

DRAFT

Standard terms and conditions of grants under the *myplace* Grant Scheme to Third Sector or Private Sector Organisations as Lead Organisations

Definitions

“We” and “our” refer to the third sector or private sector organisation receiving the grant bound by these terms and conditions.

“You” and “your” means the Big Lottery Fund and includes its employees, agents and representatives.

The “grant” means the grant awarded to us for the project as set out in the grant offer letter addressed to us from you.

The “project” means the project that you are giving us the grant for as set out in our application form and any supporting documents, and/or as varied by the grant agreement.

The “project assets” means any property (whether real or moveable) that is renovated, improved or created in the course of the project.

The “grant agreement”, which we have accepted and signed, means the terms upon which you have agreed to give us a grant or grants and includes and incorporates these standard terms and conditions and the grant offer letter together with any other conditions we have agreed.

1 In general

1.1 We will use the grant exclusively for the project. We will hold any unused part of the grant on trust for you at all times, and we will repay any grant (including any unused grant) to you immediately upon demand.

1.2 During the period of the grant we will act in a fair and open manner without distinction as to race, religion, age or disability, and in compliance with relevant legislation.

- 1.3 We will make sure that all current and future members of our governing body receive a copy of these terms and conditions while the grant agreement remains in force.
- 1.4 We will ensure that at all times while the grant agreement is in force we are correctly constituted and in compliance with all relevant regulation and that the receipt of the grant and the delivery of the project are within the scope of our governing documents, and we will provide a legal opinion from our solicitors confirming this.
- 1.5 If we are a private sector organisation, we undertake that we will not benefit financially from the development of the Project and that any surplus revenues derived from trading activities will be reinvested in the Project.

2 The project

- 2.1 We will get your written agreement before making any change to the project or to its name, aims, structure, delivery, outcomes, duration or ownership.
- 2.2 We will submit a capital business plan, which is satisfactory to you, within 6 months of the date of this grant agreement. We will then start the project within 6 months of your approval. If the capital business plan is not acceptable to you, this grant agreement will lapse.
- 2.3 We agree to make satisfactory progress with the project and complete it on time or within a reasonable period if you have not set a time limit.
- 2.4 We will not use the grant to pay for any spending commitments we have made before the date of the grant agreement.
- 2.5 We will tell you of any offer of funding for the project from anyone else at any time during the project.
- 2.6 If we spend less than the whole grant on the project, we will return the unspent amount to you promptly.

- 2.7 We will acknowledge the grant publicly as appropriate and as practical. We will follow your branding and publicity guidelines at all times. We will acknowledge your support in any published documents that refer to the project, including accounts and public annual reports, or in written or spoken public presentations about the project.
- 2.8 We hereby consent to any publicity about the grant and the project as you may from time to time require. You can carry out any forms of publicity and marketing to promote the award of the grant as you see fit. We agree to do whatever you reasonably require in order to assist with any form of publicity and marketing, including any press or media related activities.
- 2.9 We will tell you promptly about any changes to information we have provided and will make sure that the information you hold is always true and up to date.
- 2.10 In our management of all personal information we will meet the requirements of the Data Protection Act 1998. We will tell you immediately if any of our key contacts change.
- 2.11 We agree to meet all laws regulating the way we operate, the work we carry out, the staff we employ or the goods we buy, including (but without limitation):
- employment legislation,
 - health and safety legislation,
 - child and vulnerable adult protection legislation,
 - Freedom of Information legislation.

We will ensure that we have an equal opportunities policy that is implemented and reviewed regularly to help comply with all relevant laws and good practice throughout the period of the grant agreement. We will obtain all approvals and licences required by law or by you.

- 2.12 If our project involves work with children, young people or vulnerable adults (“vulnerable persons”), we will take all reasonable steps to ensure their safety. We will obtain the written agreement from the legal carer or guardian before

having any direct contact with any vulnerable person. We will have and carry out an appropriate written policy and set of procedures in place at all times to safeguard vulnerable persons, which will include procedures to check with the Criminal Records Bureau backgrounds and disclosures of all employees, volunteers, trustees or contractors who will supervise, care for or otherwise have significant direct contact with vulnerable persons.

- 2.13 If we are a charity, we will register with the Charity Commission if our income goes over their minimum exemption figure.
- 2.14 We have and will keep in place systems to prevent fraud.
- 2.15 You have the right to reproduce any of our application or subsequent information supplied by us to you for any purpose, including publication, as you see fit.

