

Arts Council of Wales
Standard Conditions of Grant -
Revenue Funded Organisations

April 2009



STANDARD CONDITIONS OF GRANT - REVENUE FUNDED ORGANISATIONS

1 OFFER OF GRANT AND FORM OF AGREEMENT

- 1.1 The offer of grant is open for acceptance for a period of four calendar weeks from the date of issue of the offer, unless the Council has given more time in writing. If acceptance of the offer is not received by the Council in writing, signed by a duly authorised officer or agent of the recipient, the Council may in its sole discretion withdraw the offer by giving notice in writing to the recipient.
- 1.2 Upon receipt by the Council of the recipient's written acceptance of the offer, the Council and the recipient will become bound by these standard conditions of grant and any special or additional conditions set out in or attached to the Council's offer of grant.
- 1.3 The Council's offer of grant, together with the recipient's grant application and the information contained in any Revenue Funding Agreement with the Council are deemed to be incorporated with these standard conditions and together comprise the agreement between the Council and the recipient. To the extent that there is any conflict between the Revenue Funding Agreement and this agreement then (for the purposes of this agreement) the terms of this agreement shall prevail unless acknowledged in writing by the Council.

2 CONDITIONS OF GRANT OFFER

In consideration of the recipient accepting the offer of grant and agreeing to be bound by the conditions attached to the offer, the Council agrees to pay the grant specified in the offer of grant subject to the following conditions:

- 2.1 The agreement between the recipient and the Council is personal to the recipient and the benefit of the agreement may not be transferred or assigned by the recipient to any other person or organisation, but the Council may assign or transfer this agreement or any of its rights under this agreement.
- 2.2 The Council may alter the amount of the grant in the light of any material alterations in the plans or circumstances of the recipient (see 3.1, 3.2 and 3.3)
- 2.3 The amount of the grant written in the offer letter is the most the Council will pay for the assisted activity. However if the cost at the end of the activity is less than that originally agreed, the Council reserves the right to make a proportionate reduction in its grant. This will normally be to the same percentage of the total project costs the Council agreed to pay. The Council will decide whether to claim this back and will take account of whether the recipient can use the money to continue activities the Council approve. The recipient must not go ahead with any additional activities until they have received Council's written approval.

- 2.4 Where the grant is in respect of activity over a period covering more than one financial year (defined for this purpose as 1 April to 31 March) the payment of grant in the second and subsequent financial years is conditional upon the Council being satisfied that the funded activity conforms to the recipient's approved grant application or Revenue Funding Agreement in both content and quality and the Council may reduce or cancel further payments of the grant in the light of that assessment. Financial and other information required for this purpose will be notified to the recipient.
- 2.5 The Council is not obliged to pay any grant to the recipient save to the extent that the Council continues to receive sufficient funds from the National Assembly and from the Department of Culture Media and Sport under the National Lottery Act 1993.
- 2.6 If the recipient, within nine months of the date of the Council's offer of grant, has not either fulfilled the payment requirements for the grant either in whole or in part, or confirmed in writing to the Council when these will be fulfilled, the Council may in its sole discretion withdraw the grant and bring this agreement to an end by giving notice in writing to the recipient.
- 2.7 The recipient is responsible for the management of its own affairs and must not assume that its business is financially stable even if the Council continue to support it. The recipient must get proper advice whenever it needs to, so that the organisation can carry out its business legally. The Council's staff, members and advisers will not take part in carrying out the recipients business and cannot be held responsible for its business.

3 RECIPIENT'S UNDERTAKINGS

It shall be a condition of the agreement between the Council and the recipient that the recipient will observe the following undertakings to the Council in consideration of the grant being made available to the recipient:

- 3.1 To use the grant only for the purposes of the activity or programme described in the grant offer or Revenue Funding Agreement and to carry out and complete this in accordance with the details set out in the grant offer and Revenue Funding Agreement as incorporated in this agreement.
- 3.2 To notify the Council immediately of any material changes in the recipient's circumstances or plans (including start and finish dates) affecting the funded activity. The recipient must not go ahead with any material changes until they have received Council's written approval as Council reserves the right to alter or withdraw the grant offer.
- 3.3 To notify the Council if the recipient wants to make any significant changes to the approved funded activity. The Council may alter or withdraw the grant it offered if it either does not agree with the change in planned activity, or does not agree that

