



# **ARTS COUNCIL ENGLAND**

## **Standard terms and conditions for grants (with schedules)**

**September 2023**

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## 1. Definitions

- 1.1. The “Organisation” means the organisations receiving the grant bound by these terms and conditions.
- 1.2. The “Arts Council” means the Arts Council England and includes its employees and those acting for it.
- 1.3. The “Agreed Programme” means the activity or activities that have been agreed with Arts Council as shown in the Schedule 1 (outline activity plan) and for which the Arts Council is giving the Organisation the grant as set out in the offer letter and in accordance with this Funding Agreement.
- 1.4. The “Funding Agreement”, which the Organisation has accepted and signed, includes and incorporates these standard terms and conditions, attached Schedules and grant offer letter together with any other conditions the Organisation has agreed.
- 1.5. The “Funding Period” means the fixed term specified in the grant offer letter.
- 1.6. The “Subsidy Control Regime” means the Subsidy Control Act 2022, and the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022, together with the Department for Business, and Trade and the Competition and Markets Authority’s published guidance on the Subsidy Control Regime or as such other laws and/or guidance that may apply or as amended or replaced from time to time, that regulates the award of financial assistance that meets the definition of ‘subsidy’ at section 2 of the Subsidy Control Act 2022.”

## **2. The Agreed Programme**

- 2.1. The Organisation will deliver the activity as defined in the Agreed Programme, which is attached as Schedule 1 (outline activity plan). The Organisation acknowledges that the grant is paid on trust to the Organisation for the sole purpose of delivering the Agreed Programme.
- 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 Agree 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.

## **3. Funding**

- 3.1. Subject to satisfactory receipt of any information required from time to time, the Arts Council agreed to pay to the Organisation the total grant in such instalments as shown in the Schedule 1.
- 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 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 prior written agreement of the Arts Council) which, for the avoidance of doubt, includes the Agreed Programmes as specified in Schedule 1 (outline

activity plan), the Funding Period and the Dates and Amounts of the Scheduled Payments as specific in Schedule 1.

- 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 Monitoring Schedule and/or Schedule 1.
- 3.5. The Organisation will show the grant and related expenditure in its annual accounts under the description of “Arts Council Funding” (as restricted fund or unrestricted fund, deriving from grant in aid or as a capital grant or from National Lottery funds 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.

#### **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 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 gives 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 relationship manager for the Organisation in relation to this Agreement. The relationship manager is the main point of contact between Arts Council England and the Organisation.
- 5.2. The Relationship Manager will:
  - 5.2.1. Act as the main contact with the Organisation for all matters relating to the grant and the Agreed Programme;
  - 5.2.2. Monitor the Organisation ensuring it complies with the terms of this Funding Agreement and other requirements in accordance with Arts Council's monitoring requirements, identify issues and share these with relevant colleagues;
  - 5.2.3. Attend the Organisation's board meetings (or equivalent) as an observer on a regular or an occasional basis; and
  - 5.2.4. Act as a "critical friend" to the Organisation by engaging with its Programme, and questioning its self-monitoring, direction, operations and activities.
- 5.3. The Arts Council may ask independent assessor 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 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, 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 Culture, Media and Sport. The Organisation agrees and accepts that the Arts Council may share such information and data with the Department for Culture, Media and Sport.
- 6.2.2. The Organisation must tell the Arts Council 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 Arts Council'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 Arts Council's grant award logo, and other logos as may be required, appropriately on all published material including printed and online material. You can download the Grant award logo/National Lottery grant award logo and access full details of how to acknowledge our support at <https://www.artscouncil.org.uk/grant-award-logo-and-guidelines> Alternatively you can email <mailto:grantawardlogo@artscouncil.org.uk> or phone 0161 934 4317 for further information.
- 6.2.4. The Organisation consents to any publicity about the grant and the Agreed Programme as the Arts Council may from time to time require. The Arts Council 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 seek its own advice in relation to: finances accounting, tax, solvency, insurance, human resources, legal advice (including compliance with legislation) 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 as soon as possible 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. At all times it must comply with any relevant laws or government requirements which may be applicable and/or in force at any time during the duration of this funding agreement and comply with best practice in governance, reporting and operation. This includes (but is not limited to):



