

DATED

23rd December 2021

SUBCONTRACT AGREEMENT

between

DEPARTMENT OF HEALTH AND SOCIAL CARE

and

NHS ENGLAND AND NHS IMPROVEMENT

CONTENTS

CLAUSE

1.	Interpretation	1
2.	Effective Date	3
3.	Back-to-back agreement	3
4.	Indemnity from Subcontractor and disputes	4
5.	Fees, charges and expenses	4
6.	Compliance with laws and policies	4
7.	Limitation of liability	5
8.	Commencement and duration	5
9.	Intellectual property	6
10.	Termination	7
11.	Further assurance	8
12.	Counterparts	8
13.	Third party rights	8
14.	No partnership or agency	8
15.	Governing law	Error! Bookmark not defined.
16.	Jurisdiction	Error! Bookmark not defined.

SCHEDULE

SCHEDULE 1	GRANT AGREEMENT	11
SCHEDULE 2	SUBCONTRACT SCOPE OF WORK	40
SCHEDULE 3	FEES	45
SCHEDULE 4	MANDATORY POLICIES	46

THIS AGREEMENT is dated 18th June 2021

PARTIES

- 1.1 Secretary of State for Health and Social Care, acting as part of the Crown through the Department of Health, which expression shall include its successors in title, with offices at 39 Victoria Street, London, Sw1H 0EU. (**DHSC**).
- (1) NHS England and NHS Improvement with offices at Skipton House, 80 London Road, London, England, SE1 6LH. (**Subcontractor**).

BACKGROUND

- (A) DHSC has entered into a grant agreement (the **Grant Agreement**), a redacted copy of which is provided in Schedule 1 hereto, under which DHSC agrees to supply services for the delivery of the Moving Healthcare Professionals Programme Phase 2 to Sport England (**Authority**).
- (B) DHSC and Subcontractor will enter into a Subcontract Scope of Work (as defined in clause 1.1), for the benefit of the Authority, and in accordance with the provisions set out below.

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

day: a period of 24 consecutive hours ending at 12.00 midnight.

Mandatory policies: DHSC's mandatory policies and procedures as amended by notification to the Subcontractor from time to time.

Subcontract Scope of Work: the specification set out in Schedule 2.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Except as provided expressly in this clause 1 and **Error! Reference source not found.** of this agreement, terms as defined in the Grant Agreement shall have the same meaning when used in this agreement.

- 1.4 Except as provided expressly in this agreement, the rules of interpretation in the Grant Agreement shall apply to this agreement.
- 1.5 For the purposes of this agreement, and unless the context otherwise requires, references in the Grant Agreement to "this agreement" shall be to the Grant Agreement as incorporated into this agreement, with the alterations made for the purposes of this agreement.
- 1.6 In this agreement:
- (a) any reference to a "clause" or "Schedule" is, unless the context otherwise requires, a reference to a clause or Schedule in this agreement, excluding a clause or schedule in the Grant Agreement; and
 - (b) any reference to a "Grant Agreement clause" or "Grant Agreement Schedule" is, unless the context otherwise requires, a reference to a clause or schedule in the Grant Agreement.
- 1.7 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.8 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.9 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.10 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.11 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.12 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.13 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.14 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.15 A reference to **writing** or **written** includes fax and email.

1.16 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.17 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. EFFECTIVE DATE

2.1 Subject to clause 2.2 to below, this agreement shall have legal effect from the date on which it is signed on behalf of both parties 18th June 2021.

2.2 If the Grant Agreement has not been signed by the Effective Date, clause 3, clause 4, and clause 5 of this agreement shall have legal effect only from the date on which Subcontractor receives written notice from the Authority or that the Grant Agreement has become legally effective.

2.3 DHSC shall promptly notify the Subcontractor in writing as soon as the Grant Agreement becomes legally effective.

3. BACK-TO-BACK AGREEMENT

3.1 As soon as this clause becomes effective under clause 2 above, the Subcontractor shall be bound to DHSC in respect of the Subcontract Scope of Work as DHSC shall be bound to the Authority under the Grant Agreement except as further provided in this agreement.

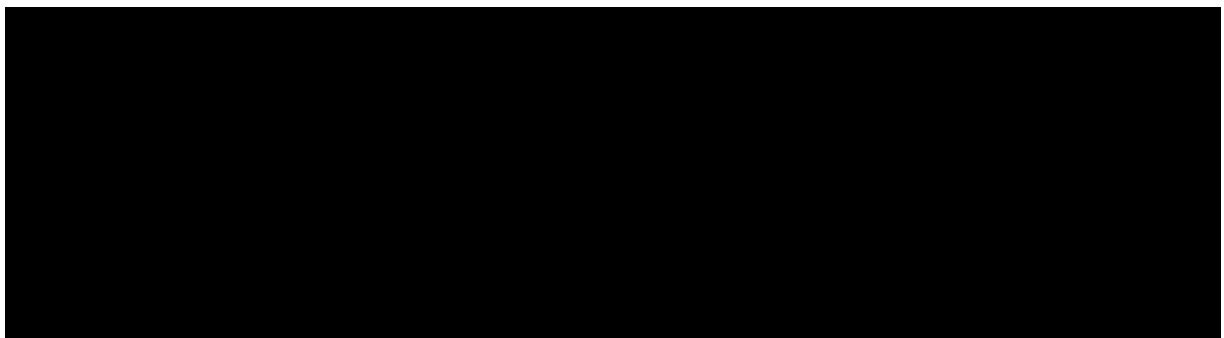
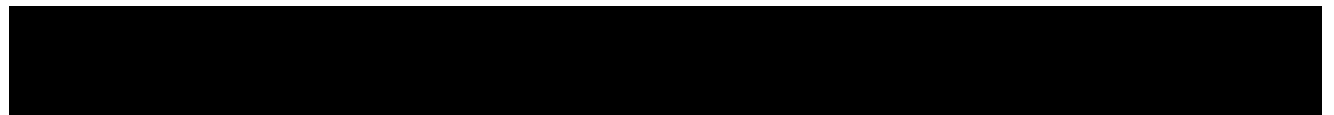
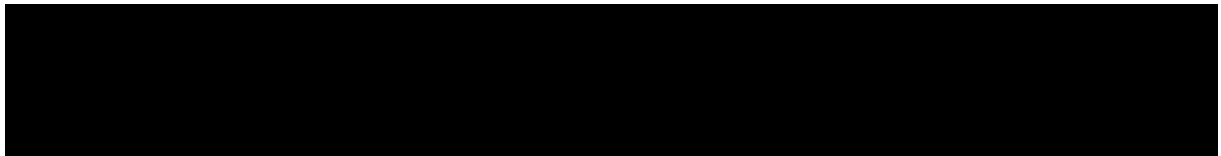
3.2 Except as further provided in this agreement, the Grant Agreement shall be used to determine the respective rights and duties of DHSC and the Subcontractor under this agreement except that:

- (a) wherever in the Grant Agreement there is a reference to the Authority or a term referring to the Authority, for the purposes of this agreement a reference to DHSC or a term referring to DHSC shall be substituted;
- (b) wherever in the Grant Agreement there is a reference to the Authority or a term referring to the Authority, for the purposes of this agreement a reference to the Subcontractor or a term referring to the Subcontractor shall be substituted; and
- (c) the Grant Agreement shall be interpreted subject to the further alterations made for the purposes of this agreement as set out in Schedule 2.

4. INDEMNITY FROM SUBCONTRACTOR AND DISPUTES

- 4.1 The Subcontractor shall indemnify DHSC against all losses, claims, demands, costs and expenses incurred or suffered by DHSC including all claims for liquidated damages by the Authority against DHSC arising out of the Subcontract Scope of Work.
- 4.2 DHSC shall give to the Subcontractor notice in writing as soon as possible after it becomes aware of any dispute between DHSC and the Authority arising out of the Subcontract Scope of Work.
- 4.3 The Subcontractor shall deal with any disputes that arise between DHSC and the Authority arising out of the Subcontract Scope of Work and shall control and pay in full for any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure in which DHSC might be involved as a result of entering into this agreement and the Grant Agreement, provided that DHSC gives to the Subcontractor written notice as required by clause 4.2 above, whereupon the Subcontractor shall be deemed to have sole authority to manage and settle such dispute.
- 4.4 The Subcontractor shall pay DHSC any amounts due to DHSC within thirty (30) days of date of invoice, unless otherwise stated in this agreement.

