

## Part B – Standard Terms

These standard terms form part of the Standard Contract for Services.

### (i) Definitions

- (a) 'Contract' means the contract made between you (the Service Provider) and us (Arts Council of Wales) and includes parts A and B of this Standard Contract for Services and any other documents that have been explicitly agreed to be part of the Contract.
- (b) 'Deliverables' means the Deliverables to be provided by you as described in section 2 of Part A and/or in the Specification.
- (c) 'Due Dates' means the due dates for the provision of the Deliverables to be provided by you as described in section 2 of Part A and/or in the Specification.
- (d) 'Expenses' means the costs and expenses you are entitled to charge are shown in section 3 of Part A.
- (e) 'Fees' means the fees you will charge us for the time you spend in providing the Services to us as are shown in section 3 of Part A
- (f) 'Services' means the Services to be provided by you as described in section 2 of Part A.
- (g) 'Specification' means the detailed specification set out in Part C.

### (ii) Your obligations

You must:

- (a) provide the Services with reasonable diligence, competently, with reasonable care and skill and in accordance with generally recognised commercial practices and standards for similar services and in keeping with this Contract;
- (b) comply with our reasonable directions at all times and use your best efforts to promote our interests;
- (c) not do or allow anything to be done that would, or would be likely to, bring the Arts Council of Wales into disrepute or adversely affect our reputation in any way;
- (d) provide evidence of your tax status in accordance with this Contract;
- (e) provide and maintain all personnel, equipment and supplies necessary to provide the Services and in doing so only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Service Provider's obligations are fulfilled;
- (f) the Services will be provided in accordance with all applicable legislation from time to time in force, and the Service Provider will inform Arts Council of Wales as soon as the Service Provider becomes aware of any changes in that

legislation and advise Arts Council of Wales whether or not such changes will impact on the Due Dates or other matter relevant to the performance of the Services.and

- (g) not accept work from other sources that will in any way impair or affect your ability to provide the Services and comply with the terms of this Contract.
- (h) Arts Council of Wales retains the right to approve or disapprove any work you do related to this Contract. In addition to any dates specified in this Contract where you will be required to meet with us, you will also be required to consult with us as regularly as we may reasonably require and at any point a significant decision is made about the work under the Contract. After each meeting, you will provide us with a summary of the meeting for our approval.

**(iii) Fees and expenses**

- (a) In return for the Services you will provide under this Contract, we will pay you the Fees and Expenses in the instalments and manner outlined in section 3 of Part A.
- (b) If we have agreed to pay your Expenses, payment may be subject to you presenting original receipts. We are entitled to put a limit on the amount of Expenses you may incur.
- (c) Before we can make any payment, you must provide us with a VAT compliant invoice for each payment that describes the work done and the time period to which the work relates. Where payment is connected to a particular Due Date or Deliverable, you must clearly identify the Due Date and/or Deliverable to which the invoice relates.
- (d) Before we will make any payment your invoice must be approved by us in accordance with our own internal procedures.
- (e) You agree that the Fees and Expenses cover all your time, resources, costs and tax (excluding VAT) in providing the Services. We are not obliged to pay you any other amounts, except any VAT that you are required to charge.
- (f) We will pay your approved invoices within 30 days of receipt, as long as you have provided the Services referred to in the invoice to our satisfaction and in accordance with the description of Services set out in section 2 of Part A and/or in the Specification.
- (g) We are not obliged to pay you any wages, salary, sickness pay or holiday allowances.
- (h) Unless you have provided us with appropriate evidence of self-employed status, and you meet the HMRC tests for self-employment, we will deduct income tax and national insurance contributions from the Fees you are paid.

**(iv) Taxation:**

- (a) The Service Provider shall be fully responsible for and shall indemnify Arts Council of Wales for and in respect of:
  - i. any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law. The Service Provider shall further indemnify Arts Council of Wales against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by Arts Council of Wales in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;
  - ii. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Service Provider against Arts Council of Wales arising out of or in connection with the provision of the Services.
- (b) Arts Council of Wales may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Service Provider.
- (c) The Service Provider shall prior to commencing the performance of the Services provide Arts Council of Wales with satisfactory written evidence of self-employed status and confirmation that the Services provided under this contract satisfy the HMRC tests for self-employment.
- (d) The Arts Council of Wales may, at any time during the term of this contract, request the Service Provider to provide evidence which demonstrates how they comply with 4 (c) above.
- (e) The Arts Council of Wales may terminate this contract if the information required in 4 (c) or 4(d) above is not supplied within a reasonable time; or if the information provided is inadequate to demonstrate self-employment status, where applicable; or where it receives information that the Service Provider does not comply with the appropriate HMRC tests.
- (f) Where the Service Provider is liable to be taxed in the UK in respect of consideration under this contract, we will deduct income tax and national insurance. This deduction is without prejudice to the indemnity you give us under 4(a) and 4(b) above.
- (g) The Arts Council of Wales may supply any information which it receives under clauses 4 (c) and (d) inclusive to the Commissioners of HMRC for the purpose of the collection and management of revenue for which they are responsible.