- 6.4.1. 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;
- 6.4.2. All anti-bribery and anti-corruption legislation;
- 6.4.3. If applicable to your Organisation, complying with the Modern Slavery Act 2015 and any other slavery and forced of compulsory labour and human trafficking legislation;
- 6.4.4. Ensuring that the Organisation does not work with organisations proscribed under the Terrorism Act 2000 - <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version>;
- 6.4.5. Any legislation or regulations in relation to ‘sanctioned’ countries, organisations and/or individuals which may be in force at any time during the duration of the funding agreement (“Sanctions Legislation”). Information on the UK Sanctions Regime can be found at: <https://www.gov.uk/government/collections/uk-sanctions-regimes-under-the-sanctions-act>
- 6.4.6. 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);

- 6.4.7. 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;
  - 6.4.7.1. having in place at all times and acting in accordance with, appropriate and effective disciplinary, grievance and whistle-blowing policies;
  - 6.4.7.2. 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;
  - 6.4.7.3. adhering to all relevant legal obligations relating to offering internships;
  - 6.4.7.4. ensuring that salaries, fees and subsistence arrangements are as good as or better than those agreed by any relevant trade unions and employers' associations;
  - 6.4.7.5. 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;
  - 6.4.7.6. 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;
  - 6.4.7.7. 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.

- 6.4.8. When procuring goods, works or services that are funded in whole or in part by the Funding Agreement you must ensure you are:
- 6.4.8.1. Getting the best value for money when buying goods, works or services and ensuring that any procurement process is conducted in a transparent and proportionate manner and suppliers are treated equally, without discrimination.
  - 6.4.8.2. Having appropriate policies and procedures for obtaining quotes or competitive tendering in place for purchasing any goods, works or services costing more than £12,000 (including VAT) over the whole life of the contract, including any extensions (irrespective of how likely it is that they will be exercised).
  - 6.4.8.3. Complying 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; and
  - 6.4.8.4. For contracts within the scope of Regulation 13 of the PCR, procure in a manner compliant with the PCR (as amended or replaced from time to time); and advertised in such a way as to ensure that all interested suppliers in the market are aware of the opportunity to tender for the contract as if you are a contracting authority for the purposes of the PCR. The Organisation understands it shall not sub-divide a requirement with the intention of excluding the application of clause 6.4.8.4 or complying with your obligations under the PCR.
- 6.4.9. We may request, and you must provide any information we require to satisfy us that you have complied with your obligations under 6.4.8.1 – 6.4.8.4.
- 6.4.10. You acknowledge that we may incur financial liability if you breach your obligations under clause 6.4.8.1 – 6.4.8.4 and that

you shall be liable to us for any losses, costs (including legal costs), damages and any other financial liability that it incurs as a direct result of such a breach.

- 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. 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.
- 6.11. The grant may be made up of funds received from the National Lottery. 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.
- 6.12. You acknowledge that the grant comes from public funds and acknowledge that the support provided must be compliant with the Subsidy Control Regime. 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 Regime and shall provide a copy of such records to us upon reasonable request. In the event that it is deemed by a competent court or other regulatory authority to be non-compliant with the Subsidy Control Regime, you 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 another organisation or organisations 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.
- 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. Termination of this Agreement**

- 7.1. 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 terminate the Funding Agreement. The Organisation will repay any grant requested immediately upon demand.
- 7.2. 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.
- 7.3. The Arts Council may also withhold or demand repayment of all or part of the grant if the Organisation:
  - 7.3.1. Closes down its business (unless, with the Arts Council's prior consent, it joins with, or is replaced by, another Organisation take can take over this Funding Agreement and carry out the purposes of the grant to the Arts Council's satisfaction);
  - 7.3.2. Makes significant changes to the Agreed Programme without the prior written approval of the Arts Council;
  - 7.3.3. 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;
  - 7.3.4. 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;

- 7.3.5. 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;
- 7.3.6. Acts illegally or negligently at any time;
- 7.3.7. 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 or the Organisation's reputation or it is in the Arts Council's discretion necessary to protect public money; and/or;
- 7.3.8. 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.
- 7.3.9. Works with any prohibited organisation proscribed under the Terrorism Act 2000 as set out in clause 6.4.4.

7.4. 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.

7.5. 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.

7.6. 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.

7.7. This Funding Agreement and these terms and conditions remain in force for whichever period is the longest time:

7.7.1. For one year following the payment of the last instalment of the grant;

7.7.2. As long as any part of the grant remains unspent;

7.7.3. The expiry of the maximum period required under the grant for asset monitoring; or

7.7.4. 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 of the delivery of the Agreed Programme).

## **8. Additional terms and conditions**

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

8.1.1. The Organisation is in breach of the Funding Agreement;

8.1.2. The Arts Council or another funder withdraws any part of the funding for the Agreed Programme;

8.1.3. 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 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;

- 8.1.4. 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.

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