

SPORT ENGLAND "THIS GIRL CAN"
TERMS OF GRANT & USE OF BRAND TOOL-KIT

This Agreement sets out the basis on which we have procured the Brand Tool-Kit for the Campaign as a non-cash grant awarded to you and the terms on which the Brand Tool-Kit is supplied to you.

If you are an organisation, club or other sporting body in England that wishes to use the Sport England Brand Tool-Kit (defined below) relating to the "This Girl Can" campaign to encourage women's participation in sport in England, you can visit our website at www.thisgirlcan.co.uk and register your interest in supporting the campaign. Once your application has been approved, you will be able to download the Brand Tool-Kit and Physical Materials to use in accordance with the terms and conditions of this Agreement (defined below) as set out below. Anyone else is prohibited from downloading and using the Brand Tool-Kit. Any artwork created using these materials must be submitted to Sport England for approval as specified in the Brand Guidelines.

Please read the terms and conditions of this Agreement carefully before downloading the Brand Tool-Kit and before submitting a request for use of the Logo and/or Designation. This offer is conditional on your agreement to all the terms and conditions contained in this Agreement. By downloading the Brand Tool-Kit Physical Materials and/or submitting a request for the Logo and/or Designation, you accept and agree to be bound by the terms and conditions of this Agreement. If you do not agree to the terms and conditions of this Agreement you should not download the Brand Tool-Kit Physical Materials or submit a request for the Logo and/or Designation. Any use of the Brand Tool-Kit other than as authorised under this Agreement or permitted by copyright and trade mark law is prohibited.

Please complete the request form on the Website providing all of the requested contact and identity details and tick the tick box confirming that you have read and accepted the terms and conditions of this Agreement. If you do not complete the form or you refuse to accept the terms and conditions of this Agreement, you will not be authorised to download and use the Brand Tool-Kit.

We reserve the right to amend this Agreement (including introducing new terms in the future and removing and/or replacing the Brand Tool-Kit or any part of it) from time to time without notice to you. The amended Agreement will be effective from the date it is posted on the Website. **Your continued use of the Brand Tool-Kit (or any part of it) will constitute your acceptance of the amended Agreement.** Therefore, please review the Website (and this Agreement in particular) on a regular basis.

You shall not have the right to rely on this Agreement for use of the Brand Tool-Kit (or any part of it) if you or the organisation that you are employed by or providing services to, is party to a separate agreement, Agreement and/or written permission from us to use the Brand Tool-Kit (or any part of it).

1. Definitions and Interpretation

1.1 Unless the context otherwise requires capitalised terms shall have the meaning as set out below:

"Agreement"	this Agreement, as amended, supplemented or otherwise modified by us from time to time;
"Brand Guidelines"	our brand guidelines as amended, supplemented or otherwise modified by us from time to time, which are available for download on our Website;
"Brand Tool-Kit"	the Brand Tool-Kit Physical Materials, the Logo and the Designation;
"Brand Tool-Kit Physical Materials"	such physical materials relating to the Campaign, that are made available by us for download on the Website, which may include but is not limited to posters, stickers and leaflets and which you download from the Website for your use;
"Campaign"	the "This Girl Can" campaign to promote healthy living, sport and physical activity to women in England, to encourage women's participation in sport and physical activity

in England;

"Designation"	a bespoke partner lock-up using the Logo and your name as illustrated in our Brand Guidelines, such as "Swim with [<i>insert your name</i>]" as agreed by us in writing on a case by case basis;
"Intellectual Property Rights"	all copyright, database rights, design rights, registered designs, trade marks, service marks, trade secrets and rights in confidential information and all rights and forms of protection of a similar nature or having an equivalent effect to any of them which may subsist anywhere in the world together with all goodwill attaching or relating thereto, whether or not any of them are registered and including application for registration of any of them relating to the Brand Tool-Kit (including any translations thereof);
"Logo"	the "This Girl Can" logo identified in our Brand Guidelines;
"Permitted Purpose"	to promote and raise awareness of the Campaign by: (i) using, exhibiting and distributing the Brand Tool-Kit at your premises and at events organised by you in England; and (ii) subject to our approval on a case by case basis, using and exhibiting the Logo and/or the Designation on your official website, on your official social media pages, on sports equipment and kits loaned free of charge to members of your club for use at your premises and at events organised by you in England and on promotional materials prepared by you for distribution at your premises and at events organised by you in England;
"Term"	the term of the Campaign which will run from 20 November 2014 for a period of three (3) years to 19 November 2017;
"we", "us", "our"	The English Sports Council, a company incorporated by Royal Charter in the United Kingdom under Company No. RC000766, with its registered office at First Floor, 21 Bloomsbury Street, London WC1B 3HF, United Kingdom;
"Website"	www.thisgirlcan.co.uk ; and
"you", "your(s)"	an organisation, club or other sporting body in England that wishes to use the Brand Tool-Kit for the Permitted Purpose.

