

## DEED OF COVENANT

Dated the                      day of                      2024

### BETWEEN:

- (1) **The Arts Council of England**, a charitable company incorporated by Royal Charter and registered in England and Wales (registered charity number 1036733) of 49 Lever Street, Manchester, M1 1FN ("the **Arts Council**"), and
- (2) **Torbay Council of Town Hall, Castle Circus, Torquay, Devon TQ1 3DR** ("the **Funded Organisation**")
- (3) **The Paignton Picture House Trust** a private company limited by guarantee incorporated and registered in England and Wales with company number 08725788 and registered charity number 1157934 whose registered office is at Wessex House, Teign Road, Newton Abbot, Devon, United Kingdom, TQ12 4AA ("the **Landowner**")

### BACKGROUND

- (A) The Funded Organisation has received or will receive a capital grant from the Arts Council to carry out a building project on land that is owned by the Landowner.
- (B) The Landowner has agreed to enter into this Deed in recognition of the fact that the Project is to be funded in whole or in part by the Arts Council and that funding has been applied for by the Funded Organisation.

**IT IS AGREED AS FOLLOWS:**

**1 Definitions**

**1.1** In this Deed the following words and phrases shall have the following meanings except where the context otherwise requires

**“the Agreed Use”** means use as a cultural (arts and heritage) hub providing a public programme of activities with ancillary uses including: live arts performance; cinema; civic and community engagement, meetings and events; income-generating space hire events; local archive and history centre;

**“the Capital Funding Agreement”** means the capital funding agreement dated 1st April 2022 and made between the Arts Council (1) and the Funded Organisation (2) a copy of which is annexed hereto at Schedule 1 with any supplementary attachments, schedules, applicable terms and conditions and any subsequent variations that have been agreed in writing between the Landowner (if required), the Arts Council and the Funded Organisation;

**“the Land”** means all that freehold land and buildings at Torbay Road, Paignton, TQ4 6AF, as registered at the Land Registry under title number DN664086 and shown edged red on the attached Plan, otherwise known as Torbay Cinema;

**“the Plan”** means the plan annexed hereto at Schedule 2; and,

**“the Project”** means the project defined as ‘the Capital Project’ in the Capital Funding Agreement.

**1.2** Unless the contrary intention is expressed the defined terms in the standard conditions shall have the same meaning here.

**1.3** Unless the contrary intention appears references in this deed to

**1.3.1** parties and other persons include their successors and assigns.

**1.3.2** an obligation of the Funded Organisation or Landowner to do something shall include an obligation to procure that it is done and an obligation not to do something shall include an obligation not to permit, suffer or allow it; and

**1.3.3** a defined term shall include each and every part.

**2** In consideration of the Arts Council funding the Project and the Funded Organisation having applied for such funding, the Landowner hereby covenants with the Arts Council and the Funded Organisation that in respect of the Land the Landowner will:-

(a) not without the prior written consent of the Arts Council, assign, transfer or charge the Land or grant any lease or license, agree to grant any lease or license or enter into or permit any parting with possession or sharing arrangements whatsoever in respect of the Land;

(b) not, except with the prior written consent of the Arts Council, to use the Land other than for the purpose of the Agreed Use;

(c) not damage or destroy the Project; and

(d) meet all other aspects required under the Capital Funding Agreement in relation to the Land (and any variation to the

covenants relating to the Land PROVIDED ALWAYS that any such variations have been made with the prior written approval of the Landowner, such approval not to be unreasonably withheld or delayed), including but not necessarily limited to keeping the Land insured, in good repair and condition, and allowing the Arts Council access to the Land as and when required.

- 3 The Arts Council may assign the benefit of this Deed to such person as it thinks fit.
4.
  - 4.1 The Funded Organisation represents that it has power to execute and deliver this Deed and the execution and performance of this Deed has been validly authorised and that this Deed will be valid legal and binding on the Funded Organisation.
  - 4.2 The Landowner represents that it has power to execute and deliver this Deed and the execution and performance of this Deed has been validly authorised and that this Deed will be valid legal and binding on the Landowner.
  - 4.3 Without prejudice to any right or remedy of Arts Council or the Funded Organisation for breach of covenant occurring before the expiration of this Deed, this Deed shall expire 20 years from the date of this Deed.
5.
  - 5.1 The Landowner hereby consents to and will make an application on Form RX1 (or such other form as may be prescribed from time to time) to enter the following restriction against the relevant registered estate.

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the Arts Council England of 49 Lever Street Manchester, M1 1FN."

5.2 The Landowner shall at its own cost and as soon as reasonably possible register and maintain the registration of the restriction referred to in clause 5.1 against the title to the Land or any part of the Land which becomes at any time after the date of this deed but during the ownership of the Landowner registered at the Land Registry and shall deliver to the Arts Council an official copy of such title showing registration of the restriction.

6 This Deed may be executed in any number of counterparts all of which taken together shall be deemed one and the same document.

**EXECUTED** as a **DEED** by the parties on the date which first appears in this Deed.

**THE COMMON SEAL of THE ARTS COUNCIL  
OF ENGLAND** was hereunto affixed in the  
presence of:

.....  
Proper officer and Authorised Signatory

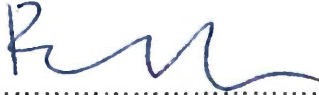
**THE COMMON SEAL of TORBAY COUNCIL**  
was hereunto affixed in the presence of:

.....  
Proper officer and Authorised Signatory

Executed as a deed by

**THE PAIGNTON PICTURE HOUSE TRUST**

acting by a director and its secretary or two directors



.....  
Director



.....  
Director / Secretary

**Schedule 1**  
**"the Capital Funding Agreement"**



**Applicant:** Torbay Council/Culture

50726880

**Project:** Torbay's Cultural Development: Paignton Picture House

CDFP-00457301-R2

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## Project information

### Cultural Development Fund

**Applicant name:** Torbay Council/Culture

**Project title:** Torbay's Cultural Development: Paignton Picture House

**Project number:** CDFP-00457301-R2

**Amount requested (£):** £2,987,670

**Amount awarded (£):** £2,987,670

## Offer letter

Your offer letter is below. Please download and read the letter so you can confirm acceptance of your grant and the applicable terms and conditions.

Document Type	Required?	Document description	Date attached
Offer letter	Yes	Torbay offer letter	25/03/2022
Other attachment (where relevant)	No		
Other attachment (where relevant)	No		

## **Attachment Details4**

**Document description:** Torbay offer letter

## **Attachment Details4**

**Document description:**

## **Attachment Details4**

**Document description:**

## Confirm offer letter downloaded and read

**I have downloaded and read the offer letter:** Yes

Offer letter acknowledgement	Page 4	08/04/2022
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## Monitoring schedule and payment conditions

Submission name	Due date	Required	Payment amount	Payment conditions
Payment Request #1 (Initial)	01/04/2022	Yes	£113,000	• A completed bank details form sent to us in hardcopy only
Payment Request #2 (Interim)	01/04/2023	Yes	£226,000	• A completed interim activity report form submitted using the online system
Payment Request #3 (Interim)	01/04/2024	Yes	£169,500	• A completed interim activity report form submitted using the online system
Payment Request #4 (Final)	01/04/2025	Yes	£56,500	• A completed activity report form submitted using the online system
Activity Report #1 (Interim)	01/07/2022	Yes		
Activity Report #2 (Interim)	01/10/2022	Yes		
Activity Report #3 (Interim)	02/01/2023	Yes		
Activity Report #4 (Interim)	01/04/2023	Yes		
Activity Report #5 (Interim)	01/07/2023	Yes		
Activity Report #6 (Interim)	01/10/2023	Yes		
Activity Report #7 (Interim)	02/01/2024	Yes		
Activity Report #8 (Interim)	01/04/2024	Yes		
Activity Report #9 (Interim)	01/07/2024	Yes		
Activity Report #10 (Interim)	01/10/2024	Yes		
Activity Report #11 (Interim)	02/01/2025	Yes		
Activity Report #12 (Final)	01/04/2025	Yes		

## Submission details

### Payment Request #1 (Initial)

**Due date:** 01/04/2022

**Required?:**

**Submission type:** Payment request

**Scheduled payment amount:** £113,000

### Payment conditions

- A completed bank details form sent to us in hardcopy only

## Submission details

### Payment Request #2 (Interim)

**Due date:** 01/04/2023

**Required?:**

**Submission type:** Payment request

**Scheduled payment amount:** £226,000

### Payment conditions

- A completed interim activity report form submitted using the online system

## Submission details

### Payment Request #3 (Interim)

**Due date:** 01/04/2024

**Required?:**

**Submission type:** Payment request

**Scheduled payment amount:** £169,500

**Payment conditions**

- A completed interim activity report form submitted using the online system

## Submission details

**Payment Request #4 (Final)**

**Due date:** 01/04/2025

**Required?:**

**Submission type:** Payment request

**Scheduled payment amount:** £56,500

**Payment conditions**

- A completed activity report form submitted using the online system

## Submission details

**Activity Report #1 (Interim)**

**Due date:** 01/07/2022

**Required?:**

**Submission type:** Report

## Submission details

**Activity Report #2 (Interim)**

**Due date:** 01/10/2022  
**Required?:**   
**Submission type:** Report

## Submission details

**Activity Report #3 (Interim)**  
**Due date:** 02/01/2023  
**Required?:**   
**Submission type:** Report

## Submission details

**Activity Report #4 (Interim)**  
**Due date:** 01/04/2023  
**Required?:**   
**Submission type:** Report

## Submission details

**Activity Report #5 (Interim)**  
**Due date:** 01/07/2023  
**Required?:**   
**Submission type:** Report



## Submission details

### Activity Report #6 (Interim)

Due date: 01/10/2023

Required?:

