

Standard terms and conditions for Music Education Hubs 2017-18

Contents

1	Definitions.....	02
2	The Agreed Activity.....	02
3	Funding.....	02
4	VAT.....	03
5	Monitoring and reporting.....	04
6	The Organisation's Obligations.....	05
7	Termination of this Agreement.....	10

1. Definitions

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

The 'Arts Council' means the Arts Council of England and includes its employees and those acting for it.

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

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

The 'Funding Period' means the fixed term specified in the grant offer letter.

2. The Agreed Activity

- 2.1. The Organisation will deliver the activities as defined in the Agreed Activity. 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.

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 offer letter.
- 3.2. The Arts Council will not make any payments under this Funding Agreement until it has received evidence that the terms and conditions have been properly accepted by the Organisation's board or equivalent. The Funding Agreement must be signed by a board member or equivalent or by a properly delegated officer.
- 3.3. The Organisation accepts that these standard terms and conditions are not negotiable and the Organisation shall have no right to amend or vary the provisions of this Funding Agreement (unless with the prior written agreement of the Arts Council) which, for the avoidance of doubt, includes the Agreed Activity, the Funding Period and the Dates and Amounts of the Scheduled Payments as specified in the offer letter.
- 3.4. The Organisation accepts that the Arts Council will not increase the grant if the Organisation spends more than the total grant shown in the offer letter. If the Organisation spends less than the whole grant allocated in any one financial year on the Agreed Activity, it will return the unspent amount of grant for that year to the Arts Council promptly at the end of that financial year.
- 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 deriving from Grant-in-Aid as a revenue grant). 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.
- 3.6. The Organisation accepts that the grant cannot be used for marketing and advertising, or for any costs associated with the maintenance, technical development or updating of existing websites or for the development and/or creation of new websites.

4. VAT

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

5. Monitoring and reporting

- 5.1. The Arts Council will designate a Relationship Manager for the Organisation in relation to this Funding 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.
 - talk to the Organisation regularly and at least on a termly basis about its progress.
 - 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 examples of good practice and issues and share these with relevant colleagues.

The Arts Council welcomes dialogue on its relationship with the Organisation, and the first point of contact for such feedback is the Relationship Manager. If the Organisation wishes to make a complaint it should use the Arts Council's relevant complaints procedure.

- 5.2. The Arts Council will monitor the Organisation for relevant risks which might adversely affect the delivery of the Agreed Activity.

- 5.3. The Arts Council will submit reports to the Department for Education and the monitoring board overseeing the National Plan for Music Education. These reports will be in the format and contain such information as the Department for Education agrees 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 to be incorporated into this Funding Agreement. This will include the need to enter into a partnership agreement with key delivery partners which enable the Organisation to fulfil all aspects of the Agreed Activity. The partnership agreement(s) must be approved in writing by the Arts Council prior to the first grant payment.
- 6.2. In addition, the Arts Council requires the Organisation to meet the following requirements:
 - 6.2.1. The Arts Council will monitor and assess the Organisation's activity and how effectively the funding is being used. To enable this, the Organisation will send the Arts Council all such information as the Arts Council may in its sole discretion reasonably request from time to time. This includes the information, without limitation, set out in the offer letter, and copies of all or any other relevant documentation about the financial and operational running of the Organisation, to include business plans, board papers or equivalent, reserves policies and any other information which the Arts Council deems relevant to its understanding of how the Agreed Activity is being delivered and the funding used.
 - 6.2.2. The success of the relationship relies on effective communication and the sharing of information. 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 Activity 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 including any required by the Department for Education as may be required, appropriately on all published material including printed and online material.
- 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. 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.
- 6.2.5. The Organisation confirms that where its remit covers other parts of the United Kingdom, that the grant and Agreed Activity supports the provision of music and cultural education in England only.
- 6.2.6. The Organisation is fully responsible for every part of its business. This includes, without limitation, the following clauses:
 - 6.2.6.1. 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 Activity are within the scope of the governing documents.
 - 6.2.6.2. The Organisation is responsible for obtaining its own management, business and music advice. This includes considering whether it needs to procure financial, accounting, tax, solvency, legal, insurance or other types of professional advice.
 - 6.2.6.3. The Organisation must tell the Arts Council immediately of any changes in the Organisation or in its arrangements with its partner organisations and any changes that may threaten its solvency or the solvency of any of its partners and inform the Arts Council if it (or they) enter(s) into or propose(s) any arrangement with any of its creditors.