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

1.3 In this Agreement, the words "include", "includes", "including" and "such as" are to be construed as if they were immediately followed by the words "without limitation".

1.4 In this Agreement, unless the context clearly indicates another intention, a reference to:

- (a) any gender includes other genders and the singular includes the plural and vice versa;
- (b) a clause or party is a reference to a clause of or party to this Agreement;
- (c) obligations undertaken by more than a single person or company are joint and several obligations; and
- (d) any reference to a person shall include natural persons and partnerships, firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted.

2. Your Organisation

2.1 You warrant that you are an organisation established in England.

2.2 You warrant that all of the information that you have provided to us in connection with the Grant and this Agreement is complete and accurate.

3. Your Grant Obligations

- 3.1 We have procured the Brand Tool-Kit as a non-cash grant awarded to you (the "**Grant**"), the cost of which is met from money available to us through the National Lottery.
- 3.2 You will be available for meetings with us and allow full and free access to your records concerning the Grant and your use of the Brand Tool-Kit, however and wherever held and to any of your offices or buildings to us, or those acting for us or to the National Audit Office.
- 3.3 Where reasonably required by us you will acknowledge the Grant publicly as appropriate and as practical. You will acknowledge our support in any published documents that refer to the Grant or in written or spoken public presentations about the Grant.
- 3.4 You hereby consent to any publicity about the Grant as we may from time to time require.
- 3.5 You will tell us about any changes to information you have previously provided in connection with the Grant and will make sure that the information we hold in connection with the Grant is true and up to date.
- 3.6 You agree to participate from time to time in such activities (such as completing questionnaires or responding to queries from us) as we may reasonably require in order to evaluate the effectiveness of the Grant.
- 3.7 You agree to comply with all applicable laws in all matters connected to the Grant.
- 3.8 You accept that we may share information about the Grant with any parties of our choice as well as with members of the public who make a request for information under the Freedom of Information Act 2000.
- 3.9 You will pay such amount as we may reasonably determine, up to a maximum of £2,000, if:
 - (a) you are in breach of any terms and conditions of this Agreement; or
 - (b) you (whether deliberately, recklessly or accidentally) provided any information to us, dishonestly or significantly incorrectly or misleadingly; or
 - (c) in connection with the Grant members of your governing body, volunteers or staff act dishonestly or negligently or in any way, directly or indirectly, to your detriment or to the detriment of your organisation or to the detriment of our reputation; or
 - (d) the primary purpose of your application and your receipt of the Brand Tool-Kit was not or is not in line with the objectives of the Campaign.

4. Licence to use the Brand Tool-Kit

In consideration of your warranties under clause 2 and subject to you meeting your obligations under clause 3, we hereby grant to you a non-exclusive, non-transferable, non-sublicensable, royalty-free licence to use the Brand Tool-Kit for the Permitted Purpose in accordance with the terms and conditions of this Agreement for a period commencing on the date on which you download the relevant Brand Tool-Kit from the Website until the end of the Term.

