

Standard Terms and Conditions for Cultural Development Fund 2022

For the Cultural Development Fund, the Department for Digital, Culture, Media and Sport have delegated authority to Arts Council England to act on its behalf in administering, accounting for and monitoring this grant.

Contents

1.	Definitions	2
2.	The Agreed Programme.....	3
3.	Funding.....	4
4.	VAT	5
5.	Monitoring.....	5
6.	The Organisation’s Obligations	6
7.	Capital Projects.....	12
8.	Termination of this Agreement	12
9.	Duration of Funding Agreement	14
10.	Prevention of Fraud and Corruption.....	14
11.	Additional terms and conditions.....	15
	Schedule 1: Agreed Programme.....	16
	Schedule 2: Revenue Monitoring and Payment Schedule	18
	Schedule 3: Capital Terms and Conditions	19
	Annexure One: Progress and payment request form for Capital Projects	25

1. Definitions

The “Organisation” means the organisation receiving the grant bound by these terms and conditions.

The “Arts Council” means the Arts Council England and includes its employees and those acting for it.

The “Agreed Programme” means the activity or activities that have been agreed with the Arts Council and for which the Arts Council is giving the Organisation the grant as set out in the grant offer letter and in accordance with this Funding Agreement.

The “Asset Monitoring Period” means a period of twenty years from the end of the Funding Period by which the Arts Council expects the Project Assets to be continued to be used in line with the Agreed Use. “Project Assets” and “Agreed Use” shall have the meaning as given in Schedule [1] hereto.

The “Capital Terms and Conditions” means the terms and conditions as are set out in Schedule [3] to this Funding Agreement.

The “Data Protection Legislation” means the United Kingdom General Data Protection Regulation and the Data Protection Act 2018 together with all other applicable UK laws whether currently existing, yet to be implemented, or to act as successor legislation, that regulate the collection, processing and privacy of personal data.

The “Funding Agreement”, which the Organisation has accepted and signed, includes and incorporates these standard terms and conditions and attached Schedules and the grant offer letter together with any other conditions the Organisation has agreed.

The “Funding Period” means the fixed term specified in the grant offer letter and these terms and conditions will apply over this period and any extension thereof.

The “Named Partner(s)” means the organisations who will be involved in delivering the Agreed Programme as set out in Schedule [1] and which the Organisation has entered (or will enter before the start of the project) in to a partnership agreement with pursuant to clause 6.13 hereof.

The “Project Asset(s)” means any equipment or property (whether real, moveable or intellectual) that is purchased, renovated, created, improved or equipped using the grant in the course of the Agreed Programme.

The “Payment Conditions” means the information the Organisation must submit to the Arts Council as part of any request for payment as set out in Schedule [2]

The “Total Project Cost of the Agreed Programme” means all the income the received and all the expenditure the Organisation will need to spend to deliver the activities as defined in the Agreed Programme.

The “Subsidy Control rules” means the Subsidy Control rules adopted by the UK with effect from 11pm on 31 December 2020, including Part 2, Title XI (Level Playing Field), Chapter 3 (Subsidy Control) of the 'Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain And Northern Ireland, of the other part' incorporated into law by the European Union (Future Relationship) Act 2020 and, where relevant, the EU State aid rules as set out in Articles 107-109 of the Treaty on the Functioning of the European Union and associated regulations and guidelines under the Northern Ireland Protocol and any other applicable laws and successor legislation.

2. The Agreed Programme

- 2.1 The Organisation will deliver the activities as defined in the Agreed Programme, which is attached as Schedule [1]. The Organisation acknowledges that the grant is paid on trust to the Organisation for the sole purpose of delivering the Agreed Programme and the Organisation will hold any unused part of the grant on trust for the Arts Council at all times and will repay any grant (including any unused grant) to the Arts Council immediately upon demand.
- 2.2 The Agreed Programme will form part of the basis for the reporting, monitoring and assessment of performance under this Funding Agreement.
- 2.3 The Organisation will tell the Arts Council immediately in writing of anything that significantly delays, threatens or makes unlikely the successful delivery of the Agreed Programme or any key part of it. This includes any withdrawal of match funding for the Agreed Programme, which the Organisation told the Arts Council it would receive, at any time during the Funding Period.
- 2.4 The Organisation will not use the grant to pay for any spending commitments made before the date the Funding Period begins (as specified in the offer letter).

- 2.5 The Organisation will get the Arts Council’s agreement before making any changes to the information contained in its application for grant funding, the Agreed Programme, the Named Partner(s) or to its name, aims, structure, delivery, outcomes, duration, design or ownership of any grant funded assets or ‘Project Asset(s)’ as defined in the Capital Terms and Conditions.

3. Funding

- 3.1 Subject to satisfactory receipt of any information required from time to time, the Arts Council agrees to pay to the Organisation the revenue grant in such instalments as shown in the Revenue Monitoring and Payment Schedule in Schedule [2]. Capital payments will be made in line with the Capital Terms and Conditions in Schedule [3].
- 3.2 The Arts Council will not make any payments under this Funding Agreement until it has evidence that the terms and conditions have been accepted by the Organisation’s board or equivalent, and the Funding Agreement is properly accepted and signed by a board member or equivalent. The Organisation will ensure that at all times, while the Funding Agreement is in force, that it is correctly constituted and regulated and that the receipt of the grant and the delivery of the Agreed Programme are within the scope of the Organisation’s constitution.
- 3.3 The Organisation accepts that these standard terms and conditions are not negotiable and the Organisation shall have no right to amend or vary the provisions of this Funding Agreement (unless with the prior written agreement of the Arts Council) which, for the avoidance of doubt, includes the Agreed Programme as specified in Schedule [1], the Funding Period, the Dates and Amounts of the Scheduled Payments as specified in Schedule [2] and the Capital Terms and Conditions.
- 3.4 The Organisation accepts that the Arts Council will not increase the grant if the Organisation spends more than the total grant shown in the offer letter.
- 3.5 The Organisation will notify the Arts Council in writing as soon as Total Project Cost for the Agreed Programme is expected or anticipated to increase, explaining the reason for any overrun, and how it is intended that any overrun will be funded, together with an updated budget or any other information the Arts Council requests.
- 3.6 The Organisation will show the grant and related expenditure in its annual accounts under the description of “Arts Council Funding” (as a restricted fund

