

# Standard Terms and Conditions – Museums Estate and Development Fund (MEND)

The criteria for the Museums Estate and Development Fund have been set by the Department for Digital, Culture, Media and Sport ('DCMS'), The Arts Council of England ('Arts Council England'), Historic England ('HE') and The National Lottery Heritage Fund ('NLHF'). The grants are administered, awarded and monitored by Arts Council England. Funding has been provided by DCMS.

## Contents

- 1. Definitions .....2**
- 2. The Agreed Project .....3**
- 3. Funding.....4**
- 4. VAT .....5**
- 5. Monitoring .....6**
- 6. Your Obligations.....6**
- 7. Building Work .....12**
- 8. Security.....13**
- 9. Land and Legal Requirements .....14**
- 10. Dealings with Project Assets .....15**
- 11. Termination of this Agreement.....16**
- 12. Prevention of Fraud and Corruption.....18**
- 13. Additional Terms and Conditions .....18**

# 1. Definitions

- 1.1 “we”, “us” and “our” in this document means Arts Council England and includes its employees and those acting for it.
- 1.2 “you” and “your” in this document means the organisation receiving the grant bound by these terms and conditions.
- 1.3 “DCMS” means the Department for Digital, Culture, Media and Sport.
- 1.4 The “Agreed Project” means the activity or activities that have been agreed with us and for which we are giving you the Grant as set out in the offer letter and and Agreed Capital Project Plan in accordance with this Funding Agreement.
- 1.5 The “Agreed Use” means how you will use the Project Asset(s) that are purchased, renovated, created or improved using the Grant and as set out in the offer letter and Agreed Capital Project Plan.
- 1.6 The “End Date” means the date by which you must complete the Capital Project as set out in the application or the attachments.
- 1.7 The “Funding Agreement”, which you have accepted and signed, includes and incorporates these standard terms and conditions, the application and attachments, and the offer letter, together with any other conditions you have agreed to. For the avoidance of doubt, the reference “the date of the Funding Agreement” shall mean the date on which you accepted the offer of grant on our Grantium system.
- 1.8 The “Funding Period” means the fixed term specified in the offer letter, ending with the project End Date.
- 1.9 “The Grant” means the grant detailed in the offer letter.
- 1.10 “Partnership Funding” means the funding from other sources needed in addition to our Grant to complete the Agreed Project.
- 1.11 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 Project.
- 1.12 The “Programme” means MEND which DCMS have delegated authority to Arts Council England to act on its behalf in administering, accounting for and monitoring this grant.

- 1.13 The “Start Date” means the date on which you will make a commitment, financial or otherwise, to undertake the Agreed Project as set out in the application.
- 1.14 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.
- 1.15 “Total Project Cost” means the total projected or actual cost of the Agreed Project.
- 1.16 The “Monitoring Schedule and Payment Conditions” means the details of how we will monitor and pay your Grant as set out in the attachments.

## **2. The Agreed Project**

- 2.1 You will deliver the activities as defined in the Agreed Project. You acknowledge that the Grant is paid on trust to you for the sole purpose of delivering the Agreed Project and you will repay any Grant (including any unused Grant) to us immediately upon demand.
- 2.2 The Agreed Project and Monitoring Schedule and Payment Conditions, will form the basis for the reporting, monitoring and assessment of performance under this Funding Agreement.
- 2.3 If you have not started the Agreed Project by the Start Date or do not complete the Agreed Project by the End Date, then we may withdraw from this Funding Agreement without any further liability on our part under this Funding Agreement.
- 2.4 You will tell us immediately in writing of anything that might significantly delay, threaten or make unlikely the successful delivery of the Agreed Project or any key part of it.
- 2.5 Where required, you must allow us (or anyone we authorise) to have access to:

- 2.5.1 inspect the Project Asset(s) and any work to them;
  - 2.5.2 monitor the progress of the Agreed Project at any time for the duration of the Funding Agreement; and,
  - 2.5.3 monitor the Agreed Use.
- 2.6 You will use the Project Asset(s) or allow them to be used, only for the approved purposes set out in the Agreed Project.
- 2.7 You will maintain the Project Asset(s) in good repair and condition and ensure that they are adequately insured. You must:
- 2.7.1 include for any additional insurance cover required as a consequence of construction works, and you must ensure that our interests are noted on such policy as appropriate.
  - 2.7.2 you must maintain and manage the Project Asset(s) in accordance with the version of the relevant maintenance and management plan we have approved.

