

Arts Council of Wales

Standard Conditions of Grant - Capital Projects

November 2010



Noddir gan
Lywodraeth Cynulliad Cymru
Sponsored by
Welsh Assembly Government



Supported by
The National Lottery[®]
Cefnogwyd gan
Y Loteri Genedlaethol

The following are general grant conditions which apply subject to specific conditions laid out in the Grant Offer Letter to which these Standard Conditions are attached (the "**Offer Letter**") or (where applicable) in the grant agreement between the Arts Council of Wales ("the **Council**") and the recipient of the Offer Letter or Grant Agreement ("the **Recipient**") (the "**Grant Agreement**")

1. The Grant (as defined in the Offer Letter and/or the Grant Agreement) must be used for the purpose set out in the approved application and is non-transferable.
2. The Grant may have to be repaid in full or in part on demand if there is a change of purpose or ownership of the project outlined in an approved application (the "**Project**") or of any asset financed (in whole or in part) by the Grant.
3. The use of the Grant will be monitored both during the Project and during the monitoring periods set out below ("the Monitoring Period"). This applies both during the Project, or, once it is completed, for the periods set out below:
 - a) for the life of the asset for appreciating assets;
 - b) fifty years for new buildings;
 - c) twenty five years for major structural repairs, improvements and refurbishment of buildings;
 - d) ten years for public art;
 - e) five years for equipment and any other assets not specifically mentioned.
4. If the purpose of the Project, or its ownership, or if the identity or constitution or ownership of the Recipient changes before completion of the Project, the agreement set out in the Offer Letter and/or the Grant Agreement will be terminated, no further Grant will be payable and the Council will be entitled to repayment on demand of any amounts of Grant already paid. A new application may be submitted by the Recipient and will be considered on its merits.
5. If the total cost of the Project is less than that estimated in the original application submitted by the Recipient, the Council will reduce the Grant offered by an appropriate proportion. If this reduction results in Grant payments already made exceeding the revised Grant offer, the Council will be entitled to demand and the Recipient will have to pay a refund of the overpayment. If the Recipient makes a formal application to the Council to use an amount of money which is equal to the reduction in the Grant for another purpose connected with the Project, the Council will reasonably consider such a request but will not be obliged to agree to any such request.
6. The Recipient must supply the Council with regular progress reports on the Project. The Recipient must supply the Council with copies of appropriate documents on a regular basis during the construction phase of the Project and on a yearly basis

thereafter subject to the Monitoring Periods. A progress report, comprising a full return of income and expenditure for the Project, will also be required within six weeks of Project completion. Thereafter information detailing income and expenditure relating to the Project will be required over five years on a yearly basis. The Recipient must also supply any further financial or other information requested by the Council to monitor the use of its Grant.

7. The Recipient must take steps to monitor the success of the Project and provide the Council with any information it requires to satisfy itself that the Project has been completed properly and in accordance with the Offer Letter and/or the Grant Agreement and with these Standard Conditions. During the Project and the Monitoring Period, the Council will be entitled to send an observer to all meetings of the Grant Recipient's committees (including all sub committees and appointment committees). During the Project and the Monitoring Period, Recipients must agree to make their books and records available for inspection by the Council at any time, and with reasonable prior notice by the Wales Audit Office or the Arts Council of Wales's internal auditors. Also during the Project and the Monitoring Period the Council shall be entitled to send an observer to meetings of the Recipient's governing body.
8. The Grant will immediately become due and payable on demand to the Council on the occurrence of any of the following events of default, namely:
 - a) the Recipient ceases to carry on all or any part of its activities;
 - b) where the Recipient is a company, if an application is made for the appointment of an administrator, if a petition is presented or an order made for the winding up of the Recipient or for appointing an administrator or if an effective resolution is passed for winding up of the Recipient or if a receiver or administrative receiver is appointed over all or any of the Recipient's assets, if an administrator or liquidator or compulsory manager or if the Recipient seeks to compromise or compound with one or more of its creditors in respect of the indebtedness or if the Recipient enters into any form of voluntary arrangement with its creditors or if the Recipient is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (with the words "proved to the satisfaction of the Courts" deemed to be omitted from that section)
 - c) where the Recipient is a company a meeting is convened for the purpose of considering a resolution to dissolve the Recipient or an application or petition is made/presented for the dissolution of the Recipient and any order is made or any procedure is concluded for the dissolution of the Recipient;
 - d) where the Recipient is an individual, if a bankruptcy petition is presented, or a bankruptcy order is made against the Recipient or the Recipient seeks to compromise or compound with the Recipient's creditors or if an interim order is made against the Recipient pursuant to s.252 of the Insolvency Act 1986;