or unrestricted fund, deriving from grant in aid as revenue grant or as a capital grant as directed in the offer letter). If the Organisation has more than one restricted fund, it will include a note to the accounts identifying each restricted fund separately. If the Organisation has more than one grant from the Arts Council, it will record each grant separately in the notes to the accounts. The Organisation will identify unspent funds and assets in respect of the grant separately in its accounting records. If the Organisation spends less than the whole grant amount on the Agreed Programme, the Organisation must return the unspent amount to the Arts Council promptly. If the grant part-funds the Agreed Programme, the Organisation must return the appropriate share of the unspent amount to the Arts Council.

4. VAT

- 4.1 The grant is not consideration for any taxable supply for VAT purposes. The Organisation acknowledges that the Arts Council's obligation does not extend to paying any amounts in respect of VAT in addition to the grant.
- 4.2 If the Organisation is registered for VAT, or subsequently becomes liable to register for VAT, it must keep proper and up to date records and it must make those records available and give copies to the Arts Council when requested.
- 4.3 If the grant includes any or all of the VAT costs associated with the Agreed Programme and the Organisation subsequently recovers any VAT, it must pay back immediately any of the VAT that has been paid for with the grant.

5. Monitoring

- 5.1 The Arts Council will designate a member of its staff for the Organisation in relation to this Agreement. This member of Arts Council staff will be the main point of contact between Arts Council England and the Organisation. The Arts Council staff member will:
 - 5.1.1. act as the main contact with the Organisation for all matters relating to the grant and the Agreed Programme;
 - 5.1.2 monitor the Organisation ensuring it complies with the terms of this Funding Agreement and other requirements in accordance with the Arts Council's monitoring requirements, identify issues and share these with relevant colleagues;

- 5.1.3 attend the Organisation’s board and project steering group meetings (or equivalent) as an observer on a regular or an occasional basis in so far as it relates to the delivery and governance of the Agreed Programme;
 - 5.1.4 attend an annual meeting with the Organisation; and,
 - 5.1.5 act as a “critical friend” to the Organisation by engaging with its Programme, and questioning its self-monitoring, direction, operations and activities.
- 5.2 The Arts Council may ask independent assessors to experience work by the Organisation and to write a report assessing the quality of that work. The Organisation will ensure that such assessors are allowed access and enabled to experience the work for this purpose.

6. The Organisation’s Obligations

- 6.1 The Arts Council requires the Organisation to meet any special or additional conditions which may have been agreed between the Arts Council and the Organisation in writing from time to time and which will be deemed incorporated into this Funding Agreement.
- 6.2 In addition, the Arts Council requires the Organisation to meet the following requirements:
- 6.2.1 The Arts Council will monitor and assess the Organisation’s activity and how effectively the funding is being used. To enable this, the Organisation will send the Arts Council all such information as the Arts Council may in its sole discretion reasonably request from time to time. This includes the information, without limitation, set out in Schedule [2], and copies of all or any other relevant documentation about the financial and operational running of the Organisation, to include business plans, board papers or equivalent, reserves policies and any other information which the Arts Council deems relevant to its understanding of how the Agreed Programme is being delivered and the funding used and for reporting purposes to the Department for Digital, Culture, Media and Sport. The Organisation agrees and accepts that the Arts Council may share such information and data with the Department for Digital, Culture, Media and Sport.
 - 6.2.2 The Organisation must tell the Arts Council in writing as soon as possible and in advance if it wants to make any significant changes to its legal status

or to the Agreed Programme under this Funding Agreement. The Arts Council will not unreasonably withhold its consent to any such changes.

- 6.2.3 The Organisation will follow the Cultural Development Fund’s branding and publicity guidelines at all times and will acknowledge the grant in press, marketing and communications materials, verbally and in writing. The Organisation will use the Cultural Development Fund’s grant award logo, and other logos as may be required, appropriately on all published material including printed and online material. The Organisation should use the following statement when acknowledging the grant publicly – “The Cultural Development Fund is a Department for Digital, Culture, Media and Sport (DCMS) fund administered by Arts Council England.” and include a link to this [press release](#). [\[link to follow\]](#)
- 6.2.4 The Organisation consents to any publicity about the grant and the Agreed Programme as the Arts Council and the Department for Digital, Culture, Media and Sport may from time to time require. The Arts Council and the Department for Digital, Culture, Media and Sport can carry out any forms of publicity and marketing to promote the award of the grant as it sees fit and the Organisation will do whatever is reasonably required in order to assist with any form of publicity and marketing, including any press or media related activities.
- 6.3 The Organisation is fully responsible for every part of its business. This includes, without limitation:
- 6.3.1 the Organisation must ensure that all current and future members of its governing body receive a copy of this Funding Agreement while it remains in force and will ensure that the receipt of this grant and the delivery of the Agreed Programme are within the scope of the governing documents;
- 6.3.2 the Organisation is responsible for getting its own management and business advice. This includes considering whether it needs to get financial, accounting, tax, solvency, legal, insurance or other types of professional advice;
- 6.3.3 the Organisation must tell the Arts Council immediately of any changes in the Organisation that may threaten its solvency and inform the Arts Council if it is proposing to enter into any arrangement with any of its creditors;

