



# Standard terms and conditions for National Portfolio Organisations

These standard terms and conditions apply to all grant offers to National Portfolio Organisations for the funding period 1 April 2018 to 31 March 2022

## Contents

|   |                                      |    |
|---|--------------------------------------|----|
| 1 | Definitions.....                     | 2  |
| 2 | The Agreed Activity.....             | 2  |
| 3 | Funding.....                         | 3  |
| 4 | VAT.....                             | 4  |
| 5 | Monitoring.....                      | 4  |
| 6 | The Organisation's Obligations.....  | 5  |
| 7 | Termination of this Agreement.....   | 10 |
| 8 | Additional Terms and Conditions..... | 13 |

## **1. Definitions**

- 1.1 The “Organisation” means the organisation receiving the grant bound by these terms and conditions.
- 1.2 The “Arts Council” means Arts Council England and includes its employees and those acting for it.
- 1.3 The “Agreed Activity” means the activity to be carried out during the Funding Period, which has been agreed with the Arts Council and for which the Arts Council is giving the Organisation the grant as set out in the application form, the business plan that accompanies this Funding Agreement as Attachments and/or as varied by this Funding Agreement.
- 1.4 The “Funding Agreement”, which the Organisation has accepted, includes and incorporates these standard terms and conditions, the payment conditions as set out in the Monitoring Schedule, the Schedule 1 additional conditions and the 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.

## **2. The Agreed Activity**

- 2.1. The Organisation will deliver the activities as defined in the Agreed Activity, which accompanies the Funding Agreement as Attachments. The Organisation acknowledges that the grant is paid on trust to the Organisation for the sole purpose of delivering the Agreed Activity.
- 2.2. The Agreed Activity 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 Activity or any key part of it. This includes any withdrawal of match funding for the Agreed Activity, 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 agrees to pay to the Organisation the total grant in such instalments as shown in the Monitoring Schedule.
- 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 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 Activity 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 Schedule 1 additional conditions, the Agreed Activity as specified in the accompanying Attachments, the Funding Period and the Dates and Amounts of the Scheduled Payments as specified in the Monitoring Schedule.
- 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.
- 3.5. 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, or from 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 a 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 Activity 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. The Relationship Manager will:
  - act as the main contact with the Organisation for all matters relating to the grant and the Agreed Activity
  - 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 (this is to be undertaken on a quarterly basis as a minimum)
  - attend the Organisation's board meetings (or equivalent) as an observer on a regular or an occasional basis
  - act as a "critical friend" to the Organisation by engaging with its activity, and questioning its self-monitoring, direction, operations and activities

- 5.2. The Arts Council may ask independent assessors to experience work by the Organisation (excluding Sector Support Organisations, Museum Development Providers, Bridge and networking organisations, conferences and activities taking part as part of formal education) and to write a report assessing the quality of that work. The Organisation will assist the Arts Council in identifying appropriate activities to nominate for assessment, although the decision as to which events are assessed will remain with the Arts Council.

## **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 Agreed 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 the Monitoring Schedule, and copies of all or any other relevant documentation about the financial and operational running of the Organisation, to include business plans together with monitoring reports/revisions, board papers or equivalent, reserves policies and any other information which the Arts Council deems relevant to its understanding of how the Agreed Activity 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 get the Arts Council's prior written agreement before making any significant changes to its legal status, transferring any assets or merging or amalgamating with any other body including a company set up by the Organisation or to the Agreed Activity.

6.2.3. The Organisation will:

- advocate for the value of publicly funded arts and culture (both grant in aid and lottery funded) across its advocacy, marketing and communication activities
- where appropriate, actively work with the Arts Council and other lottery distributors, to champion the role of The National Lottery in supporting our art and culture
- prominently feature the Arts Council's grant award logo or Lottery grant award logo (as applicable) on all digital and print marketing assets according to our guidelines
- share its images, audio and visual content with the Arts Council, having obtained all relevant consent for their use across Arts Council communication channels

6.2.4. The Organisation consents to any publicity about the grant and the Agreed Activity as the Arts Council may from time to time require.

6.2.4.1. 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.

6.2.4.2. The Organisation will assist the Arts Council in advocating for the impact and value of public funding of arts and culture. The precise nature of this advocacy will depend on the scale and capacity of the Organisation, and will be agreed through conversations with the Arts Council's communications team and/or the Organisation's Relationship Manager.

6.2.4.3. The Organisation must include the latest agreed standard boilerplate about the Arts Council and its investment for all press releases it issues, using the guidance the Arts Council will provide. The Organisation can access full details of how to acknowledge the Arts Council's support at [www.artscouncil.org.uk/grantawardlogo](http://www.artscouncil.org.uk/grantawardlogo).

