



# **Emergency Response Fund: For National Portfolio Organisations and Creative People and Places lead organisations**

Standard terms and conditions for grants

**April 2020**

## **Standard terms and conditions for grants**

These standard terms and conditions for grants apply to grant offers made under the Arts Council England's Emergency Response Fund: For National Portfolio Organisations<sup>1</sup> and Creative People and Places lead organisations in response to the Covid-19 pandemic.

This document is important. It sets out the standard legal conditions of our grant offer to you. This is a legal document and you should ensure that you fully understand your responsibilities before accepting a grant from us.

If you have any general questions about this document, please contact our Customer Services team at [enquiries@artscouncil.org.uk](mailto:enquiries@artscouncil.org.uk). However, if you need legal advice, please contact your solicitor.

If you require this document in an alternative format you can ask us by emailing [enquiries@artscouncil.org.uk](mailto:enquiries@artscouncil.org.uk)

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<sup>1</sup> For the purpose of these standard terms and conditions where we refer to 'National Portfolio Organisations' we include all 2018-22 National Portfolio Organisations, Sector Support Organisations and organisations that have withdrawn from the current National Portfolio and are being funded through another mechanism.

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## **1. Definitions**

- 1.1. 'You' means the person (individual) or organisation that we have given a grant to.
- 1.2. 'We', 'us' and 'our' means Arts Council England and includes our employees and those acting for us.
- 1.3. The 'Activity' means the activity that we have agreed to give you a grant for, as set out in your application form together with any supporting documents such as budget information and cash flow forecast.
- 1.4. The 'Grant Agreement' includes and incorporates:
  - 1.4.1. these standard terms and conditions;
  - 1.4.2. the Offer Letter which sets out any additional conditions; and
  - 1.4.3. the Application Form.

## **2. The grant**

- 2.1. The amount of the grant is set out in the Offer Letter. We are not able to increase the amount of the grant. The amount of the grant may be different to the amount that you applied for.
- 2.2. You must accept our offer within two weeks of receiving it by accepting your grant online. If you do not accept your grant online within two weeks our offer will lapse. The Offer Letter must be accepted by someone who is authorised to sign on behalf of your organisation. Your acceptance online will be deemed your signing of the Offer Letter. The Grant Agreement will come into force on the date that you accept your grant online and will be deemed the date of your Grant Agreement.
- 2.3. We will release funds as set out in the Offer Letter.
- 2.4. You must use the grant exclusively for the Activity.
- 2.5. You must tell us promptly about any changes to information you have given us, including any changes to your bank or building society details and you must make sure that the information you hold is always true and up to date.
- 2.6. You must not use the grant to cover any costs related to debt that was incurred before 1 March 2020 (unless specifically related to Covid-19).
- 2.7. You must hold any unused part of the grant on trust for us at all times.
- 2.8. You must tell us if you receive any other funding for the Activity from any other source at any time during the Activity. If this means that you no longer need the funding from us and/or that our funding duplicates something you later receive other specific funding for (for example, through the Government's Coronavirus Job

Retention Scheme), you must pay the grant or the appropriate portion of the grant back to us immediately upon demand from us.

- 2.9. If you spend less than the whole grant on the Activity, you must return the unspent amount to us promptly. If the grant part-funds the Activity, you must return the appropriate share of the unspent amount to us.
- 2.10. As the grant comes from public funds, you must account to us for any profit that you make from the Activity and we reserve the right to require you to pay back all or part of the grant.
- 2.11. If you enter into an agreement with any third party with a view to commercial exploitation of the Activity or anything related to it, you must contact us to obtain our consent. Our consent may be subject to conditions, including conditions requiring the repayment of all or part of the grant.

### **3. The Activity**

- 3.1. You must get our written permission before making any changes to the Activity or to its aims, structure, delivery, outcomes, duration or ownership.
- 3.2. If we agree that you can make changes to the Activity, we may ask you to agree to additional conditions. Any agreed changes and/or additional conditions will be set out in a separate legal agreement between us and you; you should not start any new or changed activity until that agreement has been signed by both us and you.
- 3.3. You must start the Activity within two weeks of receiving the first grant payment from us.
- 3.4. You must tell us if your plans to complete the Activity, or your own ability to complete it, changes.
- 3.5. You must ensure that all records, including financial records, relating to the Activity are accurate and up to date. You must keep these records for seven years after the Activity has finished.
- 3.6. Where it is required, you must maintain adequate insurance at all times and we may ask you to send us copies of these policies. This includes employee and public liability insurance and insurance that covers the full replacement value of any assets you have purchased using the grant.
- 3.7. You must give us, or any person nominated by us, access to all records relating to the Activity or other projects funded by us upon demand, including (but not limited to) accounts and any other financial records, VAT and any other tax records. We can ask for access to these records for up to seven years after the Activity has finished.