- 6.3.4 the Organisation must tell the Arts Council in writing immediately if any legal claims or any regulatory investigations are made or threatened against it and/or which would adversely affect the Agreed Programme during the period of the grant (including any claims made against members of its governing body or staff).
- 6.4 In carrying out its business and funded activity under the Agreed Programme the Organisation must obtain all approvals, consents and licences required by law to deliver the Agreed Programme, comply with any relevant laws or government requirements and comply with best practice in governance, reporting and operation. This includes (but is not limited to) the following obligations on the Organisation:
- 6.4.1 taking all reasonable steps to ensure the safety of the children and adults at risk it will work with. The Organisation will follow best practice in having appropriate policies and procedures in place to ensure the protection of children, young people and vulnerable adults and in complying with those procedures, which will include procedures to check backgrounds and disclosures of all employees, volunteers, trustees, partners or contractors who will supervise, care for or otherwise have significant direct contact with children and adults at risk with the Disclosure and Barring Service (DBS);
 - 6.4.2 following best practice in having appropriate and effective policies and procedures in place concerning equality and diversity, harassment and bullying and in complying with those policies and procedures;
 - 6.4.3 having in place at all times and acting in accordance with, appropriate and effective disciplinary, grievance and whistle-blowing policies;
 - 6.4.4 having an equal opportunities policy in place at all times and act at all times without distinction and in compliance with all relevant equality legislation;
 - 6.4.5 at all times complying with Data Protection Legislation.
 - 6.4.6 adhering to all relevant legal obligations relating to offering internships;
 - 6.4.7 ensuring that salaries, fees and subsistence arrangements are as good as or better than those agreed by any relevant trade unions and employers' associations;

- 6.4.8 maintaining all main financial records including profit and loss accounts, management statements, personnel and payroll records for staff funded under this Funding Agreement for seven years after the grant has ended. The Organisation will complete all statutory returns for employees and make all relevant payments to cover their pensions and salary deductions, such as income tax and National Insurance contributions;
- 6.4.9 Subject to clause 6.4.10 and 6.14.11, when procuring goods, works or services that are funded in whole or in part by the Grant the Organisation shall:
- 6.4.9.1 for contracts within the scope of Regulation 13 of the Public Contracts Regulations 2015, procure in a manner compliant with the Public Contracts Regulations 2015 (or such other procurement laws as may apply from time to time); and,
 - 6.4.9.2 for all other contracts, procure in a manner which ensures that suppliers are treated equally, without discrimination and that any procurement process is conducted in a transparent and proportionate manner.
- 6.4.10 for the purposes of clause 6.4.9.2 above, an Organisation must ensure that any requirement to procure goods, works or services that are funded in whole or in part by the Grant are advertised in such a way as to ensure that all interested suppliers in the market are aware of the opportunity and provided with an opportunity to tender for the contract as if the Organisation was a contracting authority for the purposes of the Public Contracts Regulations 2015.
- 6.4.11 the provisions at clause 6.4.9 and 6.4.10 shall only apply to contract requirements with a value of £10,000 (ex VAT) or more. Organisations shall not sub-divide a requirement with the intention of excluding the application of clause 6.12 and 6.13.
- 6.4.12 the Arts Council may request and the Organisation must provide any information the Arts Council requires to satisfy itself that the Organisation has complied with its obligations under clause 6.4.9 to 6.4.11.
- 6.4.13 the Organisation acknowledges that the Arts Council may incur financial liability if the Organisation breaches its obligations under clause 6.4.9 and that the Organisation shall be liable to the Arts Council for any losses, costs (including legal costs) damages and any other financial liability that it incurs as a direct result of such breach.

- 6.4.14 considering any possible risks involved in its funded activities and taking appropriate action to protect everyone involved and maintaining adequate and appropriate insurance at all times; and
- 6.4.15 maintaining adequate insurance at all times and if asked, will supply copies of the insurance policy. This includes employee and public liability insurance and insurance that covers the full replacement value of any assets you have funded.
- 6.5 The Organisation accepts that the Arts Council's staff, council members and advisers cannot give the Organisation professional advice and will not take part in carrying out the Organisation's business. The Arts Council cannot be held responsible for any action the Organisation takes, or fails to take, or for the Organisation's debts or liabilities. The Arts Council will not be liable for any losses or charges if it does not make any grant payment on the agreed date. The Arts Council will not be responsible to anyone else who may take, or threaten to take, proceedings against the Organisation.
- 6.6 Subject to the terms of the Capital Terms and Conditions (where applicable), the Organisation will not sell, give away, licence or borrow against any grant funded assets (including any intellectual property rights) without first receiving the Arts Council's prior written consent. As the grant has come from public funds, the Organisation understands and accepts that if the Arts Council provides the consent it may require that the disposal is at full market value and/or subject to conditions requiring the Organisation to repay all or part of the grant money received. The Organisation must maintain adequate insurance at all times for any grant funded asset which must include the full replacement value of any such assets.
- 6.7 The Organisation must give the Arts Council, the National Audit Office or any of their agents access to meetings, events and any/all financial records, other information and/or premises, as may be reasonably requested, relating to the Agreed Programme, the Organisation or to any other matter arising under this Funding Agreement and the Arts Council may postpone payment of the grant or an instalment of the grant until the Arts Council has received the material it has requested.
- 6.8 The Organisation must immediately tell the Arts Council about any changes to bank or building society details or any other changes to information provided to the Arts Council.