- the change is reasonable in relation to the funding offered. The recipient should not go ahead with any changed activity without receiving Council's written approval for this change.
- 3.4 To work in partnership with the Council to develop and achieve its strategic objectives. The Council will focus on access to the arts for all of the people of Wales and in particular on access for those people living in Communities First areas and in areas of multiple deprivation, identified in the Wales index of Multiple Deprivation Report 2005. The Council will try to agree with the recipient the best way for it to contribute to delivering these objectives. These will be set out in any offer of grant or in any Revenue Funding Agreement.
 - 3.5 Before the start of each year of funding the recipient must send the Council a plan of activity and a budget for the funded activity that its Board has approved. This should normally show a break-even financial position or better. If in exceptional circumstances the recipient is planning to make a 'deficit' (loss) by the end of the year, then the recipient must give the reasons for the planned deficit and how this deficit will be funded from existing resources.
 - 3.6 The recipient must make no financial commitment to an increased artistic plan or to other activities in future years, except where these are fully funded by resources which either exist or are reasonably certain to be available at the time
 - 3.7 At all times during which this agreement is in existence the recipient must:
 - (a) Comply with all relevant government legislation, especially, when employing staff, as the licensee or the manager of any building and those relating to health and safety, equal opportunities, discrimination on the grounds of gender, race, disability or otherwise and the protection of children, young people and vulnerable adults.
 - (b) Obtain any licences, permissions and insurances that are necessary by law.
 - (c) Comply with all obligations relating to copyright and performing rights so far as they affect the funded activity.
 - (d) To provide Council, when requested to do so, with evidence of compliance with the above.
 - 3.8 The recipient must have and carry out an equal opportunities policy, and give evidence to the Council of the results of the policy across all aspects of its activities. The recipient should follow best practice in this area by referring to the Equal Opportunities Commission Wales, the Commission for Racial Equality in Wales, the Disability Rights Commission Wales and any other relevant organisation.
 - 3.9 The recipient must adopt and carry out a written policy and set of procedures to protect children and vulnerable adults and consider any possible risks involved in the funded activity and take appropriate action to protect everyone involved. (Vulnerable adults are those people who need or may need community care

- services because of mental disability, other disability, age or illness and who are, or may be, unable to take care of themselves or unable to protect themselves against harm or exploitation). As part of these procedures, the recipient must check the backgrounds of any of its staff who are working in a duty of care position, whether this work is formal or informal, voluntary or paid. The recipient must make any 'disclosures' as described in the Protection of Children Act 2004.
- 3.10 The recipient should employ staff with the necessary skills and experience to deliver the funded activity and to safeguard the assets of both the Council and the recipient. In addition, the recipient must seek to ensure that their staff are employed on terms and conditions as good as or better than those agreed by any relevant trade unions and employers' associations.
 - 3.11 Where the funded activity involves the recipient in the purchase of goods and services then a 'competitive process' (getting formal quotes from more than one business or supplier) should be followed, unless this is inappropriate for any reason. These reasons might include 'de minimis levels' (this means, most people would agree that the amount of time and effort involved in getting formal quotes is too much and not worth it), technical or artistic reasons, or protecting someone's exclusive rights. If the recipient is a public body it must comply with relevant domestic and European legislation on procurement and competition.
 - 3.12 In entering into this agreement the recipient agrees to abide by the Council's payment and monitoring requirements as set out in the grant offer and the Revenue Funding Agreement and to provide the Council promptly with such information as the Council may require to monitor the use of the grant for the duration of the funded activity and for one year after the recipient has submitted their final set of signed annual financial statements (see 3.17).
 - 3.13 Any profits arising from the funded activity must not be distributed by the recipient without the prior approval of the Council.
 - 3.14 To ensure that an adequate system of financial control is in place and to keep proper auditable records of all income and expenditure in relation to the funded activity and to submit, if requested, original paid invoices to the Council (and the Council agrees to return the original invoices to the recipient following checking).
 - 3.15 To supply the Council with regular progress reports during the activity as described in the offer of grant and the Revenue Funding Agreement and to supply any further information about the activity that may be required by the Council from time to time. No future application for funding from the recipient will be considered by the Council if there are any outstanding monitoring requirements on this or any other funded activity.
 - 3.16 To submit to its lead officer, on time, information required for the Annual Review Meeting, which will enable the meeting to take place in the early part of the summer.

- 3.17 To submit to the Council, a copy of the recipient's signed annual (audited or independently examined) financial statements as soon as they have been formally approved, and in any case no later than 10 months after the end of the recipient's financial year.
- 3.18 The recipient must ensure that all accounts submitted to the Council are prepared in accordance with relevant Accounting Standards, including the current Statement of Recommended Practice applicable to charities and any appropriate legal or constitutional requirements, and must identify separately the grant received and/or due from the Council.
- 3.19 To make their financial books and records available for inspection by the Council at any time and, upon reasonable prior notice, by the Council's internal auditors, the National Assembly, or the Wales Audit Office.
- 3.20 To allow representatives of the Council to attend any public performance, workshop, exhibition or any other arts activity of the recipient that is in receipt of grant from the Council for quality monitoring purposes and to provide the Council or its representatives with up to two complimentary tickets (where appropriate) for each production of the funded activity.
- 3.21 To monitor and evaluate the success of the funded activity and provide the Council with any information it requires to satisfy itself that the activity has been completed successfully and properly in accordance with this agreement.
- 3.22 To allow the Council's right to carry out a formal appraisal of the recipient's affairs in accordance with guidelines established by the Council for this purpose from time to time and to co-operate in this process.
- 3.23 During the monitoring period specified in paragraph 3.12 to allow the Council to send an observer to all meetings of the recipient's governing body and any committees (including all sub-committees and appointments committees), and, to send to the Council a copy of all notices of meetings, agendas, papers and minutes at the same time that these are sent to members, in accordance with such instructions as the Council may give the recipient from time to time as to the addressee of such papers. This includes late or tabled papers.
- 3.24 To hold regular meetings of its governing body during the financial year and to review its financial performance and position at these meetings.
- 3.25 To acknowledge the grant on all published and printed material (including online materials and any recruitment advertising) in accordance with guidelines enclosed with the grant offer and notified by the Council to the recipient from time to time. These guidelines are also available at www.artswales.org.uk or from the Council's Design and Publications Officer, on 029 2037 6500. Any Press Releases referring to ACW should be approved in advance by ACW's Head of Communications who can be contacted by e-mail: betsan.moses@artswales.org.uk.

