

CONDITIONAL OFFER OF GRANT

This conditional offer of grant is made by Cheltenham Borough Council of Municipal Offices Promenade Cheltenham (the grantor) in response to the application of Cheltenham Arts Festivals Limited (the grantee) for funding to support their core activities (the service)

WHEREAS:

- I. The aims and objectives of the grantee are as set out in schedule A of this offer.
- II. The measurement criteria for the successful achievement of those aims and objectives are set out in schedule B of this offer.
- III. The conditions of the grant in terms of specific services provided (Human Resources, Information & Communication Technologies, Accommodation and Financial Services) are set out in schedule C of this offer.
- IV. In the event that the grantee accepts this offer and successfully meets the aims and objectives measured against the criteria in schedule A, and complies with conditions of schedule C, then it is intended that this offer of grant will cover the period from 1 April 2005 until 31 March 2008.

NOW IT IS AGREED as follows:

- 1 in this offer of grant the following words shall have the following meanings:
 - 1.1 "festivals" means the provision of the core activities by the grantee which shall comprise the aims and objectives as set out in schedule A.
 - 1.2 "grant" means the revenue grant funding from the council in the sums contained in Appendix 1 of this document, namely of £29,000 for year one of the grant term, £90,400 for year two of the grant term and £62,000 for year three of the grant term subject to the provisions of clauses 2.2, 2.3 and 2.4 of this offer. In addition to the revenue grant funding the grantor will, at its own discretion, provide additional services listed in Appendix 1 and Schedule C of this agreement. CAF will be required to pay charges for the use of venues and facilities also detailed in Appendix 1.
 - 1.3 "grant term" means the three year period from the 1st April 2005 to 31st March 2008.
 - 1.4 "financial year" means the period 1st April to 31st March in each year of the grant term
 - 1.5 "payment dates" means either the 1st April or the 1st July in each financial year
 - 1.6 "grant manager" means the officer nominated from time to time by the council to administer the grant and for the purposes of this offer the nominated officer will be Michael Ibbitson, (Acting Assistant Group Director).
 - 1.7 "chief executive" means the person nominated from time to time by the grantee to administer the project on behalf of the grantee and for the purposes of this offer the nominated person will be the Head of Festivals (Donna Renney, as Acting HoF) or

any such Chief Executive of Cheltenham Arts Festivals that shall be appointed in due course.

- 1.8 “satisfactory performance” means the successful achievement in each financial year of the aims and objectives set out in schedule A measured against the criteria for that financial year set out in schedule B which are to be achieved within the grant for that financial year.
- 1.9 “prime documents” means the key management and monitoring information which has been requested to be presented to the Council at the time of the annual review as detailed in Schedule B: Monitoring Information.
- 1.10 “FOI” and “DPA” means the Freedom of Information Act 2000 and the Data Protection Act 1998.

2 AMOUNT OF AND PAYMENT OF GRANT

- 2.1 subject to clauses 2.2, 2.3 and 2.4 of this offer each financial year during the grant term the amount of the grant to be paid by the council to the grantee will be as in paragraph 1.2 above and ‘in kind’ support and services as detailed in Appendix 1 and Schedule C of this agreement.
- 2.2 The base date for the purpose of the sum payable shall be 1st April 2005.
- 2.3 the grant payable in each financial year shall be divided into two equal installments with each installment being payable on one of the payment dates the first installment being payable on the 1st April 2005 upon receipt of an invoice. In subsequent financial years subject to clauses 2.3 and 2.4 of this offer the payment of the grant by installments shall be made on the annual anniversary of each of the payment dates during the grant term.
- 2.4 provided that in each financial year of the grant term the grantee achieves satisfactory performance and complies with all the conditions of grant contained in this offer and subject also to the availability of grant resources to the council the council will pay the grant to the grantee.
- 2.5 in the event that the grantee fails to achieve satisfactory performance in any financial year or in the event that the grant resources available to the council are reduced then the council reserves the right to pay such lesser sum by way of grant as it shall in its absolute discretion determine.
- 2.6 The amount of the grant payable in each financial year will be confirmed in writing by the council to the grantee by 1st March in each financial year.
- 2.7 service developments and additions to the current level of service provided by Cheltenham Arts Festivals shall be considered for additional funding annually at review time.