- 6.9 The Arts Council may share information about the grant and/or the Agreed Programme with any party. The Arts Council is also subject to the provisions of the Freedom of Information Act 2000 ('the Act'). This means that any information provided by the Organisation could be released to any person who asks for it under the Act. The Organisation may tell the Arts Council if it thinks that any of the information should be confidential under any of the exemptions of the Act. However, the Arts Council will make the final decision in accordance with the Act.
- 6.10 The Arts Council may request to be consulted on the process of recruitment and invited to attend interviews when the Organisation is recruiting trustees and/or senior staff in so far as it relates to the delivery and governance of the Agreed Programme.
- 6.11 The grant is made up of funds received from Parliament. The Organisation understands that the Arts Council can only guarantee future instalments of the grant as long as funds are available to the Arts Council. Should funding be suspended or stopped from Parliament, the Organisation understands that the Arts Council may have to reduce or stop grant payments and the Arts Council accepts no liability pursuant to this action.
- 6.12 The Organisation acknowledges that the grant comes from public funds and confirms that the support provided is compliant with the Subsidy Control rules. Where applicable, the Organisation agrees that the Arts Council will publish information relating to the grant and that the Organisation will keep reasonably detailed records to demonstrate compliance with the Subsidy Control rules and shall provide a copy of such records to the Arts Council upon reasonable request. In the event that the grant is deemed to be non-compliant with the Subsidy Control rules, the Organisation will repay the entire grant (and any other sums due) immediately.
- 6.13 The Organisation will not transfer any part of the grant or this Funding Agreement or any rights under it to any other organisation or individual without the prior written agreement of the Arts Council. If the Organisation is required by the Arts Council to enter into a partnership agreement with Named Partner(s) in order to deliver the Agreed Programme the Organisation will submit the proposed partnership agreement to the Arts Council for its prior authorisation and subject thereto will ensure that no other organisation or individual acquires any third party rights under this Funding Agreement. The Arts Council reserves the right absolutely to transfer the rights and obligations owing to it under this Funding Agreement to the Department for Digital, Culture, Media and Sport.

- 6.14 The Arts Council may impose additional terms and conditions on the grant either in the offer letter and/or if the Organisation is at any time in breach of this Funding Agreement and/or if the Arts Council believes it is necessary to make sure that the Agreed Programme is delivered as agreed between the Organisation and the Arts Council and/or the Arts Council has reasonable grounds to believe it is necessary to protect public money.

7. Capital Projects

- 7.1 If any part of the Agreed Programme is used for Project Assets then the Organisation understands and agrees that the Capital Terms and Conditions will apply in addition to these standard terms and conditions. The Arts Council will confirm in the grant offer letter whether or not the Capital Terms and Conditions apply to the grant.

8. Termination of this Agreement

- 8.1 If the Organisation breaches any of the terms and conditions of this Funding Agreement, then the Arts Council in its absolute discretion may withhold or demand repayment of all or part of the grant and bring this Funding Agreement to an end. The Organisation will repay any grant requested immediately upon demand.
- 8.2 The Arts Council may suspend payment of the grant if it wishes to investigate any matters concerning the grant (or any other grants given by the Arts Council to the Organisation). The Organisation understands and accepts that the Arts Council will accept no liability for any consequences, whether direct or indirect, that may arise from a suspension even if the investigation finds no cause for concern.
- 8.3 The Arts Council may also withhold or demand repayment of all or part of the grant if the Organisation:
- 8.3.1 closes down its business (unless, with the Arts Council's prior consent, it joins with, or is replaced by, another Organisation that can take over this Funding Agreement and carry out the purposes of the grant to the Arts Council's satisfaction);

- 8.3.2 makes significant changes to the Agreed Programme without the prior written approval of the Arts Council;
 - 8.3.3 does not fulfil the purpose of the grant with reasonable care, thoroughness, competence and to a standard that the Arts Council expects from the Organisation with its level of experience in its practice, profession or line of work;
 - 8.3.4 provides any information to the Arts Council that is wrong or misleading, either by mistake or because it is trying to mislead the Arts Council during the application process or during the period of this Funding Agreement;
 - 8.3.5 becomes insolvent, any order is made, or resolution is passed, for it to go into administration, be wound up or dissolved; an administrator or other receiver, manager, liquidator, trustee or similar officer is appointed over all or a considerable amount of the Organisation's assets; or the Organisation enters into or proposes any arrangement with its creditors;
 - 8.3.6 acts illegally or negligently at any time;
 - 8.3.7 acts in such a way that the Arts Council believes it has significantly affected the Agreed Programme, or is likely to harm the Arts Council's, the Department for Digital, Culture, Media and Sport or the Organisation's reputation or it is in the Arts Council's discretion necessary to protect public money;
 - 8.3.8 sells or in some other way transfers any part of the grant, the business or the activity funded under the Agreed Programme to someone else without first getting the Arts Council's approval in writing; and/ or
 - 8.3.9 uses the grant or any part of it for any activity that is intended to influence or attempt to influence Parliament, Government or political parties, or attempts to influence the awarding or renewal of contracts and grants, or attempts to influence legislative or regulatory action.
- 8.4 If the Organisation is in breach of any of the terms of this Funding Agreement and the Arts Council does not enforce one or more of its rights straight away, this does not mean that it will not do so in the future. The Arts Council will give

up its right to enforce this Funding Agreement only if it tells the Organisation in writing.

- 8.5 If the Organisation has other major revenue or capital grants with the Arts Council, then it is also under an obligation to keep to the terms and conditions of those Funding Agreements. If there is any conflict between those terms and conditions and the terms and conditions of this Funding Agreement, then these terms and conditions will take precedence so far as they relate directly to the delivery of this Agreed Programme.
- 8.6 If the Organisation breaches any of the terms of this Funding Agreement, the Arts Council can choose to treat that as the Organisation breaching the terms of any other grant agreements the Arts Council has with the Organisation. This will allow the Arts Council to take the same actions under those agreements that the Arts Council may take under this Funding Agreement, including making the Organisation pay back the grant and stopping any future payments.