5. FEES, CHARGES AND EXPENSES



6. COMPLIANCE WITH LAWS AND POLICIES

- 6.1 Each party shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

- 6.2 **Mandatory policies.** The Subcontractor shall comply with the Mandatory policies and as DHSC may update them from time to time.

7. LIMITATION OF LIABILITY

- 7.1 Nothing in this agreement shall limit or exclude the liability of either party for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation or wilful default; and
 - (c) any matter for which it would be unlawful to exclude or restrict liability.
- 7.2 Subject to clause 7.1:
- (a) Neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, for:
 - (i) any loss of profit, loss of revenue, loss of use, loss of goodwill, loss of data, loss due to interruption of business, or loss of anticipated savings, whether direct or indirect, and even if the party has been advised of the possibility of such losses or damages;
 - (ii) any loss that is an indirect consequence of any act or omission of the other party; or
 - (iii) any *ex gratia* payment or sum paid in settlement of a claim paid by one party without the prior written approval of the other;
 - (b) the total liability of either party to the other in respect of all other loss or damage arising under or in connection with this agreement, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, shall in no circumstances exceed £140,000 for the entire term of this agreement.
- 7.3 DHSC shall not be responsible to the Subcontractor for any failure to perform its obligations under this agreement where there is a corresponding failure by the Authority to perform its obligations under the Grant Agreement, provided that DHSC takes all reasonable steps to pursue its rights under the Grant Agreement.

8. COMMENCEMENT AND DURATION

This agreement shall be effective from the Effective Date and shall continue in force until the parties have discharged all their obligations under it unless:

- (a) the Grant Agreement is terminated for any reason, in which case this agreement shall terminate immediately and automatically, without further

action being necessary by the parties, and subject to all the rights of the parties accrued up to the date of termination; or

- (b) this agreement is terminated by one of the parties under clause 10.1.

9. INTELLECTUAL PROPERTY

- 9.1 This agreement does not affect the ownership of any Intellectual Property in any Background IP. Background IP will remain the property of the party that contributes them to the Project (or its licensors). No licence to use any Intellectual Property is granted or implied by this agreement except the rights expressly granted in this agreement.
- 9.2 Each party grants the other a royalty-free, non-exclusive licence to use its Background IP for the purpose of carrying out the Project. Neither party may grant any sub-licence to use the other's Background IP except that DHSC may allow any person or third party working for or on behalf of DHSC, to use the Subcontractor's Background IP for the purpose of carrying out the Project or benefitting from the Project.
- 9.3 DHSC will own the Arising IP and may take such steps as it may decide from time to time, and at its own expense, to register and maintain any protection, including filing and prosecuting patent applications for any of the Arising IP. Where any third party such as a contractor is engaged by the Subcontractor, the Subcontractor will ensure that the third party assign any IP they may have in the Arising IP in order to be able to give effect to the provisions of this clause 9. The Subcontractor will ensure that its employees involved in the creation of the Arising IP give DHSC such assistance as DHSC may reasonably request in connection with the registration and protection of the Arising IP, including filing and prosecuting patent applications, and taking any action in respect of any alleged or actual infringement of that Arising IP.
- 9.4 To the extent that any Arising IP is capable of prospective assignment, the Subcontractor now assigns such Arising IP to DHSC; and to the extent any Arising IP cannot prospectively be assigned, the Subcontractor will assign such Arising IP to DHSC as and when they are created.
- 9.5 The Subcontractor will notify DHSC promptly after identifying any Arising IP that the Subcontractor believes is patentable, and will supply DHSC with details of the Arising IP.
- 9.6 DHSC grants the Subcontractor a royalty-free, non-exclusive licence to use the Arising IP for the purpose of carrying out the Project. The Subcontractor may not grant any sub-licence to use the Arising IP.

- 9.7 Notwithstanding clause 9.2 above, the Subcontractor grants to DHSC a royalty-free, fully paid up, perpetual licence to use the Subcontractor's Background IP for the purpose of DHSC exercising its rights in Arising IP under this clause 9.

10. TERMINATION

- 10.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- (b) the other party commits a breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;

- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(d) to clause 10.1(j) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010); or

10.2 DHSC may terminate this agreement immediately by notice in writing if the Subcontractor is in breach of its compliance obligations under clause 6.

11. FURTHER ASSURANCE

Each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

12. COUNTERPARTS

12.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

12.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

13. THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

14. NO PARTNERSHIP OR AGENCY

14.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

- 14.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

15. DISPUTES

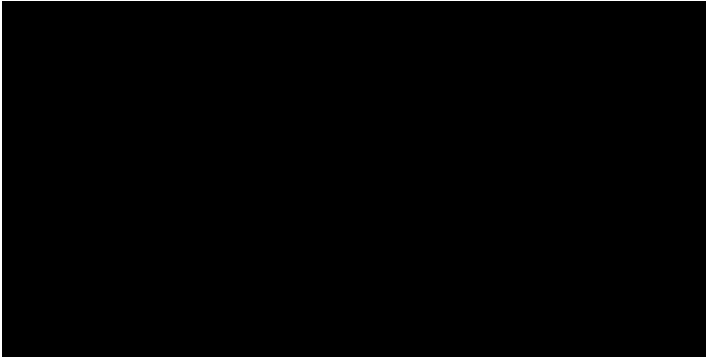
The parties acknowledge that they are both health service bodies for the purposes of section 9 of the NHS Act 2006. Accordingly, this agreement shall be treated as an NHS Contract and any disputes may be referred to the Secretary of State for Health and Social Care for determination.

16. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

SIGNATURE PAGE OVERLEAF

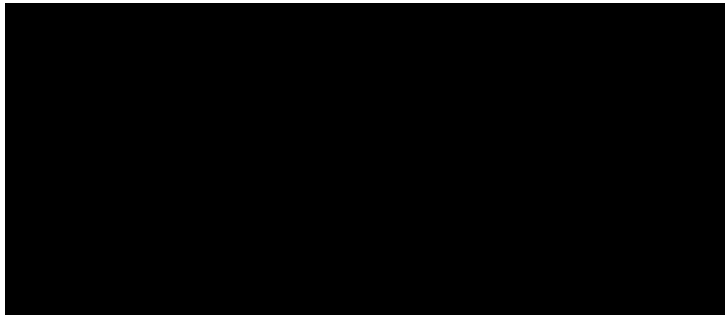
This agreement has been entered into on the date stated at the beginning of it.



Signed for and on behalf of Department of Health and Social Care

2/2/2022

Date



Signed for and on behalf of NHS England and NHS Improvement

01/02/2022

Date

Schedule 1 Grant Agreement

THE ENGLISH SPORTS COUNCIL

- and -

PUBLIC HEALTH ENGLAND

LOTTERY FUNDING AGREEMENT

URN: 2018008402

IN RELATION TO THE MOVING HEALTHCARE PROFESSIONALS PHASE 2 PROJECT

Sport England SE/LS/3314/xxx

DATE: 3rd April 2019

IT IS AGREED

1 DEFINITIONS

In this Agreement words and expressions shall have the meanings assigned to them in Schedule 1, unless the context requires otherwise.

2 INTERPRETATION

- 2.1 Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- 2.2 References to clauses, recitals and schedules are references to clauses and recitals of and schedules to this Agreement.
- 2.3 The schedules to this Agreement are an integral part of this Agreement.
- 2.4 References to any statute or statutory provision shall include reference to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any directions, orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 2.5 References to agreements, documents or other instruments include (subject to all relevant approvals) a reference to the same as amended or varied from time to time.
- 2.6 Words importing the singular include the plural and vice versa.
- 2.7 Words importing a particular gender (including neuter) include all genders.
- 2.8 "Person" includes any individual, company, partnership, firm, trust, body corporate, unincorporated association or body of persons, government or governmental body.
- 2.9 Any reference to a document being in "the agreed form" means that document in the form from time to time agreed by the parties and for the purposes of identification signed by them or on their behalf.
- 2.10 Any reference to a "party" or "parties" shall mean a party or the parties to this Agreement or such successors and assignees as are permitted in accordance with this Agreement, and "the Applicant" and "Sport England" shall be construed accordingly.

