

Reaching Communities June 2018

Standard terms and conditions for capital grants

“we” “us” and “our” means Big Lottery Fund and includes our employees and those acting for us.

“you” and “your” refer to the organisation receiving the Capital Grant bound by these terms and conditions.

“Asset Liability Period” has the meaning given in paragraph 11.

“Capital Assets” has the meaning given in paragraph 1.

“Capital Grant” means the grant awarded to you by us for the Project as set out in the Grant Agreement.

“Grant Agreement” means the grant offer letter addressed to you and from us which you have signed and accepted and which incorporates these terms and conditions (with any special conditions we have agreed).

“Project” means the project funded by the Capital Grant that you are creating, managing and delivering as set out in your application form and supporting documents, and/or as varied by the Grant Agreement.

“Practical Completion” means in the case of the Project including building work the date that a certificate of practical completion (or its equivalent) is issued and/or in any other case the Capital Asset(s) is ready for use as described in the Grant Agreement whichever is the later. Where appropriate in the case of the Project involving more than one certificate of practical completion, it will be the last date of the final certificate of practical completion issued in respect of the Project.

1. If any part of the Capital Grant is to buy or build, refurbish, extend or alter buildings or land (“Capital Assets”), then you understand that these standard terms and conditions will apply to your grant in addition to all other conditions we have required of you.
2. You understand and accept that we may require security over the Capital Assets to secure repayment of the grant in appropriate circumstances. Usually this will be:
 - 2.1. a legal charge or a standard security in our standard form; or
 - 2.2. a deed of dedication in our standard form and if the property is registered, a restriction on title is to be registered at the Land Registry or if unregistered a land charge at the Land Charges Department where appropriate or if the property is unregistered, a deed or letter of undertaking in our standard form.

If we have asked for security, you understand that we will not pay more than a maximum of 5% (in total) of the Capital Grant until we have received the documents completed to our satisfaction.

3. You understand and accept that we may require confirmation from your solicitors (by way of a Legal Opinion, in the form which we will supply), that you have the legal powers under your governing documents to undertake the Project and to execute the legal documents associated with your Capital Grant. If we have asked for a Legal Opinion, you understand that we will not pay more than a maximum of 5% (in total) of the Capital Grant until we have received the documents completed to our satisfaction.
4. You do not have any undisclosed loans secured on the Capital Assets. You will not take out any loans secured by any Capital Assets funded or part-funded by the Capital Grant unless you receive our agreement in writing first. Our agreement may be subject to conditions (which we may reasonably impose) which you will have to meet.
5. If any part of the Project is to acquire, refurbish or build upon land (including any extension or alteration(s) to building(s)) (whether freehold, heritable or leasehold land), you will send to us, when asked, the following documents:
 - 5.1. a surveyor's report on the condition of the property, its value and whether it is suitable for the Project;
 - 5.2. confirmation by your solicitors that all necessary consents for the development and/or use of the property for the purposes of the Project have been obtained and satisfactory evidence that all pre-commencement conditions (issued by the relevant Planning Authority) have been satisfied in full;
 - 5.3. if the Capital Grant is £100,000 or over, a satisfactory Certificate of Title (if requested) completed by your solicitors (in the form which we will supply);
 - 5.4. if the Capital Grant is £100,000 or over, a Deed of Dedication and if the property is registered, your solicitors undertaking to register a restriction on title at the Land Registry or a land charge at the Land Charges Department, where appropriate, or if the property is unregistered, a deed or letter of undertaking;
 - 5.5. if the Capital Grant is £500,000 or over and you are not a statutory body (whose constitution prevents the giving of security), a signed Legal Charge or Standard Security and your solicitors undertaking to register it at the Land Registry or Land Register and at Companies House, (if appropriate); and
 - 5.6. if the Capital Grant is for £500,000 or over and you are not a statutory body (whose constitution prevents the giving of security), confirmation (by way of a Legal Opinion in the form which we will supply) from your solicitors, that you have the legal powers necessary to sign the documents and that the obligations will constitute valid legal and binding obligations on you enforceable against you in accordance with their terms.
6. If any part of the Project is to acquire, refurbish or build (including by way of extension or alteration(s)) upon leasehold land, then you will ensure that the lease will be for the following minimum term of years (or remainder of the lease term if the lease was completed prior to the Grant Agreement):

- 6.1. For a Capital Grant of up to £500,000: a lease of at least 5 years from the date of Practical Completion, without a break clause.
- 6.2. For a Capital Grant of £500,000 or more but less than £1 million: a registered and assignable lease of at least 10 years from the date of Practical Completion, without a break clause.
- 6.3. For a Capital Grant of between £1 million and £5 million (inclusive): a registered and assignable lease of at least 15 years from the date of Practical Completion, without a break clause.
- 6.4. For a Capital Grant of more than £5 million: a registered and assignable lease of at least 20 years from the date of Practical Completion, without a break clause; and

PROVIDED ALWAYS THAT you will send us a copy of the lease to approve, which must satisfy us that it is suitable security for the grant.

