

Guidance on preparing a partnership agreement

May 2023

This guidance on preparing a partnership agreement **does not contain legal advice**. Arts Council England does not accept any liability as to the use of this guidance.

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Why you may need partnership agreements?

If Arts Council England decides to fund your Agreed Activity we will enter into a legally binding grant agreement with the lead organisation. The lead organisation must accept our terms and conditions of grant and the lead organisation will be solely accountable to us for all monitoring information, how all the money is spent, and for the full and successful delivery of the Agreed Activity.

Our terms and conditions of grant do not permit an organisation to subcontract any part of the Funding Agreement to other organisations without our prior agreement in writing. As a result, if we award a grant, before the Agreed Activity can start, we must approve a partnership agreement between the lead organisation and the other partners involved in the Agreed Activity.

A lead organisation may enter into partnership agreements with different types of partners at different stages in order for the lead organisation to deliver the Agreed Activity.

What must your partnership agreement do, and how much detail do you need?

In all cases your partnership agreement must ensure that the lead organisation, both for itself and all its partner organisations, can:

- meet all our terms and conditions of grant
- follow our branding guidelines
- provide us with all the financial, monitoring and any other information we require
- deliver the project on time and within budget

Types of partners

A lead organisation may have different types of partners, which may require different types of partnership agreements.

If the partners named in the lead organisation's application form are to provide goods or services needed to deliver the Agreed Activity **and** achieve the Agreed Activity outcomes, then this must be covered in

detail in the partnership agreement and in a way which meets our requirements.

However, if the partnership will focus on areas such as encouraging closer understanding or sharing information but the Agreed Activity is not dependent on this to achieve its outcomes, or if no part of the grant is used to pay for the partners' involvement in the Agreed Activity, then your partnership agreement may be less detailed.

If other organisations, other than the partners named in the application form, will provide goods or services needed to deliver the Agreed Activity, then we expect the lead organisation to follow the terms and conditions of grant and its agreed procedures when obtaining goods and services.

If the lead organisation is a contracting authority subject to the Public Contracts Regulations 2015 (or such other laws that may apply, amended or replaced from time to time that regulate public procurement), then we expect the lead organisation to follow these regulations when obtaining goods and services.

In either case when other organisations, other than the partners named in the application, will provide goods or services, we would not expect your partnership agreement to set out in significant detail your processes, policies, or the type of procurement procedure you will use. However, we would expect you to confirm in your partnership agreement if the Public Contracts Regulations 2015 applies or not, and that the lead organisation and partners will comply with the lead organisation's policy or procedures on procurement.

When should the partnership agreements begin and end?

The partnership agreement must cover a period that is at least as long as our grant agreement with the lead organisation.

Should the partnership agreement include your terms and conditions of grant?

In all cases the partnership agreement must refer to, or preferably include, our terms and conditions of grant. This is because all partner organisations must act in accordance with our terms and conditions of

grant so far as applicable to the delivery of their obligations under the partnership agreement.

You may want to attach our terms and conditions of grant as a schedule to the partnership agreement so that it is clear to all partner organisations what our terms and conditions of grant are and that they are fully aware of them.

The partnership agreement must also state that if there is any conflict between the interpretation of our terms and conditions of grant and the terms of your partnership agreement, our terms and conditions of grant will always take precedence or priority over the partnership agreement terms and conditions.

What should the partnership agreement include?

Since a wide range of partnership arrangements exist and every Agreed Activity will be different, it is difficult for us to provide you with every possible scenario.

To help clarify what needs to be included in a partnership agreement we suggest that the lead organisation goes through our terms and conditions of grant and decides which ones are relevant to each of the partners involved in delivering the Agreed Activity. This will help identify what needs to be included in the partnership agreement to enable the lead organisation to meet all our terms and conditions of grant.

All the organisations in the partnership should also study our terms and conditions of grant carefully and agree between them what their responsibilities are and how they will carry them out.

Generally, and without providing a fully comprehensive and definitive list, we expect partnership agreements will cover the following points:

- **Details of each partner organisation**

State the legal names (together with any trading names) and addresses of all the organisations that are signing up to the agreement. Think about whether you also provide details of any key contacts within the partner organisations as a single point of contact.

Ensure that each partner organisation undertakes to act in accordance with our terms and conditions of grant so far as applicable to carrying out their obligations under the partnership agreement.

- **Who the lead organisation is**
Make it clear that the organisation that submits the application to us is the lead organisation for the purposes of any grant we award. Include a statement that the lead organisation will be solely responsible to us to deliver the project in accordance with our terms and conditions of grant.
- **Purpose or aim of the partnership**
Explain how the aim of the partnership links with the aim of the project.
- **Conflicts of interest**
You must ensure that in the event of conflict between the terms and conditions of the partnership agreement and the terms and conditions of grant, our terms and conditions of grant shall take precedence or priority over the partnership agreement terms.
- **Duration or the term of the agreement**
This should include the provision for the lead organisation to terminate the partnership agreement if for any reason we need to suspend or terminate our grant.
- **Financial and contractual arrangements**
It is important that the lead organisation does not or is not seen to **make grants** to its partners. This is because grant decision making is our statutory responsibility.