9. Duration of Funding Agreement

- 9.1 This Funding Agreement and these terms and conditions remain in force for whichever period is the longest time:
- 9.1.1 for one year following the payment of the last instalment of grant;
 - 9.1.2 as long as any part of the grant remains unspent;
 - 9.1.3 if the Organisation's Agreed Programme is subject to the Capital Terms and Conditions, the expiry of the Asset Monitoring Period (20 years) or;
 - 9.1.4 as long as the Organisation does not carry out any of the terms and conditions of this Funding Agreement or any breach of them continues (this includes any outstanding reporting on grant expenditure or the delivery of the Agreed Programme).

10. Prevention of Fraud and Corruption

- 10.1 The Organisation shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Agreed Programme or showing or refraining from showing favour or disfavour to any person in relation to the Agreed Programme.

10.2 If the Supplier or the Staff engages in conduct prohibited by clause 10.1 or commits fraud in relation to the Agreed Programme or any other contract with the Crown (including the Arts Council) Arts Council may:

10.2.1 terminate the Funding Agreement and recover from the Organisation the amount of any loss suffered by the Arts Council resulting from the termination; or,

10.2.2 recover in full from the Organisation any other loss sustained by the Arts Council in consequence of any breach of this clause.

11. Additional terms and conditions

11.1 The Arts Council has the right to impose additional terms and conditions on the grant if:

11.1.1 the Organisation is in breach of the Grant Agreement;

11.1.2 the Arts Council or another funder withdraws any part of the funding for the Agreed Programme;

11.1.3 the Arts Council has reasonable grounds to believe that the Agreed Programme is being carried out by the Organisation in a way that may have a detrimental effect on the Agreed Programme, or on the Arts Council's and/ or Department for Digital, Culture, Media and Sport's role as a distributor of public money. For the avoidance of doubt, this would apply to the manner and speed of the delivery of the Agreed Programme, or to any illegal or negligent actions by the Organisation, and not to any artistic decision made by the Organisation;

11.1.4 the Arts Council has reasonable grounds to believe that it is necessary to protect public money;

11.1.5 the Arts Council believes such conditions are necessary or desirable to make sure that the Agreed Programme is delivered as set out in the application form or following any agreed changes; and/or

11.1.6 further legislation and guidance is made in relation to Subsidy Control.

Schedule 1: Agreed Programme

Applicant name:

Project number:

April 2022 – March 2025 Outline Activity Plan

Activity	Outcome	Timeframe	Milestone/ SMART objective

Applicant Name:

Project Number:

This schedule sets out the Capital Project. Changes to the Capital Project are covered in Clause 3 of Schedule 3 of the Standard Terms and Conditions for the Cultural Development Fund.

1	Agreed Use	
2	Capital Project	
3	Expected Completion Date for the Capital Project	
4	Capital Grant in Aid Allocation	
5	Total Project Cost for the Capital Project	
6	Named Partners	
7	Project Asset(s)	
8	Security	
9	Asset Monitoring Period	

Schedule 2: Revenue Monitoring and Payment Schedule

Applicant Name:
Project Number:

Due	On the condition that the Arts Council has received to its satisfaction	Amount

DRAFT

Schedule 3: Capital Terms and Conditions

The Arts Council has offered a grant to the Organisation for the capital project described in its application or as otherwise agreed with the Arts Council and forming a whole or part of the Agreed Programme.

These Capital Terms and Conditions will apply in addition to the Standard Terms and Conditions.

Definitions

The “Agreed Use” means how you will use the Project Asset(s) as set out in Schedule [1].

The “Asset Monitoring Period” means the defined period from the end of the Funding Period by which the Arts Council expects the Project Assets to be continued to be used in line with the Agreed Use. “Project Assets” and “Agreed Use” shall have the meaning as given in Schedule 1 hereto.

The “Capital Project” means that part of the Agreed Programme (whether in whole or in part) for which the grant has been awarded as detailed in Schedule [1].

“Capital Expenditure” means an amount spent to acquire or improve a long-term asset such as equipment or buildings and capitalised on the balance sheet.

The “Expected Completion Date” means the date by which you must complete the Capital Project.

The “Project Asset(s)” means any property (whether real, moveable or intellectual) that is purchased, renovated, created, improved or equipped using the grant in the course of the Agreed Programme.

The “Total Project Cost of the Capital Project” means the total projected or actual cost of the Capital Project being the amount set out in Schedule [1]

1. The Organisation will deliver the activities as defined in the Agreed Capital Project which is attached as Schedule [1].
2. The Capital Grant in Aid Allocation can only be used to support the Capital Expenditure.
3. In addition to the matters listed in clause 6.2.2 of the Standard Terms and Conditions, the Organisation will get the Arts Council’s written agreement before making any changes to the duration, design or ownership of the Capital Project.
4. In carrying out the Capital Project, the Organisation must obtain all approvals, consent, planning consents, building regulation approvals, licences and any

other necessary approvals and consents required by law to deliver the Capital Project.

