powers under Section 23 of the National Heritage (Scotland) Act 1985 hereby offer to give to Scottish Rugby Union (“the Grantee”) a grant of up to £15,000,000 (fifteen million) STERLING, payable over the financial year 2020/2021 to support rugby clubs across Scotland that have been affected by the COVID-19 pandemic, which is more particularly described in Part 1 of **SCHEDULE 1** (“the Project”) and subject to the following terms and conditions:

I hope this funding demonstrates the Scottish Government’s commitment to both men and women’s rugby across Scotland across all levels of the game.

If you have any questions about this grant offer or its conditions, please contact me.

Yours sincerely

[redacted]
[redacted] Active Scotland
Division

1. Definitions and Interpretation

- 1.1 In these Conditions, the words and expressions set out in Schedule 4 shall have the meanings ascribed to them in that Schedule.
- 1.2 In these Conditions unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3 The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or taken into account in their interpretation.
- 1.4 Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.
- 1.5 This Agreement shall not be varied except by an instrument in writing signed by both parties.

2. Purposes of the Grant

- 2.1 The Grant is made to enable the Grantee to support rugby activity in Scotland, specifically in relation to the protection of jobs and infrastructure, including through the provision of grant funds to Third Party Beneficiaries.
- 2.2 The Grant shall only be used for the purposes of the Project and for no other purpose whatsoever.
- 2.3 No part of the Grant shall be used to fund any activity or material, which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.4 The main objectives/expected outcomes of the Grant are:
 - To support rugby in Scotland financially during the COVID-19 pandemic, and continuing restrictions, which has resulted in spectators being unable to attend rugby stadia.
 - To support and protect rugby activity with the aim of safeguarding jobs and infrastructure across all funding recipients.
- 2.5 The targets/milestones against which progress in achieving objectives/expected outcomes shall be monitored are:
 - Ensuring that all aspects of Scottish Rugby have access to funding in order to minimise the financial impact of continuing COVID-19 restrictions.
 - Ongoing dialogue with Scottish Government officials to demonstrate delivery of the objective and ensure the equitable allocation of funding across the rugby sector in Scotland.
- 2.6 The eligible costs for which the Grant can be claimed are set out at Schedule 1.
- 2.7 The eligible costs exclude:
 - Any Value Added Tax (VAT) reclaimable by the Grantee
 - Player transfer fees prior to the end of the 2020/2021 season
 - Payments to owners or directors of clubs

3. Payment of Grant

- 3.1 The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of Schedule 1 attached.
- 3.2 The Grantee shall within six weeks of the Financial Year in which the Grant has been paid submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant using the form of words provided in Schedule 3. The statement shall be signed by the Grantee's Director of Finance or equivalent official.
- 3.3 In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the expenses reasonably and properly incurred (including funds which have not been allocated to Project activities by the end of the Financial Year 2020/21) or required by the Grantee in connection with the Project, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Scottish Ministers. In the event that the Grantee fails to pay such amount within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest.
- 3.4 The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Grant, which has not been claimed by 31 March of the applicable Financial Year for which it was claimed, unless otherwise agreed in writing by the Scottish Ministers.

4. Inspection and Information

- 4.1 The Grantee shall keep the Scottish Ministers fully informed of the progress of the Project in the form of monthly reports. Details shall include actual expenditure to date compared with profiled expenditure and any change to estimated expenditure for the financial year and/or the Project as a whole, the reasons for any such changes and progress in achieving objectives/outcomes.
- 4.2 Revisions to targets/milestones against which progress in achieving objectives/outcomes are monitored shall be subject to the written agreement of the Scottish Ministers.
- 4.3 The Grantee shall, on completion of the Project, submit a report to the Scottish Ministers summarising the outcomes and performance of the Project. Such a report shall include such statistical and other information relating to the impact of the Project as shall be required by the Scottish Ministers.
- 4.4 The Grantee shall also provide any other information that the Scottish Ministers may reasonably require to satisfy themselves that the Project is consistent with the Agreement. The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.

- 4.5 The Grantee shall keep and maintain for a period of 6 years after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Grant. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.
- 4.6 In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on the Project or on the use of the Grant, or any part of it, the Grantee shall immediately notify the Scottish Ministers of such activity and provide such other information as the Scottish Ministers may reasonably require in relation to the impact on the Project and the use of the Grant.
- 4.7 The grantee shall immediately inform the Scottish Ministers of any change in its constitution for example, but not limited to, a change in status from one type of body corporate to another.
- 4.8 The Grantee shall ensure that any reporting obligations associated with Subsidy Control requirements are met.