3 AWARD OF LOTTERY GRANT AND REQUIREMENTS

- 3.1 Sport England shall pay the Lottery Grant to the Applicant subject to and in accordance with the terms of this Agreement. The Lottery Grant is solely for funding the revenue expenditure in relation to the delivery of the Project and achieving the Strategic Purpose.
- 3.2 Nothing in this Agreement shall require Sport England to provide any additional revenue funding and/or capital funding in respect of the Project.
- 3.3 The Applicant shall undertake the Project in accordance with its obligations under this Agreement to achieve the Strategic Purpose.
- 3.4 The Applicant shall comply with the Governance Code insofar as it applies to the Applicant. The Applicant must progress and achieve the requirements of its Governance Action Plan agreed with Sport England. For the avoidance of any doubt, if the Applicant fails to achieve the requirements of its Governance Action Plan, it will be deemed to be in material breach of this Agreement.
- 3.5 Without prejudice to the Applicant making any further applications for funding in the future, the Lottery Grant shall be the maximum amount of funding available from Sport England to the Applicant under this Agreement.
- 3.6 Sport England's obligation to pay to the Applicant that part of the Lottery Grant not drawn down in accordance with this Agreement shall cease on the Grant Expiry Date.

4 CONDITIONS PRECEDENT TO DRAWDOWN OF THE LOTTERY GRANT

- 4.1 The conditions precedent to drawdown ("the Conditions") of the Lottery Grant comprise of the following:
 - (a) Part A Conditions, being the conditions so referred to at Schedule 2, shall be completed or achieved to Sport England's satisfaction prior to a drawdown of part or all of the Lottery Grant relating to first payment of Year 1 Funding by the Applicant; and
 - (b) Part B Conditions, being the conditions so referred to at Schedule 2, shall be completed or achieved to Sport England's satisfaction prior to a drawdown of part or all of the Lottery Grant relating to second payment of Year 1 Funding by the Applicant; and
 - (c) Part C Conditions, being the conditions so referred to at Schedule 2, shall be completed or achieved to Sport England's satisfaction prior to a drawdown of

part or all of the Lottery Grant relating to first payment of Year 2 Funding by the Applicant; and

- (d) Part D Conditions, being the conditions so referred to at Schedule 2, shall be completed or achieved to Sport England's satisfaction on an ongoing basis throughout the Grant Term and at the time immediately prior to the drawdown of any part of the Lottery Grant by the Applicant. Failure to comply with any of the Part B Conditions will amount to a material breach of the terms of this Agreement

If the Part A Conditions, Part B Conditions, Part C Conditions or Part D Conditions are not met by the Grant Expiry Date, Sport England will de-commit the remaining Lottery Grant.

4.2 Sport England will not proceed to release any part of the Lottery Grant to the Applicant in respect of amounts relating to Year 2 or Year 3 of the Project until such time as:

- (a) Sport England is satisfied with any further information that may be required from the Applicant (including, for example, any progress reports); and
- (b) the Applicant has met or complied with all required Part B Conditions (*Schedule 2*); and
- (c) the Applicant has met or complied with all required Part C Conditions (*Schedule 2*); and
- (d) the Applicant continues to comply with all required Part D Conditions (*Schedule 2*); and
- (e) Sport England is satisfied that the Applicant continues to comply with the provisions of the Agreement; and
- (f) there are sufficient Lottery funds available to Sport England for it to fund the Lottery Grant; and
- (g) evidence that the Applicant is making satisfactory progress in relation to the implementation of the Strategic Plan.

FOR THE AVOIDANCE OF DOUBT the decision as to whether any of the Part A, Part B, Part C or Part D Conditions have been met or complied with shall at all times remain at the sole discretion of Sport England.

4.3 The Applicant shall obtain Sport England's approval for the KPIs in accordance with clause 9.1 prior to the drawdown of part or all of the Lottery Grant.

- 4.4 Sport England shall at all times act reasonably in exercising its discretion to determine whether a Condition and/or terms and conditions of this Agreement has been satisfied.
- 4.5 If required by Sport England the Applicant shall, before each drawdown, supply to Sport England such documentation as Sport England may reasonably require that confirms or otherwise enables Sport England to determine whether at the time of that drawdown the Conditions have been satisfied as required by clause 4.1.

5 PAYMENT MECHANICS

- 5.1 Sport England shall pay a part of the Lottery Grant to the Applicant only against a valid Drawdown Notice submitted to Sport England in accordance with this Agreement.
- 5.2 Subject to clause 4.1 and the other provisions of this clause 5, the Lottery Grant will be made available for drawdown, and the Applicant may submit a Drawdown Notice:
- (a) only against items of Eligible Expenditure and only up to the Maximum Expenditure Amount in respect of each item of Eligible Expenditure; and
 - (b) only in amounts that, for each item of Eligible Expenditure, reflect the same proportion as is represented by the Maximum Expenditure Amount as a proportion of the estimated total cost of that item of Eligible Expenditure as specified in the Cost Plan.
- 5.3 Where the amount drawn down in accordance with clauses 5.1 and 5.2 in respect of any individual item of Eligible Expenditure is lower than the Maximum Expenditure Amount, the Applicant shall be entitled by notice to Sport England to apply the shortfall in respect of that item of Eligible Expenditure to increase the Maximum Expenditure Amount on any other item of Eligible Expenditure where Sport England (at its absolute discretion) so approves in writing.
- 5.4 Drawdown of any part of the Lottery Grant (whether initially or subsequently) shall be made as follows:
- (a) the Lottery Grant will be paid in bi-annual instalments subject to the Applicant providing Sport England with a cash flow forecast on a template to be provided by Sport England detailing the anticipated expenditure of the Lottery Grant;
 - (b) the Applicant will provide updated breakdowns of income and expenditure on a template to be provided by Sport England for the six month periods of

April to September and October to March prior to payment of the bi-annual instalments. If actual expenditure has varied from that forecast, a revised cash flow forecast should be provided at these times;

- (c) an original Drawdown Notice, which is compliant with the provisions of this clause 5 and which has been signed by the Applicant, has been received by Sport England within 6 months of the end of the Project Year and the Applicant has confirmed payment for the following year;
- (d) the Drawdown Notice has been submitted together with such supporting documentation as may reasonably be required by Sport England to show that the relevant drawdown is in relation to Eligible Expenditure and that the drawdown is in compliance with the requirements of this Agreement (including, but not limited to, invoices or valuation certificates for goods or services received, or, where payment in advance is required, a breakdown of anticipated costs);
- (e) the Drawdown Notice is submitted prior to the Grant Expiry Date; and
- (f) at the time of Sport England receiving the Drawdown Notice and at the time of Sport England making a payment in respect of such Drawdown Notice:
 - i. the Lottery is still in operation and Sport England, or a successor body undertaking Sport England's rights and obligations under this Agreement, is licensed to distribute Lottery funds;
 - ii. there are sufficient Lottery funds available to Sport England for it to fund the Lottery Grant;
 - iii. the Applicant is not in material breach of this Agreement and no Event of Default has occurred or is continuing or will result from such drawdown; and
 - iv. the Applicant has made payments for such expenditure as is specified in the Financial Breakdown as being payable by the Applicant on or prior to the date of receipt of the Drawdown Notice by Sport England.

5.5 A Drawdown Notice shall be effective only on actual receipt by Sport England.

6 VAT

6.1 The Lottery Grant does not represent consideration for a taxable supply to Sport England and is therefore not subject to Value Added Tax ("VAT"). If HM Revenue and Customs rules that VAT is payable, then the amount of the Lottery Grant payable

by Sport England shall be deemed to be inclusive of VAT. The Applicant acknowledges that Sport England shall not be obliged to make any further payment in addition to the Lottery Grant in respect of any VAT.

- 6.2 Any and all liability to pay VAT in relation to the Project and any right to recover such VAT is the sole responsibility of the Applicant. The Applicant shall use reasonable endeavours to minimise the payment of VAT and/or to recover the VAT attributable to the costs of the Project as set out in the Cost Plan.
- 6.3 No amount of the Lottery Grant shall be used by the Applicant to fund the payment of VAT payable by the Applicant in relation to the costs of the Project unless such VAT is:
- (a) payable and irrecoverable by the Applicant; and
 - (b) the amount of such VAT is specifically identified as being irrecoverable in the Cost Plan ("Funded VAT").
- 6.4 The Applicant warrants that it bona fide and reasonably believes that the Funded VAT is irrecoverable.
- 6.5 If at any time it is determined that any Funded VAT is not payable or is recoverable, then, unless otherwise agreed by Sport England:
- (a) the Lottery Grant shall be reduced by an amount which bears the same proportion to such Funded VAT that is recoverable (or is not payable) as the Lottery Grant (prior to such reduction) bears to the total cost of the Project as set out in the Cost Plan;
 - (b) the Applicant shall not then draw down any amount of the Lottery Grant to pay for such Funded VAT save that if the Applicant has already drawn down funds against the Lottery Grant to pay for such Funded VAT it shall promptly repay to Sport England an amount which bears the same proportion to such Funded VAT as is recoverable (or was not payable) as the Lottery Grant (prior to any reduction pursuant to 6.5(a)) bears to the total cost of the Project as set out in the Cost Plan; and
 - (c) the Applicant shall submit to Sport England, for approval, a revised version of the Cost Plan that reflects the removal of such Funded VAT that is recoverable (or is not payable) as ineligible for funding.