Submission type: Report

## Submission details

### Activity Report #7 (Interim)

Due date: 02/01/2024

Required?:

Submission type: Report

## Submission details

### Activity Report #8 (Interim)

Due date: 01/04/2024

Required?:

Submission type: Report

## Submission details

### Activity Report #9 (Interim)

Due date: 01/07/2024

Required?:

**Submission type:** Report

## Submission details

### Activity Report #10 (Interim)

**Due date:** 01/10/2024

**Required?:**

**Submission type:** Report

## Submission details

### Activity Report #11 (Interim)

**Due date:** 02/01/2025

**Required?:**

**Submission type:** Report

## Submission details

### Activity Report #12 (Final)

**Due date:** 01/04/2025

**Required?:**

**Submission type:** Report

**Applicant:** Torbay Council/Culture

50726880

**Project:** Torbay's Cultural Development: Paignton Picture House

CDFP-00457301-R2

## Attachments

Document Type	Required?	Document description	Date attached
Bank details	Yes	Bank details	30/04/2021
Special conditions (where relevant)	No		
Terms and conditions	Yes	Torbay terms and ...	25/03/2022

## Acknowledgement

### On-line offer acceptance form

**Programme:** Cultural Development Fund  
**Applicant name:** Torbay Council/Culture  
**Reference:** CDFP-00457301-R2  
**Name of activity:** Torbay's Cultural Development: Paignton Picture House

**Do you accept the grant offer in relation to the activity named above on the terms and conditions stated in the offer letter?** Yes

If you are acting as a representative of an organisation, by accepting this grant offer you are confirming that:

- a) You (the person accepting this offer) are authorised to accept a grant from us on behalf of your organisation.
- b) You understand that if you make any seriously misleading statements (whether deliberate or accidental) at any stage during the application process and life of the grant, or knowingly withhold any information, this could make your grant agreement invalid and you could be liable to repay any funds to us.
- c) You understand that personal data will be collected and used in accordance with the joint Arts Council England/DCMS Privacy Notice and will be subject to our obligations under the Data Protection Law and the Freedom of Information Act.
- d) You are able to comply with our terms and conditions of grant, which are attached to this offer and are available on our website.
- e) None of the conditions for grants have been breached and that payment of this grant does not, and will not be used to, breach any of the conditions of grants.

**Name:** Martin Thomas

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## Submission summary

Page	Last Updated
<b>Project information</b>	No Input Required
<b>Offer letter</b>	28/03/2022
<b>Confirm offer letter downloaded</b>	28/03/2022
<b>Attachments</b>	28/03/2022
<b>Acknowledgement</b>	04/04/2022

Martin Thomas  
Torbay Council  
Town Hall  
Castle Circus  
Torquay  
TQ1 3DR

1 April 2022

Dear Martin Thomas,

## **Offer Letter**

**Programme:** Cultural Development Fund

**Project title:** Torbay's Cultural Development: Paignton Picture House

**Applicant name:** Torbay Council (Torbay Culture)

**Project reference:** CDFP-00457301

This is to confirm that Arts Council England on behalf of the Department for Digital, Culture, Media and Sport (DCMS), will provide Torbay Council, the accountable body as defined in the terms and conditions of this award, with a restricted grant of up to £2,987,670 for the period 01 April 2022 to 31 March 2025 (the Funding Period) towards the cost of the Agreed Programme. The grant is provided by Grant in Aid Revenue and Grant in Aid Capital for the funding period, as shown on the Grant Allocation below.

Grant Allocation	£2,987,670
Grant in Aid Revenue Allocation	£565,000
Grant in Aid Capital Allocation	£2,422,670

\*The Grant Allocation is now fixed and cannot be altered. For further information on Grant in Aid Capital Allocation please see Schedule 3.

For the Cultural Development Fund, DCMS have delegated authority to Arts Council England to act on its behalf in administering, accounting for and monitoring this grant.

### **1. Our offer**

1.1 This offer is subject to your acceptance of Arts Council England's Terms and Conditions for the Cultural Development Fund, the Capital Terms and Conditions (as detailed in Schedule 3), the Additional Conditions (if any) and the Monitoring Schedule and Payment Conditions (Schedule 2). The Terms & Conditions for the Cultural Development Fund and Additional Conditions (if any) are attached to the following screen called 'Attachments'. The Monitoring Schedule and Payment Conditions are shown on the screen called 'Monitoring schedule and payment conditions' (also shown in Schedule 2 in the Terms and Conditions on the Attachments

screen). These documents along with this Offer Letter and Schedule 1 form your funding agreement with Arts Council England.

1.2 This scheme is funded using money from grant in aid. It is restricted funding for the sole purpose of delivering the activity as detailed in Schedule 1. It should be shown as restricted funding in your accounts. We reserve the right to review and reduce funding in light of how well you are delivering the objectives of this grant.

1.3 If you spend less than the whole amount grant on the Agreed Programme, you must return the unspent amount to us promptly. If the grant part-funds the Agreed Programme, you must return the appropriate share of the unspent amount to us.

1.4 As the grant comes from public funds, you must account to us for any profit that you make from the Agreed Programme and we reserve the right to require you to pay back all or part of the grant in accordance with the Terms & Conditions.

1.5 This grant comes from public funds and must not be used in a way that constitutes unlawful Subsidy. We make no representation or undertaking about Subsidy control compliance. If you have any concerns about compliance with Subsidy control rules, you must obtain your own independent legal advice.

## **2. Agreed Programme**

2.1 The Agreed Programme is set out in Schedule 1 as shown on the following screen called 'Agreed programme of activities', this schedule is supported by your application. Changes to the Agreed Programme are covered in the Terms and Conditions for the Cultural Development Fund.

2.2 Arts Council England will monitor the activity in relation to the Agreed Programme and how effectively the funding is being used. To enable this, you will send Arts Council England any information as Arts Council England may in its sole discretion reasonably request from time to time. Arts Council England reserves the right to visit projects by appointment and will ensure prior notice is given. Our main monitoring will be through the assessment of payment conditions, as detailed in the Monitoring Schedule and Payment Conditions section in the next screen and in Schedules 2 in the Terms and Conditions on the Attachments screen. The programme will also be discussed with your Senior Relationship Manager.

2.3 Success of the relationship relies on effective communication and the sharing of information. You must tell Arts Council England in advance if you want to make any significant changes to the Agreed Programme under this Funding Agreement. Arts Council England will not unreasonably withhold its consent to any such changes.

## **3. Accepting our Offer**

3.1 Accepting your grant is done online by working through this 'Offer letter acknowledgement' workflow. On the next screen you are asked to confirm that you

have downloaded and read the Offer Letter. On the following screens you will then view your Monitoring Schedule and Payment Conditions, our Terms and Conditions and bank details form, and then complete a declaration stating whether you accept this offer of a grant. Once you press 'submit' on the final screen, your acceptance will be sent to us to review.

3.2 If you do not accept this offer within one month from the date we issued it, it will no longer be valid.

3.3 When you accept your grant, you will need to download the bank details form. You must complete the bank details form and upload it to the Bank details step on Grantium.

3.4 Please note that this letter, attached schedules and our standard terms and conditions as referred to above will form the Funding Agreement. No changes can be made to these documents unless agreed by the Arts Council England in writing. The date of your acceptance of the Grant on the Arts Council's Grantium system will be the date of your Funding Agreement.

#### **4. Payment Conditions**

4.1 Payments are conditional on us receiving and approving any additional monitoring information (or 'payment conditions') we have asked for. The payment conditions for the Grant in Aid Revenue Allocation and Grant in Aid Capital Allocation are set out separately. The Monitoring Schedule and Payment Conditions for the Grant in Aid Revenue Allocation are shown in the next screen (also shown in Schedule 2 in the Terms and Conditions on the Attachments screen). The Monitoring Schedule and Payment Conditions for the Grant in Aid Capital Allocation are shown in Schedule 2 in the Terms and Conditions on the Attachments screen.

Please note that the dates listed refer to when we expect you to submit the information to meet the relevant conditions, and do not indicate when we will send a payment. After you meet all the conditions for each payment, it will normally take 15 - 20 working days for us to process and release the funds.

#### ***4.2 Receiving your first Grant in Aid Revenue Allocation payment***

In order for us to release your first revenue payment, you must:

- Accept our offer online
- Send us your bank details using the Submit Bank Details step in Grantium;
- Submit your 'Payment request #1' which includes space to attach information to meet any other payment conditions we have set on your first payment (shown in the payment schedule). You will be able to view this payment request task in your 'Submissions' area once we have reviewed your acceptance.

#### ***4.3 Receiving your first Grant in Aid Capital Allocation payment***

Payment amounts will depend on the amount of expenditure you are able to evidence in the expenditure listing submitted with each payment request. Payment requests will be initiated by us once you inform us that you are ready to claim a payment. Each



payment request will include an expenditure listing for you to complete alongside any other conditions set out in Schedule 2 in the Terms and Conditions on the Attachments screen we have requested for that payment.