- e) if the property is not used for the purposes for which it was intended to be used in connection with the Grant;
- f) if any information, representation, warranty or statement provided or made to the Council in connection with any payment made to the Recipient by the Council or any certificate statement or document delivered or made by the Recipient or on behalf of the Recipient is found to have been false, incorrect, inaccurate or misleading in any material particular or if in the Council's absolute discretion it considers repayment of any grant made to the Recipient by the Council in accordance with the terms of such grant to be at risk;
- g) if the Recipient fails to discharge any obligation or liability from time to time owed by the Recipient to the Council
- h) the Recipient fails to apply the grant for the purposes for which it was awarded, or fails to complete the project;
- i) the application form was completed fraudulently, incorrectly or misleadingly in any material particular;
- j) the Recipient has in the course of the application process, or during the process of complying with the Conditions of Grant, made incorrect representations;

the Recipient has acted fraudulently or negligently at any time during the completion of the project;

the Recipient fails to comply with the Conditions of Grant.
- k) where a distress, attachment, execution, appropriation, sequestration or other analogous legal process is levied, enforced or sued out on, or against, the assets of the Recipient and is not discharge or stayed within 7 days;
- l) where any security (including but without limitation any mortgage, charge, assignment or other encumbrance) becomes enforceable;
- m) where any event occurs (or circumstances exist) which in the opinion of the Council has or is likely to have a material adverse effect on the activities, business, operation, property or prospects of the Recipient and/or has or is likely to adversely affect the ability of the Recipient to perform or otherwise comply with its obligations under the Offer Letter and/or Grant Agreement and these Standards Conditions.

(together "the Events of Default")

9. Notwithstanding the provisions of paragraph 8 above, if an Event of Default occurs where there is an Offer Letter and/or Grant Agreement but no Grant has been paid

then the offer contained in the Offer Letter will lapse with immediate effect and the Council will not be obliged to pay any Grant to the Recipient.

10. Notwithstanding the provisions of paragraphs 8 and 9 above, if an Event of Default occurs where further payment of Grant is due, the Offer Letter and/or Grant Agreement will terminate immediately and no further amounts of Grant will be payable.
11. The Recipient agrees that the provision of the Council finance can only be guaranteed to the extent that the National Lottery Distribution Fund continues to operate and that Council funds are available.
12. The Recipient must, on demand from the Council, complete a legal charge in a form required by the Council over land and/or buildings as requested by the Council.
13. No property, equipment, assets or goods acquired or refurbished, improved or repaired using the Grant can be sold within the Monitoring Period without the prior written permission of the Council.
14. The Council can, in its absolute discretion, register an interest at the Land Registry to prevent the unauthorised disposal of any land and/or buildings.
15. In the event of the sale or disposal of property, equipment, assets or goods financed (in whole or in part) through Council funding acquired or refurbished, improved or repaired using the Grant, the Council shall be entitled to a share of the proceeds in direct proportion to the share of the relevant costs originally met from Council funds. Special conditions regarding the sale of assets and the method of determining their market value at the date of sale, may be imposed.
16. For projects where Council funding is in excess of £25,000, any proposal to raise finance by granting a mortgage or legal charge on land or buildings, or on the strength of any other asset during the Project and the Monitoring Period, will require the approval of the Council if that asset has been financed (in whole or in part) by Council funding.
17. Where procurement of goods, services or works is proposed, competitive tendering should be applied unless there are overriding reasons why this would be inappropriate (e.g. de minimis levels). Public bodies must comply with relevant domestic and European legislation on competition.
18. The Grant may only be used to support actual expenditure on the items identified in the approved application submitted by the Recipient. It may not be used to underwrite contingent liabilities resulting from the Project.
19. The Council is under no obligation to increase the Grant to meet any shortfall in the total budget for the Project. The Council may consider revised applications to meet such a shortfall but these applications will be treated on their own merits and the Council is free to accept or reject them on the same basis as any other application.