7 GENERAL CONDITIONS OF GRANT

- 7.1 The Lottery Grant shall be used solely for the purposes of funding the Project to achieve the Strategic Purpose in accordance with the Cost Plan and is non-transferable to fund any other project or for any other purpose.
- 7.2 The Lottery Grant shall only be used by the Applicant on the items of Eligible Expenditure to be incurred by the Applicant and in the amounts as specifically identified in the Cost Plan.
- 7.3 The Applicant shall procure all Other Funding required to enable it to perform its obligations under this Agreement and achieve the Strategic Purpose. The Applicant shall provide such evidence of the Other Funding as Sport England may reasonably require from time to time.
- 7.4 The Lottery Grant shall not be used to fund retrospectively any costs or liabilities incurred prior to the date of this Agreement.
- 7.5 For the avoidance of doubt, where the Applicant delivers any aspects of this Lottery Award through a partner, the Applicant will remain liable to Sport England for any non-delivery. In these instances, the Applicant is expected to enter into a legally binding agreement with the partner to ensure that any claim for clawback from Sport England can easily pass on to the partner as the Applicant will ultimately remain liable.
- 7.6 The Applicant shall comply with all laws and regulations relating to the work it carries out, the staff it employs, the goods it buys, and all laws and regulations relating to the implementation and development of the Project (including recruitment and participation). Such laws and regulations will include without limitation all relevant equality, safeguarding, human rights, health, safety and employment related laws and regulations and any guidelines and/or codes of practice which Sport England may notify to the Applicant from time to time.
- 7.7 The Applicant shall ensure that it has an appropriate equality policy, and if the Project involves work with children, young people and/or adults at risk it must also have an appropriate safeguarding policy and procedure. The Applicant will also obtain all approvals and licences and any profile checks required by law or by Sport England from time to time. The Applicant shall procure that any leisure operator and/or third-party organisation that is carrying out services related to the Project and/or managing the Project complies with the obligations in clause 7.6 and this clause 7.7 and shall provide the Applicant with a copy of its equality and/or safeguarding policy.

- 7.8 Without prejudice to Sport England's obligation to pay the Lottery Grant to the Applicant in accordance with, and otherwise to comply with, this Agreement, Sport England, its employees or agents shall not at any time be liable to the Applicant in relation to any matter in connection with the Project or as a result, directly or indirectly, of compliance by the Applicant with the provisions of this Agreement.
- 7.9 The Applicant shall ensure that there is no promotion, advertising, sponsorship, merchandising or sale of tobacco-based products, whether by the Applicant or any other person, at or in connection with the Project at any time during the Grant Term.
- 7.10 The Applicant shall recognise and continue to recognise the contribution made by Sport England and the Lottery Grant to the Project and to the implementation of the Project as reasonably required by Sport England. The Applicant shall acknowledge the Lottery Funding provided under this Agreement in its Annual Report and, where related to the Lottery Grant provided under this Agreement, in media interviews, press releases, on social media (including above and below the line advertising, Twitter and Facebook) at events or competitions and in publications including promotional material, and on-line publications. The guiding principle shall be to give appropriate and proportionate credit to the Lottery Grant as an investment in the Project.
- 7.11 As and where appropriate, the Applicant must feature the Sport England logo on all major publications and marketing materials including the Applicant's websites. If Lottery Funding is used to partly or totally produce any such publications or marketing materials then the Sport England/National Lottery logo must be used instead of the Sport England logo. Guidance on the use of these logos can be found at <http://brandtoolkit.sportengland.org/>.
- 7.12 Sport England warrants that Sport England or the National Lottery Commission (as applicable) has all rights and authorities required to license the Applicant's use or display of the logos as described in clause 7.11.
- 7.13 As and where appropriate, the Applicant must use social media to acknowledge the investment by Sport England and the National Lottery using the appropriate handles. Guidance on this use of social media can be found at <https://brandtoolkit.sportengland.org/social-media/>.
- 7.14 The Applicant shall not grant to any party any rights that would give that party a prior ranking debt over any debts that may become due to Sport England without Sport England's prior written consent.

7.15 The Applicant will work with Sport England to agree a protocol on the sharing of data, including but not limited to Club Data and Membership Data, to help produce anonymised insight into consumer behaviours. Where any new project is commissioned by the Applicant that seeks to capture personal data, then the Applicant should include the necessary clauses to allow that data to be shared with Sport England. For the avoidance of doubt, the Applicant is not obliged to provide any data to Sport England where doing so would result in the Applicant breaching the Data Protection Act 1998.

7.16 The Applicant will work with Sport England, the Open Data Institute and other bodies to promote and apply the principles of Open Data, and will work with the OpenActive initiative, where relevant. This includes the opening up of relevant data sets under a Creative Commons attributable licence. Relevant data sets (excluding any personal data) include but are not limited to: club, coach, facility or volunteer information or any other information which may be relevant to a consumer to help them take part in sport and physical activity. The Applicant will seek to move to adopt data standards for sport and physical activity where relevant as they emerge from the W3C OpenActive Standards group.

7.17 Sport England may use the Applicant's name and logo(s) either in the manner:

- (a) agreed in this Agreement; or
- (b) to be agreed following negotiations in good faith between the parties, to promote Sport England's investment, by means of the Lottery Grant, in the Project.

Where the manner of such promotion is left to be agreed following negotiations, the guiding principle shall be to give appropriate and proportionate credit to the Lottery Grant as an investment in the Project.

7.18 Where agreement is reached on Sport England's use or display of the Applicant's logo(s) in connection with Sport England's promotion of its investment, by means of the Lottery Grant, in the Project, such logo(s) shall be used in a form and colour and to a design standard agreed in advance by the Applicant and shall be displayed in accordance with all relevant rules, regulations, terms and conditions and guidelines specified by the Applicant. The Applicant warrants that, where agreement is reached on Sport England's use or display of the Applicant's logo(s), the Applicant has all rights and authorities required to license such use or display.

- 7.19 Nothing in this Agreement shall be construed as a transfer of any intellectual property rights held by Sport England, the National Lottery Commission or the Applicant.

8 REPRESENTATIONS AND WARRANTIES

- 8.1 The Applicant warrants and represents to Sport England that at the date of this Agreement each Warranty is true, accurate and not misleading.
- 8.2 Subject to clause 8.6, immediately before each drawdown the Applicant is deemed to warrant to Sport England that each Warranty is true, accurate and not misleading.
- 8.3 When interpreting a Warranty deemed to be repeated immediately before each drawdown, a reference in a Warranty to a fact, matter or circumstance occurring at or before the date of this Agreement will be construed as if it were a reference to a fact, matter or circumstance occurring at the time at which the Warranty is repeated.
- 8.4 Each Warranty is a separate and independent statement and (except as expressly provided by this Agreement) is not limited or otherwise affected by any other Warranty or by any other provision of this Agreement.
- 8.5 The Warranties are qualified by each matter that is fairly and specifically disclosed in the Disclosure Statement in sufficient detail to enable Sport England to assess its impact on the Project. No other information of which Sport England may have knowledge (whenever acquired and whether actual, constructive or implied) prevents or limits a claim being made by Sport England for breach of clause 8.1 or 8.2.
- 8.6 During the Grant Term, the Applicant must notify Sport England immediately if it becomes aware of a fact, circumstance or event which causes or is likely to cause a Warranty (if the Warranty were repeated on or at any time before a drawdown or by reference to the facts and circumstances then existing) to become untrue, inaccurate or misleading. Sport England may (at its sole discretion, such discretion not to be unreasonably withheld) expressly agree in writing to variations to the Warranties to reflect such events, facts or changes in circumstances.