In order for us to release your first payment, you must:

- Accept our offer online;
- Send us your bank details using the Submit Bank Details step in Grantium;
- Let us know when you have incurred eligible capital costs and are ready to claim a payment. We will send you a Capital Payment Request to complete on Grantium. You will be able to view the Capital Payment Request in your 'Submissions' area;
- Submit the Capital Payment Request on Grantium, including the expenditure listing and any payment conditions for that payment as set out in Schedule 2

Grant holders should be aware that Arts Council England conducts checks on a sample of applications every year to ensure that our funding is being used appropriately. We reserve the right to ask grantholders for access to all their documentation relating to their activity, and therefore you should keep clear records of project management and financial records for us to access when required.

#### *4.4. Reporting to us on your activity*

The schedule on the next screen includes a condition for a completed interim report form on a quarterly basis. This is so we can review your activity's progress before we release a payment part way through your activity. Interim report forms are completed online, and the link to the report will appear in your 'Submissions' area four weeks before the due date shown in your payment schedule. Your interim report form should include the following attachments:

- A cash flow demonstrating both project income and outgoings and the expected payments for the Grant in Aid Revenue Allocation and Grant in Aid Capital Allocation shown separately
- A fully costed risk register covering all the risks you have identified for the Agreed Programme
- Details of expenditure for the Agreed Programme including any changes to the agreed budget or forecast total cost. This should separately identify the contingency to ensure that appropriate levels of contingency are retained at as the project progresses and provide an overview of the adequacy of the remaining contingency when considered against the costed risk register.
- An up-to-date work plan, including milestones and key review dates for delivery of your project.

#### *4.5 Interim Grant in Aid Revenue Allocation payment*

When you have submitted your interim report, you must then submit your payment request for the Grant in Aid Revenue Allocation payment (including information to meet any other interim payment conditions we have set) to receive your payment.

#### *4.6 Interim Grant in Aid Capital Allocation payment*

Interim payment requests will be initiated by us once you inform us that you are ready to claim a payment and have achieved the relevant milestone set out in Schedule 2. We will send you a Capital Payment Request to complete on Grantium. You will be able to view the Capital Payment Request in your 'Submissions' area. Interim payments will be released on the condition that we have received a completed expenditure listing submitted on Grantium including information to meet any other interim payment conditions we have set out in Schedule 2.

#### *4.7 Final activity report form and payments*

After your activity has finished, you must complete a final activity report form. The link to the report will appear in your 'Submissions' area four weeks before the end date of your activity. It must be completed and submitted to us online within one month of finishing your activity. When you have submitted your report, you must then submit your final payment request (including information to meet any other final payment conditions for Grant in Aid Revenue Allocation and Grant in Aid Capital Allocation) so we can process your final payments. The final payments will be 10% of the total grant amount.

Please note: Interim and Final activity report forms are attached to Grant in Aid Revenue payment conditions, however you should account for both the Grant in Aid Revenue Allocation and Grant in Aid Capital Allocation when completing these forms.

### **5. Aims of the Cultural Development Fund**

5.1 Evaluation will be important for the Cultural Development Fund to understand how effective Government funding has been in meeting the programme's aims and outcomes. DCMS will be contracting independent advisors to help applicants with evaluating your project. We will let you know as soon as possible how we are going to do this. It is a requirement of funding that Cultural Development Fund awardees cooperate with DCMS or any appointed independent evaluators. We will require you to set aside some of your project budget for data collection to support evaluation, depending on the size and scale of your project.

5.2 The aim of the Cultural Development Fund is to level up through investment in culture. The fund will unlock local growth and productivity, promote economic and social recovery from the impact of Covid-19, and regenerate communities through capital investment in transformative place-based creative and cultural initiatives. It will capitalise on the untapped potential for investment in creativity and culture while addressing the regional undersupply and demand for capital funding in creative and cultural infrastructure.

Through implementing creative and cultural initiatives, the Cultural Development Fund will support places to achieve the following outcomes:

- Unlock local economic growth and productivity
- Become more attractive places in which to live, work, visit and invest
- Strengthen local leadership, partnerships and capability

## **6. Equality**

6.1 As part of this delivery programme you will consider participants across the protected characteristics and adjust the programme if necessary to ensure you are not acting in a discriminatory manner.

6.2 You are required to demonstrate how you are promoting equality, increasing opportunity and encouraging diverse talent. An overview of your activity in this area should be included in your monitoring updates for Arts Council England as referred to in your payment conditions.

## **7. Additional Conditions**

The grant is subject to the following Additional Conditions:

7.1 In the event that we have paid out to you any part of this grant and it then becomes apparent that a part of the Grant in Aid Capital Allocation has not been used to purchase Capital Expenditure, we reserve the right to recover any such sum from you.

7.2 You must demonstrate that all Capital Expenditure presented for payment was incurred during the Funding Period.

7.3 You will not transfer any part of the grant or this Funding Agreement or any rights under it to any other organisation or individual without the prior written agreement of the Arts Council. If you are required by the Arts Council to enter into a partnership agreement with Named Partner(s) in order to deliver the Agreed Programme you will submit the proposed partnership agreement to the Arts Council for its prior authorisation and subject thereto will ensure that no other organisation or individual acquires any third party rights under this Funding Agreement. The Arts Council reserves the right absolutely to transfer the rights and obligations owing to it under this Funding Agreement to the Department for Digital, Culture, Media and Sport.

7.4 You will undertake an evaluation of the Agreed Programme to demonstrate the aims of Cultural Development Fund outlined in 5.2 and your Application have been achieved. This evaluation should provide relevant quantitative and qualitative evidence, including financial, beneficiary, photographic and other operational information to capture baseline, interim outcomes and final outcome data about the Agreed Programme and its impact as required.

You will provide the final evaluation to the Arts Council and DCMS. We acknowledge that this evaluation may not be available until after the final payment of the grant has been made.

## **8. Acknowledging Cultural Development Fund funding**

You are required to download the Cultural Development Fund grant award logo and read the guidelines on how to acknowledge your funding before you start using the

logo. Please visit <https://www.artscouncil.org.uk/funding-finder/cultural-development-fund>. For more information, you can email [grantawardlogo@artscouncil.org.uk](mailto:grantawardlogo@artscouncil.org.uk) or phone on 0161 934 4317.

#### **9. Freedom of information**

Any information we receive from you will be subject to the Freedom of Information Act 2000. By law, we may have to provide your information to a member of the public if they ask for it under the Freedom of Information Act. For further details, see the Freedom of Information section of our website.

Please let us know if you consider that any of the information you have provided to us is commercially sensitive or confidential. We will take this into account when processing any requests for information, but any decision to release information is at our absolute discretion in accordance with the Freedom of Information Act legislation.

Please use the reference given at the top of this letter when you communicate with us. If you have any questions, please contact your named Senior Relationship Manager.

Congratulations on your successful application.

Yours sincerely,

Jane Dawson  
Director, Funding Programmes

## Standard Terms and Conditions for Cultural Development Fund 2022

For the Cultural Development Fund, the Department for Digital, Culture, Media and Sport have delegated authority to Arts Council England to act on its behalf in administering, accounting for and monitoring this grant.

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## 1. Definitions

The “Organisation” means the organisation receiving the grant bound by these terms and conditions.

The “Arts Council” means the Arts Council England and includes its employees and those acting for it.

The “Agreed Programme” means the activity or activities that have been agreed with the Arts Council and for which the Arts Council is giving the Organisation the grant as set out in the grant offer letter and in accordance with this Funding Agreement.

The “Asset Monitoring Period” means a period of twenty years from the end of the Funding Period by which the Arts Council expects the Project Assets to be continued to be used in line with the Agreed Use. “Project Assets” and “Agreed Use” shall have the meaning as given in Schedule [1] hereto.

The “Capital Terms and Conditions” means the terms and conditions as are set out in Schedule [3] to this Funding Agreement.

The “Data Protection Legislation” means without limitation (i) the United Kingdom General Data Protection Regulation and (ii) the Data Protection Act 2018 together with all other applicable UK laws whether currently existing, yet to be implemented, or to act as successor legislation, that regulate the collection, processing and privacy of personal data.

The “Funding Agreement”, which the Organisation has accepted and signed, includes and incorporates these standard terms and conditions and attached Schedules and the grant offer letter together with any other conditions the Organisation has agreed.

The “Funding Period” means the fixed term specified in the grant offer letter and these terms and conditions will apply over this period and any extension thereof.

The “Named Partner(s)” means the organisations who will be involved in delivering the Agreed Programme as set out in Schedule [1] and which the Organisation has entered (or will enter before the start of the project) in to a partnership agreement with pursuant to clause 6.13 hereof.

The “Project Asset(s)” means any equipment or property (whether real, moveable or intellectual) that is purchased, renovated, created, improved or equipped using the grant in the course of the Agreed Programme.

The “Payment Conditions” means the information the Organisation must submit to the Arts Council as part of any request for payment as detailed in the Monitoring Schedule and Payment Conditions sections on the screens in Grantium and in Schedule [2]

The “Total Project Cost of the Agreed Programme” means all the income the received and all the expenditure the Organisation will need to spend to deliver the activities as defined in the Agreed Programme.

The “Subsidy Control rules” means the Subsidy Control rules adopted by the UK with effect from 11pm on 31 December 2020, including Part 2, Title XI (Level Playing Field), Chapter 3 (Subsidy Control) of the 'Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain And Northern Ireland, of the other part' incorporated into law by the European Union (Future Relationship) Act 2020 and, where relevant, the EU State aid rules as set out in Articles 107-109 of the Treaty on the Functioning of the European Union and associated regulations and guidelines under the Northern Ireland Protocol and any other applicable laws and successor legislation.

