

Standard Terms & Conditions for the Service Contracts under £10,000

1. General

1.1 These Terms and Conditions apply to all supplies of services to Arts Council England where the value of the supply (excluding VAT) is under £10,000.

2. Definitions

2.1 “**Arts Council England**” means The Arts Council of England, a company incorporated by Royal Charter and registered as a charity in England and Wales (Charity Registration Number 1036733) whose registered office address is 21 Bloomsbury Street, London WC1B 3HF

2.2 “**Contract**” means the contract made between you (the Service Provider) and us (Arts Council England). The Contract documents are comprised of the Purchase Order, the Tender Documents and these Terms & Conditions.

2.3 “**Fees and Expenses**” means the fees you will charge us for the time you spend and the costs you incur in providing the Services to us. The Fees and Expenses you are entitled to charge are set out in the Purchase order.

2.4 “**Services**” means the Services to be provided by you to us as set out in the Tender Documents.

2.5 “**Tender Documents**” means our Invitation to Quote for the Services and your Proposal. For the avoidance of doubt, where any conflict arises between these Terms and Conditions and your Proposal, these Terms and Conditions will prevail.

3. Your Obligations

3.1 In delivering the Services you must:

3.1.1 provide the Services with reasonable diligence, competently, and in keeping with the Contract;

3.1.2 comply with our reasonable directions at all times and use your best attempts to promote our interests;

3.1.3 not do or allow anything to be done that would, or would be likely to, bring Arts Council England into disrepute or adversely affect our

reputation in any way;

- 3.1.4 provide and maintain all personnel, equipment and supplies necessary to provide the Services;
 - 3.1.5 seek our prior written consent before entering into a sub-contract with another supplier or contractor for the purpose of performing your obligations under the Contract (such consent not to be unreasonably withheld or delayed by us). You must ensure that a provision is included in any such a sub-contract which requires payment to be made of all sums due by you to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
 - 3.1.6 not accept work from other sources that will in any way impair or affect your ability to provide the Services and comply with the terms of the Contract;
- 3.2 If you are required to provide us with any written reports as part of the Services, you must comply with the Arts Council England house style document which can be found on our website at www.artscouncil.org.uk/housestyle
- 3.3 In addition to any dates specified in this Contract where you will be required to meet with us, you will also be required to consult with us regularly, but no less than once a month.

4. Fees and Expenses

- 4.1 In return for the Services you will provide under this Contract, we will pay you the Fees and Expenses in the instalments and manner outlined in the Purchase Order.
- 4.2 If we have agreed to pay your Expenses, you must provide us with original receipts. You may only recover expenses from us in accordance with our current Expenses Policy for Service Providers. We will provide you with a copy of this policy. We are entitled to put a limit on the amount of and type of Expenses you may incur.
- 4.3 Before we can make any payment, you must provide us with a VAT compliant invoice for each payment that describes the work done and the time period to which the payment relates. We may reject your invoice if in our reasonable opinion it does not comply with this clause 4.

- 4.4 You agree that the Fees and Expenses set out in the Purchase Order cover all your time, resources, costs and tax (including VAT, if applicable) in providing the Services. We are not obliged to pay you any other amounts.
- 4.5 If you are not currently liable to register for VAT but are subsequently required to do so, you agree that the Fees and Expenses payable to you under this Contract will be deemed to be inclusive of VAT. Inevitably
- 4.6 We will pay your approved invoices within 30 days of receipt, as long as you have provided the Services referred to in the invoice to our satisfaction.
- 4.7 Our preferred payment method to you will be by BACS transfer. In order to facilitate this payment process your invoice must state your sort code and bank account details. Please contact our finance department if you require further details.
- 4.8 We are not obliged to pay you any wages, salary, sickness pay or holiday allowances.
- 4.9 This clause 4.9 applies where you are an individual rendering the Services or the organisation undertaking to provide the individual to render the Services. It is hereby declared that it is the intention of the parties that this Contract is a contract for services and you shall be responsible for all income tax liabilities and National Insurance or similar contributions in respect of the fees payable under this Contract and you hereby indemnify the Arts Council England in respect of any claims that may be made by the relevant authorities against the Arts Council England in respect of income tax or National Insurance or similar contributions relating to the performance of the services hereunder. The Arts Council England may, at any time during the term of the Contract, request that you provide the information which demonstrates how your or your consultant comply with this condition or why this condition does not apply to you or the consultant. You shall flow these terms down to the consultant with whom you contract. The Arts Council England has a right to terminate this Contract if (a) you fail to provide the information in response to the request within a reasonable time or the information provided is inadequate to demonstrate compliance with this condition; (b) the specified information requested was not provided within the specified period; (c) or the information provided demonstrates that you or your consultant is not complying with terms of this condition. This condition is required to enable the Arts Council England to