- 3.26 Not to use the acknowledgement of grant or any other references to the Council in any way to imply that the Council undertakes or accepts responsibility to third parties for the grant recipient's debts or obligations.
- 3.27 To co-operate in any bona-fide research conducted by or on behalf of the Council.
- 3.28 To provide the Council with images relating to the assisted activity (if available). These images should be forwarded to the Council's Design and Publications Officer and will be included in the Council's image library. The photographer or producer should be credited and their permission already gained for ACW to publish any images.
- 3.29 Unless advised by the Council, to ensure that any new and vacant posts are publicly advertised and filled by competitive interview. The recipient must send to the Council, particulars, job descriptions and details of interview arrangements for the appointment of such senior employees of the recipient as the Council may specify from time to time and must allow a representative of Council to observe the interview process.
- 3.30 To conduct the funded activity in accordance with the principles of the Welsh Language Act 1993 so that so far as practicable the activities shall be conducted on a basis of equality between the Welsh and English languages and that within this principle the activity will reflect the linguistic character of the work and that appropriate interpretation is available for both the community in which the recipient is providing the activity and the audiences at which the activity is aimed.
- 3.31 To publicise bilingually and with equal prominence, core information relating to the funded activity. Core information is defined as date and time (if expressed in words), venue, location, booking procedure, organisation's/organiser's contact details, directions, public access, parking and arrangements for disabled visitors. This applies to all publicity including flyers, posters, handouts, leaflets, postcards, DVD's, brochures, websites, CD-ROM, e-marketing and programmes.

4 DEFAULT

The Council may in its absolute discretion and without prejudice to any other rights that it may have against the recipient either require the recipient to return all or part of any grant that may have been paid and/or withhold any outstanding payments of grant should any of the following events of default arise:

- 4.1 The recipient has failed to observe any of its undertakings to the Council whether contained in paragraph 3 of these standard conditions or required by way of additional conditions to the Council's offer of grant;
- 4.2 If any information or representation provided or made to the Council in connection with the grant or otherwise deemed to form part of this agreement is found to have been made fraudulently or incorrectly or is misleading in any material particular;

- 4.3 The recipient has acted illegally, fraudulently or negligently at any time during the funded activity and the Council believes it has significantly affected the funded activity or is likely to harm the Council's or the recipient's reputation;
- 4.4 The recipient ceases to operate for any reason, becomes insolvent, is declared bankrupt, goes into receivership, administration or liquidation, makes an arrangement with creditors, or a trust deed is granted for creditors, or if the estate is seized for legal reasons.

5 DISCLOSURE OF INFORMATION

- 5.1 The Arts Council of Wales has obligations and responsibilities under the Freedom of Information Act 2000 to provide on request access to recorded information the Council holds. One of the consequences of these new statutory responsibilities is that information, which the Council holds about recipients, may be subject to disclosure, in response to a request, unless the Council decides that one of the various statutory exemptions applies. Where information, data and material of any nature comprise Personal Data or Sensitive Personal Data, as both terms are defined in the Data Protection Act 1998, the Council will not, except in the cases outlined below, disclose any such confidential information to any third party without the recipient's consent.
- 5.2 The recipient agrees that the Council may disclose information which it obtains from the recipient or already holds about the recipient, or receives about the recipient from any enquiries made to fraud prevention organisations or from anyone else permitted to give information about the recipient to the Council (together "Information") to fraud prevention organisations and any other organisation for the purposes of prevention of fraud.
- 5.3 The recipient agrees that information disclosed by the Council to fraud prevention organisations and other organisations for the purposes of prevention of fraud may be shared by such organisations with other organisations for the purposes of prevention of fraud. For the avoidance of doubt, information for the purposes of this condition includes any Information which is deemed personal data pursuant to the Data Protection Act 1998.
- 5.4 The Council may disclose Information if the Council has a duty to do so or if the law permits the Council to do so.

6 NOTICES

All correspondence and notifications relating to the grant from the recipient must be sent to the Council at the address and quoting the references appearing on the Council's letter of offer of grant, unless otherwise notified by the Council in writing.