- 3.8. You must send us any information and records that we reasonably require to monitor your Activity and how the grant is being used.
- 3.9. If it is requested as part of your Monitoring Schedule and Payment Conditions, you must provide us with a brief report on the Activity within one month of completing it, using our standard Activity report form which is held in your online account.
- 3.10. Where requested you must provide us with clear and accurate accounts that cover the period of the Activity. These accounts must follow any relevant legal requirements for accounts, audit or examination of accounts, annual reports or annual returns and must clearly show income and expenditure. We will expect to see evidence of how you have used any grant awarded through this fund when you submit management accounts to us as part of your National Portfolio (or Creative People and Places or equivalent funding agreement) grant monitoring. We may also request additional documentation on use of funds.
- 3.11. In carrying out your Activity, you must meet all laws regulating the way you operate, the work you carry out, the staff you employ or the goods and services you buy. For example, you are responsible for getting any licences, permissions and insurances that are necessary by law.
- 3.12. You must have appropriate policies and procedures in place and act in accordance with them at all times to help you comply with any relevant law, government requirement and best practice including, but not limited to:
- 3.12.1. Data protection;
  - 3.12.2. Equal opportunities including discrimination on the basis of race, age, gender, disability, religion and/or sexuality;
  - 3.12.3. Employment law;
  - 3.12.4. Harassment and bullying.
- 3.13. The following conditions apply if you or your employees, business partners, contractors or volunteers will supervise, care for or have significant direct contact (which for the avoidance of doubt includes contact by electronic and/or digital means) with a vulnerable person during the Activity:
- 3.13.1. 'Vulnerable person' means:
    - a. anyone under the age of 18; and/or
    - b. anyone who needs (or may need) community care services because of mental disability, other disability, age or illness, and who is (or may be) unable to take care of themselves or unable to protect themselves against significant harm or exploitation.
  - 3.13.2. You must consider all the risks that may arise from your contact with the vulnerable person, and take all reasonable steps to ensure their safety. Before having any significant direct contact with the vulnerable person, you must get the written agreement of the legal carer or guardian of the vulnerable person.
  - 3.13.3. As well as your responsibilities in clause 3.13.2, you must have and carry out a written policy and set of procedures to safeguard vulnerable people if during the Activity, your employees, business

- partners, contractors or volunteers supervise, care for or have significant direct contact with vulnerable people.
- 3.13.4. As part of these procedures you must check with the Disclosure and Barring Service (DBS) the backgrounds and disclosures of those employees, business partners, contractors or volunteers who will, during their Activity, supervise, care for or otherwise have significant direct contact with vulnerable people.
- 3.13.5. If you are the person having significant direct contact with the vulnerable person, you must have your background checked by the Disclosure and Barring Service (DBS) and have a clear and valid certificate readily available to provide on request.
- 3.13.6. You must comply with this clause 3.13 even if you are not required to do so under any child protection or care standards legislation, and whether the work is formal, informal, voluntary or salaried.
- 3.13.7. We cannot advise you of your legal responsibilities in your dealings with vulnerable people, and these conditions are not legal advice. If you have any queries about your obligations, we strongly advise that you seek your own independent legal advice and also contact the National Society for Prevention of Cruelty to Children [www.nspcc.org.uk/inform](http://www.nspcc.org.uk/inform)

## **4. Information, marketing and publicity**

- 4.1. You must acknowledge the grant publicly as appropriate and as practical.
- 4.2. Where you are delivering project work, you must follow our branding and publicity guidelines at all times. You will acknowledge our support and the support of the National Lottery (if your grant is from National Lottery sources) in any published documents that refer to the Activity, including any advertisements, accounts and public annual reports, or in written or spoken public presentations about the Activity.
- 4.3. You must acknowledge our grant by following the guidelines we will provide. If your grant is from National Lottery sources and you are delivering project work, you should feature the appropriate Grant award logo/National Lottery grant award logo on all information, marketing and publicity materials relating to the activity we have agreed to fund, including printed and online material. You should also incorporate verbal and written acknowledgment of our support into your communications. You can download the Grant award logo/National Lottery grant award logo and access full details of how to acknowledge our support at [www.artscouncil.org.uk/grantawardlogo](http://www.artscouncil.org.uk/grantawardlogo) Alternatively you can email [grantawardlogo@artscouncil.org.uk](mailto:grantawardlogo@artscouncil.org.uk) or phone 0161 934 4317 for further information.
- 4.4. The National Lottery grant award logo, other 'Crossed fingers' logos and the words 'The National Lottery' are owned by the Gambling Commission ('the Commission'). The Commission is responsible for licensing and regulating the National Lottery. It aims to ensure the integrity of the National Lottery, to protect players and to

maximise the funds that can be paid out in grants. The Commission has granted Camelot UK Lotteries Limited ('Camelot') a licence to operate the National Lottery until January 2023. Under the terms of the licence it is a single- purpose company, dedicated to the operation of the National Lottery and is regulated by the Commission.