5. Confidentiality and Data Protection

- 5.1 The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of the Project.
- 5.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed and/or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.
- 5.3 The Grantee shall ensure that all requirements of the Data Protection Laws are fulfilled in relation to the Project.
- 5.4 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

6. Disposal of Assets

The Grantee shall not and shall ensure that any Third Party Beneficiary shall not, without prior written consent of the Scottish Ministers, dispose of any asset funded, in part or in whole, with Grant funds within 5 years of the asset being acquired or developed. During that period, the Scottish Ministers shall be entitled to the proceeds of the disposal – or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale. Recovery by the Scottish Ministers shall not be required where the value of the asset is less than £1,000.

7. Publicity

The Grantee shall where reasonably practicable acknowledge in all publicity material relating to the Project the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

8. Intellectual Property Rights

- 8.1 All Intellectual Property Rights are hereby assigned to and shall vest in the Crown or its assignees.
- 8.2 The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials, shall constitute an infringement of any third party copyright or intellectual property right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

9. Default

- 9.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:
 - 9.1.1 The Grantee commits a Default;
 - 9.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;
 - 9.1.3 The Grantee fails to carry out the Project;
 - 9.1.4 In the Scottish Ministers' opinion, the progress on the Project is not satisfactory; or
 - 9.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy.
- 9.2 If, in the Scottish Ministers' opinion, the Grant or any part of (including payments to Third Party Beneficiaries) is unlawful, including where it does not comply with applicable Subsidy Control requirements, and they consider that they are required to recover such sum in order to ensure compliance with their legal obligations Scottish Ministers may require immediate repayment of the Grant or any part of it together with interest at such rate and on such basis as may be determined from time to time in accordance with law.

- 9.3 The Scottish Ministers may withhold the payment of the Grant if at any time within the duration of the Agreement:
- 9.3.1 The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 9.3.2 A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.
- 9.4 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 9.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 28 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 28 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.
- 9.5 Notwithstanding the provisions of this clause 9, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 9 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.
- 9.6 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 9.1 to 9.3 shall not be construed as a waiver of such right or remedy.

10. Assignment and payments to Third Party Beneficiaries

- 10.1 Other than as outlined under this Agreement, the Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.
- 10.2 As part of the Project, the Grantee will make payments to Third Party Beneficiaries. Such payments are public funds and the Grantee shall ensure that such payments are made on terms substantially similar to this Agreement, such terms to be validly executed in writing.
- 10.3 The Grantee shall ensure that payments to Third Party Beneficiaries comply with applicable Subsidy Control requirements.

11. Termination

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

12. Corrupt Gifts and Payments of Commission

The Grantee shall not offer, give, or agree to give any person any gift or consideration of any kind as an inducement or reward in relation to this Grant. The Grantee shall ensure that its employees shall not breach the terms of the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other grant.

13. Continuation of Conditions

These Conditions, except for Condition 6, shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Grant was paid.

14. Compliance with the Law

The Grantee shall ensure that in relation to the Project/Programme, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

If you wish to accept the offer of this Grant on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date both copies of the Grant Acceptance below and return one copy of the offer of Grant and Schedules to me at Andrew.sinclair@gov.scot

You should retain the second copy of the offer of Grant and Schedules for your own records.

Yours sincerely

[redacted]
[redacted] Active Scotland Division
20 January 2021

GRANT ACCEPTANCE

On behalf of Scottish Rugby Union, I accept the foregoing offer of Grant by the Scottish Ministers dated 20 January 2021 on the whole terms and conditions as set out in the letter and Schedules. I confirm that I hold the relevant signing authority.

Signed:

Print Name:

Position in Organisation of Person Signing:

Date:

Place of Signing:

Signed:

Witness Name:

Address:

Date:

Place of Signing:

SCHEDULE 1

PART 1: THE PROJECT

The purpose of this funding £15,000,000 (fifteen million) is to assist rugby clubs and organisations across Scotland in dealing with the financial impact of the COVID – 19 pandemic.

This funding should be used to support rugby activity in order to protect jobs and infrastructure across all funding recipients.

Rugby Clubs receiving funding hereby provide an undertaking to the Scottish Rugby Union that the full grant amount will only be used to support ongoing Club rugby related operations, will not be used to fund any player transfer fees prior to the end of the 2020/21 season, and will not be withdrawn from clubs by Owners or Directors.

The Club otherwise agrees to be bound by the terms set out in the Offer of Grant between the Scottish Ministers and the Scottish Rugby Union dated 20 January 2021.

Failure to comply to the terms as noted above will result in the full grant amount being returned to the Scottish Rugby Union.