3 METHOD FOR CLAIMING PAYMENT OF GRANT

- 3.1 the grantee will at least fourteen days prior to each of the payment dates ensure that the chief executive returns to the grant manager an account setting out the amount of expenditure incurred by the grantee in connection with the project as at the payment date.
- 3.2 regardless of the amount of expenditure shown on the account provided in accordance with clause 3.1 the liability of the council to pay the grant shall not exceed the amount of the installment due calculated in accordance with the terms of this offer.

- 3.3 the account provided in accordance with clause 3.1 shall be supported by the production of relevant prime documents evidencing that the amount of the expenditure that is detailed in the account has actually been made.

4 CONDITIONS FOR PAYMENT OF THE GRANT

- 4.1 funding for CAF is conditional upon the grantee achieving satisfactory performance and complying with the following conditions of grant during each financial year of the grant term;
- 4.1.1 the production of annual monitoring reports as set out in clause 5 of this offer.
- 4.1.2 the production of a statement of account and the prime documentation as set out in clause 3 of this offer.
- 4.1.3 compliance with legislative requirements relevant to CAF activity and CBC procedural guidelines to employees, especially in such areas as employment conditions, data and information legislation and financial probity (included in but not exclusively contained in CBC Constitution and Standing Orders.
- 4.2 in the event that the grantee in the reasonable opinion of the council fails to comply with any of the requirements set out in clause 4.1 of this offer then the council reserves the right to make an adjustment to the amount of the grant payable which may include a reduction, suspension or withholding of the whole or any part of the amount of the grant which has become payable.
- 4.3 in some circumstances and at the sole discretion of the grant manager the council may make an advance payment of the next installment of the grant payable of an amount which at its absolute discretion it shall determine but which in any event shall not exceed the amount of the installment due on that next payment date where in the opinion of the grant manager a service within the project will be unable to be provided.
- 4.4 where a prepayment has been made as described in clause 4.3 the grantee will be liable to repay to the council upon demand any money so advanced where;
- 4.4.1 the council determines that the grantee has breached the conditions of grant set out in clause 4.1, or
- 4.4.2 in such circumstances where the grantee is unable or unwilling to continue with the delivery of the project, or
- 4.4.3 where the grantee has voluntarily or otherwise entered into a bankruptcy, liquidation, or any voluntary arrangement or composition with any of its creditors
- 4.5 The grantee shall indemnify and hold the grantor harmless against all damages, costs, claims, expenses, fees (including counsels fees) and liabilities caused by the negligent acts or omissions of the grantee, it's officers, employees, servants or agents.

5 ANNUAL MONITORING REPORTS

- 5.1 the chief executive will complete on or before the 7th September an annual monitoring report detailing the activities, funding and outputs of the grantee in connection with the delivery of the project using the forms supplied by the grant manager and submit those completed forms to the grant manager.
- 5.2 if the performance criteria set out in schedule A have not been met by 1st September of each financial year the project manager must give to the grant manager a written explanation of the circumstances together with a written plan of suggested corrective action.
- 5.3 it is a council requirement that all data and reporting systems are subject to random periodic auditing and the project manager must accordingly retain all records which support data entered on the monitoring report forms. The grant manager reserves the right to carry out audits of this information at any time. The retention periods for documents, where specified in council document management procedures, must comply with these stated periods. Other retention periods should be agreed between the grant manager and chief executive.
- 5.4 During the month of September of each financial year and as part of it's annual review the council will carry out a review of the grantee to determine whether the grantee currently meets the strategic aims of the council's business plan and community plan and to determine how well the grantee is meeting the council's funding expectations as set out in this conditional offer of grant. This review shall be approved and scrutinised by the Economy and Business Improvement

6 SUB-CONTRACTS

- 6.1 in order to deliver the project, the grantee may agree to sub-contract work to another organisation with relevant expertise. The grantee is responsible and liable for all aspects of the sub-contractual relationship including the provision by the sub-contractor of all information that the grantee is required to produce in support of its claim for payment of the grant under the terms of this offer.
- 6.2 any sub-contract will be made between the sub-contractor and the grantee, and the council shall incur no liability to the sub-contractor in the event of the grantee defaulting on their liabilities.