5. The Organisation will take all reasonable steps to minimise the environmental impact of the Agreed Capital Project.
6. The Organisation will use the Project Asset(s) or allow them to be used, only for the Agreed Use.
7. The Organisation will maintain the Project Asset(s) in good repair and condition.
8. The Organisation must maintain adequate insurance at all times for any grant funded asset which must include the full replacement value of any such assets. This insurance must include for any additional cover required as a consequence of construction works and the Organisation must ensure that the interests of the Arts Council are noted on such policy as appropriate.
9. In addition to the matters listed in clause 5.1 of the Standard Terms and Conditions, the Organisation will allow the Arts Council to inspect the Project Asset(s) and any work to them and monitor the Agreed Use.
10. You consent to the Arts Council sharing information about the Capital Project with an independent project monitor, if one is appointed, at the Arts Council cost and discretion, to help with monitoring of the agreed Capital Project. The Arts Council will notify you if this will happen.
11. In addition to Payment Conditions, you may be requested to provide written reports to demonstrate progress towards meeting the Agreed Project and if you need to bring any matter to the Arts Council's attention as required by the terms of the Funding Agreement.
12. Where required, the Organisation must allow the Arts Council (or anyone the Arts Council authorises) to have access to:
 - 12.1 inspect the Project Asset(s) and any work to them;
 - 12.2 monitor the progress of the agreed Capital Project, including meetings with the Organisation's officers or agents at any time up to the end of the Asset Monitoring Period; and/ or,
 - 12.3 monitor the Agreed Use.
13. The Organisation accepts that the Arts Council will not release more than 95% of the total grant until the Capital Project has been completed to the Arts Council's satisfaction.
14. If the grant is to be used for any building works, the Organisation must ensure that:

- 14.1 you employ a lead professional(s) with appropriate building experience to manage the design and tender process, the post contract works and to certify that the building works have been properly carried out;
- 14.2 you appoint design, cost, management and other specialist consultants and advisors as appropriate to and with appropriate experience for the project value, size and complexity;
- 14.3 if structural work is necessary, you must employ a structural engineer;
- 14.4 you will use building professionals that are fully qualified members of an approved professional body and have all necessary professional indemnity insurance cover. This includes appointing a conservation accredited professional if you are undertaking work to a Grade I or II* listed building;
- 14.5 if building works come under the Construction (Design and Management) Regulations 2015, you will confirm that you have appointed a principle designer;
- 14.6 you put in place all necessary contracts with contractors and professional advisors on standard terms and conditions that an employer with appropriate experience would enter into for projects of the same value, size and complexity;
- 14.7 building contracts must contain a clause which allows you to retain part of the contractors' fees on practical completion of the works; and
- 14.8 you must ensure that satisfactory arrangements are made for the retention of all relevant construction documents for a term of seven years from the last instalment of Grant payment. This is to include but not limited to:
 - 14.8.1 contract drawings and specifications;
 - 14.8.2 as built drawings;
 - 14.8.3 health and safety files;
 - 14.8.4 building contract with the main build contractor and key sub or specialist contractors;
 - 14.8.5 other building contracts as appropriate;
 - 14.8.6 planning and/or listed building consent including the confirmations of the discharge of the conditions of consents;
 - 14.8.7 discharge of reserved building control completion certificate;

14.8.8 fire officer approval;

14.8.9 contracts of engagement for professional teams; and,

14.8.10 any other documents the Arts Council may request.

14.9 Prior to appointing contractors or professional advisors you will undertake checks on their capability and financial status to understand whether the contractors or professional advisors are exposed to any risks given the size of the proposed contract. Based on these checks, you agree to take all reasonable steps to minimise any identified risks. This includes the requirement for a performance bond or parent company guarantee in tender documents for building contracts if considered necessary.

14.10 Pursuant to Clause 14.9, you agree to keep the Arts Council informed of all risks in respect of any third party insolvency and in the event of the occurrence of insolvency, you undertake to appoint an alternative contractor or professional consultant at your own cost.

15. In addition to 6.2.3 of the Standard Terms and Conditions, the Organisation shall also use the grant award logo during the construction and after the building work has been completed on a permanent basis in a public area.

16. The Organisation understands and accepts that the Arts Council may require security over the Project Assets as described in these Capital Terms and Conditions. If the Arts Council has requested security, the Organisation accepts that the Arts Council will not make any grant payments until it has received the relevant security documents completed to its satisfaction. The type of security that the Arts Council requires, and any other supporting requirements are set out in the grant offer letter.

17. The Organisation confirms that it or any of the Named Partner(s) does not have any undisclosed loans secured on the Project Assets and that it or any of the Named Partner(s) will not take out any loans secured on any Project Assets (whether in whole or in part) without the written consent of the Arts Council. The Arts Council's consent may be subject to conditions.

18. Pursuant to clause 16 above and prior to the release of the grant the Arts Council will require the following conditions to be met:

18.1 confirmation (by way of a Certificate of Title, in the Arts Council's Standard form) from the Organisation's solicitors with confirmation of ownership of the Project Asset(s), the Organisation's right to it to allow expenditure of the grant on the Project Asset(s) and that the Project Asset(s) may be used for the Capital Project and evidence of local authority cabinet approval or equivalent for the acceptance of the grant on the terms and conditions provided and delivery of the Agreed Programme;

- 18.2 a deed of covenant (tripartite or as appropriate) and solicitor's undertaking to register the restriction at the Land Registry upon completion; or,
 - 18.3 if the property is unregistered, a deed of dedication (tripartite or as appropriate) to effect first registration of the restriction thereafter; and,
 - 18.4 if you are not a statutory body (this includes local authorities and universities), confirmation (by way of a legal opinion in the Arts Council's standard form) from your solicitors that you have the legal powers necessary to sign all the documents related to the Grant and security.
19. If any part of the grant is to buy land (whether freehold land or leasehold land), the Organisation is to send the Arts Council when asked the following documents:
- 19.1 a surveyor's report on the condition of the property, its value for the purpose of the Capital Project and whether it is suitable for the Capital Project;
 - 19.2 confirmation by the Organisation's solicitors that all necessary consents for the use of the property for the purposes of the grant have been obtained;
 - 19.3 for the purchase of leasehold land, a copy of the future lease and agreement for lease;
 - 19.4 an undertaking to satisfy all other requirements as set out in Clauses 16 and 18 upon completion of the purchase of the freehold or leasehold interest; and,
 - 19.5 any other documents or requirements that the Arts Council may request in order to meet the legal requirements noted above.
20. If any part of the grant is to buy or involves leasehold land, then the Organisation must send the Arts Council a copy of the lease(s) and ensure that the lease(s) meet(s) Arts Council standard lease requirements; a registered and assignable lease which must be in place for of at least twenty (20) years, without a break clause, no forfeiture on insolvency clause and permitted user clause that is compliant with the Agreed Use.
21. Without prejudice to the terms of any security over the Project Asset(s) that the Organisation gives the Arts Council pursuant to clauses 16 and 18 , the Organisation must seek the Arts Council's prior written consent if it or any of the Named Partner(s) wishes to sell, let, sub-let or otherwise deal with or dispose of any Project Assets within the period specified in the security documentation.