9 PROJECT PLAN

- 9.1 The Applicant shall prepare and obtain Sport England's written approval for key performance indicators that will objectively measure the achievement of sporting objectives (the "**KPIs**") and a method of assessing the Applicant's performance in achieving the KPIs (the "**KPI Assessment Method**"). The KPIs and the KPI

Assessment Method shall only be amended with the prior written approval of Sport England.

9.2 The Applicant shall:

- (a) ensure that it reviews and updates the Project Plan (with such updates or changes approved in writing by Sport England) at least once every 12 months; and
- (b) within three months of Sport England advising the Applicant in writing that Sport England has concerns with one or more aspects of the Project Plan, and that these documents require updating to address these concerns, ensure that the Project Plan (as appropriate) has been updated to take into account Sport England's concerns and it has obtained the written approval of Sport England to the updated Project Plan (as appropriate), save that Sport England may not require the Applicant to do so pursuant to this clause 9.2(a) more than once in any six month period.

9.3 When preparing or updating the Project Plan the Applicant shall:

- (a) consult with Sport England and take into account any comments or suggestions that they may have;
- (b) take into account any published strategy for the development of sport in England that applies at the time of the update or will apply at a later date; and
- (c) take into account the objects of:
 - i. maximising participation in sport;
 - ii. achieving an appropriate balance of elite, regional and community usage; and
 - iii. ensuring that usage by the community is representative of the demographics of the public.

9.4 Without prejudice to clause 9.2:

- (a) the Applicant may update the Project Plan at any time provided that in so doing any changes to the Project Plan are agreed in writing by Sport England; and
- (b) the Project Plan in effect from time to time shall be deemed to apply for the remainder of the Grant Term.

10 MONITORING AND AUDIT ACCESS

- 10.1 The Applicant shall on request provide to Sport England copies of all papers, minutes and accounts, and shall procure that Sport England shall have access to all books, records and documentation of the Applicant and any third party involved with the Project that are relevant to the Project and which Sport England reasonably considers necessary to observe and monitor the progress of the Project.
- 10.2 Sport England shall, on reasonable notice, be allowed access during normal working hours to the offices of the Applicant to monitor compliance with the provisions of this Agreement. Sport England may also require the Applicant to report on the progress of the Project by way of written report or meeting at monthly intervals.
- 10.3 The Applicant shall allow Sport England (or any persons duly authorised by it) to have such access at reasonable times as they may require and provide Sport England with all reasonable assistance in order to enable Sport England to:
- (a) monitor the conduct and progress of the Project; and
 - (b) monitor compliance with the terms of this Agreement, including the promotion and encouragement of sport, in accordance with the Project Plan.
- 10.4 In addition to the provisions of clauses 10.1 and 10.3 above, the Applicant will take appropriate steps to monitor its own success in completing the Project in accordance with the Project Plan.
- 10.5 The Applicant shall supply to Sport England such financial or other information and records as Sport England may reasonably require from time to time in respect of the Applicant's performance of its obligations pursuant to this Agreement.
- 10.6 Before each drawdown (excluding the initial drawdown only) of part of the Lottery Grant the Applicant shall provide Sport England with a breakdown of actual expenditure of the Lottery Grant together with supporting evidence to enable Sport England to reconcile actual expenditure against budgeted forecasts unless such evidence has previously been received by Sport England as part of a Drawdown Notice.
- 10.7 Sport England may conduct an audit of the Applicant's expenditure of the Lottery Grant, including an examination of such books, records, documents, minutes and papers as are held owned or otherwise respectively in the control of the Applicant at any time upon giving reasonable notice.

10.8 For the purposes of any examination under the National Audit Act 1983 of the economy, efficiency and effectiveness with which Sport England has used its resources, the Applicant undertakes to:

- (a) provide the Comptroller and Auditor General of the National Audit Office with such documents as he may reasonably require which are owned, held or otherwise within the control of the Applicant; and
- (b) procure that all professional advisers, contractors, agents or any other person it engages in relation to the Project shall provide the Comptroller and Auditor General of the National Audit Office with such documents as he may reasonably require which are owned, held or otherwise within their control,

PROVIDED THAT nothing in this clause 10.8 shall require the production of legally privileged documents.

11 EVENTS OF DEFAULT

11.1 The following events shall each constitute an Event of Default:

- (a) the Part A Conditions not being completed or satisfied by 1 April 2020, the Part B Conditions and Part C Conditions not being completed or satisfied by 1 April 2021 and Part D Conditions not being completed or satisfied by the Grant Expiry Date;
- (b) a material breach by the Applicant of any of its obligations under this Agreement, and either the breach is incapable of remedy or if capable of remedy has not been remedied within twenty (20) Business Days, or such longer period as Sport England may allow, of service of a written notice by Sport England requiring the breach to be remedied;
- (c) a Warranty being incorrect in any material respect as at the date on which it was made or repeated;
- (d) the Applicant failing to resubmit the Application (revised accordingly) within a reasonable timescale where, at any time during the implementation of the Project, the purpose of the Project changes or the purpose of the Project is unlikely to be fulfilled, or the rejection of any such resubmitted Application by Sport England in circumstances where Sport England reasonably believes the revised Application is unlikely to fulfil the purpose for which the Lottery Grant was originally made (in respect of which Sport England shall first communicate to the Applicant its reasons in writing);

- (e) it becoming unlawful for the Applicant or for Sport England materially to perform all or any of its obligations under this Agreement;
- (f) the Applicant or any employee or agent thereof acting or having acted fraudulently at any time in relation to the Application, the negotiation of this Agreement, a Drawdown Notice or the fulfilment of the Project.
- (g) the Applicant or an employee or agent of the Applicant having completed the Application or a Drawdown Notice incorrectly or misleadingly in any material particular;
- (h) the Applicant or any employee or agent thereof acting or having acted at any time in relation to the Application, the negotiation of this Agreement, or the fulfilment of the Project negligently to the extent that in the reasonable opinion of Sport England such negligence has a material effect on the Project;
- (i) the commission of any offence by the Applicant or any employee or agent thereof under the Prevention of Corruption Acts 1889 to 1916 in relation to this Agreement or the Project;
- (j) the Applicant no longer being legally bound to fulfil any or all of the Applicant's obligations under this Agreement (or any transfer or novation of the Applicant's obligations under this Agreement) or being unable to fulfil the Project to Sport England's satisfaction;
- (k) a Prevented Party being prevented from performance of its obligations for a continuous period in excess of three months;
- (l) the Applicant applying any part or all of the Lottery Grant other than in respect of the fulfilment of the Strategic Purpose or the Project;
- (m) the Applicant failing to adhere to the Governance Code; and
- (n) the occurrence of a Critical Event in relation to a Related Agreement, except where Sport England has given its written consent to that Critical Event.

11.2 The Applicant shall notify Sport England of the occurrence, and give details, of an Event of Default promptly upon becoming aware of such Event of Default.

12 CONSEQUENCES OF AN EVENT OF DEFAULT

12.1 Without prejudice to clause 12.1(b), upon the occurrence of an Event of Default and at any time thereafter Sport England may:

- (a) wholly or partially suspend or cancel any future payments of the Lottery Grant; and/or
- (b) terminate this Agreement; and/or
- (c) require payment of an amount equal to all or any part of the Lottery Grant as has then been drawn down.

12.2 Sport England may exercise (whether simultaneously or not) one or more of its rights set out in clause 12.1 and a failure to exercise a right under those clauses shall not prevent Sport England from exercising that right at a later date. Sport England shall exercise its rights:

- (a) pursuant to clause 12.1 by serving notice to that effect on the Applicant specifying the details of the Event of Default, which notice shall have immediate effect;
- (b) pursuant to clause 12.1(b) by serving notice to that effect on the Applicant from whom Sport England is seeking repayment specifying the details of the Event of Default and the amount of the Lottery Grant which is required to be repaid, which notice shall have immediate effect (a "**Repayment Notice**").

12.3 For the purpose of this clause 12.2 Sport England may exercise more than one right at the same time through the same notice.

12.4 Save where Sport England reasonably believes that it is not practicable to do so, before Sport England issues a Repayment Notice it shall provide the Applicant an opportunity to discuss (either in person or by telephone) the Event of Default pursuant to which Sport England is intending to exercise its rights pursuant to clause 12.1. For the avoidance of doubt if for any reason whatsoever the Applicant does not make use of the opportunity offered by Sport England to discuss the Event of Default this shall not prevent Sport England exercising its rights pursuant to clause 12.1.