The lead organisation does make **payments from its grant** to its partners in consideration for the activities they are delivering under the partnership agreement.

If a partner organisation will supply goods or services as part of the Agreed Activity then include details of what will be delivered, how often, what the method of payment will be and when payments will be made. We are not responsible for payments to partner organisations as this responsibility lies with the lead organisation.

Include a statement that the lead organisation will be responsible for all funds received from us and will not be liable to make payments to a partner organisation until they have received our grant payments.

Ensure that all partners keep records of all project expenditure and be able to provide evidence on demand or to provide the evidence within a reasonable timeframe. This is because our terms and conditions of grant requires the lead organisation to keep records of all project expenditure and be able to provide evidence of spending to us if we ask for it.

- **Roles and responsibilities**

Explain the main roles and responsibilities of each organisation in the partnership. Make clear which tasks and services each partner will be responsible for delivering and when.

- **Policies and procedures**

Include all that are required by law or relevant to the Agreed Activity, such as health and safety; equal opportunities; the protection of children, young people and vulnerable adults; buying goods and services; data sharing between the partners; raising a concern; complaints.

- **Data Sharing Agreement**

To ensure effective collaboration and compliance with data protection laws, we encourage the lead organisation to share information with their partners, fulfil reporting requirements, and establish proper procedures, while providing guidance as needed.

As part of the reporting requirements of your grant you may need to obtain data from partner organisations. You should therefore consider implementing a data sharing agreement. The data sharing agreement refers to the act of introducing a written agreement between the lead organisation and its partners to ensure that when they are sharing personal data that they are doing it legally.

Data sharing agreements set out the purpose of the data sharing, cover what happens to the data at each stage, set standards and help all the parties involved in sharing to be clear about their roles and responsibilities.

As all organisations, partnerships and circumstances are slightly different, we envisage that all data sharing agreements would be slightly different. The contents of a thorough Data Sharing agreement depends on various factors and you should seek advice from the Information Commissioner's office.

More information about Data sharing agreements is available via the ICO website here:

<https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/data-sharing-a-code-of-practice/data-sharing-agreements/>

<https://ico.org.uk/for-organisations/data-sharing-information-hub/contractual-liability-in-data-sharing-agreements/#:~:text=A%20data%20sharing%20agreement%20is,that%20are%20parties%20to%20it>

The data sharing agreement may sit within the partnership agreement or separately. If separately, the partnership agreement should state that the partners will enter into a separate data sharing agreement if the lead organisation requires them to. It is the lead organisation's responsibility to ensure that they have sufficient measures in place to protect data.

- **Administration, meetings and record keeping**

Explain who is responsible for setting up meetings, how often they will happen and what records will be kept.

Records need to be kept for a period of seven years under our terms and conditions of grant, so the lead organisation should make sure that it and its partner organisations do the same.

Please take note that we and the National Audit Office have the right to visit the premises of both the lead organisation and any partner organisation for up to seven years under the terms and conditions of grant.

- **Monitoring and reporting**

Explain how monitoring information will be provided by the partner organisations throughout the period of the grant agreement to enable the lead organisation to complete regular progress reports for us. Also set out the responsibilities of each partner in working

with our programme-level evaluator and our relationship manager for the lead organisation.

- **Communication**

Make clear how often the Agreed Activity will be discussed by the partnership and by what methods, for example, face-to-face meetings, phone or email. This may be where you will want your specific point of contact to coordinate with each other.

Make it clear who will be responsible for promoting the Agreed Activity through the media and who will handle enquiries. Again this may be where you will want your specific point of contact to coordinate with each other.

- **Our Branding and Logos**

Use and display of our branding and logos must be in accordance with our guidelines. All partner organisations that receive any part of the grant should also be required to do adhere to this. You should make it clear that the use of our branding and logos will stop when the funding agreement comes to an end.

- **Changes to the agreement and disputes**

Explain how changes to the partnership agreement and disputes will be managed and resolved. Remember that a disagreement between the partners may result in the lead organisation being unable to meet our terms and conditions of grant. This may be where you will want your specific point of contact to coordinate with each other and/or to attempt to resolve or manage disputes to stop them from escalating.

However, if you (the lead organisation and your partners) are unable to resolve a dispute and/or your partnership agreement comes to an end, we will expect the lead organisation and any new partners to enter into a new partnership agreement (which will be subject to the approval of Arts Council England) or for the new partner to replace any outgoing partner in your partnership agreement.

- **Signed declaration**

All parties to the agreement must sign and date the agreement.