22. If consent is given and the Organisation or any of the Named Partner(s) sells or disposes of the Project Asset(s), it may have to repay the Arts Council all or part of the money received from the Arts Council. The amount the Organisation must repay will be in direct proportion to the share of the Total Project Cost of the Capital Project that came from the Arts Council. If, with the Arts Council's consent, the Organisation sells the Project Asset(s) wholly or partly bought with the grant, it will be at full market value and the Arts Council may impose conditions upon the transfer or disposition.
23. The Arts Council is required by our auditors, the National Audit Office, not to make payments in advance of an organisation's need. Subject to clause 24 and 25, the Arts Council shall pay the Capital Grant in Aid Allocation in instalments to the Organisation based on the Organisation's 'Progress and payment request form for Capital Projects' (Annexure 1).
24. The Arts Council reserves the right to request further information from the Organisation in relation to the Organisation's payment request. At the Arts Council's absolute discretion, the Arts Council will not release funds to the Organisation to pay debts, liabilities and expenditure deemed unreasonable.
25. Without limitation on the Arts Council's absolute discretion as outlined in Clause 24, debts, liability and expenditure will be deemed unreasonable if:
 - 25.1 The Organisation has not followed the requirements for goods, services and contracts as stated in Clause 6.4.9 of the Standard Terms and Conditions in incurring the expenditure.
 - 25.2 The expenditure has not been incurred to deliver the agreed Capital Project and is not included in the agreed budget.
 - 25.3 The expenditure is not deemed Capital Expenditure
26. This Funding Agreement will remain in force for the period specified in clause 9 of the Standard Terms and Conditions.

Annexure One: Progress and payment request form for Capital Projects

Introduction

This report must be submitted electronically to the Arts Council or our appointed independent monitor (if appointed) every three months unless otherwise requested and more frequently if you need to bring any matter to the Arts Council's attention as required by the terms of the Funding Agreement. It forms part of the reporting requirements as defined in the Schedule 3 Capital Terms and Conditions and more specifically set out in clause 11.

The first report must be submitted within thirty working days of signing the Funding Agreement. Please refer to your original application, and any changes you agreed with the Arts Council, when you complete this report.

If there are any matters you need to bring to the Arts Council's attention as required by the terms of the Funding Agreement, you should do so immediately by completing this report.

Please fill in the relevant sections of the form and send this report form to your Senior Relationship Manager. If an independent project monitor is appointed, the form should also be forwarded to the monitor.

You should complete Section A and B every time you submit this form to the Arts Council. If you are also requesting a payment, please complete sections A, B and C.

Completing the Form

Section A – Progress Summary

In this section the table compares data in the current report with both that previously reported and the Funding Agreement.

The Arts Council asks you to provide the following information:

- *Column A* –The first column should include the details from Section 5 of Schedule 1 of the Capital Project of your Funding Agreement
- *Column B* – *As at last report*. The middle column records the information provided on the previous report and indicates any changes.
- *Column C* – *As at this report*. The final column should include your current total project cost for the Capital Project and partnership funding, start date and expected completion dates.

You are asked to summarise how you think your Capital Project is progressing. You should provide the following details:

- how your project has progressed since your last report
- summarise the reasons for any changes noted in the table above
- identify any issues you need to bring to the Arts Council's attention as required by the terms of the Funding Agreement
- summarise the key risks and how you plan to mitigate them

Section B – Project Expenditure and Cashflow

In this section, you are asked to provide the following information:

- an up to date Expenditure Report
- an up to date **Project Cashflow**

This section is also available in excel format on request and should be submitted using the budget headings provided.

Expenditure Report:

- *Column A – Total Project Cost as Funding Agreement.* The first column should include the details for the Capital Project set out in the budget contained within your application for funding.
- *Column B - Adjustments* is formatted to identify the changes between columns A and column C.
- *Column C – Current Total Project Cost.* The third column is your current estimate of the final cost of each element. The total should correspond with the figure entered in the Progress Summary - Column C – Section A
- *Column D – Expenditure to date.* The final column should provide details of the cumulative project expenditure as at the date of the report. This column should be the sum of all the expenditure submitted as part of the payment requests as at the date of this report (see Section C below).

Cashflow Forecast:

Complete the cashflow template provided to show the monthly income and expenditure forecast for the first year and quarterly thereafter.

The Budget headings are the same as those on the Expenditure Report. Where actual expenditure figures are noted on the cash flow forecast they should correspond with *Column D - Expenditure to date* in the Expenditure Report.

Section C – Expenditure Listing

DCMS/ACE Cultural Development Fund 2022

If you are requesting a payment, you should provide details of the dates, amounts and payment details of the expenditure to which your payment request relates.

- **Payment number:** You should sequentially number each payment request you make.
- **Amount claimed to date:** Your records should show how much the Arts Council have paid you prior to this submission
- ***Total Expenditure as part of this request:*** The total of detailed expenditure is the total expenditure on the schedule including any irrecoverable VAT.
- **Amount Requested:** This should be the amount of the Total Expenditure as part of this request x the Grant Percentage.

