

## **Conditions for the Use of Funds**

### **1 Financial Arrangements**

#### **1.1 Use of Funds**

- 1.1.1 The funds approved shall not cover expenses incurred before the Commencement Date. Expenditure approved to be funded will be shown on a list attached in the Funding Agreement (“**List of Approved Expenditure Items**”). Grantee is responsible for any increase in cost, including those resulting from inflation and unforeseen requirements once the application is approved.
- 1.1.2 The funds shall be used solely for the project and the associated fees, including any fee for statutory submissions required by relevant Government bureau and departments for carrying out the events and the activities of the project as stated in the Approved Project Proposal.
- 1.1.3 The funds shall not be used as payment to individual members of the public as a financial reward for their participation in the activities associated with the project. Lavish expenditures should be avoided. The Grantee may be required to compensate the Government for loss resulting from improper handling of the funds.
- 1.1.4 The Grantee must not assign, transfer, subcontract or otherwise dispose of any or all of its interests, rights, benefits or obligations under the Funding Agreement.
- 1.1.5 The Grantee should maintain full and proper books, accounts, relevant records and information related to the project. Such records should be kept during the continuance of the Funding Agreement and for a minimum period of seven years after the end of Government’s financial year in which the project is completed or the Funding Agreement is terminated, and be

available for conducting audit, inspection, verification and copying by the authorised representatives of the Government, the Audit Commission and the Independent Commission Against Corruption (“ICAC”) from time to time during the continuance of the Funding Agreement and the seven-year period.

## 1.2 Disbursement of Funds

1.2.1 Payment of the funds will be made to the Grantee by instalments in accordance with the approved schedule of disbursement. An initial payment of 20% of the approved grant will be released to the Grantee upon signing of the Funding Agreement. The final 10% of the approved grant will normally be released after the completion of the project and acceptance of the Project Evaluation Report (see clause 2 below) together with a final audited statement of accounts (see clause 1.2.6 below) with original certified financial records by the BHCF Secretariat (“**Secretariat**”). The remaining amount of the approved grant would be disbursed by instalments with the percentage not more than 35% of the total approved funding proposed by the Grantee and agreed by the ACBHC after the acceptance of each progress report submitted every six months by the Grantee according to the agreed schedule. To apply for fund disbursement, the Grantee should complete and submit the “Request Form for Payment of the Funds” to the Government.

1.2.2 The funds disbursed shall be kept in a risk-free interest-bearing Hong Kong Dollar account in the sole name of the Grantee from a licensed local bank and the funds shall be separated from other monies belonging to the Grantee. This requirement is not applicable to post-secondary education institutions provided that the grant is kept and operated by their respective finance offices. Payee of the fund disbursement should be the Grantee, but not an individual person. The funds will be, unless otherwise stated, a one-line vote without further division into sub-allocations, i.e. funds approved under the same expenditure item as set out in the List of Approved Expenditure Items attached in

the Funding Agreement may be deployed flexibly except for costs for supporting staff, earmarked items (such as contingency items and engaging external audit services), and expenditures related to a cancelled activity that have been reported.

- 1.2.3 The Grantee should submit a copy of bank statement showing the name and account number of the bank account in the Grantee organisation as stated in clause 1.2.2 upon signing the Funding Agreement.
- 1.2.4 Disbursement shall be in line with the List of Approved Expenditure items. Item not on the list will not be disbursed. The disbursed amount for individual item will not exceed the approved amount for that item, unless and until written approval of the Secretariat is given in accordance with clause 1.3.1 below. Applications for supplementary funds will not be considered.
- 1.2.5 Please consult the exchange rate provided by the Hong Kong Association of Banks at the website: <https://www.hkab.org.hk/en/rates/exchange-rates> for items involving foreign currency. If another exchange rate is adopted, justification with supporting document should be provided for Government's consideration.
- 1.2.6 The Grantee is required to submit a complete statement of accounts together with annual progress report and Project Evaluation Report (as defined in clause 2.1(b)&(c) below). The statement of accounts should be audited and duly signed by certified public accountants (practising) within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50), providing assurance that the spending is within the List of Approved Expenditure Items and approved budget for the respective approved expenditure items, and that all the accounts properly presented the financial position of the project and in line with the terms and conditions of the Funding Agreement, to the Secretariat. The complete audited statement of accounts shall include but not limited to the following items –
- (a) Auditor's report on the project to the Grantee;

- (b) Income and Expenditure Accounts; and
- (c) Notes to the Accounts

For Grantees who are post-secondary education institutions, the statement of accounts should be certified by their respective finance offices, providing assurance to conditions the same as stated for the audited statement of accounts above.