### **3. Funding**

- 3.1 Subject to satisfactory receipt of the information required to pay the Grant, we agree to pay to you the total Grant as shown in the offer letter.
- 3.2 We will not make any payments under this Funding Agreement until we have evidence that these Standard Terms and Conditions have been accepted by your board or equivalent, and you have accepted the offer of Grant on our Grantium system.
- 3.3 You will not use the Grant to pay for any spending commitments made before the date of the Funding Agreement.
- 3.4 You accept that these Standard Terms and Conditions are not negotiable and you shall have no right to amend or vary the provisions of this Funding Agreement which, for the avoidance of doubt, includes the Agreed Project and the Funding Period as specified in the offer letter.
- 3.5 You accept that we will not increase the Grant if you spend more than the total Grant shown in the offer letter.
- 3.6 We will be under no obligation to pay the Grant after expiry of the Funding Period.
- 3.7 You will ensure that you obtain sufficient Partnership Funding to meet any part of the Total Project Cost that we do not fund and you will

provide written evidence of this Partnership Funding to us immediately on receipt.

- 3.8 You will notify us in writing as soon as Total Project Cost 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 we request.
- 3.9 You will comply with all relevant laws regarding the submission of accounts, audit or examination of accounts, annual reports, and annual returns. You will maintain an appropriate depreciation policy and the Project Asset(s) will be depreciated in line with this agreed policy.
- 3.10 You will acknowledge our Grant in the annual reports and accounts covering the Funding Period.
- 3.11 You will show our Grant and related expenditure as restricted funds under the description "Arts Council MEND Capital Grant" in your annual accounts. You will identify unspent funds and assets in respect of the Grant separately in accounting records. If you have more than one restricted fund, you will include a note to the accounts identifying each restricted fund separately. If you have more than one Grant from us, you will record each Grant separately in the notes to the accounts. You will identify unspent funds and assets in respect of the Grant separately in your accounting records.

## **4. VAT**

- 4.1 The Grant is not consideration for any taxable supply for VAT purposes. You acknowledge that our obligation does not extend to paying any amounts in respect of VAT in addition to the Grant.
- 4.2 If you are registered for VAT, or subsequently become liable to register for VAT, you must keep proper and up to date records and you must make those records available and give copies to us when requested.
- 4.3 You acknowledge that Grant payments for the Agreed Project must be claimed net of any VAT that is recoverable from HM Revenue and Customs. If the Agreed Project includes any irrecoverable VAT and you subsequently recover any VAT from HM Revenue and Customs, you must pay back immediately any of the VAT that has been paid for with the Grant.

## **5. Monitoring**

- 5.1 We will designate a relationship manager for you in relation to this Funding Agreement. The relationship manager is the main point of contact between us and you. The relationship manager will:
- 5.1.1 act as the main contact with you for all matters relating to the Grant and the Agreed Project;
  - 5.1.2 monitor you ensuring you comply with the terms of this Funding Agreement and other requirements in accordance with our monitoring requirements, identify issues and share these with relevant colleagues, including DCMS;
  - 5.1.3 act as a “critical friend” to you by engaging with you in respect of the Agreed Project, and questioning its self-monitoring, direction, operations and activities.
- 5.2 You must take appropriate steps to monitor your own success in achieving the Agreed Project. If set out in the Additional Conditions of your offer letter, you will undertake an evaluation to demonstrate that the outcomes for the Agreed Project have been met. We may request this evaluation at any time for the duration of the Funding Agreement and you will be required to provide such information to us on request and shall continue to be accountable to us for this.
- 5.3 You consent to us sharing information about the Agreed Project with an independent project monitor, if one is appointed, at our cost and discretion. We will notify you if we are going to do this.
- 5.4 You must provide progress reports to us or the independent project monitor if appointed in the form and at intervals set out in the Funding Agreement or in a form and on such dates that we request.

## **6. Your Obligations**

- 6.1 We require you to meet any special or additional conditions which may have been agreed between us and you in writing from time to time and which will be deemed incorporated into this Funding Agreement.
- 6.2 In addition, we require you to meet the following requirements:
- 6.2.1 We will monitor and assess your delivery of the Agreed Project and how effectively the Grant is being used. To enable this, you will send us all such information as we may in our sole discretion

reasonably request from time to time. This includes the information, without limitation, set out in the offer letter, and copies of all or any other relevant documentation about the financial and operational running of you, to include business plans, board papers or equivalent, reserves policies and any other information which we deem relevant to our understanding of how the Agreed Project is being delivered and the funding used and for reporting purposes to DCMS. The Organisation agrees and accepts that the Arts Council may share such information and data with DCMS.