In the table provided, you should list all invoices on the schedule together with any other certified expenditure (i.e. direct costs not invoiced e.g. payroll costs). The budget reference entered should correspond to the budget reference on the Expenditure Report.

Section D - declaration

Before completing your name and the date, please ensure you have read the declaration and agree with the statements on this form.

Cultural Development Fund

Progress report and payment request form

Applicant:

Project Title:

Project reference:

Date:

Section A – Progress Summary

	As detailed in the Funding Agreement (A)	As at last report (B)	As at this report (C)
Total project cost for the Capital Project	£	£	£
Partnership funding requirement	£	£	£
Partnership funding confirmed to date	£	£	£
Start Date for the Capital Project			
Expected Completion Date for the Capital Project			

Please summarise how your project is progressing. Provide details of:

- how your project has progressed since your last report
- summarise the reasons for any changes noted in the table above
- identify any issues you need to bring to the Arts Council's attention as required by the terms of the Funding Agreement
- summarise the key risks and how you plan to mitigate them

DRAFT

Section B – Project expenditure and cashflow

Please complete the following Expenditure Report

Capital investment - Expenditure Report

Organisation name:

Reference:

Date:



Budget reference / activity	Total Project Cost as Funding Agreement	Adjustments	Current Total Project Cost	Expenditure to date
1. Pre-construction costs	0	0	0	
	0	0	0	
Sub-total 1. carried to 9. below	0	0	0	0
2. Construction	0	0	0	
	0	0	0	
	0	0	0	
	0	0	0	
Sub-total 2. carried to 9. below	0	0	0	0
3. Furniture, Fittings and Equipment	0	0	0	
	0	0	0	
	0	0	0	
	0	0	0	
Sub-total 3. carried to 9. below	0	0	0	0
4. Specialist Equipment	0	0	0	
	0	0	0	
	0	0	0	
	0	0	0	
Sub-total 4. carried to 9. below	0	0	0	0
5. Fees and Charges	0	0	0	
	0	0	0	
	0	0	0	
	0	0	0	
Sub-total 5. carried to 9. below	0	0	0	0
6. Client Costs	0	0	0	
	0	0	0	
	0	0	0	
	0	0	0	
Sub-total 6. carried to 9. below	0	0	0	0
7. Contingency	0	0	0	
	0	0	0	
Sub-total 7. carried to 9. below	0	0	0	0
8. Value Added Tax				
Irrecoverable VAT	0	0	0	0
Sub-total 8. carried to 9. below	0	0	0	0
9. Total Project Cost	0	0	0	0

Please complete the following Cashflow Report

Organisation:																					
Reference:																					
Date:																					
	Total Project Cost	Actuals to 00/00/00	year																		
			Month 1 forecast	Month 2 forecast	Month 3 forecast	Month 4 forecast	Month 5 forecast	Month 6 forecast	Month 7 forecast	Month 8 forecast	Month 9 forecast	Month 10 forecast	Month 11 forecast	Month 12 forecast	Quarterly forecast	Forecast					
		£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£
Expenditure (payments)																					
Pre-construction costs		0																			0
Construction		0																			0
Furniture, Fittings & Equipment		0																			0
Specialist Equipment		0																			0
Professional fees and charges		0																			0
Client Costs		0																			0
Overall project contingency		0																			0
VAT		0																			0
Total Expenditure	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
		Actuals to 00/00/00	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£	£
Income (receipts)																					
Own funds																					0
Local Authority																					0
Other public																					0
Arts Council																					0
Heritage Lottery Fund																					0
Charitable Trusts																					0
Individuals & Corporate																					0
Fundraising target																					0
Total Receipts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash b/f		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Payments		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Receipts		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash c/f		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Notes:

Section D – Declaration

Data protection and freedom of information

As a public organisation, the Arts Council has to follow the Data Protection Act 1998 and the Freedom of Information Act 2000. The Arts Council has a data protection policy, which is available from our website at www.artscouncil.org.uk

Under the Freedom of Information Act, the Arts Council may have to provide information about your grant to a member of the public if they ask for them under the Act. However, the Arts Council will not release those parts of your information covered by one or more of the exemptions under the Act. For information on the exemptions and freedom of information generally, please visit www.foi.gov.uk

The Arts Council considers that the information you provide will not be protected by any exemptions and therefore would release it if a member of the public asks for it.

However, the information you give the Arts Council could possibly be covered by exemptions if it is sensitive or confidential. If you consider some or all of this information to be confidential, please mark the box below and specify what parts you think are confidential and why.

Mark this box if you want the Arts Council to treat some or all of the information in section A as confidential. You must explain what the information is that you think is confidential and provide your reasons below.

Checklist Before you send in this report, please check the following:

Have you completed Sections A and B?

If you have completed the expenditure and cashflow forecast in excel, have you send this with your report?

If you are requesting a payment, have you completed Section C?

Have you kept a copy of this report for your own reference?

Please remember to fill in your name and date below and submit the form electronically as a Word document. A signature is not required.

The Organisation confirms that:

DCMS/ACE Cultural Development Fund 2022

- as far as we know, the information in this report is true and correct, and we have complied with the conditions of the Funding Agreement
- we have confirmed any changes to the agreed Capital Project as required by the Funding Agreement.
- the Organisation has given me the authority to sign this document on their behalf.
- the expenditure listed in this report is in accordance with the Arts Council's order(s) for goods/works/services as part of the agreed Capital Project for which the Arts Council has offered a grant.
- we have not knowingly or deliberately presented any payment claim which might be deemed to be fraudulent.
- none of these items have been included in a previous payment request made to Arts Council England
- we will provide accounts, receipts, records, policies, documents, quotations, contracts and any other information as the Arts Council may reasonably request.

Name

Date

Day

Month

Year

/

/