3 Our organisation

- 3.1 We will get your written agreement before:
- Changing our governing document, concerning: our aims, payments to members and members of our governing body, the sharing out of our assets (whether our organisation is dissolved or not), or the admission of any new members; or
 - Transferring the whole or a substantial part of our assets to, or merging or amalgamating with, any other body, including a company set up by us.
- 3.2 We will write to you as soon as possible if any legal claims are made or threatened against us and/or which would adversely affect the project during the period of the grant (including any claims made against members of our governing body or staff).
- 3.3 We will tell you in writing as soon as possible of any investigation concerning our organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, HM Revenue and Customs or any other regulatory body.

3.4 We will be available for meetings with you and allow full and free access to our records however and wherever held and to any of our offices or buildings to you, or those acting for you or to the National Audit Office.

3.5 We will let you know if our governing body falls below three members and will increase it to at least three as soon as possible.

4 VAT

4.1 We acknowledge that the grant is not consideration for any taxable supply for VAT purposes by us to you. We understand your obligation does not extend to paying us any amounts in respect of VAT in addition to the grant and that the grant made by you is inclusive of VAT.

4.2 We agree to repay you immediately any VAT we recover whether by set-off, credit or repayment to the extent that any such VAT cost is included in the grant.

4.3 We will notify you immediately if any irrecoverable VAT claimed under the grant becomes recoverable.

4.4 We will keep proper and up to date records relating to VAT, and we will make such records available for you to look at and give you copies when requested.

4.5 If you have funded all of the VAT costs for our project, we agree to refund immediately all of the VAT we recover to you.

4.6 If you have funded a proportion of the VAT costs for the project, we agree to refund immediately the same proportion of the VAT recovered to you.

5 Our annual report and accounts

5.1 We will comply with all relevant laws regarding the submission of accounts, audit or examination of accounts, annual reports, and annual returns.

- 5.2 We will acknowledge your grant in our annual reports and accounts covering the period of the project.
- 5.3 We will show your grant and related expenditure as a restricted fund under the description “**myplace** Grant Scheme grant” in our organisation’s annual accounts. We will identify unspent funds and assets in respect of the grant separately in our accounting records.
- 5.4 We will send you a copy of our annual accounts as soon as they have been approved in accordance with our governing document and in any event within ten months of the end of the financial year for each year in which grant payments are made. The accounts will be signed by a member of our management committee and externally audited or independently evaluated as appropriate for our organisation.
- 5.5 We will keep proper and up to date accounts and records for at least seven years after the termination of our grant, including summary profit and loss accounts and management accounts, personnel and payroll records and invoices, which show how the grant has been used. We will make these financial records available to you to look at and give you copies.
- 5.6 We will report regularly and fully to all members of our governing body on the financial position of our organisation and will put in place procedures to avoid any conflict of interest arising in the provision of goods or services required to deliver the project.

6 Monitoring

- 6.1 We will monitor the progress of the project and complete regular reports as you require using the forms you send us.
- 6.2 We will send you any further information you may ask for about the project or about our organisation, and its activities and such other information as you may require from time to time. You may use this information to monitor the project and evaluate the **myplace** Grant Scheme.

- 6.3 We will fill in a final report on the project using the form you send us. We understand that the grant is finished only after we have completed this report to your satisfaction and you have received annual accounts for the full period.
- 6.4 We will tell you immediately in writing of anything that significantly delays, threatens or makes unlikely the project's completion.
- 6.5 We will comply with any reasonable requirements that you may have for site visits (including visits to individual project sites), compliance visits, and meetings with our officers or agents at any time during or after completion of any project or during the asset monitoring period.

7. Grants for refurbishment of property and the purchase of freehold or leasehold land and buildings

- 7.1 We will take reasonable steps to obtain value for money when buying goods and services in connection with any project by obtaining quotations or applying competitive tendering. If any part of the grant is used to buy any capital items or services or a series of related capital items or services costing more than £10,000, we will put out the order to competitive tender. If there are good reasons why we cannot tender, we will get your agreement beforehand. We understand that public bodies must meet the relevant UK and European legislation on procurement, together with the provisions of the World Trade Organisation General Procurement Agreement.
- 7.2 We understand and accept that you will require security over the project assets funded by the grant. Usually this will be a legal charge in your standard form.
- 7.3 We will ensure that we have at all times the legal powers under our governing documents to undertake the project and to execute the legal documents associated with the grant. We undertake that our governing documents will ensure that no individual will benefit in the event of sale, winding up or dissolution of our organisation and that any assets remaining after such a sale, winding up or dissolution will be transferred to another organisation having similar Objects or to some other charitable object.