- 6.2.6.4. The Organisation is responsible, through the partnership agreements it has in place, for ensuring that its partners have sound financial procedures in place appropriate for handling public money and are under an obligation to the Organisation to meet all the commitments imposed upon the Organisation under the terms of this Funding Agreement as necessary for them to fulfil their obligations to the Organisation.
- 6.2.6.5. The Organisation must tell the Arts Council in writing as soon as possible if any disputes with third parties arise or 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).
- 6.2.7. In carrying out its business and funded activity the Organisation must obtain all approvals, consents and licences required by law to deliver the Agreed Activity, 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):
 - 6.2.7.1. Taking all reasonable steps to ensure the safety of the children and adults at risk it will work with. It will have and carry out an appropriate written policy and have a set of procedures in place at all times to safeguard children and adults at risk, 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 young people with the Disclosure and Barring Service (DBS).
 - 6.2.7.2. Having an equal opportunities policy in place at all times.
 - 6.2.7.3. Managing all personal information in accordance with the Data Protection Act 1998.

- 6.2.7.4. 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.
 - 6.2.7.5. 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 achieving this. If the funding that the Organisation receives under this Funding Agreement accounts for 50% or more of annual income then the Organisation must ensure that when it procures goods or services, it is done so in line with English and EU procurement law. The Organisation must seek legal advice where appropriate.
 - 6.2.7.6. 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; and
 - 6.2.7.7. Acting at all times without distinction and in compliance of all relevant legislation and best practice as to age, disability, gender, gender reassignment, race, religion or belief, sexual orientation or any other characteristic protected under the provisions of the Equality Act 2010; In particular, the Organisation will develop and put in place appropriate policies and procedures to comply with relevant equality legislation.
- 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 must give the Arts Council, the Department for Education, 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.
- 6.5. 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.
- 6.6. The Arts Council may share information about the grant and/or the Agreed Activity with third parties. 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.
- 6.7. The Organisation understands that the Arts Council can only guarantee future instalments of the grant in accordance with pupil number changes, the allocations made under in accordance with the National Plan for Music Education and as long as Department for Education funding is made available by the will of Parliament.
- 6.8. 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.
- 6.9. The Organisation will ensure that no other organisation or individual acquires any third party rights under this Funding Agreement.
- 6.10. 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.

- 6.11. When required by the Arts Council, the Organisation will ensure that copyright and design rights in works created wholly with monies granted will be vested in the Crown and the Secretary of State for the Department for Education respectively.
- 6.12. There is no guarantee of any continuation funding for the Agreed Activity, which is also subject to the availability of funds from the Department for Education. The Organisation may be required, at the Arts Council's reasonable request but at the Organisation's cost, to pass on knowledge, skills, documentation, materials and procedures, developed with the grant while delivering the Agreed Activity to another organisation(s) carrying forward similar work.
- 6.13. If any capital asset costing more than £1,000 is purchased with the grant, the asset must not be sold or otherwise disposed of within five years of purchase without Arts Council's prior written consent. The Arts Council may require the repayment of all or part of any proceeds of any disposal or sale.
- 6.14. The Organisation will maintain a register of any capital assets purchased with the grant. This register will record, as a minimum, (a) the date the item was purchased; (b) the price paid; and (c) the date of disposal (in due course).
- 6.15. The Organisation must not attempt to raise a mortgage or other charge on assets funded by the grant without the prior approval of the Arts Council.

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 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 significant changes to the Agreed Activity or wishes to change its partnership arrangements 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 music education, 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 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 first getting the Arts Council's approval in writing.

- 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. This Funding Agreement and these terms and conditions remain in force for whichever period is the longer time:
 - 7.5.1. For one year following the payment of the last instalment of grant; or
 - 7.5.2. 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).