1.2.7 Grantee shall prepare and submit the annual and final audited/certified statement of accounts with the progress report and/or Project Evaluation Report within the duration between the Commencement Date and the completion of the project in accordance with the proposed schedule of disbursement at item 12 of the application form (**Appendix III**)

- (a) For Project Duration of 12 months, the final audited statement of accounts shall be submitted along with the Project Evaluation Report within four months after the completion of core activities or before the date specified in the Funding Agreement.
- (b) For Project Duration over 12 months, Grantee should submit the annual and final audited statement of accounts along with the progress report **by the end of the 13<sup>th</sup> month** counting from the Commencement Date and the Project Evaluation Report **within four months** of completion of core activities respectively or before the date specified in the Funding Agreement.

If an extension of the submission deadline is required, approval should be obtained from the Government.

1.2.8 Original copies of financial records shall be submitted **together with** the signed audited/certified annual and final statement of accounts. They include, but are not limited to, quotation records, bills, invoices, cash memos and receipts duly certified by the Person-in-Charge of the Project. If the Grantee fails to present relevant financial records to justify the spent expenditure item(s), such item(s) may not be reimbursed. All the expenses

incurred for disbursement shall fall within the approved scope and are in line with the Guide to Application (including this Appendix) and Funding Agreement. The Grantee should maintain a copy of the submitted financial records in accordance with clause 1.1.5 above.

- 1.2.9 The final payment of the funds will be disbursed after the Government has accepted the final audited/certified statement of accounts, original certified financial records and the Project Evaluation Report (see clause 2 below); and after the Grantee has discharged all obligations and liabilities in accordance with the Funding Agreement. The amount of final disbursement applied shall be the remaining balance of the actual spending of the project as presented in the final audited/certified statement of accounts accepted by the Secretariat, and not funded by the BHCF in previous disbursements, subject to the condition that the total disbursement amount does not exceed the total amount of funds granted.
- 1.2.10 The Government shall determine the manner in which instalments are made. The Government may withhold or terminate instalments according to the progress of the project.
- 1.2.11 All payments will be subject to satisfactory performance and progress of the project including the implementation of the activities and tasks set out in items 6 and 10 of the Approved Project Proposal (i.e. application form). The Government or its authorised party may conduct progress meetings and / or on-site inspections to examine the progress of the project at any time.
- 1.2.12 In the case that the total amount of grant received in accordance with the approved schedule of payment is greater than the total amount of actual spending presented in the final audited/certified statement of accounts, the unspent balance of the grant shall be returned to BHCF **within two months upon the duly signed final certified/audited statement of accounts is presented. The Secretariat will specify the exact date.**

### 1.3 Variations

- 1.3.1 Except for expenditures for supporting staff, audit services and contingency items, the Government may accept an application to increase the approved amount of an individual item by up to 20%, provided that the total amount to be paid will not exceed the total amount approved for the project. Funds approved under the same expenditure item as set out in the List of Approved Expenditure Items attached to the Funding Agreement may be deployed flexibly.
- 1.3.2 The Government may reduce the approved level of funds , on a pro-rata basis where applicable, under the following circumstances:
- (a) the project's scope or activities of the project are changed or reduced;
  - (b) the actual frequency of activities (e.g. seminars) is less than that proposed;
  - (c) the number of participants is less than that proposed and funds are allocated based on the number of participants;
  - (d) the number of publications (e.g. leaflets) is less than that proposed;
  - (e) the Project Duration is reduced; and/or
  - (f) any other justifiable circumstance deemed necessary by the Government.
- 1.3.3 Upon the Government's request, the Grantee shall refund some or all of the funds that have been used otherwise than in accordance with the Funding Agreement.

### 1.4 Income and Other Sources (if any)

- 1.4.1 Income derived from the project (if any) within the Project Duration, including sales of output and fees generated from project activities, regardless of whether it has been declared in the project proposal, should be ploughed back into the project. It must be defrayed against the actual expenditure before calculating the amount to be disbursed as final payment.