- 7.4 We understand that you will not pay any of the capital grant until you have received the documents you require completed to your satisfaction.
- 7.5 We will ensure that we have no undisclosed loans secured on the project assets. Where we take out any loans secured on the project assets funded or part-funded by the grant, we will notify you of this fact without delay.
- 7.6 If any part of the grant is to buy freehold or leasehold land and buildings, we will obtain and send to you when asked the following documents:
- a surveyor's report on the condition of the property, its value and whether it is suitable for the project;
 - confirmation from our solicitors that all necessary consents for the use of the property for the purposes of the grant have been obtained;
 - confirmation (by way of legal opinion in a form which you will supply) from our solicitors that we have the legal powers necessary to sign the documents; and
 - if any part of the grant is to buy leasehold land and buildings, we will ensure the registered and assignable lease will be on terms acceptable to you.
- 7.7 We understand and accept that:
- you will keep ninety-five (95) percent of the grant allocated to an individual project until we have provided in a satisfactory form:
 - evidence that we have received any necessary planning permission, listed building consent and building regulations consent (or other applicable consents or regulations) required for the building work; and
 - evidence that a competitive tender process has been undertaken with a minimum of three estimates received from three independent builders. If we are to commission the building works under pre-tendered arrangements, we will ensure that it provides evidence of the tender process undertaken to identify existing contractors;
 - you will make payments in stages only when you receive builders' invoices or against interim certificates completed on the RIBA (Royal Institute of British Architects) form or other appropriate invoices;

- you will keep five (5) per cent of the grant for any building works until you receive the certificate of practical completion. We will then send you the making good defects certificate, the final certificate, confirmation that we have obtained the building regulations completion certificate and the buildings insurance certificate;
- if we want to make significant changes to the scope of any works, we must get your permission in writing before going ahead;
- you will require confirmation (by way of a Certificate of Title, which you will supply) from our solicitors that we are the freehold owner or a lessee holding under a registered and assignable lease on terms acceptable to you of the project assets to which the grant relates (to the extent that they consist of real property) and that the project assets may be employed for the grant purpose; and
- you will keep ninety-five (95) percent of the grant until we have provided in a form which is completed to your satisfaction:
 - a copy of the tender review report. If we are to commission the work under pre-tendered arrangements, we will provide you with evidence that demonstrates that costs have been market tested to confirm value for money;
 - an updated capital project cost summary, cash flow and programme; and
 - evidence that we have secured all the required partnership funding for the capital project;
- we will ensure that we employ a lead building professional to manage the tender process and to certify that the building works have been properly carried out;
- if structural work is necessary, we will ensure that we employ a structural engineer;
- we will ensure that we use building professionals that are fully qualified members of an approved professional body and have all necessary professional indemnity insurance cover; and
- if building works come under the Construction (Design and Management) Regulations 2007, we will ensure that we have appointed a planning supervisor.

- 7.8 Without prejudice to the terms of any security over the project assets that we give you pursuant to clause 7.2, if we sell, let, sub-let or otherwise dispose of any project assets within twenty (20) years of the date of the grant agreement, we will notify you accordingly. If we sell or dispose the project assets, we may have to repay you all or part of the money we have received from you. The amount we repay will be in direct proportion to the share of the project costs that came from you. If, with your consent, we sell the project assets wholly or partly bought with the grant, it will be at full market value and we may impose conditions upon the transfer or disposition
- 7.9 You will continue to monitor the project assets for ten (10) years after the date of the grant agreement and we will supply you information about it and allow you to inspect the project assets in accordance with your standard procedures throughout the term of the grant agreement.

8 Payment of grant

- 8.1 We will open a separate and designated bank or building society account for the sole purpose of receiving and administering the grant and will provide you with the bank or building society statements when asked.
- 8.2 You will pay the grant by bank transfer (BACS) into a UK-based bank account or building society account in our name, which requires the signatures of at least two authorised people for every withdrawal. We will not use ATM's or debit cards to make cash withdrawals or payments from this account.
- 8.3 You will not be liable for any losses or costs (including, but not only, bank charges) if you do not make grant payments on the agreed date.
- 8.4 If you pay the grant in instalments over two or more years, payment for the second and following years will depend on your approval of an end of year report on the previous year, which we will complete on a form provided by you within three months of the end of the grant year. If we do not do this, grant payments may be suspended.
- 8.5 You will normally make payments for up to three months spending in advance

as long as we complete a satisfactory payment plan before the project starts and we have given written notice of the project start date. We will submit payment claims by providing an up to date income and expenditure statement, plus a projection of future costs on the claim form you provide, plus any associated information asked for with the claim. Claims for grant payments shall be for individual project costs. Where the grant is claimed to cover estimated (rather than actual) expenditure, the claim can only include items of expenditure to be made during the period to which the claim relates.