6.2.5. The Organisation is fully responsible for every part of its business. This includes, without limitation:

- 6.2.5.1. 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 that they have regular updates on the financial position of the Organisation and on the delivery of the Agreed Activity
- 6.2.5.2. 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
- 6.2.5.3. 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
- 6.2.5.4. 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 Activity during the period of the grant (including any claims made against members of its governing body or staff)
- 6.2.6. In carrying out its business and funded activity under the Agreed Activity the Organisation must obtain all approvals, consents and licences required by law to deliver the Agreed Activity, 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):
  - 6.2.6.1. taking all reasonable steps to ensure the safety of the children and adults at risk that 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)

- 6.2.6.2. 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
- 6.2.6.3. having in place at all times and acting in accordance with appropriate and effective disciplinary, grievance and whistleblowing policies
- 6.2.6.4. 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
- 6.2.6.5. at all times complying with Data Protection Legislation. Data Protection Legislation shall mean (i) unless and until the General Data Protection Regulation ((EU) 2016/679) ('GDPR') is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998
- 6.2.6.6. adhering to all relevant legal obligations relating to offering internships
- 6.2.6.7. ensuring that salaries, fees and subsistence arrangements are as good as or better than those agreed by any relevant trade unions and employers' associations
- 6.2.6.8. 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

- 6.2.6.9. buying goods or services in a way that will give value for money. This means getting the best price for goods or services and having appropriate policies and procedures for obtaining quotes or competitive tendering in place for purchasing any capital items or services, or a series of capital items or services costing more than £10,000. If there are good reasons why the Organisation cannot obtain quotes or put out the order to competitive tender, then it will obtain the Arts Council's prior written consent. The Organisation understands that it must meet the relevant UK and European procurement legislation. It will comply with all anti-bribery and anti-corruption legislation
  - 6.2.6.10. 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
  - 6.2.6.11. 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 that the Organisation has funded
- 6.3. 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.
- 6.4. The Organisation will not sell, give away, licence or borrow against any grant funded assets (including any intellectual property rights) without 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.

- 6.5. 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 Activity, 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.
- 6.6. The Organisation must, subject to the provisions as noted in clause 6.2.6.5. above, provide to the Arts Council such audience/participant, staffing, activities including touring, income and expenditure data as the Arts Council may request. Where relevant, the Organisation must ensure that it has obtained all relevant and appropriate consents in accordance with the Data Protection Legislation prior to providing such data to the Arts Council. 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.
- 6.7. 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.
- 6.8. Any information the Arts Council receives from the Organisation will be subject to the Freedom of Information Act. By law, the Arts Council may have to provide the Organisation's information to a member of the public if they ask for it under the Freedom of Information Act 2000. For further details, see the Arts Council's information sheet *How we treat your application under the Freedom of Information Act*, available on the Arts Council's website at [www.artscouncil.org.uk](http://www.artscouncil.org.uk). If the Organisation has any concerns, the Organisation should let the Arts Council know as some information may be covered by exemptions if it is sensitive or confidential, but any decision to release information is at the Arts Council's absolute discretion in accordance with the Freedom of Information Act legislation.
- 6.9. The Arts Council reserves the right to be consulted in the process of recruitment and invited to attend interviews when the Organisation is recruiting trustees and/or senior staff.
- 6.10. The Organisation understands that the Arts Council can only guarantee future instalments of the grant as long as funds from the Government and/or the National Lottery are available to it. It is possible that the indicative amount may therefore be reduced for future instalments.

- 6.11. The Organisation acknowledges that the grant comes from public funds and it will not use the grant in a way that constitutes unapprovable State aid. In the event that it is deemed to be unapprovable State aid, then it will repay the entire grant immediately.
- 6.12. 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 Activity, 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.
- 6.13. 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 Activity 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. 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 written 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)
  - 7.3.2. makes any significant change to the Agreed Activity 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, or any order is made, or resolution is passed, for it to go into administration, be wound up or dissolved; or if 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 delivery of the Agreed Activity, 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 Activity to someone else without the Arts Council's prior written approval
- 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 Activity.
- 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 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 or the delivery of the Agreed Activity)

## **8. Additional Terms and Conditions**

- 8.1. The Arts Council has the right to impose additional terms and conditions on the grant if:
- the Organisation is in breach of the Grant Agreement
  - the Arts Council or another funder withdraws any part of the funding for the Agreed Activity
  - the Arts Council has reasonable grounds to believe that the Agreed Activities are being carried out by the Organisation in a way that may have a detrimental effect on the Agreed Activities, 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 Activities, or to any illegal or negligent actions by the Organisation, and not to any artistic decision made by the Organisation

- the Arts Council has reasonable grounds to believe that it is necessary to protect public money; and/or
- the Arts Council believes such conditions are necessary or desirable to make sure that the Agreed Activity is delivered as set out in the application form or following any agreed changes