- 7. In addition to clauses 5 and 6, if all or part of your Capital Grant is to be used for **any building work** you understand and accept:
 - 7.1. that we will keep 95% of the Capital Grant until you have provided in a form which is completed to our satisfaction:
 - 7.1.1. evidence that you have received any necessary planning permission, listed building or conservation area consent and building regulations consent (or other applicable consents or regulations) required for the building work; and
 - 7.1.2. evidence that a competitive tender process has been undertaken with a minimum of three estimates received from three independent builders to ensure value for money. If you are to commission the building works under pre-tendered arrangements, you will provide evidence of the tender process undertaken to identify existing contractors and details of any mini-competition between pre-appointed building contractors and, in each case, provide to our satisfaction evidence of a fair, transparent and documented process (compliant with any statutory requirements applicable to the building works);
 - 7.2. that we will make payments in stages when you receive builders' invoices or against interim certificates completed on the RIBA (Royal Institute of British Architects) or RIAS (The Royal Incorporation of Architects in Scotland) form or other appropriate invoices and/or certification in terms first approved by us;
 - 7.3. that we will keep 5% of the part of the grant for the building works until we receive the certificate of Practical Completion. You will then send us the making good defects certificate; the final certificate; confirmation that you have obtained the building regulations completion certificate; and confirmation that you have obtained the buildings insurance certificate and any defects insurance and guarantees; and

- 7.4. that if you want to make significant changes to the scope of the building works (including without limitation agreed build standard, quality or finish), you must get our permission in writing before going ahead.
8. In addition to clauses 5 and 6, if your Capital Grant is for more than £100,000 and to be used for **any building work** you understand and accept that:
- 8.1. we will require confirmation (by way of a satisfactory Certificate of Title, in the form which we will supply) from your solicitors that you are the leasehold, freehold or heritable owner of the Capital Assets with a good and marketable title and that the Capital Assets may be used for the purpose of securing the Capital Grant.
- 8.2. we will keep 95% of the Capital Grant until you have provided in a form which is completed to our satisfaction:
- 8.2.1. a copy of the tender review report. If you are to commission the building work under pre-tendered arrangements, you will provide us with evidence that demonstrates that costs have been market tested to confirm value for money;
- 8.2.2. an up to date capital project cost summary, cash flow and programme;
- 8.2.3. evidence that you have secured all the required partnership funding for the capital Project; and
- 8.2.4. all the legal documents requested by us have been received and approved.
- 8.3. you must employ a lead building professional to manage the tender process and to certify that the building works have been properly carried out;
- 8.4. if structural work is necessary, you must employ a structural engineer;
- 8.5. you will use building professionals that are fully qualified members of an approved professional body with the necessary experience and expertise for the Project and have all necessary professional indemnity insurance cover with indemnity limits appropriate to the nature of the Project and approved by us; and
- 8.6. if building works come under the Construction (Design and Management) Regulations 2015 (as amended from time to time), you will confirm that you have appointed a planning supervisor and otherwise comprised in full with the terms of the regulations.
9. You understand that if you do not make payment claims for Capital Grant within three months of incurring the relevant capital expenditure, then we will proportionally reduce your Capital Grant in line with the actual capital expenditure incurred in the claim period.

10. You will not sell, lease, let, sub-let or otherwise dispose of or change the use of any Capital Assets without first obtaining our written consent, which may contain conditions which you will have to meet. If you sell or dispose of any Capital Assets, you may have to repay us all or part of the money you have received from us. The amount you repay will be in direct proportion to the share of the Project cost that came from us. If, with our consent, you sell any capital asset wholly or partly bought using Capital Grant monies, it will be at full market value which you have demonstrated to our satisfaction.
11. We will continue to have an interest in the Capital Assets and you will supply information about and allow us to inspect the Capital Assets for the following relevant periods commencing from and including the date of acceptance of the grant offer letter:
 - 11.1. for Capital Grants of up to £500,000, to and including the date which is 5 years after the date of Practical Completion;
 - 11.2. for Capital Grants of £500,000 or more but less than £1 million, to and including the date which is 10 years after the date of Practical Completion;
 - 11.3. for Capital Grants of between £1 million and £5 million (inclusive), to and including the date which is 15 years after the date of Practical Completion;
 - 11.4. for Capital Grants of more than £5 million, to and including the date which is 20 years after the date of Practical Completion,

defined as our "Asset Liability Period".

PROVIDED THAT if all or any part of the Capital Grant has become repayable, or any other amount has become due from you to us, and the relevant amount has not been paid on the date when the Asset Liability Period would otherwise end in accordance with this clause 11, the Asset Liability Period shall continue until the date all amounts due to us have been paid in full.

12. During the carrying out of any building works you will procure that the building contractor(s) will at all times:
 - 12.1. maintain an insurance policy being an "all risks" insurance policy covering the usual risks covered by this type of policy in respect of the building works, their carrying out and all unfixed goods and materials in connection with the building works for, in every case, the full reinstatement or replacement costs thereof from time to time; and
 - 12.2. if requested, supply evidence to us of such insurance policy; and
 - 12.3. if any of the building works or any materials or goods required to undertake such works are destroyed or damaged, make an appropriate claim under such insurance policy and use any such proceeds received for the same in rebuilding, reinstatement or replacement of the works; and
 - 12.4. not to do or permit anything which may render such policy of insurance void or voidable.

- 13.** You will pay and indemnify and keep us indemnified from and against all loss damage costs claims and any liability and expense in respect of any injury to or the death of any person damage to any property movable or immovable pollution or sign of likely pollution or disturbance or destruction of any rights easement or privilege or otherwise by reason of or arising out of the erection and completion of any building works or the condition existence or user of the works.
- 14.** You will procure for us a right of entry onto the property on which any building works are to be carried out in order to view the state and progress of the building works provided that any entry would be on an accompanied basis escorted by your representative or your contractor, that we shall not interfere with or interrupt progress of the building works and that we make any communications and representations only to you and not direct to your contractor.