- 6.2.2 You must tell us in advance if you want to make any significant changes to your legal status or to the Agreed Project under this Funding Agreement. You will get our written agreement before making any changes to the information contained in the application, the Agreed Project or to its name, aims, structure, delivery, outcomes, duration, design or ownership.
- 6.2.3 The Organisation will follow the Programme branding and publicity guidelines at all times and will acknowledge the grant in press, marketing and communications materials, verbally and in writing. The Organisation should use the following statement when acknowledging the grant publicly – “The Department for Digital, Culture, Media and Sport funds MEND which is administered by Arts Council England”. You will follow our branding and publicity guidelines at all times and will acknowledge the Grant in press, marketing and communications materials, verbally and in writing and on the Grant-funded Project Asset(s). Our requirements may change from time to time and you must adopt our changes as and when they occur.
- 6.2.4 You consent to any publicity about the Grant and the Agreed Project as we or the DCMS may from time to time require. We can carry out any form of publicity and marketing to promote the award of the Grant as we see fit and you 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 You must give us the right to use any photographs or digital images you send us. You must get any permission you need for you and us to use these photographs or images before you send them to us or before you use them.
- 6.4 You will take all reasonable steps to minimise the environmental impact of the Agreed Project.
- 6.5 You are fully responsible for every part of your business. This includes, without limitation:

- 6.5.1 You must ensure that all current and future members of your 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 Project are within the scope of the governing documents;
- 6.5.2 You are responsible for getting your own management and business advice. This includes considering whether you need to get financial, accounting, tax, solvency, legal, insurance or other types of professional advice;
- 6.5.3 You must tell us immediately of any changes in your organisation that may threaten its solvency and inform us if you are proposing to enter into any arrangement with any of your creditors;
- 6.5.4 You must tell us in writing as soon as possible if any legal claims or any regulatory investigations are made or threatened against your organisation and/or which would adversely affect the Agreed Project during the period of the Grant (including any claims made against members of its governing body or staff).
- 6.5.5 In carrying out your business and the Agreed Project you must obtain all approvals, consents and licences required by law to deliver the Agreed Project, will 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 you:
- 6.5.5.1 taking all reasonable steps to ensure the safety of the children and vulnerable adults you will work with. You 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. Such procedures 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);
  - 6.5.5.2 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;



- 6.5.5.3 having in place at all times and acting in accordance with, appropriate and effective disciplinary, grievance and whistle-blowing policies;
- 6.5.5.4 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;
- 6.5.5.5 at all times complying with Data Protection Legislation. Data Protection Legislation shall mean without limitation (i) the United Kingdom General Data Protection Regulation and (ii) 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;
- 6.5.5.6 adhering to all relevant legal obligations relating to offering internships;
- 6.5.5.7 ensuring that salaries, fees and subsistence arrangements are as good as or better than those agreed by any relevant trade unions and employers' associations;
- 6.5.5.8 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. You 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;
- 6.5.5.9 considering any possible risks involved in your Agreed Project and taking appropriate action to protect everyone involved and maintaining adequate and appropriate insurance at all times.

6.6 Subject to Clause 6.8 and 6.9, when procuring goods, works or services that are funded in whole or in part by the Grant you must:

- 6.6.1 comply with your obligations under the Public Contracts Regulations 2015 (as amended or replaced from time to time) ("PCR"), if you are a contracting authority subject to the PCR;
- 6.6.2 for contracts within the scope of Regulation 13 of the PCR, procure in a manner compliant with the PCR (or such other procurement laws as may apply from time to time); and
- 6.6.3 For all other contracts, procuring 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.