- 4.5. We hereby give you the permission to use the Grant award logo/National Lottery grant award logo to acknowledge and celebrate your grant award. In using the logo you must comply with the guidelines available at [www.artscouncil.org.uk/grantawardlogo](http://www.artscouncil.org.uk/grantawardlogo), or any future versions that we notify you of.
- 4.6. Please note that with regard to the National Lottery grant award logo:
  - 4.6.1. this permission is specific to any National Lottery-funded activity and you may not transfer any of these rights to another project or organisation;
  - 4.6.2. we may share information about your project and/or Activity with the Commission and Camelot to enable it to monitor your compliance with the National Lottery grant award guidelines and to take appropriate action should you breach its terms;
  - 4.6.3. we will have the right to end your permission to use the National Lottery grant award logo if our own permission from the Commission and/or Camelot is terminated or if you do not comply with the National Lottery grant award guidelines or if your grant from the National Lottery funds is withdrawn, suspended or terminated. If this permission ends, you must stop using the National Lottery grant award logo immediately.
- 4.7. We acknowledge that you will own all rights in any materials produced for or relating to the Activity and in the Application Form, including any intellectual property rights. You hereby grant us a non-exclusive, worldwide, royalty-free perpetual licence to reproduce any materials relating to the Activity and the Application Form as we reasonably require for marketing and publicity purposes. We may also share information with other funders, government departments, regulatory agencies, partners and others with a legitimate interest in public funding.

## **5. Additional Conditions for organisations**

- 5.1. You will ensure that you are at all times correctly constituted and that you can deliver the Activity under the terms of your constitution.
- 5.2. You must get our written agreement before:
  - 5.2.1. changing your governing document, (unless you are a statutory organisation) concerning your aims, payments to members and members of your governing body, the sharing out of your assets (whether your organisation is dissolved or not), or the admission of any new members; or



- 5.2.2. transferring your assets to, or merging or amalgamating with, any other body, including a company set up by you.
- 5.3. You must write to us as soon as possible if any legal claims are made or threatened against you and/or which would adversely affect the Activity during the period of the grant (including any claims made against members of your governing body or staff concerning the organisation).
- 5.4. You must tell us in writing as soon as possible of any investigation concerning your organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, the Office of the Scottish Charity Regulator, HM Revenue & Customs or any other regulatory body.
- 5.5. You acknowledge that the grant comes from public funds and that you 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 you will repay the entire grant immediately.

## **6. General conditions**

- 6.1. If you break any term and/or condition of the Grant 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 give up our right to enforce this agreement only if we tell you in writing.
- 6.2. If you break this agreement, we can choose to treat that as you breaking 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 agreement, including making you pay back the grant and stopping any future payments.
- 6.3. 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, any action you fail to take, or for your debts or liabilities. Even though we may give you funding and talk to you about your activities, you are still fully responsible for every part of the Activity, your business and the decisions about it. We will not be responsible to anyone else who may take, or threaten to take, proceedings against you.
- 6.4. You are responsible for getting your own management, business and artistic advice. This includes considering whether you need to get financial, accounting, tax, solvency, legal, insurance or other types of professional advice. You must not assume that your business is financially stable or solvent (this means your business is able to meet its financial responsibilities), even if we continue to support you.
- 6.5. Your grant comes from public money, so if you are planning to buy goods or services with your grant, you should always buy them in a way that will give value for money

and avoids any conflicts of interest. If you are an organisation and the funding that you receive from us accounts for 50 per cent or more of your annual income then you must ensure that when you purchase goods or services you do so in line with English and European Union procurement law. You should seek legal advice where appropriate.

- 6.6. We get the funding we give to you from different places, including National Lottery. We do not expect this funding to be reduced or stopped but, if it is, we may reduce or stop your grant before we have paid you the full amount.
- 6.7. This grant is in response to the Covid-19 pandemic. We reserve the right to introduce new requirements and/ or additional conditions based on any further guidance given and/ or announcements made by the Government and any changing circumstances in relation to Covid-19.
- 6.8. We are not obliged to provide, and nor should you assume that we will, any further funding for the Activity after this grant agreement comes to an end.
- 6.9. The Freedom of Information Act 2000 ('the Act') applies to us. This means that any information you give us could be released to any person who asks for it under the Act.

Visit our publication scheme at [www.artscouncil.org.uk/freedom-information](http://www.artscouncil.org.uk/freedom-information) for more information on how Arts Council England applies the Act and our data protection policy. You must tell us if you think that any of the information should be confidential under any of the exemptions of the Act.

Please visit [www.ico.gov.uk](http://www.ico.gov.uk) for information on the Act.