## 2. The Agreed Programme

- 2.1 The Organisation will deliver the activities as defined in the Agreed Programme, which is attached as Schedule [1]. The Organisation acknowledges that the grant is paid on trust to the Organisation for the sole purpose of delivering the Agreed Programme and the Organisation will hold any unused part of the grant on trust for the Arts Council at all times and will repay any grant (including any unused grant) to the Arts Council immediately upon demand.
- 2.2 The Agreed Programme will form part of the basis for the reporting, monitoring and assessment of performance under this Funding Agreement.
- 2.3 The Organisation will tell the Arts Council immediately in writing of anything that significantly delays, threatens or makes unlikely the successful delivery of the Agreed Programme or any key part of it. This includes any withdrawal of match funding for the Agreed Programme, which the Organisation told the Arts Council it would receive, at any time during the Funding Period.
- 2.4 The Organisation will not use the grant to pay for any spending commitments made before the date the Funding Period begins (as specified in the offer letter).
- 2.5 The Organisation will get the Arts Council’s agreement before making any changes to the information contained in its application for grant funding, the Agreed Programme, the Named Partner(s) or to its name, aims, structure,

delivery, outcomes, duration, design or ownership of any grant funded assets or 'Project Asset(s)' as defined in the Capital Terms and Conditions.

## 1. Funding

- 3.1 Subject to satisfactory receipt of any information required from time to time, the Arts Council agrees to pay to the Organisation the revenue grant in such instalments as shown in the Revenue Monitoring and Payment Schedule in Schedule [2]. Capital payments will be made in line with the Capital Terms and Conditions in Schedule [3].
- 3.2 The Arts Council will not make any payments under this Funding Agreement until it has evidence that the terms and conditions have been accepted by the Organisation's board or equivalent, and the Funding Agreement is properly accepted and signed by a board member or equivalent. The Organisation will ensure that at all times, while the Funding Agreement is in force, that it is correctly constituted and regulated and that the receipt of the grant and the delivery of the Agreed Programme are within the scope of the Organisation's constitution.
- 3.3 The Organisation accepts that these standard terms and conditions are not negotiable and the Organisation shall have no right to amend or vary the provisions of this Funding Agreement (unless with the prior written agreement of the Arts Council) which, for the avoidance of doubt, includes the Agreed Programme as specified in Schedule [1], the Funding Period, the Dates and Amounts of the Scheduled Payments as specified in Schedule [2] and the Capital Terms and Conditions.
- 3.4 The Organisation accepts that the Arts Council will not increase the grant if the Organisation spends more than the total grant shown in the offer letter.
- 3.5 The Organisation will notify the Arts Council in writing as soon as Total Project Cost for the Agreed Programme is expected or anticipated to increase, explaining the reason for any overrun, and how it is intended that any overrun will be funded, together with an updated budget or any other information the Arts Council requests.
- 3.6 The Organisation will show the grant and related expenditure in its annual accounts under the description of "Arts Council Funding" (as a restricted fund or unrestricted fund, deriving from grant in aid as revenue grant or as a capital grant as directed in the offer letter). If the Organisation has more than one restricted fund, it will include a note to the accounts identifying each restricted fund separately. If the Organisation has more than one grant from the Arts Council, it will record each grant separately in the notes to the accounts. The Organisation will identify unspent funds and assets in respect of the grant separately in its accounting records. If the Organisation spends less than the whole grant amount on the Agreed Programme, the Organisation must return the unspent amount to the Arts Council promptly. If the grant



part-funds the Agreed Programme, the Organisation must return the appropriate share of the unspent amount to the Arts Council.

## 2. VAT

- 4.1 The grant is not consideration for any taxable supply for VAT purposes. The Organisation acknowledges that the Arts Council's obligation does not extend to paying any amounts in respect of VAT in addition to the grant.
- 4.2 If the Organisation is registered for VAT, or subsequently becomes liable to register for VAT, it must keep proper and up to date records and it must make those records available and give copies to the Arts Council when requested.
- 4.3 If the grant includes any or all of the VAT costs associated with the Agreed Programme and the Organisation subsequently recovers any VAT, it must pay back immediately any of the VAT that has been paid for with the grant.

## 3. Monitoring

- 5.1 The Arts Council will designate a member of its staff for the Organisation in relation to this Agreement. This member of Arts Council staff will be the main point of contact between Arts Council England and the Organisation. The Arts Council staff member will:
  - 5.1.1 act as the main contact with the Organisation for all matters relating to the grant and the Agreed Programme;
  - 5.1.2 monitor the Organisation ensuring it complies with the terms of this Funding Agreement and other requirements in accordance with the Arts Council's monitoring requirements, identify issues and share these with relevant colleagues;
  - 5.1.3 attend the Organisation's board and project steering group meetings (or equivalent) as an observer on a regular or an occasional basis in so far as it relates to the delivery and governance of the Agreed Programme;
  - 5.1.4 attend an annual meeting with the Organisation; and,
  - 5.1.5 act as a "critical friend" to the Organisation by engaging with its Programme, and questioning its self-monitoring, direction, operations and activities.
- 5.2 The Arts Council may ask independent assessors to experience work by the Organisation and to write a report assessing the quality of that work. The

Organisation will ensure that such assessors are allowed access and enabled to experience the work for this purpose.

#### 4. The Organisation's Obligations

- 6.1 The Arts Council requires the Organisation to meet any special or additional conditions which may have been agreed between the Arts Council and the Organisation in writing from time to time and which will be deemed incorporated into this Funding Agreement.
- 6.2 In addition, the Arts Council requires the Organisation to meet the following requirements:
- 6.2.1 The Arts Council will monitor and assess the Organisation's activity and how effectively the funding is being used. To enable this, the Organisation will send the Arts Council all such information as the Arts Council may in its sole discretion reasonably request from time to time. This includes the information, without limitation, set out in Schedule [2], and copies of all or any other relevant documentation about the financial and operational running of the Organisation, to include business plans, board papers or equivalent, reserves policies and any other information which the Arts Council deems relevant to its understanding of how the Agreed Programme is being delivered and the funding used and for reporting purposes to the Department for Digital, Culture, Media and Sport. The Organisation agrees and accepts that the Arts Council may share such information and data with the Department for Digital, Culture, Media and Sport.
- 6.2.2 The Organisation must tell the Arts Council in writing as soon as possible and in advance if it wants to make any significant changes to its legal status or to the Agreed Programme under this Funding Agreement. The Arts Council will not unreasonably withhold its consent to any such changes.
- 6.2.3 The Organisation will follow the Cultural Development Fund's branding and publicity guidelines at all times and will acknowledge the grant in press, marketing and communications materials, verbally and in writing. The Organisation will use the Cultural Development Fund's grant award logo, and other logos as may be required, appropriately on all published material including printed and online material. The Organisation should use the following statement when acknowledging the grant publicly –

“The Cultural Development Fund is a Department for Digital, Culture, Media and Sport (DCMS) fund administered by Arts Council England.”

- 6.2.4 The Organisation consents to any publicity about the grant and the Agreed Programme as the Arts Council and the Department for Digital, Culture, Media and Sport may from time to time require. The Arts Council and the Department for Digital, Culture, Media and Sport can carry out any forms of publicity and marketing to promote the award of the grant as it sees fit and the Organisation will do whatever is reasonably required in order to assist with any form of publicity and marketing, including any press or media related activities.
- 6.3 The Organisation is fully responsible for every part of its business. This includes, without limitation:
- 6.3.1 the Organisation must ensure that all current and future members of its governing body receive a copy of this Funding Agreement while it remains in force and will ensure that the receipt of this grant and the delivery of the Agreed Programme are within the scope of the governing documents;
- 6.3.2 the Organisation is responsible for getting its own management and business advice. This includes considering whether it needs to get financial, accounting, tax, solvency, legal, insurance or other types of professional advice;
- 6.3.3 the Organisation must tell the Arts Council immediately of any changes in the Organisation that may threaten its solvency and inform the Arts Council if it is proposing to enter into any arrangement with any of its creditors;
- 6.3.4 the Organisation must tell the Arts Council in writing immediately if any legal claims or any regulatory investigations are made or threatened against it and/or which would adversely affect the Agreed Programme during the period of the grant (including any claims made against members of its governing body or staff).