- 6.7 For the purposes of Clause 6.6.1 above, you 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 you are a contracting authority for the purposes of the PCR.
- 6.8 The provisions at Clause 6.6 and 6.7 shall only apply to contract requirements with a value of £10,000 (ex VAT) or more. You shall not sub-divide a requirement with the intention of excluding the application of Clause 6.6 and 6.7.
- 6.9 We may request and you must provide any information we require to satisfy ourselves that you have complied with your obligations under Clause 6.6 to 6.8.
- 6.10 You acknowledge that we may incur financial liability if you breach your obligations under Clause 6.6 and that you shall be liable to us for any losses, costs (including legal costs), damages and any other financial liability that we incur as a direct result of such breach.
- 6.11 You accept that our staff, council members and advisers cannot give you professional advice and will not take part in carrying out your business. We cannot be held responsible for any action you take, or fail to take, or for your debts or liabilities. We will not be liable for any losses or charges if we do not make any grant payment on the agreed date. We will not be responsible to anyone else who may take, or threaten to take, proceedings against you.
- 6.12 Subject to Clause 10 below, you will not sell, give away, licence or borrow against any Project Asset(s) (including any intellectual property rights) without first receiving our prior written consent. As the Grant has come from public funds, you understand and accept that if we provide the consent it will require that the disposal is at full market value and/or subject to conditions requiring you to repay all or part of the Grant money received. You must maintain adequate insurance at all times for any Project Asset(s) which must include the full replacement value of any such assets.
- 6.13 If you want to use the Project Asset(s) to raise further funding, you will first need to obtain our consent in writing, which may be subject to conditions and which you will have to meet. You undertake that:

6.13.1 any loan secured on the Project Asset(s) will be used entirely for the benefit of the Agreed Project; and,

6.13.2 the maximum security for the loan will be no higher than the amount of money being put up by the new lender.

- 6.14 You must give us, 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 Project, you, or to any other matter arising under this Funding Agreement and we may postpone payment of the Grant or an instalment of the Grant until we have received the material we have requested.
- 6.15 You must immediately tell us about any changes, or anticipated changes, to bank or building society details or any other changes to information provided to us.
- 6.16 We may share information about the Grant and/or the Agreed Project with third parties. We are also subject to the provisions of the Freedom of Information Act 2000 ('the Act'). This means that any information provided by you could be released to any person who asks for it under the Act. You may tell us if you think that any of the information should be confidential under any of the exemptions of the Act. However, we will make the final decision in accordance with the Act.
- 6.17 We may request to be consulted on the process of recruitment when you are recruiting trustees and/or senior staff.
- 6.18 The Grant is made up of funds received from Parliament. You understand that we can only guarantee future instalments of the Grant as long as funds are available to us. Should funding be suspended or stopped from Parliament, the Organisation understands that we may have to reduce or stop grant payments and we accept no liability pursuant to this action.
- 6.19 You acknowledge that the Grant comes from public funds and confirm that the support provided is compliant with the Subsidy Control rules. Where applicable, you agree that we will publish information relating to the Grant and that you will keep reasonably detailed records to demonstrate compliance with the Subsidy Control rules and shall provide a copy of such records to us upon reasonable request. In the event that it is deemed to be non-compliant with the Subsidy Control rules, you will repay the entire Grant (and any other sums due) immediately.
- 6.20 You will ensure that no other organisation or individual acquires any third-party rights under this Funding Agreement.

## **7. Building Work**

7.1 If all or any part of your Agreed Project is to be used for building work, you must ensure that:

- 7.1.1 you have received all approvals, consent, planning consents, building regulation approvals, licences and any other necessary approvals and consents required by law to deliver the Agreed Project.
- 7.1.2 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;
- 7.1.3 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;
- 7.1.4 if structural work is necessary, you must employ a structural engineer;
- 7.1.5 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;
- 7.1.6 if building works come under the Construction (Design and Management) Regulations 2015, you will confirm that you have appointed a principle designer;
- 7.1.7 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;
- 7.1.8 building contracts must contain a clause which allows you to retain part of the contractors' fees on practical completion of the works; and
- 7.1.9 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:

- 7.1.9.1 contract drawings and specifications;
- 7.1.9.2 as built drawings;
- 7.1.9.3 health and safety files;
- 7.1.9.4. building contract with the main build contractor and key sub or specialist contractors;
- 7.1.9.5 other building contracts as appropriate;
- 7.1.9.6 planning and/or listed building consent including the confirmations of the discharge of the conditions of consents;
- 7.1.9.7 discharge of reserved building control completion certificate;
- 7.1.9.8 fire officer approval;
- 7.1.9.9 contracts of engagement for professional teams; and,
- 7.1.9.10 any other documents we may request.

7.1.10 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.