- 1.4.2 All interest income from the bank account generated by the disbursed funds should apply to settling expenditures before calculating the amount to be disbursed as final payment. Under no circumstances should the interest earned be applied for other uses, and no negative interest should be charged to the project.
- 1.4.3 The Grantee shall not apply for or accept any donation or financial assistance from other sources for the same expenditure of the project funded by the BHCF as specified in the List of Approved Expenditure Items in the Approved Project Proposal.
- 1.4.4 Should there be changes to the sources of funding/sponsorship after the approval of the project, for example when the Grantee has sought additional funding/sponsorship to top up items that are fully or partly funded by the BHCF or to introduce new items not covered by the BHCF, they should be submitted to the Government for consideration and approval.
- 1.4.5 The Government would consider whether other sources of funding would constitute any conflict of interest, and whether they might cause any potential liability or damage to the image of the Government, the ACBHC, the BHCF and its Secretariat.
- 1.4.6 The Government, the ACBHC and the Secretariat accept no liability for deficits arising from the projects.

## **2 Project Schedule(s), Progress Report(s) and Project Evaluation Report**

- 2.1 The Government will monitor the progress of the project. Grantee is required to submit the following schedule(s) and reports (under a standard form to be provided), which should be signed off personally by the Person-in-Charge of the Project –

(a) Project Schedule(s)<sup>1</sup> – it should be submitted **within three months**

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<sup>1</sup> Project Schedule(s) shall be presented in timetable and/or timeline format indicating the start date, finish date, duration and status of every stage of task planned for each activity, and the submission of progress reports, Project Evaluation Report and audited statement of accounts.

from the date of signing the Funding Agreement before commencement of any public engagement activities. The project schedule should be updated from time to time. An updated copy should be attached with the submission of every progress report to the Secretariat.

(b) Half-yearly progress report(s) – it should be submitted to the Secretariat **every six months**, counting from the Commencement Date until the Project Evaluation Report and the final audited/certified statement of accounts are submitted.<sup>2</sup>

(c) Project Evaluation Report – the first draft of the report should be submitted **within one month** upon completion of core activities and the finalised version should be submitted **within four months** from the completion of core activities. The Government will assess the success and effectiveness of the project by comparing the project results against its original objectives and targets as set out in the Approved Project Proposal.

2.2 If an extension of the submission deadline for the progress report(s)/ Project Evaluation Report is necessary, approval should be obtained from the Government prior to the original deadlines.

2.3 Timely submission of reports is important and reflects on the diligence and ability of the Grantee in managing a project. If reports remain overdue without justifications, the Government will consider terminating the project and rating it as “unsatisfactory” for the record. All records of “unsatisfactory” projects, regardless of whether they are due to delay in report submission or other reasons, may be taken into account when any new application from the Grantee is considered in the future.

2.4 Apart from the progress reports, the Secretariat may request the Grantee to provide regular updates on the number of participants / voluntary workers from time to time as necessary.

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<sup>2</sup> Please refer to the examples in item 12 of Appendix II of this Guide to Application for the schedule of submitting the half-yearly progress reports.

### **3 Organisation of Project Activities and Budgeting**

#### **3.1 General**

- 3.1.1 The Grantee should make all necessary applications and submissions and obtain all necessary approval and consent from relevant Government bureaux and departments required by and in relation to the project, including all relevant activities, events, publicity and the related preparation work.
- 3.1.2 The Grantee should inform the Secretariat of the details of individual activities (e.g. date, time and venue) at least two weeks prior to the commencement of the activity.
- 3.1.3 If personal information of participants will be collected for the purpose of carrying out the project, the information should be properly handled according to the requirements of the Personal Data (Privacy) Ordinance (Cap. 486). If in doubt, the Grantee should seek advice from the Office of the Privacy Commissioner of Personal Data.
- 3.1.4 The Grantee should take due account of the need to minimise waste and be more environmentally friendly in implementing the project particularly those involving the organisation of seminars and conferences.
- 3.1.5 The Grantee shall collect feedback from participants after completion of each activity using the sample questionnaire given by the Secretariat and provide collated statistics to the Secretariat for record. The Grantee shall also consider using some of the feedback as part of the key performance indicators to measure the performance of the activities in their proposal.

### 3.2 Recruitment of Friends of Heritage (“FOH”)

Information in Chinese regarding the number of FOH volunteers required, the event name and details, the date, time and venue, the tasks for the FOH volunteers, the duty times, the inclement weather arrangements and the contact details of the Grantee (including name, post title, phone number and email address) should be provided to the Antiquities and Monuments Office two months prior to the event so as to allow sufficient time for recruitment and clarification.