- 6.4 In carrying out its business and funded activity under the Agreed Programme the Organisation must obtain all approvals, consents and licences required by law to deliver the Agreed Programme, comply with any relevant laws or government requirements and comply with best practice in governance, reporting and operation. This includes (but is not limited to) the following obligations on the Organisation:
- 6.4.1 taking all reasonable steps to ensure the safety of the children and adults at risk it will work with. The Organisation will follow best practice in having appropriate policies and procedures in place to ensure the protection of children, young people and vulnerable adults and in complying with those procedures, which will include procedures to check backgrounds and disclosures of all employees, volunteers, trustees, partners or contractors who will supervise, care for or otherwise have significant direct contact with children and adults at risk with the Disclosure and Barring Service (DBS);
  - 6.4.2 following best practice in having appropriate and effective policies and procedures in place concerning equality and diversity, harassment and bullying and in complying with those policies and procedures;
  - 6.4.3 having in place at all times and acting in accordance with, appropriate and effective disciplinary, grievance and whistle-blowing policies;
  - 6.4.4 having an equal opportunities policy in place at all times and act at all times without distinction and in compliance with all relevant equality legislation;
  - 6.4.5 at all times complying with Data Protection Legislation.
  - 6.4.6 adhering to all relevant legal obligations relating to offering internships;
  - 6.4.7 ensuring that salaries, fees and subsistence arrangements are as good as or better than those agreed by any relevant trade unions and employers' associations;
  - 6.4.8 maintaining all main financial records including profit and loss accounts, management statements, personnel and payroll records for staff funded under this Funding Agreement for seven years after the grant has ended. The Organisation will complete all statutory returns for employees and make all relevant payments to cover their pensions and salary deductions, such as income tax and National Insurance contributions;
  - 6.4.9 Subject to clause 6.4.10 and 6.14.11, when procuring goods, works or services that are funded in whole or in part by the Grant the Organisation shall:
    - 6.4.9.1 Comply with your obligations under the Public Contracts Regulations 2015 (as amended or replaced from time to time);

- 6.4.9.2 for contracts within the scope of Regulation 13 of the Public Contracts Regulations 2015, procure in a manner compliant with the Public Contracts Regulations 2015; and,
- 6.4.9.3 for all other contracts, procure in a manner which ensures that suppliers are treated equally, without discrimination and that any procurement process is conducted in a transparent and proportionate manner.
- 6.4.10 for the purposes of clause 6.4.9.2 above, an Organisation must ensure that any requirement to procure goods, works or services that are funded in whole or in part by the Grant are advertised in such a way as to ensure that all interested suppliers in the market are aware of the opportunity and provided with an opportunity to tender for the contract as if the Organisation was a contracting authority for the purposes of the Public Contracts Regulations 2015.
- 6.4.11 the provisions at clause 6.4.9 and 6.4.10 shall only apply to contract requirements with a value of £10,000 (ex VAT) or more. Organisations shall not sub-divide a requirement with the intention of excluding the application of clause 6.12 and 6.13.
- 6.4.12 the Arts Council may request and the Organisation must provide any information the Arts Council requires to satisfy itself that the Organisation has complied with its obligations under clause 6.4.9 to 6.4.11.
- 6.4.13 the Organisation acknowledges that the Arts Council may incur financial liability if the Organisation breaches its obligations under clause 6.4.9 and that the Organisation shall be liable to the Arts Council for any losses, costs (including legal costs) damages and any other financial liability that it incurs as a direct result of such breach.
- 6.4.14 considering any possible risks involved in its funded activities and taking appropriate action to protect everyone involved and maintaining adequate and appropriate insurance at all times; and
- 6.4.15 maintaining adequate insurance at all times and if asked, will supply copies of the insurance policy. This includes employee and public liability insurance and insurance that covers the full replacement value of any assets you have funded.
- 6.4.16 ensuring that you do not work with organisations proscribed under the Terrorism Act 2000

<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version>

- 6.5 The Organisation accepts that the Arts Council's staff, council members and advisers cannot give the Organisation professional advice and will not take part in carrying out the Organisation's business. The Arts Council cannot be held responsible for any action the Organisation takes, or fails to take, or for the Organisation's debts or liabilities. The Arts Council will not be liable for any losses or charges if it does not make any grant payment on the agreed date. The Arts Council will not be responsible to anyone else who may take, or threaten to take, proceedings against the Organisation.
- 6.6 Subject to the terms of the Capital Terms and Conditions (where applicable), the Organisation will not sell, give away, licence or borrow against any grant funded assets (including any intellectual property rights) without first receiving the Arts Council's prior written consent. As the grant has come from public funds, the Organisation understands and accepts that if the Arts Council provides the consent it may require that the disposal is at full market value and/or subject to conditions requiring the Organisation to repay all or part of the grant money received. The Organisation must maintain adequate insurance at all times for any grant funded asset which must include the full replacement value of any such assets.
- 6.7 The Organisation must give the Arts Council, the National Audit Office or any of their agents access to meetings, events and any/all financial records, other information and/or premises, as may be reasonably requested, relating to the Agreed Programme, the Organisation or to any other matter arising under this Funding Agreement and the Arts Council may postpone payment of the grant or an instalment of the grant until the Arts Council has received the material it has requested.
- 6.8 The Organisation must immediately tell the Arts Council about any changes to bank or building society details or any other changes to information provided to the Arts Council.
- 6.9 The Arts Council may share information about the grant and/or the Agreed Programme with any party. The Arts Council is also subject to the provisions of the Freedom of Information Act 2000 ('the Act'). This means that any information provided by the Organisation could be released to any person who asks for it under the Act. The Organisation may tell the Arts Council if it thinks that any of the information should be confidential under any of the exemptions

of the Act. However, the Arts Council will make the final decision in accordance with the Act.

- 6.10 The Arts Council may request to be consulted on the process of recruitment and invited to attend interviews when the Organisation is recruiting trustees and/or senior staff in so far as it relates to the delivery and governance of the Agreed Programme.
- 6.11 The grant is made up of funds received from Parliament. The Organisation understands that the Arts Council can only guarantee future instalments of the grant as long as funds are available to the Arts Council. Should funding be suspended or stopped from Parliament, the Organisation understands that the Arts Council may have to reduce or stop grant payments and the Arts Council accepts no liability pursuant to this action.
- 6.12 The Organisation acknowledges that the grant comes from public funds and confirms that the support provided is compliant with the Subsidy Control rules. Where applicable, the Organisation agrees that the Arts Council will publish information relating to the grant and that the Organisation will keep reasonably detailed records to demonstrate compliance with the Subsidy Control rules and shall provide a copy of such records to the Arts Council upon reasonable request. In the event that the grant is deemed to be non-compliant with the Subsidy Control rules, the Organisation will repay the entire grant (and any other sums due) immediately.
- 6.13 The Organisation will not transfer any part of the grant or this Funding Agreement or any rights under it to any other organisation or individual without the prior written agreement of the Arts Council. If the Organisation is required by the Arts Council to enter into a partnership agreement with Named Partner(s) in order to deliver the Agreed Programme the Organisation will submit the proposed partnership agreement to the Arts Council for its prior authorisation and subject thereto will ensure that no other organisation or individual acquires any third party rights under this Funding Agreement. The Arts Council reserves the right absolutely to transfer the rights and obligations owing to it under this Funding Agreement to the Department for Digital, Culture, Media and Sport.
- 6.14 The Arts Council may impose additional terms and conditions on the grant either in the offer letter and/or if the Organisation is at any time in breach of this Funding Agreement and/or if the Arts Council believes it is necessary to make sure that the Agreed Programme is delivered as agreed between the

Organisation and the Arts Council and/or the Arts Council has reasonable grounds to believe it is necessary to protect public money.

## 5. Capital Projects

- 7.1 If any part of the Agreed Programme is used for Project Assets then the Organisation understands and agrees that the Capital Terms and Conditions will apply in addition to these standard terms and conditions. The Arts Council will confirm in the grant offer letter whether or not the Capital Terms and Conditions apply to the grant.

## 6. Termination of this Agreement

- 8.1 If the Organisation breaches any of the terms and conditions of this Funding Agreement, then the Arts Council in its absolute discretion may withhold or demand repayment of all or part of the grant and bring this Funding Agreement to an end. The Organisation will repay any grant requested immediately upon demand.
- 8.2 The Arts Council may suspend payment of the grant if it wishes to investigate any matters concerning the grant (or any other grants given by the Arts Council to the Organisation). The Organisation understands and accepts that the Arts Council will accept no liability for any consequences, whether direct or indirect, that may arise from a suspension even if the investigation finds no cause for concern.
- 8.3 The Arts Council may also withhold or demand repayment of all or part of the grant if the Organisation:
- 8.3.1 closes down its business (unless, with the Arts Council's prior consent, it joins with, or is replaced by, another Organisation that can take over this Funding Agreement and carry out the purposes of the grant to the Arts Council's satisfaction);
  - 8.3.2 makes significant changes to the Agreed Programme without the prior written approval of the Arts Council;
  - 8.3.3 does not fulfil the purpose of the grant with reasonable care, thoroughness, competence and to a standard that the Arts Council expects from the Organisation with its level of experience in its practice, profession or line of work;
  - 8.3.4 provides any information to the Arts Council that is wrong or misleading, either by mistake or because it is trying to mislead the



Arts Council during the application process or during the period of this Funding Agreement;

8.3.5 becomes insolvent, any order is made, or resolution is passed, for it to go into administration, be wound up or dissolved; an administrator or other receiver, manager, liquidator, trustee or similar officer is appointed over all or a considerable amount of the Organisation's assets; or the Organisation enters into or proposes any arrangement with its creditors;

8.3.6 acts illegally or negligently at any time;

8.3.7 acts in such a way that the Arts Council believes it has significantly affected the Agreed Programme, or is likely to harm the Arts Council's, the Department for Digital, Culture, Media and Sport or the Organisation's reputation or it is in the Arts Council's discretion necessary to protect public money;

8.3.8 sells or in some other way transfers any part of the grant, the business or the activity funded under the Agreed Programme to someone else without first getting the Arts Council's approval in writing;

8.3.9 uses the grant or any part of it for any activity that is intended to influence or attempt to influence Parliament, Government or political parties, or attempts to influence the awarding or renewal of contracts and grants, or attempts to influence legislative or regulatory action; and/ or

8.3.10 is or becomes (and/ or an organisation with which it works) becomes a proscribed group or organisation under the Terrorism Act 2000 as set out in clause 6.4.16.