7.1.11 Pursuant to Clause 7.1.10, you agree to keep us 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.

## **8. Security**

8.1 You understand and accept that we will require security over the Project Asset(s) funded by the Grant. Usually this will be by way of a fixed and floating charge in our standard form along with an undertaking from your solicitor to register the charge at the Land Registry and Companies House within 28 and 21 days, respectively, of completion of the charge, or if appropriate we may request a deed of covenant in our standard form along with an undertaking from your solicitor to register a restriction at the Land Registry within 28 days of completion of the deed.

8.2 We reserve the right to request any type of security or additional security (now or in the future) or consolidated security if it is considered necessary

and desirable given the circumstances of the Agreed Project. If we have asked for security, you understand that no payments of the Grant will be made until we have received the requested documents completed to our satisfaction.

- 8.3 The type of security we require for the Agreed Project is set out in the Funding Agreement.

## **9. Land and Legal Requirements**

- 9.1 Pursuant to Clause 8 above and prior to the release of the Grant, we will require the following conditions to be met:

9.1.1 confirmation (by way of a Certificate of Title, in our Standard form) from your solicitors that you are the freehold owner or a lessee under a registered and assignable lease on terms acceptable to us, of the Project Assets to which the Grant relates and that the Project Assets can be used for the Agreed Project;

9.1.2 a signed fixed and floating charge and solicitors undertaking to register it at the Land Registry and at Companies House upon completion; or

9.1.3 a signed fixed legal charge and solicitors undertaking to register it at the Land Registry and at Companies House upon completion; or

9.1.4 a deed of covenant with restriction on title and solicitor's undertaking to register the deed and restriction at the Land Registry upon completion; or

9.1.5 if the property is unregistered, a deed of dedication (tripartite or as appropriate) to register a land charge and effect first registration of the restriction thereafter; and,

9.1.6 if you are not a statutory body (this includes local authorities and universities), confirmation (by way of a legal opinion in our standard form) from your solicitors that you have the legal powers necessary to sign all the documents related to the Grant and security; or,

9.1.7 if you are a statutory body, 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 Project.

- 9.2 If any part of the Grant is to fund the development of leasehold land, then you must send us a copy of the lease and ensure that the lease meets

our standard lease requirements and ensure that the lease is for the minimum term of:

- 9.2.1 For Grants up to and including £499,999: a lease of at least ten (10) years, without a break clause and a permitted user clause that is compliant with the Agreed Project.
- 9.2.2 For Grants of £500,000 and above but less than £1,000,000: a registered and assignable lease of at least fifteen (15) years, without a break clause, no forfeiture on insolvency clause and a permitted user clause that is compliant with the Agreed Project.
- 9.2.2 For Grants of £1,000,000 and above but less than £5 million: a registered and assignable lease of at least twenty (20) years, without a break clause, no forfeiture on insolvency clause and a permitted user clause that is compliant with the Agreed Project.
- 9.2.3 For Grants of £5 million: a registered and assignable lease of at least thirty (30) years, without a break clause, no forfeiture on insolvency clause and a permitted user clause that is compliant with the Agreed Project.

## **10. Dealings with Project Assets**

- 10.1 Without prejudice to the terms of any security over the Project Assets that you give us pursuant to Clauses 8 and 9, you must seek our prior written consent if you wish to sell, let, sub-let or otherwise deal with or dispose of any Project Asset(s) within:
  - 10.1.1 ten (10) years from the date of the Funding Agreement for a Grant up to and including £499,999; or
  - 10.1.2 fifteen (15) years from the date of the Funding Agreement for a Grant of £500,000 and above but less than £1,000,000; or,
  - 10.1.3 twenty (20) years from the date of the Funding Agreement for a Grant of £1,000,000 or above but less than £5,000,000; or,
  - 10.1.4 thirty (30) years from the date of the Funding Agreement for a Grant of £5,000,000.
- 10.2 If consent is given and you sell or dispose of the Project Asset(s), you may have to repay us all or part of the money received from us. The amount you must repay will be in direct proportion to the share of the project costs that came from us. If, with our consent, you sell the Project Asset(s) wholly or

partly bought with the Grant, it will be at full market value and we may impose conditions upon the transfer or disposition.