12.5 Any amount required to be repaid under a Repayment Notice shall be payable in a single payment as soon as reasonably practicable and in any event not later than twenty (20) Business Days after the service of the Repayment Notice or such later time as is specified in the Repayment Notice. In addition, the Applicant shall reimburse on demand all costs (including legal fees) properly incurred by Sport England in recovering or seeking to recover the amount so required to be repaid.

12.6 If any payment is not made as required under this clause 12 then interest shall be payable to Sport England on the amount for the time being outstanding at the rate of 4 per cent above the base rate of the Bank of England from time to time on the basis of actual days elapsed from the due date for payment until payment in full to Sport England (after as well as before judgment).

12.7 Termination of this Agreement in whole or in part shall be without prejudice to any accrued rights or liabilities of any of the parties.

12.8 There shall be no other rights of termination except as expressly set out in this Agreement.

13 APPROVALS

13.1 Any approvals to be given by Sport England must be requested in writing. The Applicant may only rely upon an approval required by this Agreement if it is given in writing by Sport England (or any person duly authorised by it).

13.2 Without prejudice to clause 13.1, the Applicant shall not be deemed to be in breach of this Agreement where it is unable to perform its obligations under this Agreement because of an unreasonable delay by Sport England in providing an approval.

14 LIABILITY

14.1 Without prejudice to the rights or liabilities of the parties accrued during the Grant Term, any obligation on the Applicant to repay the Lottery Grant shall cease to apply on the expiry of the Grant Term except where expressly stated otherwise in this Agreement.

14.2 The extent of Sport England's liability under this Agreement is limited to its obligation to pay the Lottery Grant in accordance with the provisions of this Agreement.

15 CONFIDENTIALITY AND ANNOUNCEMENTS

15.1 A party may make public the purpose, amount and term of the Lottery Grant. Save as set out in the foregoing, the Applicant shall not issue any public statement, press release or other publicity in relation to the Lottery Grant or which refers to Sport England other than in a form approved in advance by Sport England (such approval not to be unreasonably withheld).

15.2 Subject to the other provisions of this clause 15, the parties agree to keep the provisions of this Agreement and the matters referred to herein confidential and not to disclose them to any person other than:

- (a) with the prior written consent of the non-disclosing party (such consent not to be unreasonably withheld or delayed);
- (b) to their professional advisers provided that such professional advisers are under an equivalent or greater duty of confidentiality;
- (c) to Her Majesty's Department of Digital, Culture, Media and Sport, the Treasury Solicitor or any other governmental, parliamentary or regulatory authority including the National Audit Office;
- (d) if required to do so by law or any regulatory or governmental authority or as a result of any accounting requirements.

15.3 Clause 15.2 shall not apply to information which:

- (a) was in or enters the public domain prior to its receipt other than as a result of an unauthorised disclosure by the recipient or its representatives or advisers;
- (b) is available to or in the possession of the recipient free of any restriction as to its use or disclosure prior to its being furnished by the disclosing party hereunder, provided that such information is not subject to any agreement or other duties relating to confidentiality in respect thereof; or
- (c) the recipient can demonstrate was already known to him or it prior to the disclosure to him.

16 SEVERABILITY AND VARIATION

16.1 If any provision of this Agreement is held to be illegal, invalid or unenforceable in whole or in part the remainder of the Agreement shall continue to be valid and enforceable.

16.2 No variation of any of the terms of this Agreement shall be effective unless in writing and signed by or on behalf of both parties.

17 ASSIGNMENT, NOVATION AND SUB-CONTRACTING

17.1 Sport England may assign or transfer the benefit and burden of this Agreement to a successor body to Sport England, or to any successor distributor of Lottery funding which is able to comply with Sport England's obligations in this Agreement.

17.2 Sport England may by written notice require the Applicant to assign or transfer the benefit and burden of this Agreement to a successor body of Sport England or to any successor distributor of Lottery funding which meets the requirements of clause

17.1 and upon receipt of such notice, the Applicant shall execute all documents and do all acts and things as Sport England reasonably requires for the purpose of giving effect to such assignment or transfer.

17.3 Except where expressly permitted to do so by this Agreement the Applicant shall not purport to assign, novate, sub-contract, charge or transfer the Lottery Grant or this Agreement or any of its rights or obligations under this Agreement without the prior written approval of Sport England (at its absolute discretion).

17.4 The Applicant shall be entitled to sub-contract the performance of any of its obligations under this Agreement to the Contractor provided always that such sub-contracting will not release the Applicant from any of its obligations under this Agreement.

18 FORCE MAJEURE

18.1 MEANING OF FORCE MAJEURE

In this Agreement, "**force majeure**" means any cause preventing either party (a "**Prevented Party**") from performing any or all of its obligations which arises from or is attributable to either:

- (a) acts, events, omissions or accidents beyond the reasonable control of the prevented party, 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; or
- (b) war, civil war, armed conflict or terrorist attack, nuclear, chemical or biological contamination or sonic boom, but nothing else.

18.2 EFFECT OF FORCE MAJEURE

A Prevented Party must, immediately upon the occurrence of a force majeure event, serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and will, subject to:

- (a) service of such notice;
- (b) it having taken all reasonable steps to avoid such prevention or delay; and
- (c) clause 18.3,

have no liability in respect of the performance of its obligations which are prevented by the force majeure event(s) during their continuation, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations. The corresponding obligations of the other party will be suspended to the same extent.

18.3 PREVENTED PARTY TO FIND SOLUTION OR ALTERNATIVE

A Prevented Party must use all reasonable endeavours to bring the force majeure event preventing or delaying the performance of its obligations to a close, or to find a solution by which its obligations under this Agreement may be performed despite the continuance of the force majeure event.

19 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall constitute a partnership between the parties or constitute any party as agent for the other.

20 No WAIVER

No failure or delay in exercising rights under this Agreement shall operate as a waiver of such rights.

21 ENTIRE AGREEMENT

21.1 This Agreement (together with the documents referred to herein) represents the entire agreement between the parties and supersedes all prior agreements, understandings or arrangements (both written and oral) relating to the subject matter of this Agreement.

21.2 Nothing in this Agreement excludes any liability for fraud or any other liability which cannot be limited or excluded by law.

22 NOTICES

22.1 All notices to be given under this Agreement shall be in writing and shall be deemed duly served on a party if marked for the attention of the authorised recipient and left at their authorised address, posted by first class post addressed to that address, sent by facsimile transmission to a machine located at that address, or sent by email to the email address specified in clause 22.3 with a delivery receipt request, and shall be deemed to have been served if:

- (a) delivered, at the time of delivery;

- (b) posted, on the second Business Day after the date of posting;
- (c) sent by fax, on receipt by the sender of a fax report that the transmission has been made; or
- (d) sent by email, on receipt of the email in the recipient's email inbox as confirmed by a delivery receipt.

22.2 If delivery or transmission occurs after 4.00pm on any day, service shall be deemed to occur at 10.00am on the next following Business Day.

22.3 The authorised address, facsimile number and authorised recipient of each of the parties is set out below. Any party may vary these details by giving notice in accordance with this clause to the other parties:

(a) The English Sports Council

21 Bloomsbury Street

London WC1B 3HF

Attention: Chief Executive

Fax: 020 7383 5740

Email: LegalServices@sportengland.org

(b) Department of Health and Social Care

39 Victoria Street, London, SW1H 0EU

Attention: Deputy Director – Diet & Obesity

Fax: 02076548086

Email: Alison.Tedstone@dhsc.gov.uk

22.4 For the avoidance of doubt this clause 22 shall not apply to the sending and receipt of Drawdown Notices pursuant to clause 5.

23 COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses incurred in the negotiation, preparation and execution of this Agreement.

24 COUNTERPARTS

This Agreement may be executed in counterpart but the counterparts shall together constitute one and the same instrument.

25 THIRD PARTIES

25.1 No person other than a party to this Agreement and the Comptroller and Auditor General of the National Audit Office may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

25.2 For the avoidance of doubt the parties may by agreement in writing rescind or vary this Agreement without the consent of the Comptroller and Auditor General of the National Audit Office.