8.4 If the Organisation is in breach of any of the terms of this Funding Agreement and the Arts Council does not enforce one or more of its rights straight away, this does not mean that it will not do so in the future. The Arts Council will give up its right to enforce this Funding Agreement only if it tells the Organisation in writing.

8.5 If the Organisation has other major revenue or capital grants with the Arts Council, then it is also under an obligation to keep to the terms and conditions of those Funding Agreements. If there is any conflict between those terms and conditions and the terms and conditions of this Funding Agreement, then these

terms and conditions will take precedence so far as they relate directly to the delivery of this Agreed Programme.

- 8.6 If the Organisation breaches any of the terms of this Funding Agreement, the Arts Council can choose to treat that as the Organisation breaching the terms of any other grant agreements the Arts Council has with the Organisation. This will allow the Arts Council to take the same actions under those agreements that the Arts Council may take under this Funding Agreement, including making the Organisation pay back the grant and stopping any future payments.

## 7. Duration of Funding Agreement

- 9.1 This Funding Agreement and these terms and conditions remain in force for whichever period is the longest time:

9.1.1 for one year following the payment of the last instalment of grant;

9.1.2 as long as any part of the grant remains unspent;

9.1.3 if the Organisation's Agreed Programme is subject to the Capital Terms and Conditions, the expiry of the Asset Monitoring Period (20 years) or;

9.1.4 as long as the Organisation does not carry out any of the terms and conditions of this Funding Agreement or any breach of them continues (this includes any outstanding reporting on grant expenditure or the delivery of the Agreed Programme).

## 8. Prevention of Fraud and Corruption

- 10.1 The Organisation shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Agreed Programme or showing or refraining from showing favour or disfavour to any person in relation to the Agreed Programme.

- 1.2 If the Supplier or the Staff engages in conduct prohibited by clause 10.1 or commits fraud in relation to the Agreed Programme or any other contract with the Crown (including the Arts Council) Arts Council may:

- 10.2.1 terminate the Funding Agreement and recover from the Organisation the amount of any loss suffered by the Arts Council resulting from the termination; or,
- 10.2.2 recover in full from the Organisation any other loss sustained by the Arts Council in consequence of any breach of this clause.

## 9. Additional terms and conditions

- 11.1 The Arts Council has the right to impose additional terms and conditions on the grant if:
  - 11.1.1 the Organisation is in breach of the Grant Agreement;
  - 11.1.2 the Arts Council or another funder withdraws any part of the funding for the Agreed Programme;
  - 11.1.3 the Arts Council has reasonable grounds to believe that the Agreed Programme is being carried out by the Organisation in a way that may have a detrimental effect on the Agreed Programme, or on the Arts Council's and/ or Department for Digital, Culture, Media and Sport's role as a distributor of public money. For the avoidance of doubt, this would apply to the manner and speed of the delivery of the Agreed Programme, or to any illegal or negligent actions by the Organisation, and not to any artistic decision made by the Organisation;
  - 11.1.4 the Arts Council has reasonable grounds to believe that it is necessary to protect public money;
  - 11.1.5 the Arts Council believes such conditions are necessary or desirable to make sure that the Agreed Programme is delivered as set out in the application form or following any agreed changes; and/or
  - 11.1.6 further legislation and guidance is made in relation to Subsidy Control.

Schedule 1: Agreed Programme

Applicant name: Torbay Council

Project number: CDFP-00457301

April 2022 – March 2025 Outline Activity Plan

Activity	Outcome	Timeframe	Milestone/ SMART objective
<p><b>Delivery of Capital Works, Paignton Picture House</b></p>	<p>Technical design, planning, procurement, contractor mobilization RIBA Stage 3/4</p>	<p>April - July 2022</p>	<ul style="list-style-type: none"> <li>• Finalise partnership agreement between Torbay Council, Torbay Development Agency, Torbay Culture, Paignton Picture House Trust, South Devon College, &amp; Agatha Christie Festival Ltd.</li> <li>• Lead architect and design team appointed.</li> <li>• Design work, surveys and reports completed.</li> <li>• Submission of planning application.</li> <li>• Planning application decision May 2022.</li> <li>• Capital works contractor appointed.</li> <li>• Procurement &amp; commissioning of capital delivery contractors completed.</li> </ul>

	Site works, construction improvement RIBA Stage 5	August 2022- February 2025	<ul style="list-style-type: none"> <li>Procurement/tendering processes completed.</li> <li>Contractor site works delivered.</li> </ul>
	Site works completed, contingency & handover RIBA Stage 6/7	January - March 2025	<ul style="list-style-type: none"> <li>All site works completed.</li> <li>Review of project outcomes and budget.</li> <li>Implementation of building management.</li> <li>Paignton Picture House reopens February 2025.</li> </ul>
<b>Delivery of Resource Activity</b>	Engagement & participation	July 2022 – December 2024	<ul style="list-style-type: none"> <li>High Street presence established – network of places/venues.</li> <li>Paignton Commons community programme delivered.</li> <li>3 Open Season cultural programmes delivered.</li> </ul>
	Skills & training	July 2022 – December 2024	<ul style="list-style-type: none"> <li>Development &amp; delivery of programme to include placements, mentoring, internships, apprenticeships.</li> </ul>
	Wider developments – cultural partnerships & cultural development opportunities	July 2022 – December 2024	<ul style="list-style-type: none"> <li>Stronger cultural partnerships developed - boards, governance, integrated plans.</li> <li>Cultural development connections established to other regeneration &amp;</li> </ul>

	<b>Evaluation</b>		Design & delivery of evaluation framework		April 2022 – March 2025	renewal opportunities aligned to Future High Streets Fund activity.	<ul style="list-style-type: none"> <li>• Evaluation framework established.</li> <li>• Ongoing evaluation updates.</li> <li>• Delivery of evaluation report.</li> </ul>
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Applicant Name: Torbay Council  
 Project Number: CDFP-00457301

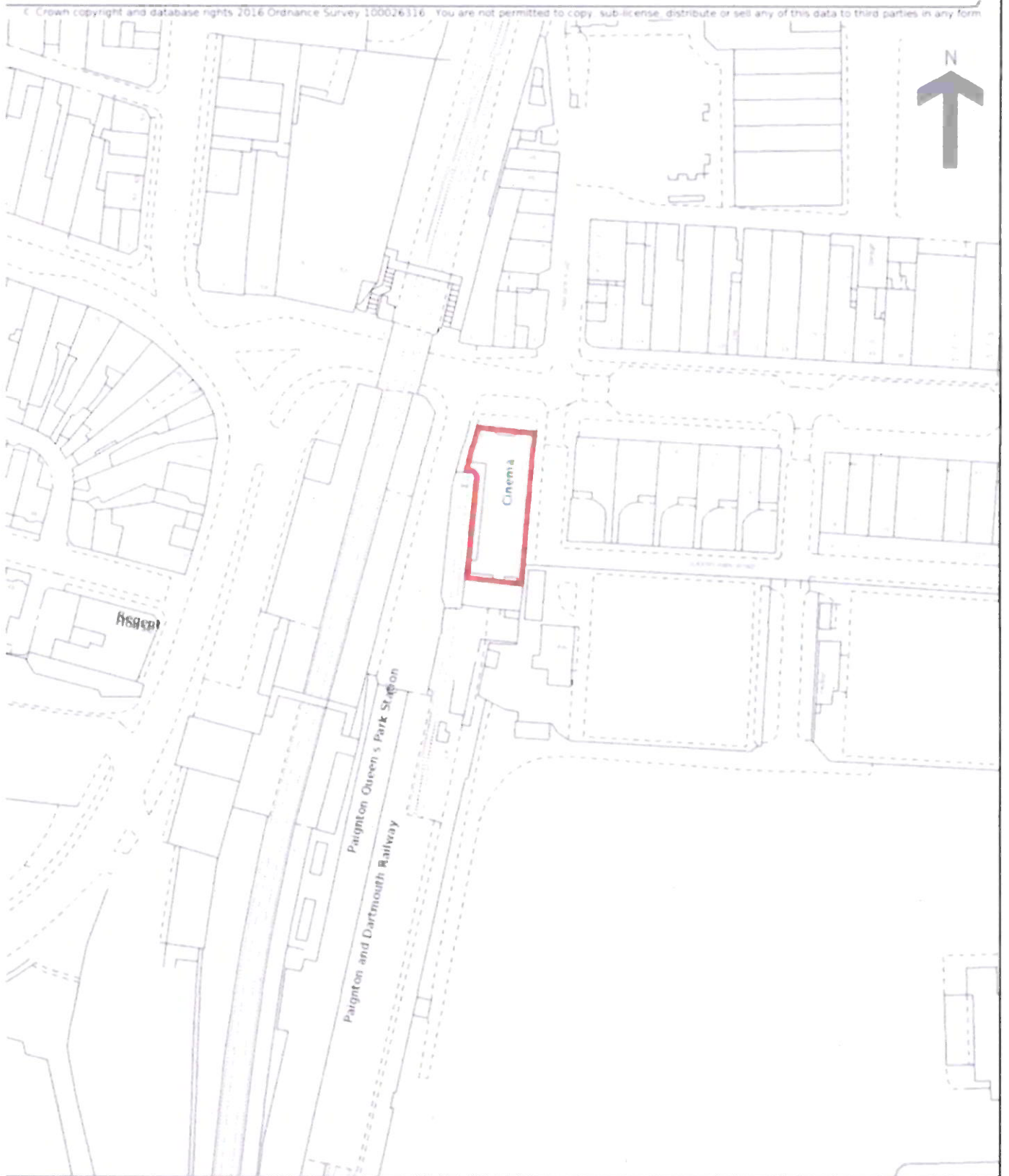
This schedule sets out the Capital Project. Changes to the Capital Project are covered in Clause 3 of Schedule 3 of the Standard Terms and Conditions for the Cultural Development Fund.