5. Use of the Brand Tool-Kit

- 5.1 The Brand Tool-Kit Physical Materials can be downloaded by you from the Website.
- 5.2 In the event that you wish to use the Logo and/or the Designation, you will submit a request to us using the online submission form available on the Website identifying whether you wish to use the Logo and/or the Designation, the proposed purpose of your use and your preferred Designation format (from a pre-selected drop down menu). If appropriate, we will provide you with written confirmation of our approval or rejection.
- 5.3 You hereby agree that:
 - (a) you shall not use the Brand Tool-Kit (or any part of it) for any use, event or purpose (whether directly or indirectly) which:
 - (i) violates or infringes in any way upon the rights of others, which is unlawful, offensive, obscene, defamatory, profane or otherwise objectionable which encourages conduct that would constitute a criminal offence, gives rise to civil liability or otherwise violates any law or is in breach of the privacy or any other rights of a third party or of any law;

- (ii) would tend to allow them to become liable mislead the public, or be materially detrimental to or inconsistent with our good name, goodwill, reputation and image;
 - (iii) would impair our rights in the Brand Tool-Kit (or any part of it);
 - (iv) is commercial (i.e. promoting particular products and/or services), promotional and/or falsely suggests a client (or other business) affiliation/relationship with us; or
 - (v) is in any way be affiliated to or sponsored by any company, organisations, persons, sponsors and/or media partners that contravene the objective of the Campaign, including without limitation manufacturers, suppliers and retailers of alcohol, cigarette and other tobacco products, carbonated soft drinks, fast food and drugs.
- (b) you shall not amend, adapt, use or position the Brand Tool-Kit (or any part of it) so as to suggest that we, you or any of the persons appearing in the Brand Tool-Kit Physical Materials endorse any commercial product or service or any political party or belief without our prior approval in writing;
 - (c) you shall discharge your obligations in connection with the use of the Brand Tool-Kit with all due skill, care and diligence and comply with any applicable laws, regulations and/or industry codes;
 - (d) you shall at all times (notwithstanding the termination of this Agreement) be liable for, indemnify and hold us harmless (together with our officers, employees and agents) against all liabilities, actions, proceeds, costs, claims, damages and other expenses of any nature whatsoever incurred by, suffered by or awarded against us and compensation agreed by us in consequence of any breach or non-performance by you of any of your obligations under this Agreement.

6. Intellectual Property Rights

- 6.1** The legal and beneficial ownership of the physical Brand Tool-Kit and the Intellectual Property Rights belongs to us or our affiliates.
- 6.2** You agree that this Agreement does not give you any ownership, any claim, any right, title or interest in or to the Brand Tool-Kit (or any part of it) except the rights of use as are specifically set out in this Agreement and you hereby acknowledge and agree that the benefit of all such use by you shall at all times enure to us. You shall hold all goodwill accruing to the Brand Tool-Kit as a result of your use of the Brand Tool-Kit as bare trustee for our benefit.
- 6.3** All uses of the Brand Tool-Kit Physical Materials must be displayed by you in the manner that has been presented for download on the Website, without amendment.
- 6.4** All uses of the Logo and the Designation must be displayed by you in a manner approved by us in accordance with clause 5.2, without amendment and shall be used in accordance with our Brand Guidelines accompanied by clear marking to show that the Intellectual Property Rights in the Logo and the Designation are owned by us or our affiliates and are being used with our permission.

7. Protection of the Brand Tool-Kit and the Intellectual Property Rights

- 7.1** You shall not apply to register or pursue registrations of the Brand Tool-Kit (or any part of it) or any Intellectual Property Rights in your own name.
- 7.2** You shall notify us in writing of any infringements or misuses of the Brand Tool-Kit (or any part of it) and/or the Intellectual Property Rights by third parties of which you become aware.
- 7.3** We have the sole right to determine whether any action shall be taken on account of all proceedings relating to the Brand Tool-Kit (or any part of it) and/or the Intellectual Property Rights and will in our sole discretion decide what action (including litigation, arbitration or compromise) if any to take in respect of any infringement or alleged infringement of the Brand Tool-Kit (or any part of it) and/or the Intellectual Property Right or any other claim or counterclaim brought or threatened in respect of the use of the Brand Tool-Kit (or any part of it) and/or the Intellectual Property Right. We shall not be obliged to bring or defend any proceedings whether for infringement or otherwise in relation to the Brand Tool-Kit (or any part of it) and/or the Intellectual Property Right if we in our sole discretion decide not to do so.
- 7.4** In any infringement proceedings which are brought by us, we shall be entitled to claim in respect of any loss suffered or likely to be suffered by you and shall be entitled to retain any damages awarded in respect of such claim.