### 3.3 Procurement of Goods and Services

3.3.1 The Grantee should exercise utmost prudence in procuring project assets, goods and services for the project and must follow the following procedures:

- (a) For every procurement the aggregate value of which is more than HK\$5,000 but less than HK\$50,000, quotations from at least two suppliers should be obtained;
- (b) For every procurement the aggregate value of which is HK\$50,000 or more, but less than HK\$500,000, quotations from at least three suppliers should be obtained; and
- (c) For every procurement the aggregate value of which is HK\$500,000 or more, open tendering should be used.

3.3.2 The Grantee should select the supplier that has submitted the lowest conforming bid. If the lowest bid is not selected, or such purchase is conducted by single source quotation or tender, full justifications must be given and prior agreement must be obtained from the Government. The Grantee should provide a written record outlining the approving authorities and justifications for tenders or single-source quotations.

3.3.3 Procurement of goods/services and recruitment of staff/workers/members must be conducted in an open and fair manner. A mechanism should be put in place for

staff/workers/members to declare any conflict of interest and to prohibit staff/workers/members from soliciting or accepting any advantage when handling the project. The Grantee should properly document and keep all records of declaration of interest, quotations and tendering documents for goods / services for at least seven years after the completion of the project or the termination of the Funding Agreement. Such records should be made available for inspection by the authorised representatives of the Government, the Audit Commission and the ICAC at all reasonable times. For goods and items with individual cost of HK\$1,000 or above procured with the BHCF grant within the Project Duration, inventory records should be maintained (see clause 4.10 below).

3.3.4 Besides, the Grantee should also observe the Funding Guidelines as listed out in the **Appendix V** of this Guide to Application to understand items that would be excluded from the funding support and the cap/restriction on individual funding category when executing procurement exercise. Overspending on capped items and expenditures on funding-excluded items will not be reimbursed.

### 3.4 Manpower

3.4.1 The Grantee is expected to have the ability to supervise and the expertise to undertake the project. Hence, no funding will be granted for employment of additional supervisory/administrative staff, engagement of professional advisors or provision of training courses for staff of the Grantee for undertaking the project.

3.4.2 Funding of supporting staff may be supported and the salary will be considered on a case-by-case basis including duties, qualifications and experience of the staff. The total amount of the supporting staff cost should normally be below 40% of the approved total budget or the actual expenditure for the project, whichever is less. If the Grantee can provide full justification to the satisfaction of the Government, funding for the supporting

staff cost could exceed 40% of the approved total budget and/or actual expenditure for the project.

- 3.4.3 To prevent double benefits, the grant must not be used in any way to remunerate any staff if they are receiving any forms of salary, remuneration, honorarium, and/or allowance on a full-time basis by other funding sources or the Grantee. In case a supporting staff to be remunerated by the BHCF is working on the project on a part-time basis, his/her salary should be apportioned accordingly. The Grantee who fails to comply with the rules of prevention of double benefits will be required to refund the Government the benefits overpaid to the Grantee with interest.
- 3.4.4 Direct labour cost involved in preparing/conducting conservation or related activities on the site concerned may be supported in the form of allowance or honorarium expenditure items under the activities. The actual amount to be granted will depend on the modus operandi of the project. The Grantee shall observe the pay rates and restriction as stipulated under **Appendix V** of this Guide to Application. The Grantee shall demonstrate in the budget / actual expenditure items fulfilment of such requirement.
- 3.4.5 Any unused fund in the approved budget for supporting staff costs is not allowed to be reallocated to other expenditure items unless approval from the Government is obtained with full justification.
- 3.4.6 For staff to be employed for the project, the level of pay should be on par with the general market level and must comply with the prevailing statutory minimum wage under the Minimum Wage Ordinance (Cap. 608), the Employment Ordinance (Cap. 57) and any other relevant ordinances. It is the responsibility of the Grantees to ensure that its management and staff comply with the requirements of the Prevention of Bribery Ordinance (Cap. 201).

3.4.7 The Grantee shall reserve sufficient budget in the proposal for the recruitment of supporting staff to follow up on the administration work upon completion of activities, and ensure timely submission of the relevant reports and financial records to the Secretariat.

### 3.5 Insurance

The Grantee must effect and keep in force appropriate insurance policies for the project and its activities throughout the project period and indemnify the Government against any claim that may arise from the project. All public events under the project should be covered by public liability insurance. Under no circumstances shall the Government, the ACBHC or the BHCF and its Secretariat be held liable for any loss or damage or liabilities arising from the project.