1	Agreed Use	<p>The Project Asset will be a cultural (arts and heritage) hub providing a public programme of activities and other usages including: live arts performance; cinema; civic and community engagement, meetings and events; income-generating space hire events; local archive and history centre.</p>
2	Capital Project	<p>The Grade II* Project Asset is one of the best surviving examples of an early cinema including early fit out and is owned freeholder by the Paignton Picture House Trust. The capital works comprise its restoration, refit and minor extension for use as a 21<sup>st</sup> century cultural hub which will comprise the following:</p> <p>Basement: kitchen area with dumb waiter; toilets including accessible provision; storage</p> <p>Ground floor: auditorium with extendable stage; ticket office; new cafe/bar including on-street seating beneath restored glass canopy; level floor auditorium to allow for flexible use; back of house facilities including storage and dressing rooms; toilets including accessible provision; lift to ground floor; lift to upper floors.</p> <p>First floor: new bar and accessible toilet</p> <p>Second floor: film projector room; office/control room; conference/events space; accessible toilet</p> <p>West-side extension: housing accessible toilets and core stair</p>

		<p>NB. A package of emergency repair work to the exterior of the foyer block was undertaken between Jan-Nov 2021. This was funded by Historic England, Architectural Heritage Fund and the MHCLG (Future High Street Fund).</p> <p>On completion, the Paignton Picture House Trust will take on the operation of the Project Asset.</p>
3	Expected Completion Date for the Capital Project	31 March 2025
4	Capital Grant in Aid Allocation	£2,422,670
5	Total Project Cost for the Capital Project	£3,822,670
6	Named Partners	<ul style="list-style-type: none"> <li>• The Paignton Picture House Trust (independent charity, freehold owner of the Project Asset)</li> <li>• South Devon College</li> <li>• Torbay Economic Development Company Limited (TDA)</li> <li>• Torbay Culture</li> <li>• Agatha Christie Festival Ltd</li> </ul> <p>NB. These are the key delivery partners. Cultural and development partners noted in the Application are not listed here.</p> <p>You are required to submit a copy of the final draft partnership agreement(s) between you and your Named Partner(s) for us to review and comment. This should be done prior to the final agreed partnership agreement being signed and completed. The completed partnership agreement will then need to be submitted to us as required under Milestone 1 of Schedule 2.</p>



7	Project Asset(s)	The Paington Picture House (also known as Torbay Cinema), Torbay Road, Paington, TQ4 6AF as registered at the Land Registry under freehold title number DN664086 and as shown edged in red on the attached plan.
8	Security	A 20-year Tripartite Deed of Covenant with the Organisation and Paington Picture House Trust with Restriction on Title over the freehold of the Project Asset supported by a Certificate of Title, Legal Opinion and Solicitor's undertaking in Arts Council's standard form
9	Asset Monitoring Period	20 years from the end of the Funding Period



## Schedule 2: Monitoring and Payment Schedule

Applicant Name: Torbay Council

Project Number: CDFP-00457301

The Monitoring Schedule and Payment Conditions for the Grant in Aid Revenue Allocation are shown on the screens in Grantium and are also listed in this schedule.

The Monitoring Schedule and Payment Conditions for the Grant in Aid Capital Allocation are set out in this schedule. Payment requests will be initiated by us once you inform us that you are ready to claim a payment and have achieved the relevant milestone set out in this schedule. These milestones and the amount of the Grant in Aid Capital Allocation has been informed by your up to date workplan and cash flow provided with your interim activity report forms.

In the event that you are unable to demonstrate need for the amount set out in the relevant instalment of Grant Allocation set out in this Monitoring and Payment Schedule or you have notified us of any delay to the Agreed Programme in accordance with Clause 2.3 of the Terms and Conditions for the Cultural Development Fund, you accept that we reserve the right to amend or vary after consultation with you the Monitoring Schedule and Payment Conditions so that it reflects any revised spending plans.

Further Interim payments will be released on the condition that we have received a completed expenditure listing submitted on Grantium. We may also request one or more of the following conditions at the time you request your payment:

- A copy of your updated detailed project plan based on the programme as set out in schedule one including target numbers, desired outcomes and revised equality actions which demonstrate to the Arts Council that you have made satisfactory progress
- Written evidence that the other funding listed as 'expected' in your application is in place (eg copies of offer letters from other funders)
- A comprehensive risk register for the project including appropriate mitigations which are acceptable to the Arts Council
- Economic and social outputs: A copy of your revised economic and social outputs datasheet
- Three competitive quotes for goods or services, or other evidence that you have followed a competitive tendering process for the purchase of goods or services
- An up-to-date timetable which sets out the major milestones which separately identifies the design, procurement, construction and commissioning activities
- A copy of your cash flow projection
- Most recent management accounts
- Full evaluation: A full evaluation report for the activity
- An updated income and expenditure budget

<b>Milestones</b>	<b>On the condition that Arts Council England has received to its satisfaction:</b>	<b>Grant in Aid Capital Allocation</b>	<b>Grant in Aid Revenue Allocation</b>
<b>Milestone 1</b>  <i>From feasibility through to design development but prior to letting of main contract (construction project) or purchase of equipment</i>	<ul style="list-style-type: none"> <li>• Bank Details Form</li> <li>• Signed Acceptance</li> <li>• Completed expenditure listing on Grantium</li> <li>• Other: An interim report form as described in Clause 4.4 of the Offer Letter</li> <li>• Completion of Security as set out in Section 8 of Schedule 1</li> <li>• Confirmation of appropriate partnership agreement in place between partners</li> </ul>	Payments up to 10% of the grant	20% £113,000
<b>Milestone 2</b>  <i>From letting of main contract (construction projects) or first purchase of equipment through to halfway point of capital project timetable</i>	<ul style="list-style-type: none"> <li>• Completed expenditure listing on Grantium</li> <li>• Other: An interim report form as described in Clause 4.4 of the Offer Letter</li> <li>• Evidence that you have received all appropriate statutory consents to undertake the Agreed Programme.</li> <li>• A copy of the tender review report and or Agreed Contract Sum for the Agreed Programme that has been followed our requirements for procuring goods, works or services goods and contracts as stated in Clause 6.4.9-6.4.15 of the Terms and Conditions</li> <li>• Evidence that you have secured all the funding</li> </ul>	Payments up to 40% of the grant	40% £226,000

	<p>for the Agreed Programme;</p> <ul style="list-style-type: none"> <li>• Provision of confirmation and evidence of registration of Security</li> </ul>		
<p><b>Milestone 3</b></p> <p><i>From halfway point of capital project timetable up to completion</i></p>	<ul style="list-style-type: none"> <li>• Completed expenditure listing on Grantium</li> <li>• Other: An interim report form as described in Clause 4.4 of the Offer Letter</li> </ul>	<p>Payments up to 40% of the grant</p>	<p>30% £169,500</p>
<p><b>Milestone 4</b></p> <p><i>Retention to be released only on certified completion of project</i></p>	<ul style="list-style-type: none"> <li>• Completed expenditure listing on Grantium</li> <li>• A final activity report form</li> <li>• A statement of income and expenditure for the Agreed Programme that has been certified by an independent qualified accountant, including confirmation that all Grant expenditure will be capitalised on your balance sheet.</li> <li>• Submission of a costed maintenance and management plan</li> <li>• Submission of completed CDF 2 project evaluation</li> </ul>	<p>Final payment of 10% of the grant</p>	<p>10% £56,500</p>
		<b>100% CDEL</b>	<b>100% RDEL</b>

Schedule 3: Capital Terms and Conditions

The Arts Council has offered a grant to the Organisation for the capital project described in its application or as otherwise agreed with the Arts Council and forming a whole or part of the Agreed Programme.

These Capital Terms and Conditions will apply in addition to the Standard Terms and Conditions.

## **Definitions**

The “Agreed Use” means how you will use the Project Asset(s) as set out in Schedule [1].

The “Asset Monitoring Period” means the defined period from the end of the Funding Period by which the Arts Council expects the Project Assets to be continued to be used in line with the Agreed Use. “Project Assets” and “Agreed Use” shall have the meaning as given in Schedule 1 hereto.

The “Capital Project” means that part of the Agreed Programme (whether in whole or in part) for which the grant has been awarded as detailed in Schedule [1].

“Capital Expenditure” means an amount spent to acquire or improve a long-term asset such as equipment or buildings and capitalised on the balance sheet.

The “Expected Completion Date” means the date by which you must complete the Capital Project.

The “Project Asset(s)” means any property (whether real, moveable or intellectual) that is purchased, renovated, created, improved or equipped using the grant in the course of the Agreed Programme.