7.5 For the avoidance of doubt, nothing herein comprises a licence to use any Designation or other trade mark in connection with or in relation to any goods or services.

8. Limitation Of Liability

8.1 We do not warrant that the use of the Brand Tool-Kit by you will not infringe the rights of any third party and exclude all implied warranties or representations to the fullest extent permitted by law.

8.2 Our only responsibilities with respect to the Brand Tool-Kit are set out in this Agreement. To the fullest extent permitted by law, we exclude all liability for loss or damage arising out of or in connection with your use of the Brand Tool-Kit (or any part of it) for any reason except where caused by our negligence, fraud, misrepresentation or fraudulent misrepresentation. Nothing in this Agreement will exclude or limit our liability for death or personal injury caused by our negligence.

8.3 You acknowledge that we will have no liability for any indirect or consequential losses or damage you may suffer or incur (including any loss of savings you expect to make, loss of business or business opportunity, or loss of profit or revenue) arising from your use of the Brand Tool-Kit. You hereby waive any claim or cause of action arising out of any termination of this Agreement and you release us, and our affiliates and our respective officers, employees and agents from any and all such claims and causes of action.

9. Termination

9.1 The rights granted to you under this Agreement will terminate automatically upon a breach by you of the terms of this Agreement.

9.2 We may, in our absolute and sole discretion, at any time terminate the Grant and/or cease to make available the Brand Tool-Kit for you, including without limitation where:

- (a) we decide to discontinue the Campaign;
- (b) we do not have available adequate money from the National Lottery to enable us to fund the continued provision of the Brand Tool-Kit;
- (c) you undergo, or we reasonably believe that you have undergone or may undergo, any form of insolvency or event connected to an insolvency; or
- (d) we determine (including without limitation on the basis of any information or notification that you provide or fail to provide pursuant to this Agreement) that you are not suitable for the receipt of the Brand Tool-Kit in accordance with the eligibility criteria for the Campaign, or for grant recipients generally, from time to time; or
- (e) we suspect that your primary purpose of receiving the Brand Tool-Kit is not in line with the objectives of the Campaign.

9.3 We will be entitled to terminate this Agreement for any reason on notice set out on the Website.

9.4 Termination of this Agreement will be without prejudice to any existing rights and/or claims that we may have against you, and will not relieve you from fulfilling the obligations accrued prior to such termination.

9.5 You acknowledge that we will have no liability arising out of any alleged wrongful termination of this Agreement. You hereby waive any claim or cause of action arising out of any termination of this Agreement and you release us, our affiliates and our respective officers, employees and agents from any and all such claims and causes of action.

9.6 On termination of this Agreement:

- (a) you will immediately cease all use of the Brand Tool-Kit and destroy or upon our request return to us all materials containing the Brand Tool-Kit in your possession or control; and
- (b) all rights granted to you under this Agreement or however acquired and any goodwill associated therewith shall revert and inure to us.

10. General

- 10.1** If any provision of these terms and conditions is held to be illegal, invalid or unenforceable in whole or in part the remainder of this Agreement will continue to be valid and enforceable.
- 10.2** No failure or delay in exercising rights under this Agreement shall operate as a waiver of such rights.
- 10.3** This Agreement does not make either party the agent of the other nor does it create a partnership or joint venture between the parties.
- 10.4** This Agreement expresses the entire agreement between us and you.
- 10.5** This Agreement is personal to you and you will have no right to assign, novate or otherwise transfer any of your rights, obligations and liabilities under this Agreement.
- 10.6** We may assign, novate or otherwise transfer all of its rights, obligations and liabilities under this Agreement to a successor body to us or to any successor distributor of Lottery funding, and you will consent to any such assignment, novation or other transfer with delay. The award of the Grant, this Agreement and all non-contractual disputes arising in connection with the Grant shall be governed by and construed according to English law and be subject to the exclusive jurisdiction of the English Courts.