### 3.6 Publicity

3.6.1 Funding for the production of publicity materials and/or publications will be considered. Details of publication arrangements and the relevant budget should be provided in the application for overall assessment. The Grantee is encouraged to use electronic means for promotion and publication materials for environmentally friendly reasons to reduce excessive printed copies.

3.6.2 Use of modern technology and/or social media platform such as project website is also encouraged and the respective design and maintenance costs will also be considered. The Grantee should ensure the budget of the project is sufficient to support its operation and maintenance throughout the Project Duration and up to the end of three years after the completion of the project. The Grantee has to bear its own cost on their operation and the continuous maintenance afterwards.

3.6.3 In carrying out the project, any educational, publicity and other related materials should not be used for personal, political, commercial or religious publicity of any individuals or

organisations. Additionally, activities, events or materials arising from the project should not be presented in a manner that induce a public perception of any personal, political, commercial or religious publicity of any kind, or misrepresent any association of any individuals or organisations with the Government, the ACBHC, the BHCF and its Secretariat. In addition, activities and events organised and materials produced under the project should not be implemented or distributed in a way which may adversely affect the image of, or cause any liability to, the Government, the ACBHC, the BHCF and its Secretariat.

- 3.6.4 The Grantee is obliged to submit sample or artwork of all publicity materials for publications proposed, produced or used for the project or its activities for review by the Government as and when required, and should follow the advice of the Government on the format and presentation of such materials whenever required.
- 3.6.5 When considering the location and arrangements for displaying publicity materials, the Grantee should comply with the relevant legislation and regulations, and obtain the endorsement of all relevant authorities, Government bureaux and departments and other relevant parties, including consultation of parties affected as appropriate. Provisions of funds by the BHCF should in no way be construed as support for the proposed location and arrangements for the display of such publicity materials.
- 3.6.6 The full name of BHCF may be used and printed in all publicity materials, publications and activities under the project to acknowledge the contribution of the BHCF. For any use of the name of BHCF, prior approval from the Government should be obtained. The publicity materials include publicity leaflets/posters/banners; backdrops; press release; webpage; reports and publications arising from the project ; and advertisements on newspaper and electronic media, etc. The Grantee shall submit electronic copies of the finalised publicity materials and two sets of any printed publications to the

Secretariat for record.

- 3.6.7 The Grantee should obtain prior approval from the Government for placing the name of BHCF together with names, logos and photos of other individuals, a single private organisation or a consortium of private companies in any publicity materials and promotional items relating to the project.
- 3.6.8 In no circumstances should the name of BHCF be used for commercial interest or other purposes which may damage the image and/or cause any liability to the Government, the ACBHC, the BHCF and its Secretariat.
- 3.6.9 A disclaimer should be added to all publications and media briefs relating to the project: *"Any opinions, findings, conclusions or recommendations expressed in this material/event do not necessarily reflect the views of the Government of the Hong Kong Special Administrative Region, the Built Heritage Conservation Fund and the Advisory Committee on Built Heritage Conservation."*

### 3.7 Changes to the Project Details

- 3.7.1 Major changes to the project are subject to prior written approval by the Government. Full justifications should be provided to substantiate the request for such major changes which include but not limited to:
- (a) revision of the objectives and/or content of the activities listed in the Approved Project Proposal;
  - (b) change in personnel, including the Person-in-Charge of the Project, Project Leader and members of the project team;
  - (c) change in the degree of involvement of the personnel in the project as specified in the Approved Project Proposal;
  - (d) transfer of the responsibility of organising an activity to another institution or organisation;
  - (e) major change in budget components;
  - (f) extension/reduction of the approved Project Duration;

- (g) deferral of the submission of progress report(s), Project Evaluation Report or audited statement of accounts; and/or
- (h) changes in sponsorship.

3.7.2 For other changes, such as changes of the date and place of an activity, etc., the Secretariat should be notified in writing for information in advance.

3.7.3 The Grantee must ensure that the names of the project and activities are not the same or similar to any project or activities organised by other organisations. The Government reserves the right to request the Grantee to make changes to the project (including the name) as deemed necessary to avoid confusion.

