

# **DRAFT Standard terms and conditions for grants under the *myplace* Grant Scheme to Local Authorities as Lead Organisations**

## **Definitions**

“We” and “our” refer to the Local Authority 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 “project” means a project for which you are giving us a grant as set out in our application form and any supporting documents, and/or as varied by the grant agreement. This includes the agreed individual project or projects and the delivery organisations that will deliver them, as listed in the grant offer letter.

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

The “delivery organisation” means the third sector or private sector partner or any other organisation that delivers or helps the third sector or private sector partner to deliver the whole or part of a project

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 “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 delivery of 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 our executive team receives a copy of these terms and conditions while the grant agreement remains in force.

## **2 The project**

2.1 We will get your written agreement before making any change to any project or to its name, aims, structure, delivery, outcomes, duration or ownership. We will get your written agreement before changing the agreed project or projects or the delivery organisations that are delivering them.

2.2 We will submit capital delivery and business plans, which are satisfactory to you, within 6 months of the date of this grant agreement. We will then start the project within six months of your approval of these plans. If the capital delivery and business plans are not acceptable to you this agreement will lapse.

2.3 We will submit a partnership agreement, which is satisfactory to you, within 6 months of the date of this agreement. If the partnership agreement is not acceptable to you this agreement will lapse.

2.4 We agree to make satisfactory progress with the delivery of the project or projects and complete it/them on time or within a reasonable period if you have not set a time limit.

2.5 We will not use the grant to pay for any spending commitments we have made before the date of the grant agreement.

2.6 We will tell you of any offer of funding for any project from anyone else at any time during the project.

- 2.7 If a delivery organisation spends less than the whole grant specified for any individual project or part of a project, we will return the unspent amount to you promptly.
- 2.8 We, and all delivery organisations, 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 any project including accounts and public annual reports, or in written or spoken public presentations about the project or projects.
- 2.9 We hereby consent to any publicity about the grant or any 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.
- 2.10 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.
- 2.11 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.
- 2.12 We agree, and will ensure that all delivery organisations also 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.
- 2.13 We will ensure that we (and all delivery organisations) 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.

- 2.14 If any project involves work with children, young people or vulnerable adults (“vulnerable persons”), we will require the relevant delivery organisations to take all reasonable steps to ensure their safety. We will ensure that a delivery organisation obtains the written agreement from the legal carer or guardian before having any direct contact with any vulnerable person. We will ensure that a delivery organisation has and carries 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.
- 2.15 We will acquire and maintain all necessary consents, resources and expertise to deliver the project or projects.
- 2.16 We have and will keep in place adequate procedures for dealing with any conflicts of interest arising in the provision of goods and services required to deliver any project.
- 2.17 We have and will keep in place systems to prevent fraud.
- 2.18 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 write to you as soon as possible if any legal claims are made or threatened against us, which would adversely affect the delivery of any project during the period of the grant (including any claims made against members of our staff).
- 3.2 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.

#### **4 Contracts between us and delivery organisations delivering individual projects**

4.1 Even though we may sub-contract individual projects to one or more delivery organisations, we understand we remain accountable for delivering the project or projects and for complying with all of the terms and conditions of the grant agreement.

4.2 We will ensure that the payment of any or all of the grant to delivery organisations is subject to an agreement containing reasonable and adequate terms and conditions to safeguard the grant and all relevant obligations from this grant agreement. These terms and conditions must include provisions for delivery organisations to repay grant funds if any of the events listed in clause 12.3 occurs.

4.3 We will ensure that delivery organisations maintain adequate insurance cover.

4.4 We will ensure that delivery organisations follow your branding and publicity guidelines at all times.

4.5 We will ensure that you have the right (under the Contracts (Rights of Third Parties) Act 1999) to enforce any of our rights under the agreement between us and a delivery organisation relating to the project and that these rights may not be altered or extinguished without your written consent.

4.6 If we recover money from a delivery organisation, we will repay this money immediately to you, unless you agree otherwise in writing.

#### **5 VAT**

5.1 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.

- 5.2 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.
- 5.3 We will notify you immediately if any irrecoverable VAT claimed under the grant becomes recoverable.
- 5.4 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.
- 5.5 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.
- 5.6 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.

## **6 Our annual report and accounts**

- 6.1 We will comply with all relevant laws regarding the submission of accounts, audit or examination of accounts, annual reports, and annual returns.
- 6.2 We will identify your grant and related expenditure as a restricted fund in our accounts. We will identify unspent funds and assets in respect of the grant separately in our accounting records.
- 6.3 We will send you a copy of our accounts signed and audited as required by the appropriate regulations.
- 6.4 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, 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.

