

Conditions of Funding –

COVID-19 EMERGENCY FUNDS

Terms and Conditions

Please note: *These T&Cs apply to the following emergency funds administered by Creative Scotland/Screen Scotland:*

- *The Performing Arts Venues Recovery Fund*
- *The Grassroots Music Venues Stabilisation Fund*
- *The Culture Organisations and Venues Recovery Fund*
- *The Independent Cinema Recovery and Resilience Fund*

1 INTRODUCTION

1.1 The Funding is being paid by Creative Scotland under section 39(4) of the Public Services Reform (Scotland) Act 2010 and, in accordance with section 39(5) of that Act, we have determined that the Funding is to be made on the terms and conditions as set out in the Offer of Grant and these Terms and Conditions.

1.2 As the objective of the Funding is to provide you with financial support to tackle the impact of the COVID-19 pandemic, we reserve the right to amend these Terms and Conditions and / or impose new terms and conditions should we consider that to be appropriate in light of any change to the laws or guidance applying in Scotland in relation to the COVID-19 pandemic.

1.3 You must follow these Terms and Conditions, together with the rest of the Funding Agreement and provide the documents and information set out in them as required. The Funding Agreement is our contract with you so to fail to meet any of the conditions will constitute a breach of the terms of your Funding.

1.4 Once Funding has been awarded, we will monitor the purposes for which you utilise the Funding to make sure that the Funding is being used for the purposes for which it was given. We also want to make sure that the Funding achieves the objectives for which it was given.

We will monitor your use of the Funding against the terms set out in:

- your Application as approved by us;
- our Funding Agreement;
- the documents which you must provide if you request our permission to make any changes to the Funding Agreement; and
- any other written arrangements we make with you.

2 DEFINITIONS:

- 2.1 **'we', 'us', 'our'** – Creative Scotland;
- 2.2 **'you', 'your'** – the individual/organisation(s) awarded the Funding as set out in the Funding Agreement;
- 2.3 **'Application'** – any documents or information you send us in application for and to support your request for Funding;
- 2.4 **'Funding'** – the amount of the award set out in the Offer of Grant;
- 2.5 **'Funding Agreement'** – our agreement comprising the Offer of Grant together with these Terms and Conditions and your acceptance of the Offer of Grant and these Terms and Conditions;
- 2.6 **'Offer of Grant'** - the Offer letter setting out the Funding which we will make available to you;
- 2.7 **'Working Days'** - a day (other than a Saturday, Sunday or public holiday) when banks in Scotland are open for business
- 2.8 **'Permitted Uses'** – the matters for which the Funding may be used as set out in the Offer of Grant.

3 FUNDING CONDITIONS:

- 3.1 The Funding must only be used for the Permitted Uses.
- 3.2 No changes may be made to the Permitted Uses without our prior written permission.
- 3.3 No aspect of the Permitted Uses should be party political in intention, use or presentation by you.
- 3.4 Unless otherwise specified in the Offer of Grant, the offer of Funding only remains open for acceptance by you for a period of ten (10) Working Days from the date of the Offer of Grant. If you do not accept the offer within this period (or the period otherwise specified in the Offer of Grant), it will lapse and will no longer be capable of being accepted by you.
- 3.5 The Offer of Grant is to be accepted by the method (or by one of the methods) set out in the Offer of Grant. If you are an incorporated body or organisation then the Offer of Grant must be accepted by someone who is authorised to sign for and on behalf of the body or organisation. The Funding Agreement will take effect from the date that you accept it.
- 3.6 Any activities for which the Funding is used must be carried out in line with current best practice and comply with all applicable laws and regulations. You must also ensure that you hold all necessary consents, licences, permits, insurances and authorisations for any activity for which the Funding is to be used prior to using the Funding for that activity.

- 3.7 You are responsible for getting your own management, business and artistic advice. This includes considering whether you need to get financial, accounting, tax, solvency, legal, insurance or other types of professional advice.
- 3.8 Our staff, Board members and advisers, cannot give you professional advice and will not take part in carrying out your business. You are solely responsible for using the Funding in accordance with its Permitted Uses, your business and the decisions taken about it. We will not be responsible to you or to anyone else who may take, or threaten to take, action against you.
- 3.9 We will pay the Funding in the instalments set out in the Offer of Grant into the bank account detailed in the Offer of Grant (see the section headed 'Payment of your Award').
- 3.10 The Funding must not be used to pay for any spending commitments you have made before 31 December 2019 and/or the date on which COVID-19 affected you or your business.
- 3.11 You hereby acknowledge and agree that the Funding comes from public funds and that you will not use the Funding (or any part of it) in a way that constitutes unapprovable State Aid. In the event that the Funding (either on its own or taken together with other financial assistance) is deemed to be unapprovable State Aid or we are the subject of an actual or threatened claim that the Funding (either on its own or taken together with other financial assistance) is unapprovable State Aid then you will repay the Funding to us in full. To that end, you hereby warrant, represent and undertake to us that you were not in financial difficulty prior to 31 December 2019. In this paragraph 3.11, the term "State Aid" means any aid in terms of Article 107(1) of the Treaty on the Functioning of the European Union as amended, extended, re-enacted, replaced or consolidated from time to time.
- 3.12 If you receive funding from any other source (not already stated in your Application) prior to 31 December 2020 which may be used by you for the Permitted Uses you must notify us immediately of the amount and the terms and conditions of such funding.
- 3.13 If you spend less than the amount of the Funding on the Permitted Uses, you must return any unspent amount of the Funding to us immediately.
- 3.14 We will only pay the Funding to the person/organisation, which has applied for it. You must tell us in writing about anything that affects this before you make any changes. If paid to your organisation, you must tell us, in writing, about any change in its name or constitutional status immediately. The Funding cannot be transferred to another person or organisation.