3.8 The Grantee shall appoint one of its key members or an employee of it as Project Leader whose name must be included in the application form. The Project Leader will act as the representative of the Grantee and will be the key person responsible for carrying out the project in accordance with the terms and conditions of the Funding Agreement. The Project Leader will be the point of contact for the Grantee and will be responsible for addressing comments and enquiries from the Secretariat. Notwithstanding the appointment of Project Leader, the Grantee is responsible for the prevention, detection and investigation of Project Leader's misconduct, including but not limit to misuse of funds, falsification of data, etc. The Grantee should inform the Secretariat immediately of any change of Project Leader in writing, and recommend, with justifications, a suitable new Project Leader to take over the project, together with his/her curriculum vitae for the Secretariat's consideration and approval.

### 3.9 Others

3.9.1 For applications from NPOs (including post-secondary education institutions) **without receiving government subventions**, general administrative and overhead costs incurred from the project will be considered, subject to a cap of 10% of the total approved grant or actual expenditure of the project, whichever is less. The Grantee shall inform the

Secretariat immediately if there is any change in this status.

- 3.9.2 Allocation for funding on contingency items in the budget will be considered on a case-by-case basis. Such an approved budget is not allowed to be reallocated to other expenditures without getting approval by the Government.
- 3.9.3 Overseas travel will not normally be supported. Overseas participants at a local event or activity are normally expected to pay for their own travel and living expenses.
- 3.9.4 Funding will not be granted to the Grantee for renting or purchasing materials already in the Grantee's stock or venues that are already occupied or owned by the Grantee.
- 3.9.5 Funding for payments to individuals as a reward for their participation in the organised activities will not be granted.
- 3.9.6 Fees for external auditors to prepare audited statements of accounts as required under clause 1.2.6 will be considered. Any unused fund in the approved budget for audit fees is not allowed to be reallocated to other expenditure items.

#### **4 Intellectual Property Rights Arising from Projects and the Use of Project Deliverables**

- 4.1 For the purpose of these “Conditions for the Use of Funds”,
  - (a) “intellectual property rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights;

- (b) “project deliverables” means documents, manuscripts, papers, interview records, oral history records, application forms, records, reports, posters, pamphlets, leaflets, brochures, publications, photographs, films, audio and video recordings, workshop/talk/seminar materials, website materials, e-Book materials, publicity materials, software for computer and/or other mobile devices (e.g. mobile applications), virtual reality productions, etc. which are created, developed or produced by or on behalf of the Grantee during the course of or in connection with performing the Funding Agreement and/or the project (in whatever form or media such as cassette tapes, CDs, VCDs, DVDs, mp3, and USB storage devices, whether in their completed forms or not) including without limitation all the deliverable(s) (where applicable) as mentioned in item 6 of the Grantee’s application form; and
- (c) the terms “performance”, “performer” and “fixation” shall have the same meanings as those assigned to them in section 200 of the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong).
- 4.2 Unless agreed otherwise in writing between the Government and the Grantee, the Grantee will, pursuant to the terms and conditions of the Conditions for the Use of Funds and the Funding Agreement, solely own all intellectual property rights subsisting in the project deliverables upon their creation.
- 4.3 The Grantee shall irrevocably waive and undertake to procure at its own cost and expense all relevant authors and directors of the project deliverable(s) to irrevocably waive all moral rights (whether past, present or future) in the project deliverable(s). Such waiver shall operate in favour of the Government, the ACBHC, the BHCF and its Secretariat, and their respective authorised users, assigns and successors-in-title and shall take effect upon the creation of such items.
- 4.4 In case the project deliverable(s) consist of or contain a film, video or sound recordings or any part thereof, the Grantee shall obtain at its own costs and expenses before the fixation and/or recording of any performance(s) in such film, video or sound recording all the consent

or clearance from the performer(s) as may be necessary for such fixation and/or recording of the performance(s) and for any use and exploitation of such fixation or recording, or copies thereof, as contemplated by these “Conditions for the Use of Funds” and/or the Funding Agreement.