**(v) Information and confidentiality**

- (a) We are a 'public authority' for the purposes of the Freedom of Information Act 2000 ('the Fol Act'). Subject to certain exemptions, we are required to supply information to members of the public on request. This potentially includes any

information which relates to your business and the work you will do for us under this Contract.

- (b) You must notify us as soon as possible if you consider any information you give us to be confidential or covered by one or more of the other FoI Act exemptions. In many instances we will be unable to agree to accept information in absolute confidence where doing so would prevent us from being an open and transparent public body.
- (c) We will not be liable for any loss or damage you may suffer from our disclosure of information under the FoI Act.
- (d) This clause will not affect your rights under the Data Protection Act 2018 ('DP Act') and the General Data Protection Regulation 2016/679/EU ("GDPR").
- (e) If you are handling or processing data on our behalf you must ensure that you are registered with the Information Commissioner's Office if required under the DP Act. Both we and you will duly observe all our obligations under the DP Act which arise in connection with the Contract.
- (f) Where you are processing personal data and or sensitive personal data (as defined in section 1 and 2 of the DP Act) as a data processor for us as Data Controller (as defined by the DP Act and the General Data Protection Regulation 2016/679/EU ("GDPR").) you must:
  - i. ensure all processing of personal data, relating to this contract, from inception to completion, is in accordance with the requirements of the Data Protection Act 2018 and the General Data Protection Regulation 2016/679/EU ("GDPR").
  - (ii) ensure you do not process such Personal Data and/or Sensitive Personal Data (as defined by the GDPR) other than in accordance with this contract (where the contracted work involves the processing of personal data as defined by the Data Protection Act, the requirements regarding this processing are detailed in **Appendix 1**), which may be amended from time to time, by mutual agreement. The Contractor shall only be entitled to process Personal Data during the Contract Period, or until termination, whichever is earlier.
  - (iii) Ensure you do not perform their obligations under this Agreement in such a way as to cause the other Party to breach any of its obligations under the Data Protection Legislation
  - (iv) ensure that you have in place appropriate technical and organisational measures to ensure the security of the personal data;
  - (v) guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data;

- (vi) provide us with such information as we may reasonably require to satisfy us that you are complying with your obligations under the DP Act and GDPR;
  - (vii) promptly notify us of any breach of the security measures referred to in sub-clause 4(f)i. above;
  - (viii) ensure that you do not knowingly or negligently do anything which places or is likely to place us in breach of our obligations under the DP Act and GDPR; and
  - (ix) comply with all reasonable directions or requests from us regarding any data that you process on our behalf.
- a. We suggest that you visit [www.ico.gov.uk](http://www.ico.gov.uk) for information on freedom of information and data protection.
  - b. Subject to clauses 4(a) to 4(e) inclusive, at no time may either party give any confidential information to any other person unless:
    - i. disclosure is required by law; and/or
    - ii. it has obtained the other party's written consent;
    - iii. the information is already in the public domain;
    - iv. disclosure is necessary to ensure the services are performed properly.

**(iii) Intellectual Property**

- a. You agree that all original data, working papers, reports and other original documents specifically produced or developed in providing the Services ('the Materials') will be available on licence to us free of charge.
- b. If you are carrying out research on our behalf, we will consider requests to use the research data on your own behalf.
  - i. let us know the overall objective of your work, the timetable and proposed date and place of publication;
  - ii. acknowledge in any publications or accompanying publicity that you conducted the research on our behalf and that it was funded by us;
  - iii. anonymise all data to protect the identity of any individual or organisation;
  - iv. provide a copy of the work to us before publication and make any reasonable amendments we may request to ensure accuracy; and

- v. state that any views expressed are yours and not necessarily those of Arts Council of Wales.
- c. We reserve the right in our absolute discretion to refuse any request under clause 6(b) above to use our research data.
- d. You must not impinge or breach any copyright or other intellectual property rights in fulfilling your obligations under this Contract.
- e. You must obtain all permissions necessary to ensure that we will not breach any copyright or other intellectual property rights when we use the Materials.
- f. You agree to indemnify Arts Council of Wales and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by us, or for which Arts Council of Wales may become liable, with respect to any intellectual property infringement claim or other claim relating to the Materials or the Services during the course of providing the Services. Arts Council of Wales may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Service Provider.

**(iv) Right of audit**

- a. You must keep secure and maintain full and accurate records of the Services you provide to us, including all paid Fees and Expenses paid to you.
- b. These records must be kept secure and maintained for at least two years after the final payment we make under this Contract, or for longer periods if agreed or required by law.
- c. You must allow us, or our appointed representative, access to any records we may reasonably require to check your compliance with this Contract.