comply with the requirements of Procurement Policy Note 08/15 (issued by the Cabinet Office).

5. Information & Confidentiality

- 5.1 We are a “public authority” for the purposes of Freedom of Information Act 2000 (“FOIA”). Subject to certain exemptions, we are required to supply information to members of the public on request. This potentially includes any information which relates to your business and the work you will do for us under this Contract.
- 5.2 You and we acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not confidential information. We shall be responsible for determining in our absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, you hereby give your consent for us to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.
- 5.3 We will not be liable for any loss or damage you may suffer from our disclosure of information under the FOIA or from making the Contract publically available in accordance with clause 5.2 above.
- 5.4 This clause will not affect your rights under the Data Protection Act 1998 (“DPA”).
- 5.5 If you are handling or processing data on our behalf you must ensure that you are registered with the Information Commissioner's Office if required under the DPA. Both we and you will duly observe all our obligations under the DPA which arise in connection with the Contract.
- 5.6 Where you are processing personal data and or sensitive personal data (as defined in sections 1 and 2 of the DPA) as a data processor for us as Data Controller (as defined by the DPA) you must:
 - 5.6.1 ensure that you have in place appropriate technical and organisational measures to ensure the security of the personal data;
 - 5.6.2 guard against unauthorised or unlawful processing of the personal data

and against accidental loss or destruction of, or damage to, the personal data, as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

- 5.6.3 provide us with such information as we may reasonably require to satisfy us that you are complying with your obligations under the DPA;
 - 5.6.4 promptly notify us of any breach of the security measures referred to in sub-clause 5.6.1 above;
 - 5.6.5 ensure that you do not knowingly or negligently do anything which places or is likely to place us in breach of our obligations under the DPA; and
 - 5.6.6 comply with all reasonable directions or requests from us regarding any data that you process on our behalf;
- 5.7 Subject to clauses 5.1 to 5.3 inclusive, at no time may either party give any confidential information to any other person unless:
- 5.7.1 disclosure is required by law; and/or
 - 5.7.2 it has obtained the other party's written consent;
 - 5.7.3 the information is already in the public domain;
 - 5.7.4 disclosure is necessary to ensure the services are performed properly.

6. *Intellectual Property*

- 6.1 For the purposes of this Contract "Intellectual Property" includes, without limitation and whether registered or unregistered, copyright, trademarks, logos, design rights, patents and database rights.
- 6.2 You agree that all original Intellectual Property and all original documents and materials (including electronic documents) specifically produced or developed in providing the Services ("the Materials") will be our property. We will own all Intellectual Property rights in the Materials and these Intellectual Property rights shall be immediately assigned to us upon creation without the need for us to enter into any additional agreement with you.

6.3 You must not impinge or breach any copyright or other Intellectual Property rights in fulfilling your obligations under this Contract.

6.4 You must obtain all permissions necessary to ensure that we will not breach any copyright or other intellectual property rights when we use the materials.

7. Right of audit

7.1 You must keep secure and maintain full and accurate records of the Services you provide to us, including all paid expenses and the payments we make to you.