- 3.15 In the event you exploit any work, services, material or IPR from your use of the Funding, for commercial gain, we reserve the right to enter into good faith negotiations with you to discuss appropriate recoupment of the Funding.
- 3.16 You must keep proper up-to-date accounts and records. We may ask you to provide a copy of your accounts and bank statements within an agreed period after the end of the financial year, in which we have made any Funding payments. You must monitor the use of the Funding and provide us with progress reports and such financial or other information and records as and when we may from time to time reasonably request.
- 3.17 You must allow us, (or anyone we authorise) access to all relevant information in relation to your use and expenditure of the Funding. This is so that we can monitor your use of the Funding. You must also take into account any recommendations we (or anyone we authorise) make in relation to the use of the Funding.
- 3.18 You must also allow the Auditor General for Scotland ('AGS'), or any examiners appointed by the AGS, access to all relevant information in order to allow the AGS to carry out any examination of our use of resources in the discharge of our functions.
- 3.19 Creative Scotland is a Scottish Non-Departmental Public Body and as such is subject to European Union (EU) procurement regulations. Consequently, if you are planning to buy goods or services with the Funding, you should always buy them in a way that will give value for money and avoids any conflicts of interest.
- 3.20 During the period covering the Funding, you must not sell or otherwise transfer or dispose of any property, assets or goods that have been wholly or partly bought, restored, conserved (maintained or protected from damage) or improved with the Funding unless:
- you sell them for their full current market value; and
 - we have given you written permission beforehand.
- 3.21 We will pay the Funding or any part of it to you in line with the Funding Agreement. However, this only applies as long as:
- the Scottish Government continues to provide us with enough funds;
 - we are satisfied that the Funding is being, and will continue to be or has been, used in accordance with the Funding Agreement; and
 - you are using the Funding in proportion to any other funds you receive from other sources for the Permitted Uses as set out in your Application.
- 3.22 We will stop paying the Funding and you must repay the whole or any part of the Funding that you have received if:
- you do not use the Funding for the Permitted Uses without obtaining our written permission beforehand;
 - you fail to comply with any of the terms of the Funding Agreement;

- the Funding is deemed to constitute unapprovable State Aid as set out in condition 3.11 above;
- the Funding or any part of it has been paid to you in error;
- you cease to operate for any reason, you pass a resolution (or any court of competent jurisdiction makes an order) that you be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- you become insolvent, or are declared bankrupt, or are placed into receivership, administration or liquidation, or a petition has been presented for your winding up, or you enter into any arrangement or composition for the benefit of your creditors, or you are unable to pay your debts as they fall due;
- you have, in our opinion, given us fraudulent, incorrect, incomplete or misleading information;
- you are, in our opinion, negligent or fraudulent in relation to your application for the Funding or its use;
- you are under investigation by us or another body and we consider public funds are at risk.

3.23 If there is more than one of you, any responsibility under these terms of Funding will apply to you all together and separately and each of you will be jointly and severally liable for the obligations set out in the Funding Agreement.

4 CONFIDENTIALITY, DATA PROTECTION AND OTHER POLICIES

4.1 The terms and conditions of the Funding Agreement are and shall remain strictly confidential.

Creative Scotland has adopted the Scottish Information Commissioners Model Publication Scheme and has produced and published our [Guide to Publication Scheme](#), which details the information we make available in each of the Classes identified. For more information on how we handle FOI requests, please read our [Freedom of Information policy](#).

4.2 Creative Scotland is committed to protecting the rights and privacy of individuals in accordance with Data Protection legislation. This may include members of the public, past and prospective employees, agency workers, secondees, funding applicants, contractors and suppliers.

Data Protection legislation regulates the way that Creative Scotland handles and uses the personal information that we collect in the course of carrying out our functions and gives certain rights to people whose personal information we may hold.

Funding applicants can find out more about the personal information Creative Scotland handles and uses in our [Funding Privacy Notice](#).

4.3 Details of our policies can be found in our [Resources section](#).