**(v) Conflict of interest**

You must make sure that neither you nor any of your employees, agents or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between your interests or the interests of your employees, agents or sub-contractors and your obligations under this Contract. You must disclose to us the particulars of any conflict of interest that arises.

**(vi) Your status**

- a. You are an independent contractor and nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between us or constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

- b. You cannot incur liabilities or obligations on our behalf unless specifically authorised by us in writing.

Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**(vii) Indemnity**

- a. You must pay us back for any damage, costs or liability we may incur due to your negligence or your failure to comply with this Contract.
- b. The amount you may be required to pay us under sub-clause 9(a) will include without limitation legal and other professional advisory fees.

**(viii) Insurance**

- a. In addition to the indemnity you give us above, you must maintain appropriate insurance cover with a reputable insurance company. Appropriate insurance means a policy or policies of insurance providing an adequate level of cover for all risks you may take on by providing the Services and for all statutory or other legal requirements you may be under.
- b. If we request you to do so you must show us evidence that the insurances as required by sub-clause 11(a) are being maintained at your expense.

**(ix) Default**

- a. If you decide that you are unable to meet your obligations under this Contract you must immediately write to us and explain the reasons.
- b. If you are in material breach of your obligations under this Contract we may issue a default notice detailing the breach, and the time period and terms by which you must remedy the breach.
- c. Any action taken by us under this clause will not affect any right we may have to immediately terminate the Contract.

**(x) Termination and end of Contract**

- a. Any of the following conditions is a material breach which will automatically and immediately enable us to terminate this Contract:
  - i. failure to comply with a default notice under sub-clause 12(b);
  - ii. you commits any gross misconduct affecting the business of Arts Council of Wales;

- iii. you commit any serious or repeated breach or non-observance of any of the provisions of this agreement or refuse or neglect to comply with any reasonable and lawful directions of Arts Council of Wales;
  - iv. you are convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
  - v. you are in the reasonable opinion of Arts Council of Wales negligent or incompetent in the performance of the Services;
  - vi. you are declared bankrupt or make any arrangement with or for the benefit of your creditors or have a county court administration order made against him under the County Court Act 1984;
  - vii. you are incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of [NUMBER] days in any [52-week] consecutive period;
  - viii. commits any fraud or dishonesty or acts in any manner which in the opinion of Arts Council of Wales brings or is likely to bring Arts of Wales into disrepute or is materially adverse to the interests of Arts Council of Wales;
  - ix. commits any breach of any of Arts Council of Wales relevant policies and procedures; or
  - x. commits any offence under the Bribery Act 2010.
- xi. you assign any of your obligations under this Contract without our prior written consent;
  - xii. you sell or transfer your business to any other organisation or organisations without informing us first; or
  - xiii. you cease to trade for any reason.
- b. Upon termination under sub-clause 13(a), we may obtain the remainder of the Services from a third party. You must pay us the difference between:
- i. the amount we pay the third party to complete the remainder of the Services; and
  - ii. the amount that we would have paid you for the remainder of the Services under this Contract, had the Contract continued in force,
- together with any other costs we may have to pay as a direct consequence of terminating the Contract.
- c. We will use our reasonable endeavours to ensure that the amount we pay to a third party under sub-clause 13(b) is at a commercially acceptable rate and where possible this amount will not exceed the level of the fee we would have paid you under this Contract.



- d. Where specified in section 6 of Part A, either party may terminate this Contract on written notice to the other within the time specified.
- e. We reserve the right to extend this Contract with your prior written agreement.
- f. On termination or expiry of this Contract, you will promptly provide us (or someone else we nominate) with all information and property, sign or enter into any agreement, cooperate generally with and provide all reasonable assistance to us to ensure an orderly handover of this project.
- g. Termination of this Contract as provided in this clause will not affect any right of action or remedy of either party.

**(xi) Uncontrollable events**

- a. An 'uncontrollable event' is an extraordinary natural event (such as a flood or earthquake) that cannot be reasonably foreseen or prevented, fire, explosion, industrial dispute, debilitating illness or injury, or any other extraordinary event beyond that party's control. Neither party will be liable for failure to perform their obligations due to an uncontrollable event.
- b. If either party is unable to perform its obligations as a direct result of an uncontrollable event, that party must notify the other immediately with reasons. At that point this Contract will be suspended.
- c. The suspension of the Contract will only continue during the time when the party is unable to meet its obligations due to the uncontrollable event. As soon as the uncontrollable event is over, the affected party must give written notice to the other of this fact.
- d. If the failure to perform obligations due to the uncontrollable event exceeds one month, either party may immediately terminate this Contract by giving written notice to the other.