8.6 If you are not satisfied that we have met all the terms of our grant agreement, or you need extra information or documents, you may ask for this and may postpone payment of the grant until you feel that the terms are met or until you receive the material you want.

9 Length of grant agreement

9.1 These terms and conditions and the grant agreement remain in force for whichever of these is the longer time:

- Twenty (20) years after the date of the grant agreement; or
- As long as we 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 project delivery).

9.2 We understand that you are not liable, except for death or personal injury resulting from negligence or for fraud:

- to any person for any matter arising in connection with the development, planning, construction, operation, management and administration of any individual project, or
- to us for any loss or damage arising directly or indirectly as the result of us complying with these standard conditions or terms of grant.

9.3 We hold the grant on trust at all times and may not transfer it to any other organisation.

9.4 The grant agreement is solely between us and you. The standard terms and

conditions cannot be enforced by any other party.

10 Information

10.1 We accept that you may share information about our grant with any parties of your choice as well as with members of the public who make a request for information under the Freedom of Information Act 2000. Details of the project may be broadcast on television, on your website, in newspapers and through other media.

11. Supervision, withholding and repayment of grant

11.1 You will not increase the grant if we spend more than the agreed budget.

11.2 You may suspend payment of the grant if you want to investigate any matters concerning the grant (or any other grants you have given to us). We understand that you accept no liability for any consequences, whether direct or indirect, that comes about from a suspension even if the investigation finds no cause for concern.

11.3 You may withhold or demand repayment of (in which circumstances we will immediately repay) all or part of the grant at your absolute discretion, in any of the following circumstances if:

- we fail to meet any of these terms and conditions;
- we completed the application form dishonestly or significantly incorrectly or misleadingly;
- we or any other person or organisation operating for us gave you any significantly misleading or inaccurate information, whether deliberate or accidental, during the application process, or during the period of the grant agreement;
- members of our governing body, volunteers or staff act at any time during the project dishonestly or negligently or in any way, directly or indirectly, to our detriment or to the detriment of our organisation or the project or to the detriment of your reputation or the reputation of the Youth Facilities Fund;

- our organisation, members of our governing body, employees or volunteers are subject to an investigation or formal enquiry by the Police, Charity Commission, HM Revenue and Customs or other regulatory body;
- we receive duplicate funding from any other source for the same or any part of the project;
- there is, in your opinion, a significant change of purpose, ownership or recipient, either during the project or within a reasonable period after its completion, so that you judge that the grant is unlikely to fulfil the purpose for which you made it;
- at any stage of the application process or during the period of the grant agreement we do not let you have information that would affect your decision to award, continue or withdraw all or part of the grant;
- we are or become legally ineligible to hold the grant; and/or
- if you have reasonable grounds to believe that it is necessary to protect public money.

11.4 You may withhold or demand repayment of all or any part of the grant if it is likely that we will have to stop operating, may be dissolved or become insolvent, or is likely to be put into administration or receivership or liquidation, or we are about to make an arrangement with, or guarantee a Trust Deed to our creditors.

11.5 We acknowledge that the grant comes from public funds and we 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 we will repay the entire grant immediately.

12 Assignment

12.1 You may assign any of your rights under the grant agreement to any other or successor body.

12.2 We may not transfer any part of the grant or this grant agreement or any rights under it to another organisation or individual.

13 Additional conditions

13.1 You have the right to impose additional terms and conditions on the grant either in the offer letter and/or if:

- we are in breach of the grant agreement;
- you withdraw any part of the funding for the project;
- you judge that members of our governing body, volunteers or staff or any person or organisation closely involved in carrying out the project act in a way that may have a detrimental effect on the project or on your reputation as a distributor of public money or as a Government sponsored body or to the detriment of the **myplace** Grant Scheme;
- if you have reasonable grounds to believe that it is necessary to protect public money; and/or
- you believe such conditions are necessary or desirable to make sure that the project is delivered as set out in our application or following any agreed changes.

14. Novation

14.1 You are entitled to novate your rights and obligations under the grant agreement or any part thereof to any contracting authority or any other body that is to substantially perform any of the functions that previously had been performed by you, provided that any such novation shall not increase the burden of our obligations under the grant agreement.