20. The conditional offer of the Grant contained in the Offer Letter is valid for two months from the date of issue unless otherwise specified in the Offer Letter. In any case unless written acceptance is received by the Council within this period the offer contained in the Offer Letter will automatically lapse. If after nine months from the date of issue of the Offer, the Recipient has not either claimed the Grant in whole or in part, or indicated in writing when the Grant will be claimed, a warning will be issued that the Offer will automatically lapse if no claims are made after a further three months, i.e. one year after the date of offer.
21. The Recipient must ensure that its auditors, or where the Recipient is not required to prepare audited accounts, whoever is responsible for compiling its financial accounts in accordance with the Recipient's constitution shall complete a standard letter in a form specified by the Council to ensure that the asset has been physically verified. The Council may request a copy of the Recipient's annual financial statements, which will be audited where applicable, for each year of the monitoring period.
22. The Recipient shall comply with any statutory obligations (whether as employer, licensee or manager of a building or project) and shall obtain any statutory consents necessary to enable the Project to proceed where they have not already been obtained.
23. Notwithstanding any other provisions the Recipient shall take all reasonable steps to make the project or activity for which funding is provided accessible to people with disabilities. The Recipient must take all steps to ensure that the Project or activity complies with the relevant provisions of the Disability Discrimination Act 1995.
24. The Recipient shall take measures to ensure that any asset purchased with the aid of Council funding (in whole or in part) has sufficient insurance cover against all usual risks
25. The Recipient shall comply with all applicable equal opportunities legislation.
26. To acknowledge the Grant on all published and printed material (including online) 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.
27. Acknowledgement of this Grant and any other references to the Council must not be used in any way to imply that the Council undertakes or accepts responsibility to third parties for the grant Recipient's debts or obligations.
28. The Council expects the Recipient to co-operate fully in any research projects conducted by or on behalf of the Council into any aspect of Lottery funding and or Council funding as a whole.
29. The Council has obligations and responsibilities under the Freedom of Information Act 2000 to provide on request from members of the public access to recorded

information the Council holds. One of the consequences of these new statutory responsibilities is that information, which the Council holds about the Recipient or received from the Recipient, may be subject to disclosure, in response to a request, unless the Council decides that one of the various statutory exemptions applies.

30. In the case of any information relating to a Recipient which consists of Personal Data or Sensitive Personal Data, as both terms are defined in the Data Protection Act 1998, the Council will ensure that it treats such information in accordance with the requirements of that Act and any related legislation.
31. 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.
32. 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 consists of Personal Data or Sensitive Personal Data.
33. The Recipient agrees the Council may otherwise disclose Information if the Council has a duty to do so or if the law permits the Council to do so.
34. Where the Recipient is a charity, it must comply with all relevant legislation including but not limited to the Charities Act 1993 and/or any amendment to or re-enactment thereof.



Arts Council of Wales is committed to making information available in large print, braille, audio and British Sign Language and will endeavor to provide information in languages other than Welsh or English on request.

Arts Council of Wales operates an equal opportunities policy.