The “Total Project Cost of the Capital Project” means the total projected or actual cost of the Capital Project being the amount set out in Schedule [1]

1. The Organisation will deliver the activities as defined in the Agreed Capital Project which is attached as Schedule [1].
2. The Capital Grant in Aid Allocation can only be used to support the Capital Expenditure.
3. In addition to the matters listed in clause 6.2.2 of the Standard Terms and Conditions, the Organisation will get the Arts Council’s written agreement before making any changes to the duration, design or ownership of the Capital Project.
4. In carrying out the Capital Project, the Organisation must obtain all approvals, consent, planning consents, building regulation approvals, licences and any other necessary approvals and consents required by law to deliver the Capital Project.

5. The Organisation will take all reasonable steps to minimise the environmental impact of the Agreed Capital Project.
6. The Organisation will use the Project Asset(s) or allow them to be used, only for the Agreed Use.
7. The Organisation will maintain the Project Asset(s) in good repair and condition.
8. The Organisation must maintain adequate insurance at all times for any grant funded asset which must include the full replacement value of any such assets. This insurance must include for any additional cover required as a consequence of construction works and the Organisation must ensure that the interests of the Arts Council are noted on such policy as appropriate.
9. In addition to the matters listed in clause 5.1 of the Standard Terms and Conditions, the Organisation will allow the Arts Council to inspect the Project Asset(s) and any work to them and monitor the Agreed Use.
10. You consent to the Arts Council sharing information about the Capital Project with an independent project monitor, if one is appointed, at the Arts Council cost and discretion, to help with monitoring of the agreed Capital Project. The Arts Council will notify you if this will happen.
11. In addition to Payment Conditions, you may be requested to provide written reports to demonstrate progress towards meeting the Agreed Project and if you need to bring any matter to the Arts Council's attention as required by the terms of the Funding Agreement.
12. Where required, the Organisation must allow the Arts Council (or anyone the Arts Council authorises) to have access to:
  - 12.1 inspect the Project Asset(s) and any work to them;
  - 12.2 monitor the progress of the agreed Capital Project, including meetings with the Organisation's officers or agents at any time up to the end of the Asset Monitoring Period; and/ or,
  - 12.3 monitor the Agreed Use.
13. The Organisation accepts that the Arts Council will not release more than 90% of the total grant until the Capital Project has been completed to the Arts Council's satisfaction.
14. If the grant is to be used for any building works, the Organisation must ensure that:

- 14.1 you employ a lead professional(s) with appropriate building experience to manage the design and tender process, the post contract works and to certify that the building works have been properly carried out;
- 14.2 you appoint design, cost, management and other specialist consultants and advisors as appropriate to and with appropriate experience for the project value, size and complexity;
- 14.3 if structural work is necessary, you must employ a structural engineer;
- 14.4 you will use building professionals that are fully qualified members of an approved professional body and have all necessary professional indemnity insurance cover. This includes appointing a conservation accredited professional if you are undertaking work to a Grade I or II\* listed building;
- 14.5 if building works come under the Construction (Design and Management) Regulations 2015, you will confirm that you have appointed a principle designer;
- 14.6 you put in place all necessary contracts with contractors and professional advisors on standard terms and conditions that an employer with appropriate experience would enter into for projects of the same value, size and complexity;
- 14.7 building contracts must contain a clause which allows you to retain part of the contractors' fees on practical completion of the works; and
- 14.8 you must ensure that satisfactory arrangements are made for the retention of all relevant construction documents for a term of seven years from the last instalment of Grant payment. This is to include but not limited to:
  - 14.8.1 contract drawings and specifications;
  - 14.8.2 as built drawings;
  - 14.8.3 health and safety files;
  - 14.8.4 building contract with the main build contractor and key sub or specialist contractors;
  - 14.8.5 other building contracts as appropriate;
  - 14.8.6 planning and/or listed building consent including the confirmations of the discharge of the conditions of consents;
  - 14.8.7 discharge of reserved building control completion certificate;



14.8.8 fire officer approval;

14.8.9 contracts of engagement for professional teams; and,

14.8.10 any other documents the Arts Council may request.

- 14.9 Prior to appointing contractors or professional advisors you will undertake checks on their capability and financial status to understand whether the contractors or professional advisors are exposed to any risks given the size of the proposed contract. Based on these checks, you agree to take all reasonable steps to minimise any identified risks. This includes the requirement for a performance bond or parent company guarantee in tender documents for building contracts if considered necessary.
- 14.10 Pursuant to Clause 14.9, you agree to keep the Arts Council informed of all risks in respect of any third party insolvency and in the event of the occurrence of insolvency, you undertake to appoint an alternative contractor or professional consultant at your own cost.
15. In addition to 6.2.3 of the Standard Terms and Conditions, the Organisation shall also use the grant award logo during the construction and after the building work has been completed on a permanent basis in a public area.
16. The Organisation understands and accepts that the Arts Council may require security over the Project Assets as described in these Capital Terms and Conditions. If the Arts Council has requested security, the Organisation accepts that the Arts Council will not make any grant payments until it has received the relevant security documents completed to its satisfaction. The type of security that the Arts Council requires, and any other supporting requirements are set out in the grant offer letter.
17. The Organisation confirms that it or any of the Named Partner(s) does not have any undisclosed loans secured on the Project Assets and that it or any of the Named Partner(s) will not take out any loans secured on any Project Assets (whether in whole or in part) without the written consent of the Arts Council. The Arts Council's consent may be subject to conditions.
18. Pursuant to clause 16 above and prior to the release of the grant the Arts Council will require the following conditions to be met:
- 18.1 confirmation (by way of a Certificate of Title, in the Arts Council's Standard form) from the Organisation's solicitors with confirmation of ownership of the Project Asset(s), the Organisation's right to it to allow expenditure of the grant on the Project Asset(s) and that the Project Asset(s) may be used for the Capital Project and evidence of local authority cabinet approval or equivalent for the acceptance of the grant on the terms and conditions provided and delivery of the Agreed Programme;

- 18.2 a deed of covenant (tripartite or as appropriate) and solicitor's undertaking to register the restriction at the Land Registry upon completion; or,
  - 18.3 if the property is unregistered, a deed of dedication (tripartite or as appropriate) to effect first registration of the restriction thereafter; and,
  - 18.4 if you are not a statutory body (this includes local authorities and universities), confirmation (by way of a legal opinion in the Arts Council's standard form) from your solicitors that you have the legal powers necessary to sign all the documents related to the Grant and security.
19. If any part of the grant is to buy land (whether freehold land or leasehold land), the Organisation is to send the Arts Council when asked the following documents:
- 19.1 a surveyor's report on the condition of the property, its value for the purpose of the Capital Project and whether it is suitable for the Capital Project;
  - 19.2 confirmation by the Organisation's solicitors that all necessary consents for the use of the property for the purposes of the grant have been obtained;
  - 19.3 for the purchase of leasehold land, a copy of the future lease and agreement for lease;
  - 19.4 an undertaking to satisfy all other requirements as set out in Clauses 16 and 18 upon completion of the purchase of the freehold or leasehold interest; and,
  - 19.5 any other documents or requirements that the Arts Council may request in order to meet the legal requirements noted above.
20. If any part of the grant is to buy or involves leasehold land, then the Organisation must send the Arts Council a copy of the lease(s) and ensure that the lease(s) meet(s) Arts Council standard lease requirements; a registered and assignable lease which must be in place for of at least twenty (20) years, without a break clause, no forfeiture on insolvency clause and permitted user clause that is compliant with the Agreed Use.
21. Without prejudice to the terms of any security over the Project Asset(s) that the Organisation gives the Arts Council pursuant to clauses 16 and 18 , the Organisation must seek the Arts Council's prior written consent if it or any of the Named Partner(s) wishes to sell, let, sub-let or otherwise deal with or dispose of any Project Assets within the period specified in the security documentation.

22. If consent is given and the Organisation or any of the Named Partner(s) sells or disposes of the Project Asset(s), it may have to repay the Arts Council all or part of the money received from the Arts Council. The amount the Organisation must repay will be in direct proportion to the share of the Total Project Cost of the Capital Project that came from the Arts Council. If, with the Arts Council's consent, the Organisation sells the Project Asset(s) wholly or partly bought with the grant, it will be at full market value and the Arts Council may impose conditions upon the transfer or disposition.
23. The Arts Council is required by our auditors, the National Audit Office, not to make payments in advance of an organisation's need. Subject to clause 24 and 25, the Arts Council shall pay the Capital Grant in Aid Allocation in instalments to the Organisation based and these payment amounts will depend on the amount of expenditure you are able to evidence in the expenditure listing submitted with each payment request.
24. The Arts Council reserves the right to request further information from the Organisation in relation to the Organisation's payment request. At the Arts Council's absolute discretion, the Arts Council will not release funds to the Organisation to pay debts, liabilities and expenditure deemed unreasonable.
25. Without limitation on the Arts Council's absolute discretion as outlined in Clause 24, debts, liability and expenditure will be deemed unreasonable if:
  - 25.1 The Organisation has not followed the requirements for goods, services and contracts as stated in Clause 6.4.9 of the Standard Terms and Conditions in incurring the expenditure.
  - 25.2 The expenditure has not been incurred to deliver the agreed Capital Project and is not included in the agreed budget.
  - 25.3 The expenditure is not deemed Capital Expenditure
26. This Funding Agreement will remain in force for the period specified in clause 9 of the Standard Terms and Conditions.



**Schedule 2**

“the Plan”



**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

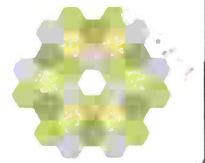
Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 28 November 2022 shows the state of this title plan on 28 November 2022 at 14:40:46. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).

This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by the HM Land Registry, Plymouth Office .



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