26 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

DEFINITIONS

"Act"	The National Lottery etc. Act 1993 as amended by the National Lottery Act 1998;
"Application"	an application for Lottery funding (Unique Reference Number 2018008402 for the Project solicited by Sport England from the Applicant and dated 1 November 2018;
"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks are open for business in the City of London. Banks shall not be deemed to be "open" for the purposes of this definition by virtue of the availability of automatic telling machines, telephone banking or online banking facility;
"Audience Data"	anonymised participation data, such as demographics and participation figures, derived from the investment of the Lottery Grant;
"Club Data"	Place Data related to clubs;
"Conditions"	the requirements and tasks set out in <i>Conditions</i> ;
"Critical Event"	<p>any of the following events that has had or may have an adverse effect on the fulfilment of the Project, the achievement of the Strategic Purpose and/or the ongoing compliance by either or both of the Applicant with the terms of this Agreement:</p> <ul style="list-style-type: none">a) a material breach of the terms of, or a failure by the Applicant to enforce any of its rights under, a Related Agreement;b) a termination, assignment, novation or other transfer of any or all of the rights or obligations under a Related Agreement; orc) an amendment of the terms of a Related Agreement;
"DCMS"	the Department of Digital, Culture, Media and Sport;

"Disclosure Statement"	the statement set out in Schedule 8 (<i>Disclosure Statement</i>) to this Agreement;
"Drawdown Notice"	<p>together the forms of notice set out in the following schedules (where applicable):</p> <ul style="list-style-type: none"> a. Schedule 6 (<i>Drawdown Notice</i>), b. Schedule 11 (<i>Initial Claim & Forecast Form</i>) c. Schedule 12 (<i>Six Monthly Project Cost Reconciliation & Claim Form</i>) d. Schedule 13 (<i>Annual Project Cost Reconciliation & Claim Form</i>) <p>together with the supporting information required under clause 5.4;</p>
"Eligible Expenditure"	the items of expenditure eligible for funding through the Lottery Grant that have been identified as "Eligible Expenditure" in the Cost Plan and which have actually been incurred by the Applicant in respect of the Project;
"Event of Default"	an event set out in clause 11.1;
"Governance Action Plan"	the action plan agreed between the Award Recipient and Sport England as set out in the Award Agreement which sets out the actions, steps required and timescales for compliance with the Code for Sports Governance as set out in this Agreement;
"Governance Code"	Sport England's A Code for Sports Governance https://www.sportengland.org/media/11193/a_code_for_sports_governance.pdf
"Grant Expiry Date"	31 March 2022 or such other date subsequently notified in writing by Sport England upon three months' notice and agreed between the Parties;
"Grant Term"	the period from the date of this Agreement until the date which is four years after the commencement of the Project
"KPI Assessment Method"	has the meaning set out in clause 9.1;

"KPIs"	has the meaning set out in clause 9.1 and at Schedule 15 (<i>Agreed KPIs</i>);
"Lottery"	The National Lottery created by the Act;
"Lottery Grant"	the grant made by Sport England pursuant to the Application, being a maximum sum of £4,498,465 (four million, four hundred and ninety-eight thousand, four hundred and sixty-five pounds) subject to any reduction in accordance with the terms of this Agreement.
"Maximum Expenditure Amount"	the maximum amount that may be drawn down by the Applicant in respect of each item of Eligible Expenditure that is specified as the "Maximum Expenditure Amount" in the Cost Plan;
"Membership Data"	the number of members; characteristics of members (for example, age); activity patterns; Audience Data; and other membership data which has been 'anonymised' to remove personal data;
"Other Funding"	capital and/or revenue funding to meet the balance of the capital and revenue costs of the Project which are not met from the Lottery Grant;
"Place Data"	data related to location, venues, activities and event information associated with the investment of the Lottery Grant;
"Prevented Party"	has the meaning set out in clause 18.1;

"Project"	Phase two of the Moving Health Care Professionals programme which will focus on the following: <ul style="list-style-type: none"> • Increased capability, opportunity and motivation of healthcare professionals to be aware of and advocate the benefits of physical activity • Increase in healthcare professionals advocating physical activity • Increase in patient physical activity levels • Sustainable and owned physical activity educational resources developed by the medical community for the medical community • Improvements in outcomes such as health or quality of life • Understanding the potential for sustainable implementation of interventions and delivery models to achieve large-scale change in clinical care (sustainability and scalability).
"Project Plan"	a project plan developed by the Applicant in respect of the Project as set out in the document at Schedule 5 (<i>Project Plan</i>);
"Related Agreement"	an agreement entered into by the Applicant in respect of or related to the undertaking of the Project;
"Strategic Purpose"	the purpose for which this Lottery Grant was granted as set out in Schedule 3 (<i>Strategic Purpose</i>);
"Warranty"	each statement set out in Schedule 7 (<i>Warranties</i>).

CONDITIONS

Part A Conditions:

Pursuant to clause 4.1, the following conditions must be achieved, to the satisfaction of Sport England, prior to the drawdown of any part of the Lottery Funding relating to the first payment of Year 1 Funding:

1. the Applicant shall obtain all necessary approvals and authorisations to fund the fulfilment of the Project and its payment obligations under the Agreement, by commencement of the Project;
2. the Applicant shall secure binding commitments from funding partners (and/or any other person where applicable) that will enable it to draw down, and to the extent applicable provide evidence that it has sufficient available committed revenue funding to meet, the Other Funding for the Project within a timescale that will enable it to fulfil its obligations under this Agreement, by commencement of the Project;
3. the Applicant shall supply to Sport England with confirmation that the Applicant has validly entered into and executed this Agreement and that the signatory/ies have been properly authorised to sign this Agreement on behalf of the Applicant, by the date of this Agreement;
4. The Applicant shall supply to Sport England by the date of this Agreement, documentary evidence demonstrating that the Applicant has the capacity and authority to enter into this Agreement and perform their obligations under this Agreement, accept any liabilities arising from this Agreement, that this Agreement will be legally binding on them and that Sport England may enforce the terms of this Agreement against the Applicant;
5. In accordance with Sport England's Governance Code, the Applicant shall agree a Governance Action Plan with Sport England, if required by Sport England, by commencement of the Project.
6. The Applicant shall provide to Sport England evidence of the Applicant's safeguarding policy which covers children, young people and adults at risk, by the commencement of the Project.
7. The Applicant shall submit for Sport England's approval the final Cost Plan which includes both cash and in-kind contributions from the Applicant, and revisions to overhead and active hospital costs.

Part B Conditions

Pursuant to clause 4.1, the following conditions must be achieved, to the satisfaction of Sport England, prior to the drawdown of any part of the Lottery Funding relating to the second payment of Year 1 Funding:

8. The Applicant shall undertake to Sport England's satisfaction, an analysis of the workforce the investments are targeting to identify the challenges and opportunities

to aid targeting and planning and the Applicant shall provide a report detailing the findings of the analysis for Sport England's approval.

9. The Applicant shall work with Sport England to develop the Project Plan, to Sport England's satisfaction, for the development of the proof of efficacy and replicability of active hospitals workstream.
10. The Applicant shall submit all evaluation plans to Sport England for approval prior to work being commissioned

Part C Conditions

Pursuant to clause 4.1, the following conditions must be achieved, to the satisfaction of Sport England, prior to the drawdown of any part of the Lottery Funding relating to the first payment of Year 2 Funding:

11. The Applicant shall work with Sport England to develop the Project Plan, to Sport England's satisfaction, for an area based approach to moving at scale and pace.

Part D Conditions:

Pursuant to clause 4.1, the following conditions must be achieved, to the satisfaction of Sport England, on an ongoing basis and immediately prior to the drawdown of the Lottery Grant or any part of it:

12. The Applicant shall submit to Sport England a plan for the use of the 5% contingency budget, specified at Schedule 4 (*Cost Plan*) to Sport England for approval prior to it being committed.
13. The Applicant shall involve Sport England in the procurement of any external providers and, in particular, the Applicant shall consult with Sport England in finalizing of the Invitation to Quote and in selecting the provider.
14. The Applicant shall submit to Sport England for approval plans for the sustainability models for each of the programmes detailed in the Project Plan. Where these plans include Intellectual Property funded by the Award, the Applicant shall adhere to the terms of this Agreement, including where there is a proposal for licensing and/or profitability.
15. If any part of the Award is used directly or indirectly to purchase or develop intellectual property rights then the Applicant will take all necessary steps to protect such rights against claims from third parties and such rights shall not be exploited without Sport

England's prior written consent. Exploitation includes use for any commercial purpose or any licence, sale, assignment, materials transfer or other transfer rights. The Applicant understands and accepts that if the Applicant provides the consent it may be subject to conditions requiring repayment of the Award or you sharing any money received.'