7.2 These records must be kept secure and maintained for at least two years after the final payment we make under this Contract, or for longer periods if agreed or required by law.

7.3 You must allow us access to any records we may reasonably require to check your compliance with this Contract.

8. Conflict of Interest

You must make sure that neither you nor any of your employees, agents or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between your interests or the interests of your employees, agents or sub-contractors and your obligations under this Contract. You must disclose to us the particulars of any conflict of interest that arises.

9. Your Status

9.1 You are an independent contractor and not our agent, partner or employee.

9.2 You cannot incur liabilities or obligations on our behalf unless specifically authorised by us in writing.

9.3 You must not hold yourself out as our employee to any third party.

10. Insurance

10.1 You must maintain appropriate insurance cover with a reputable insurance company. Appropriate insurance means a policy or policies of insurance providing an adequate level of cover for all risks you may take on by providing the Services and for all statutory or other legal requirements you may be

under.

- 10.2 If we request you to do so you must show us evidence that the insurances as required by sub-clause 10.1 are being maintained at your expense.

11. *Default*

- 11.1 If you decide that you are unable to meet your obligations under the Contract you must immediately write to us and explain the reasons.

- 11.2 If you are in material breach of your obligations under the Contract we may issue a default notice detailing the breach, and the time period and terms by which you must remedy the breach.

- 11.3 Any action taken by us under this clause will not affect any right we may have to immediately terminate the Contract.

12. *Termination and end of Contract*

- 12.1 Any of the following conditions is a fundamental breach, which will automatically and immediately enable us to terminate this Contract:

12.1.1 failure to comply with a default notice under sub-clause 11.2;

12.1.2 you become insolvent (within the meaning of the Insolvency Act 1986);

12.1.3 any order is made, or resolution passed, for your administration, winding-up or dissolution (other than for the purposes of a solvent amalgamation or reconstruction);

12.1.4 an administrator or other receiver, manager, liquidator, trustee or similar officer is appointed over all or any substantial part of your assets;

12.1.5 you enter into or propose any composition or arrangement with your creditors generally;

12.1.6 you breach clause 17 below (Prevention of Corruption);

12.1.7 you assign any of your obligations under this Contract without our prior written consent;

12.1.8 you merge with any other organisation or organisations without

informing us first or;

12.1.9 you cease to trade for any reason;

12.1.10 your breach clause 4.9.

- 12.2 Upon termination under sub-clause 12.1 we may obtain the remainder of the Services from a third party. You must pay us the difference between the amount we pay the third party to complete the remainder of the Services and the amount that we would have paid you for the remainder of the Services under the Contract, had the Contract continued in force together with any other costs we may have to pay as a direct consequence of terminating the Contract.
- 12.3 We will use our reasonable endeavours to ensure that the amount we pay to a third party under sub-clause 12.2 is at a commercially acceptable rate and where possible this amount will not exceed the level of the fee we would have paid you under this Contract.
- 12.4 On termination or expiry of this Contract, you will promptly provide us (or someone else we advise you to) with all information and property, sign or enter into any agreement, cooperate generally with and provide all reasonable assistance to us to ensure an orderly handover of this project.
- 12.5 Termination of this Contract as provided in this clause will not affect any right of action or remedy of either party.

13. *Uncontrollable Events*

- 13.1 An 'uncontrollable event' is an extraordinary natural event (such as a flood or earthquake) that cannot be reasonably foreseen or prevented, fire, explosion, industrial dispute, debilitating illness or injury, or any other extraordinary event beyond that party's control. Neither party will be liable for failure to perform their obligations due to an uncontrollable event.
- 13.2 If either party is unable to perform its obligations as a direct result of an uncontrollable event, that party must notify the other immediately with reasons. At that point this Contract will be suspended.
- 13.3 The suspension of the Contract will only continue during the time when the party is unable to meet its obligations due to the uncontrollable event. As soon as the uncontrollable event is over, the affected party must give written notice to the other of this fact.