**(xii) Anti-discrimination**

- a. You must comply with all anti-discrimination legislation from time to time in force including, but not limited to, the following:
  - i. Employment Relations Act 2004;
  - ii. Equality Act 2006; and
  - iii. Equality Act 2010.
- b. You must not treat one group of people less favourably than others because of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation including when deciding about recruiting, training or promoting staff.

- c. You must, as far as possible, comply with all statutory codes of practice issued from time to time by the Equality and Human Rights Commission or any of its predecessor bodies such as the Commission for Racial Equality. You must provide any information we require to determine whether you are complying with these codes of practice.
- d. When working on our premises, you must comply with our employment policies and codes of practice relating to diversity and equal employment opportunities.
- e. You must monitor the representation among your staff of persons of different groups. If it seems that any group or groups are not represented or are under-represented among your staff in a particular type of job, you must, where appropriate and reasonable:
  - i. place and use job advertisements to reach members of the specific groups to encourage their applications;
  - ii. use employment agencies and careers offices in areas where members of such groups live and work;
  - iii. use recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups; and/or
  - iv. train and encourage members of your staff from such groups so they may apply for promotion or transfer to do the type of job in which such groups are under-represented.
- f. You must ensure that you maintain effective whistle-blowing policies whereby your employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.

**(xiii) Protection of children and vulnerable adults**

- a. This clause will only apply if in providing the Services you or your business partners or employees will supervise, care for or have significant direct contact with a Vulnerable Person.
- b. In this clause, 'Vulnerable Person' means:
  - i. persons under the age of 18; and
  - ii. people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.
- c. You must consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the

written consent of the legally authorised carer or guardian of the Vulnerable Person before having any significant direct contact with the Vulnerable Person.

- d. Without limiting sub-clause 16(c), you must adopt and carry out a written policy and set of procedures to protect Vulnerable Persons if:
  - i. you are a company or partnership, or you are an individual who employs other persons; and
  - ii. in the course of providing the Services, your employees or your contractors supervise, care for or have significant direct contact with Vulnerable Persons.
- e. As part of the procedures mentioned in sub-clause 16(d) you must check the backgrounds of and view disclosures from the Disclosure and Barring Service for your potential employees, contractors or volunteers who will, in the course of providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.

If you are the person having significant direct contact with Vulnerable Persons, you must, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian your consent to having your background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.

- f. You must comply with sub-clause 16(e) even if you are not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.
- g. Arts Council of Wales cannot advise you of your legal obligations in relation to your dealings with Vulnerable Persons, and this clause should not be seen as such. If you have any queries about your obligations, we strongly advise that you seek your own independent legal advice and also contact the National Society for Prevention of Cruelty to Children ([www.nspcc.org.uk](http://www.nspcc.org.uk)).

#### **(xiv) Health and safety**

You must comply with the Health and Safety at Work etc Act 1974, the Management of Health and Safety at Work Regulations 1999, and all other regulations and approved codes of practice relevant to the Services.

#### **(xv) Prevention of corruption**

We can terminate this Contract immediately if you, your employees or your agents have offered, given or agreed to give any person any money or gifts of any kind, to bring about this Contract.

**(xvi) Notices**

- a. Either party may send notices, letters and other documents by prepaid first class recorded delivery post or facsimile message to the other party at the address identified in the particulars, or at any other address or facsimile number provided to the other party.
- b. To prove that a notice or document has been delivered, it is sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter or that the facsimile message was properly addressed and despatched.

**(xvii) Disputes**

- a. The parties will attempt to settle any dispute which may arise between them under this Contract.
- b. If a dispute is not resolved to the satisfaction of both parties within 10 working days, the parties will attempt to settle it by mediation.
- c. To begin mediation, either party must give written notice to the other party requesting mediation.
- d. If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation, either party may begin legal proceedings.

**(xviii) Contracts (Rights of Third Parties) Act 1999**

As provided in the Contracts (Rights of Third Parties) Act 1999, unless otherwise expressly stated in this Contract, no third party will have any right of enforcement under this Contract.

**(xix) Change and assignment**

No change or assignment of this Contract will be effective unless it has been agreed in advance by both parties in writing.

**(xx) Waiver**

The failure of either party to exercise any right or remedy will not constitute a waiver of that right or remedy. A waiver is only effective if provided to the other party in writing.

**(xxi) Severance**

If any part of this Contract is or becomes legally ineffective or unenforceable it will not affect the validity of the rest of this Contract.

**(xxii) Whole agreement**

This Contract contains the whole agreement between the parties relating to the Services and replaces all previous agreements between the parties relating to the Services. However this provision shall not operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

**(xxiii) Law**

This Contract is governed by the laws of England and Wales and subject to the jurisdiction of the courts of England and Wales.

**(xxiv) Costs**

Each party will pay its own costs the preparation of and entry into this Contract.