16. The Applicant shall continue to comply with and implement its Governance Action Plan, if applicable and shall comply with the Governance Code.

Schedule 2 Subcontract Scope of Work

Please find below the agreed service specification and the agreed evaluation plan.

Activating NHS Systems: Overarching Aims and Objectives

A design group made up of OHID Physical Activity team members, Sport England, Evaluation partners, and other experts (as required), will use their best endeavours to support the co-production of this workstream by playing an advisory role. This group will be a forum for discussion and exchange to determine how the project will evolve over time which allows for innovation and change to occur.

The project will aim to remain true to the original objectives that the design group have collaboratively developed (as set out in Appendix 1 below). Frequency of meetings (currently weekly) will be determined by the group and will be dependent on the needs of the project.

Aim

The aim of the Activating NHS Systems workstream is to embed physical activity into Healthcare Systems so that physical activity conversations for the prevention and treatment of long-term conditions become the norm, not the exception. This includes both work with national NHS bodies and supporting Integrated Care Systems (ICSs) to embed PA at system, place and neighbourhood within their organisations. This will be a key part of implementation of Uniting the Movement (UM) and Everybody Active Every Day (EAED).

The ambition is to ensure that system leaders at all levels of the NHS including both national, regional and local commissioners as well as primary, secondary, tertiary care and community providers understand the importance of physical activity within the NHS, how their roles can support its inclusion as part of the prevention and treatment/therapy as well as understanding what the broader benefits of delivering physical activity are to the system. In part this is achieved through:

- Changing the system mindset around physical activity
- Supporting NHS leaders and others to gain the essential knowledge and skills pertinent to their role in the system
- Aligning with NHS priorities including CORE20PLUS5, reductions in bureaucracy and managing the impacts of Covid on the system
- Supporting HCPs/ System leaders to be aware of where to go to access relevant the resources and support.

Rationale

ICS's roles and priorities are defined nationally by DHSC and operationally by NHSE/I. Locally their role is defined through their place-based relationships and partnerships. To be effective in increasing physical activity there needs to be an alignment between national and local priorities with appropriate resources in place.

Local priorities emerge from a complex set of relationships between local voluntary, commercial and statutory organisations, and individuals (Including Active Partnerships).

The work is aligned with a series of products and services that have been developed by Sport England, OHID (formally PHE) and national and place based/local partners e.g. Moving Healthcare Professionals, the RCGP Active Practice Charter, Local Delivery Pilots and local innovation around contracting, commissioning and service design.

The purpose of this workstream is to build on these assets to achieve a shared understanding of what should be done to increase awareness of the value of physical activity and the steps needed to embed physical activity in the decision-making culture and Clinical Practice of the NHS to support better patient outcomes making use of resources that are available.

Objectives

1. Undertake Insight & Mapping to inform the delivery of the workstream
 - Develop a stakeholder mapping of all potential organisations that could contribute to the overarching aim
 - Through a mapping exercise and the community of practice identify aligned/shared priorities, opportunities and where the energy in the systems is likely to be in the next few years. This includes asset & action mapping (looking at the evidence base as well as where examples/practice are already being established in this area) and identifying gaps where we may want to seek innovative solutions
 - Identify what evidence and insight is listened to and needed at national and ICS level to inform narratives, planning, decision making, delivery and create change.
 - Gather and share examples of promising/good practice in engaging with and integrating physical activity into NHS systems.
2. Creating a co-produced plan of action to achieve the overarching aim.
 - Engage a cross section of system leaders through the community of practice to develop a co-produced/shared purpose and a plan of action including solutions on how to effectively integrate PA into health systems across England. Develop short, medium/longer term proposals for these solutions to allow development so that relevant, useful and appropriate PA advice and support becomes the norm at every level.
3. Create a Community of Practice
 - Develop an active community of practice/learning network, starting with the ADE (and developing further over time), made up of a diverse group of key stakeholders, who are or who could become champions and advocates for integrating physical activity into health systems and practice to learn, share, innovate and more broadly over time, become a social movement for change.
 - Identify a physical location to 'house' the COP and accompanying assets/comms
 - Inspire and empower partners to test out new ways of working including innovative solutions to gaps in the system (we reserve the right to commission pilots

approaches as evidence of what works emerges outside the scope of this work); learn through the CoP what works in different places

4. Deliver effective communication with relevant stakeholders to engage them with the workstrand and support the delivery of its aims.
 - Determine the most effective communication channels and through tailored communications regularly communicate with the relevant stakeholder groups to support the sharing of evidence, resources, and messaging that can influence the integration of physical activity into health systems

Evaluation

Our evaluation partners (NCSEM, Ipsos Mori) will undertake

- 1) a process evaluation of what's actually been done
- 2) qualitative impact evaluation to explore the impact of workstream activities

Approach for NHS Horizons

A flexible, collaborative and iterative process underpinned by the principles of large-scale change. The programme will operate between July 2021 to August 2022.

Outline timeframe for development of workstream as of Dec 2021 (this will be revised on a regular basis):

- Mapping (July 21– September 21)
- Discovery Phase (October 21 – August 22)
- Development Phase (February 22 – August 22)

Objectives

This programme will deliver the aim and overarching objectives through a series of activities broken down into three phases:

1. Mapping:

Convening conversations across all levels of the system to identify shared priorities, opportunities and beliefs about physical activity in the NHS and foresee where the energy in the systems is likely to be in the next few years. This is done in a way that builds momentum and a shared understanding with stakeholders about the nature of the challenge and a vision for future.

- Identify and collate a detailed stakeholder map of organisations and roles within system that could contribute to the overarching aim

- Map assets & actions (looking at the evidence base as well as where examples/practice are already being established in this area) and identifying gaps where we may want to seek innovative solutions
- Identify what evidence and insight is listened to and required at national and ICS level to inform narratives, planning, decision making, delivery and create change
- Commence the co-design of an evaluation framework
- Make use of existing and emerging work in engaging with and integrating physical activity into NHS systems to develop the case for change.

2. Discovery:

Engage with a cross section of leaders to co-produce a shared purpose and series of principles for how to effectively integrate physical activity into health systems across England. Develop a plan to work with these priorities over short-, medium- and long-term change interventions.

- Design and deliver two events (Accelerated Design Event: *Moving Healthcare Professionals: Maximising Physical Activity in Healthcare - opportunities for health and care* and systems workshop: *Designing an active future*)
- Convene conversations across national NHS programmes and identify leadership beliefs about how the NHS embeds physical activity now and how it can be different in the future
- Convene a workshop for NHS England and NHS Improvement colleagues working nationally on programmes that connect to or align with physical activity
- Design and run a series of ‘tests’ or ‘challenges’ to build momentum and knowledge of what works to develop the change process
- Identify development communities to share knowledge, test and develop solutions which could form the basis for a series of community of practices and a broader social movement
- Internal report highlighting the knowledge, compelling narrative for change and current knowledge around good practice
- Progress report including an action plan and programme plan for the development phase of the programme including assets, methods and communities of practice required to enable system change.

3. Development:

Support the emerging networks and communities to embed the principles identified in **mapping** and **discovery** to create a foundation for sustainable change.

- Design and delivery of workshops and events to progress the work, develop momentum and support relevant community of practice(s)
- Inspire and empower partners to test out new ways of working including innovative solutions to gaps in the system
- Determine the most effective communication channels and through tailored communications regularly communicate with the relevant stakeholder groups to support the sharing of evidence, resources, and messaging that can influence the integration of physical activity into health systems
- Deliver effective communication with relevant stakeholders to engage them with the workstream and support the delivery of its aims

- Lessons learnt workshop
- Summary report.

Schedule 3 Fees

The total cost of the work set out in Schedule 2 shall be £140,000 exclusive of VAT

Monthly review meetings with the core team (NHS Horizons and OHID) to agree progress on each phase in line with the overall project objectives. Evidence of undertaking each of the three phases will be required to trigger financial payment.

Payment Schedule

The payments will be made in two transactions in January 2022 and July 2022.

Payment number	Amount	Due date
1	£60,000	31 st January 2022
2	£80,000	29 th July 2022

Schedule 4 Mandatory Policies

- Anti-bribery Policy.
- Data protection Policy.
- Code of conduct.