13.4 If the failure to perform obligations due to the uncontrollable event exceeds one month, either party may immediately terminate this Contract by giving written notice to the other.

14. *Anti-discrimination*

14.1 You must comply with all anti-discrimination legislation from time to time in force including, but not limited to, the Equalities Act 2010 and any subordinate or associated legislation.

14.2 You must ensure that you maintain effective whistle-blowing policies whereby your employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.

15. *Protection of Children and Vulnerable Adults*

15.1 This clause will only apply if in providing the Services you or your business partners or employees will supervise, care or have significant direct contact with a Vulnerable Person.

15.2 In this clause, "Vulnerable Person" means:

15.2.1 persons under the age of 18; and

15.2.2 people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.

15.3 You must consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the written consent of the legally authorised carer or guardian of the Vulnerable Person before having of any significant direct contact with the Vulnerable Person.

15.4 Without limiting sub-clauses 15.2 and 15.3 you must adopt and carry out a written policy and set of procedures to protect Vulnerable Persons if:

15.4.1 you are a company or partnership, or you are an individual who employs other persons; and

15.4.2 in the course of providing the Services, your employees or your contractors supervise, care for or have significant direct contact with

Vulnerable Persons.

- 15.5 As part of the procedures mentioned in sub-clause 15. you must check the backgrounds of and view disclosures from the Disclosure and Barring Service for your potential employees, contractors or volunteers who will, in the course providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.
- 15.6 If you are the person having significant direct contact with Vulnerable Persons, you must, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian your consent to having your background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.
- 15.7 You must comply with sub-clause 15.6 even if are not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.
- 15.8 Arts Council England cannot advise you of your legal obligations in relation to your dealings with Vulnerable Persons, and this clause should not be seen as such. 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).
- 16. *Health and Safety***
You must comply with the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, and all other regulations and approved codes of practice relevant to the Services.
- 17. *Prevention of Corruption***
We can terminate this Contract immediately if you, your employees or your agents have offered, given or agreed to give any person any money or gifts of any kind, to bring about this Contract.
- 18. *Notices***
- 18.1 Either party may send notices, letters and other documents by prepaid first class recorded delivery post or facsimile message to the other party at the address identified on the Purchase Order, or at any other address or fax number provided to the other party.
- 18.2 To prove that a notice or document has been delivered, it is sufficient to prove

that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the facsimile message was properly addressed and despatched.

19. *Disputes*

- 19.1 The parties will attempt to settle any dispute which may arise between them under this Contract.
- 19.2 If a dispute is not resolved to the satisfaction of both parties within 10 working days, the parties will attempt to settle it by mediation under the Centre for Effective Dispute Resolution's (CEDR's) Model Mediation Procedure.
- 19.3 To begin mediation, either party must give written notice to the other party requesting mediation. The initiating party must send a copy of such request to CEDR.
- 19.4 If there is any issue on the conduct of the mediation (including nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of any party, decide the issue for them.
- 19.5 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation, either party may begin legal proceedings.

20. *Contracts (Rights of Third Parties) Act 1999*

As provided in the Contracts (Rights of Third Parties) Act 1999, unless otherwise expressly stated in this Contract, no third party will have any right of enforcement under this Contract.

21. *Change and Assignment*

No change or assignment of this Contract will be effective unless it has been agreed in advance by both parties in writing.

22. *Waiver*

The failure of either party to exercise any right or remedy will not constitute a waiver of that right or remedy. A waiver is only effective if provided to the other party in writing.

23. *Severance*

If any part of this Contract is or becomes legally ineffective or unenforceable it will not affect the validity of the rest of this Contract.

24. Whole Agreement

The Contract contains the whole agreement between the parties relating to the Services and replaces all previous agreements between the parties relating to the Services. However this provision shall not operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

25. Law

This Contract is governed by English law and subject to the jurisdiction of the English Courts.

26. Costs

Each party will pay its own costs in preparing and carrying out the Contract and in undertaking any mediation under clause 18 above.