## **7 Monitoring**

- 7.1 We will monitor the progress of each project and complete regular reports as you require using the forms you send us.
- 7.2 We will send you any further information you may ask for about any individual project or about a delivery 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.
- 7.3 We will fill in a final report on each 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.
- 7.4 We will tell you immediately in writing of anything that significantly delays, threatens or makes unlikely any project's completion.
- 7.5 We will, and will ensure that delivery organisations 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.

## **8 Grants for refurbishment of property and the purchase of freehold or leasehold land and buildings**

- 8.1 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.

- 8.2 We understand and accept that you will require security over individual project assets funded by the grant. This will usually be a deed of dedication in your standard form.
- 8.3 We will ensure that all delivery organisations have the legal powers under their governing documents to undertake the project and to execute the legal documents associated with the grant. We understand that you will not pay any of the capital grant allocated to an individual project until you have received the documents completed to your satisfaction.
- 8.4 We will ensure that no third sector or private sector partner has any undisclosed loans secured on the individual project assets. Where a delivery organisation takes out any loans secured on any individual project assets funded or part-funded by the grant, we will require them to notify us of this fact without delay and will notify you accordingly.
- 8.5 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 .
- 8.6 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 any necessary planning permission, listed building consent and building regulations consent (or other applicable consents or regulations) required for the building work has been obtained; and

- evidence that a competitive tender process has been undertaken with a minimum of three estimates received from three independent builders. If the delivery organisation is 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 for an individual project 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 a project's 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 the building regulations completion certificate and the buildings insurance certificate have been issued;
- if we want to make significant changes to the scope of the works for a project, we must get your permission in writing before going ahead;
- prior to releasing payment of any grant you will require confirmation (by way of a Certificate of Title, which you will supply) from a solicitor that we and/or any third sector partner is the freehold owner or a lessee holding under a registered and assignable lease on terms acceptable to you of the individual project assets to which the grant relates (to the extent that they consist of real property) and that the individual project assets may be employed for the grant purpose; and
- you will keep ninety-five (95) percent of the grant allocated to an individual project until we have provided in a form which is completed to your satisfaction:
  - a copy of the tender review report. If the delivery organisation is 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 the delivery organisation has secured all the required partnership funding for the capital project;

- we will ensure that a lead building professional is employed 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 a structural engineer is employed;
- we will ensure that every delivery organisation uses 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 the delivery organisation has appointed a planning supervisor.

8.7 Without prejudice to the terms of any security over the project assets given to you pursuant to clause 8.2, if we or a third sector or private sector partner sells, lets, sub-lets or otherwise disposes of an individual project's assets within twenty (20) years from the date of this grant agreement, we shall require that it notifies you accordingly as soon as practicable. If we or a third or private sector partner sells or disposes of any individual project assets, we may have to repay you all or part of the money we have received from you and you may impose conditions on the transfer or disposition.

8.8 You will continue to monitor individual project assets for a period of ten (10) years from the date of the grant agreement and we will supply you information about it and ensure that you are allowed to inspect the individual project assets in accordance with your standard procedures throughout the term of the grant agreement.

## **9 Payment of grant**

9.1 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.

9.2 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. We must take up the first instalment of the grant within six months of the date of the grant offer letter; otherwise it will automatically lapse, unless you agree in writing to an extension.

9.3 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. Grants for capital payments will not be paid unless supported by validated certificates and invoices, unless you agree otherwise in writing.

9.4 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.

## **10 Length of grant agreement**

10.1 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).

10.2 We understand that you are not liable

- 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.

10.3 We hold the grant on trust at all times and may not transfer it, except for payments to a delivery organisation for delivering individual projects as agreed in the grant offer letter.

10.4 The grant agreement is solely between us and you. The standard terms and conditions cannot be enforced by any other party.

10.5 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.

## **11 Information**

11.1 We accept that you may share information about our grant, our organisation, and any individual project or delivery organisation 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 any individual project may be broadcast on television, on your website, in newspapers and through other media.

## **12 Supervision, withholding and repayment of grant**

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

12.2 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 come about from a suspension even if the investigation finds no cause for concern.

12.3 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 staff or any person or organisation closely involved in carrying out any project act at any time 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 **myplace** Grant Scheme;
- There is, in your opinion, a significant change of purpose, ownership or recipient, either during the execution of any 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; and/or
- If you have reasonable grounds to believe that it is necessary to protect public money.

### **13 Assignment**

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

13.2 We may not transfer any part of the grant or this grant agreement or any rights under it to another organisation or individual, except to a third sector partner with which we have entered into an agreement, as authorised by you.

### **14 Additional conditions**

14.1 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 of any project act in a way that may have a detrimental effect on any project or on your reputation as a distributor of public money or as a Government sponsored body;
- 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 each project is delivered as set out in our application or following any agreed changes.

## **15. Novation**

- 15.1 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.