7 PERMISSIONS, INDEMNITY, ETC.

- 7.1 the grantee shall be responsible for obtaining all necessary consents, licences permissions (legislative or otherwise) and insurances required to carry out the festivals.
- 7.2 the grantee agrees to indemnify the council against any costs, claims, demands or proceedings of any nature arising out of the implementation of the festivals.
- 7.3 The grantor excludes all liability for all and any claims made against the grantee as a result of the grantee's defaults

8 AUDIT ARRANGEMENTS

At the end of each financial year, a final account must be prepared for all expenditure during that year and must be certified as true and accurate by the

chief executive. The final account must be independently audited and sent with any appropriate certificates and the auditor's report to the grant manager by the following 1st of May each year.

9 INELIGIBLE EXPENDITURE

Funds provided through the Council for CAF will not be paid and may not be used for:

- 9.1 Expenditure on activities of a political or exclusively religious nature;
- 9.2 Expenditure on works or activities which any other person has a statutory duty to undertake;
- 9.3 Expenditure other than that mentioned in the Project details;
- 9.4 Any liability arising out of negligent acts omissions or defaults of the grantee;
- 9.5 Payments for unfair dismissal or redundancy to staff employed on fixed term contracts, where this arises in respect of the expiry of that term without it being renewed;
- 9.6 This list is not comprehensive. The chief executive must consult the Grant Manager if there is any doubt as to whether particular costs are eligible.

10 FINANCIAL ACCOUNTABILITY

The Grantee will ensure that:

- 10.1 the grant manager is notified immediately if any financial irregularity in the use of the grant monies is suspected, and indicate the steps being taken in response. Irregularity means any fraud or other impropriety, mismanagement, or use of funds for purposes other than that approved;
- 10.2 an inventory is maintained of all capital assets over £2,500 acquired, built or improved wholly or partly using the grant. The grant manager will provide instructions on the inventory where applicable;
- 10.3 documents are made available and reasonable access is provided for inspection visits and scrutiny of files by the grant manager, the internal audit team at Cheltenham Borough Council, or the audit commission for external audits and review of project.

11 RETURN OF ASSETS PURCHASED

Should CAF be liquidated for any reason any assets which have been purchased solely using grant monies must be returned to the council.

12 BREACH OF CONDITIONS OF GRANT OR TERMINATION OF PROJECT

Should the activities of CAF be terminated or should the grantee be in substantial breach of the terms of this contract, the grantee shall repay to the council the whole or part of any unspent grant monies received as may be appropriate.

13 WAIVER

13.1 failure by the council at any time to enforce any of the provisions of this offer of grant or to require performance by the grantee of any of the provisions herein shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the offer or any part thereof or the right of the council to enforce any provision in accordance with its terms.

14 Resolution of dispute

In the event of any dispute or where meaning of this grant offer is unclear the matter should be referred to the grant manager and chief executive. Both CAF and CBC aim to resolve disputes at the lowest possible level and before disputes are referred to either of the above people an effort should have been made to resolve the problem. In the event of the dispute not being agreed between the chief executive and grant manager then the matter will be referred to the management boards of both organizations for resolution.

15 ACCEPTANCE OF OFFER

To accept this offer, both copies of this agreement must be signed by an authorised person on behalf of the grantee and both copies must be returned to the council. A copy signed by the grant manager will then be returned to you.

Signature	_____
Name (Authorised to sign on behalf of the Grantee)	_____
Position	_____
Dated:	

Signature	
Name (on behalf of Cheltenham Borough Council)	
Dated:	