## **11. Termination of this Agreement**

- 11.1 If you breach any of the terms and conditions of this Funding Agreement, then we in our absolute discretion may withhold or demand repayment of all or part of the Grant and terminate this Funding Agreement. You will repay any grant requested immediately upon demand.
- 11.2 We may suspend payment of the Grant if we wish to investigate any matters concerning the Grant (or any other grants given by us to you). You understand and accept that we 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.
- 11.3 We may also withhold or demand repayment of all or part of the Grant if you:
- 11.3.1 close down your business (unless, with our prior consent in our absolute discretion, you join with, or are replaced by, another organisation that can take over this Funding Agreement and carry out the purposes of the Grant to our satisfaction);
  - 11.3.2 make significant changes to the Agreed Project without our prior written approval;
  - 11.3.3 do not fulfil the purpose of the Grant with reasonable care, thoroughness, competence and to a standard that we expect from you with your level of experience in its practice, profession or line of work;
  - 11.3.4 provide any information to us that is wrong or misleading, either by mistake or because you are trying to mislead us during the application process or during the period of this Funding Agreement;
  - 11.3.5 become, or in our view are likely to become, insolvent, any order is made, or resolution is passed, 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 your assets; or you enter into or propose any arrangement with your creditors;



- 11.3.6 act illegally or negligently at any time;
  - 11.3.7 act in such a way that we believe has significantly affected the Agreed Project, or is likely to harm our, the DCMS or your reputation or it is in our discretion necessary to protect public money;
  - 11.3.8 sell or in some other way transfer any part of the Grant, the business or the activity funded under the Agreed Project to someone else without first getting our approval in writing; and/or
  - 11.3.9 use 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 attempt to influence the awarding or renewal of contracts and grants or attempt to influence legislative or regulatory action.
- 11.4 If you are in breach of any of the terms of this Funding Agreement and we do not enforce one or more of our rights straight away, this does not mean that we will not do so in the future. We will only waive our right to enforce a provision of this Funding Agreement if we tell you in writing, signed by a member of our senior management team.
- 11.5 If you have other major revenue or capital grants with us, then you are 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 Project.
- 11.6 If you breach any of the terms of this Funding Agreement, we can choose to treat that as you breaching the terms of any other grant agreements we have with you. This will allow us to take the same actions under those agreements that we may take under this Funding Agreement, including making you pay back the Grant and suspending any future payments.
- 11.7 This Funding Agreement and these Terms and Conditions remain in force for whichever period is the longest time:
- 11.7.1 for Grants up to £499,999 (on freehold or leasehold land already owned by you): ten (10) years from the date of the Funding Agreement; or,
  - 11.7.2 for Grants of £500,000 and above but less than £1,000,000 (on freehold or leasehold land already owned by you): fifteen (15) years from the date of this Funding Agreement; or,

- 11.7.3 for Grants of £1,000,000 and above but less than £5,000,000 (on freehold or leasehold land already owned by you): twenty (20) years from the date of this Funding Agreement; or,
- 11.7.4 for Grants of £5,000,000 (on freehold or leasehold land already owned by you): thirty (30) years from the date of this Funding Agreement; and/or,
- 11.7.5 as long as you do 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 Project).

## **12. Prevention of Fraud and Corruption**

- 12.1 You 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 Project or showing or refraining from showing favour or disfavour to any person in relation to the Agreed Project.
- 12.2 If you or your staff, suppliers or sub-contractors engages in conduct prohibited by Clause 12.1 or commits fraud in relation to the Agreed Project or any other contract with the Crown (including us) we may:
  - 12.2.1 terminate the Funding Agreement and recover from you the amount of any loss suffered by us resulting from the termination; or
  - 12.2.2 recover in full from you any other loss sustained by us in consequence of any breach of this clause.

## **13. Additional Terms and Conditions**

- 13.1 We have the right to impose additional terms and conditions on the Grant if:
  - 13.1.1 you are in breach of the Funding Agreement;
  - 13.1.2 we withdraw or suspend any part of the funding for the Agreed Project;
  - 13.1.3 we judge that members of your governing body, volunteers or staff or any person or organisation closely involved in carrying

out the Agreed Project act in a way that may have a detrimental effect on the Agreed Project or on our and/or the DCMS's role and/or reputation as a distributor of public money or as a Government sponsored body;

- 13.1.4 we have reasonable grounds to believe that it is necessary to protect public money; and/or
- 13.1.5 we believe such conditions are necessary or desirable to make sure that the Agreed Project is delivered as agreed by the parties.