## **7. VAT**

- 7.1. You acknowledge that the grant is not consideration for any taxable supply for VAT purposes. You acknowledge that our obligation does not extend to paying you any amounts in respect of VAT in addition to the grant.
- 7.2. 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 to us and give us copies when requested.
- 7.3. If we have agreed to fund any or all of the VAT costs associated with your Activity and you subsequently recover any VAT, you must pay us back immediately any of the VAT that has been paid for with the grant.

## **8. Conditions relating to assets or goods purchased with the grant**

- 8.1. During the period covered by your grant, you must not sell any assets or goods that have been totally or partly bought, restored, conserved (maintained or protected from damage) or improved with our grants unless:
  - 8.1.1. you can sell them for their full current market value; and
  - 8.1.2. we have given you permission, in writing, beforehand.
- 8.2. If we have contributed (or will contribute) more than £25,000 to help with buying, restoring, conserving or improving land, buildings or any other asset, you must not apply for a mortgage over that asset or use it as security without our prior written approval.
- 8.3. We may insist on third party rights being given to us (and in a form approved by us) under any contract that you have with contractors and consultants on most building projects.
- 8.4. If we feel it is necessary, we will take security on the freehold or leasehold interest or other asset or assets, or ask for some other appropriate form of security for your responsibilities under the terms of the grant. We may demand that you give our solicitors copies of all the documents affecting the title to the property (for example, all mortgages, conveyances, leases and so on that affect the legal rights to the property).
- 8.5. If you sell or give away assets or goods bought, restored, conserved or improved with our grants, we will be entitled to receive an appropriate share of the 'net' proceeds (the proceeds after tax and other costs of sale have been taken into account) of this for as long as these assets or the improvements have a useful economic life.

## **9. Breach of these terms and conditions, and suspending or repaying the grant**

- 9.1. If you fail to meet any of these terms and conditions, we may, in our absolute discretion:
  - 9.1.1. require you to pay back all or part of the grant (regardless of how much you may have already spent); and/or
  - 9.1.2. stop any future payments; and/ or
  - 9.1.3. end this Grant Agreement immediately; and/or
  - 9.1.4. take any of these actions in connection with any other grant that you may have with us.
- 9.2. We may recover the grant in our absolute discretion, if any of the following events occurs:

- 9.2.1. you close down your business (unless it joins with, or is replaced by, another business that can carry out the Activity and we have provided our prior written permission);
- 9.2.2. you make any changes to the Activity with first getting our written permission;
- 9.2.3. you use the grant for anything other than the Activity;
- 9.2.4. you do not follow our reasonable instructions;
- 9.2.5. you do not carry out the Activity with reasonable care, thoroughness, competence and to a standard that would be expected for your level of experience in your artistic practice, profession or line of work you receive funding for the Activity, or any specific element of the Activity from another source (for example, from the Government) that duplicates the funding we have awarded; and/ or,
- 9.2.6. you do not complete the Activity on time;
- 9.2.7. you have supplied us with any information that is wrong or misleading, either by mistake or because you were trying to mislead us;
- 9.2.8. you are declared bankrupt or become insolvent, any order is made, or resolution is passed, for you 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 the people you owe money to;
- 9.2.9. you act illegally or negligently at any time, and we believe it has significantly affected the Activity, or is likely to harm our or your reputation;
- 9.2.10. without first getting our approval in writing, you sell or in some other way transfer the grant, your business or the Activity to someone else;
- 9.2.11. you receive funding for the Activity, or any specific element of the Activity from another source (for example, from the Government) that duplicates the funding we have awarded; and/ or,
- 9.2.12. we deem it unlikely that the grant will fulfil the purpose for which we made it.

## **10. Termination of the Grant Agreement**

- 10.1. These terms and conditions and the Grant Agreement remain in force for whichever of these is the longest time:
  - for one year following the payment of the last Instalment of the grant;
  - as long as any part of the grant remains unspent;
  - the expiry of the maximum period required under the Grant Agreement for asset monitoring;
  - as long as you do not carry out any of the terms and conditions of the Grant Agreement or any breach of them continues (this includes any outstanding reporting on grant expenditure or Activity delivery).

Arts Council England The Hive  
49 Lever Street Manchester  
M1 1FN

Website: [www.artscouncil.org.uk](http://www.artscouncil.org.uk)  
Phone: 0161 934 4317  
Email: [enquiries@artscouncil.org.uk](mailto:enquiries@artscouncil.org.uk)

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You can get this document in Braille, in large print, on audio CD, and in various electronic formats. Please contact us if you need any of these.

We are committed to being open and accessible.

We welcome all comments on our work. Please send these comments to our Customer Services Team at The Hive, 49 Lever Street, Manchester, M1 1FN or via the contact form on our website at: <http://www.artscouncil.org.uk/contact-us>