A grant approval form for completion by Rugby Clubs (on the onward disbursement of funding) is included overleaf.

Scottish Government – grant approval pro-forma for completion by Rugby Clubs and to be held by the Scottish Rugby Union

Name of Club;

By signing this document the Club agree to the following grant conditions:

Clubs receiving funding hereby provide an undertaking to the Scottish Rugby Union that:

- the full grant amount will only be used to support ongoing Club rugby related operations;
- will not be used to fund any player transfer fees prior to the end of the 2020/21 season; and
- will not be withdrawn from clubs by Owners or Directors.

The Club otherwise agrees to be bound by the terms set out in the Offer of Grant between the Scottish Ministers and the Scottish Rugby Union dated xxx.

Failure to comply to the terms as noted above will result in the full grant amount being returned to the Scottish Rugby Union.

Name of designated Club Signatory;

Position within club;

Signature;

Date;

PART 2: PAYMENT OF GRANT

1. The total Grant of up to £15,000,000 (fifteen million) shall be payable by the Scottish Ministers to the Grantee in one instalment on receipt of a completed claim for Grant in the form set out in Schedule 2 together with the associated monitoring information set out in paragraph 4.1 of the Offer of Grant.
2. The total Grant shall be payable over the financial year 2020/21. The Scottish Ministers shall not be bound to pay any instalment of the Grant, which has not been claimed by the Grantee by 31 March 2021 of the applicable financial year, unless otherwise agreed in writing by the Scottish Ministers.
3. Any change to the profile or to the overall costs of the Project shall be notified to the Scottish Ministers at the earliest opportunity via the claims for Grant and monitoring reports.
4. Each claim shall be for an amount equal to the actual reasonable and proper costs and expenses incurred by the Grantee in connection with the Project since the submission by it of the last claim for an instalment of the Grant.
5. Each claim shall be submitted together with such explanatory or supplementary material as the Scottish Ministers may from time to time require whether before or after submission of the claim.
6. On receipt of each claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred in connection with the Project having regard to that claim. The determination shall be based on the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within 2 weeks of receiving a claim and any required documentation and information relevant to the claim.
7. In order to facilitate the accrual of expenditure of the Grant for the financial year the Grantee shall, where appropriate, advise the Scottish Ministers in writing by third working day in April the amount of the Grant actually expended up to and including 31 March 2021.

SCHEDULE 2
GRANT CLAIM FORM

Organisation:

Bank details:

Project:

Total agreed grant for:

Latest forecast of expenditure of grant for:

Grant claimed to date:

We hereby claim grant of in respect of the above period in accordance with the terms and conditions of the offer of Grant dated and the Schedules attached thereto.

Completed by:

Position:

Contact Details:

Date:

Items of Expenditure

A	B	C	D
Item	Amount (£)	Paid Invoice [Y/N]	Other (please specify, e.g. certificate of payment in kind)
TOTAL*			

* Note the total should add up to the total expenditure claimed for the period.

SCHEDULE 3

STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT

Scottish Rugby Union

This is to confirm that the grant claimed by Scottish Rugby Union in relation to the above Project during the financial year ended 31 March 2021 was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant. The records of Scottish Rugby Union support this statement.

Signed:

Name in block capitals:

Position:

Date:

SCHEDULE 4

DEFINITIONS

“**Agreement**” means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant, the Grantee’s Application, these Conditions and the Grantee’s acceptance of these Conditions;

“**Conditions**” means these grant conditions;

“**Data Protection Laws**” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body including the Data Protection Act 1998, the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR.

“**Default**” means:

- a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- c) Any breach of any legislation; or
- d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, or any other default,

In all cases by either party, its employees, agents or representatives;

“**Financial Year**” means a period from 1 April in one year until 31 March in the next;

“**Grant**” means the grant offered by the Scottish Ministers to the Grantee as specified in the Award Letter, as varied from time to time in accordance with these Conditions;

“**Grantee**” means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

“**Intellectual Property Rights**” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or generated as part of the Project by or on behalf of the Grantee.

“**Project/Programme**” means the purpose for which the Grant has been awarded as described in the Offer of Grant;

“**Payment**” means each of the payments specified in Schedule 1 hereto.

“**Subsidy Control**” means any rule, regulation or guideline relating to the control and regulation of subsidies arising from the EU-UK Trade and Cooperation Agreement as it applies to domestic law by virtue of section 29 of the European Union Future Relationship Act 2020 and other applicable domestic and international subsidies control obligations.

“Third Party Beneficiary” means the person, organisation or body (other than the Grantee) in receipt of Grant funds as part of the Project.

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.