- 4.5 The Grantee shall procure the performer(s) referred to in clause 4.4 above to waive their moral rights over their performance(s) in relation to the project deliverable(s), such waiver shall operate in favour of the Government, the ACBHC, the BHCf and its Secretariat and their respective authorised users, assigns and successors-in-title and to have effect immediately upon each of the relevant performance is given.
- 4.6 If any work or materials of which the intellectual property rights belong to a third party are incorporated into the project deliverable(s) or used by the Grantee in the conduct of the project and/or performance of the Funding Agreement, prior to the use and incorporation of such work and materials in conducting the project and/or performing the Funding Agreement, the Grantee shall have obtained from such third party intellectual property rights owners the grant of all necessary licences or clearances for itself, the Government, the ACBHC, the BHCf and its Secretariat and their respective authorised users, assigns and the successors-in-title to use (including doing any of the acts restricted by the copyright set out in sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong)) such work and materials in the manner and for any of the purposes contemplated by these “Conditions for the Use of Funds” and/or the Funding Agreement. The costs of the above licences or clearances shall be borne by the Grantee.
- 4.7 The Grantee shall ensure that the performance of the Funding Agreement and/or the project; the creation, development, production and supply of the project deliverables; the use, operation, custody or possession of the project deliverables or any part thereof by the Government, the ACBHC, the BHCf and its Secretariat and their respective authorised users, assigns and successors-in-title; and the exercise by the Government, the ACBHC, the BHCf and its Secretariat and their respective authorised users, assigns and successors-in-title of any rights granted under the Funding Agreement and/or in connection

with the project (including without limitation the rights and licences granted under clause 4.9 below) do not and will not infringe any intellectual property rights, performers' rights, moral rights and/or any other rights of any person.

- 4.8 The Grantee shall be solely responsible for all claims of infringement of intellectual property rights, performers' rights, moral rights and/or any other rights arising out of or in relation to the project deliverable(s) by any third party. The Grantee shall indemnify and keep the Government, the ACBHC, the BHCF and its Secretariat and their respective authorised users, assigns and successors-in-title fully and effectively indemnified against all claims, actions, arbitrations, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis) arising directly or indirectly from or in relation to any infringement or alleged infringement of any intellectual property rights, performers' rights, moral rights and/or any other rights of any person in connection with the creation, development, production and supply of the project deliverable(s); the use, operation, custody or possession of the project deliverable(s) or any part thereof by the Government, the ACBHC, the BHCF and its Secretariat and their respective authorised users, assigns and successors-in-title; the performance of the Funding Agreement and/or the project; and the exercise by the Government, the ACBHC, the BHCF and its Secretariat and their respective authorised users, assigns and successors-in-title of any rights granted under the Funding Agreement and/or in connection with the project (including without limitation the rights and licences granted under clause 4.9 below).
- 4.9 The Grantee shall, at its own cost and expense, grant for the benefit of the Government, the ACBHC, the BHCF and its Secretariat and their respective authorised users, assigns and successors-in-title an unconditional, irrevocable, non-exclusive, sub-licensable, perpetual, royalty-free, transferable and worldwide licence to use the project deliverables, including the results, findings, any other information provided in the application form, progress report, Project Evaluation Report and other publications or publicity material (and, without prejudice to clause 4.6 above, in relation to any project deliverables to

which the Grantee is not empowered to grant sub-licence(s) the Grantee hereby undertakes to procure at its sole cost and expense the grant of such rights for the benefits of the Government, the ACBHC, the BHCF and its Secretariat and their respective authorised users, assigns and successors-in-title by the relevant third parties in respect of such project deliverables). Such licence to use shall include but not be limited to the following rights:-

- (a) the right to copy the project deliverables and extract or reproduce the same in any format and in any medium, including but without limitation to any written publications, posters, invitation cards/letters, leaflets, brochures, photographs, films, audio and video recordings (in whatever format such as cassette tapes, CDs, VCDs, DVDs, mp3) and computer files;
- (b) the right to issue, publish, distribute copies of the project deliverables and communicate the project deliverables to the public, including but without limitation to the right to make available the project deliverables to the public via the Internet and the right to broadcast the project deliverables or include the same in a cable programme service;
- (c) the right to rent, hire and loan copies of the project deliverables to the public;
- (d) the right to exhibit, perform, show and play the project deliverables in public; and
- (e) the right to adapt, enhance, edit, modify, translate the project deliverables and combine the same with other reports, notes, plans, recommendations, analyses, programmes, research findings, photographs, tables, drawings, diagrams, figures, documents, things and materials. All intellectual property rights of whatever nature in such adaptation(s) made by the Government, the ACBHC, the BHCF and its Secretariat and their respective authorised users, assigns and successors-in-title shall belong to and shall be and remain vested in the Government absolutely upon their creation.

#### 4.10 Handling of Goods and Capital Items procured with the Funds

4.10.1 The Grantee will hold the title of goods and capital items (such as reference books, computer software, electronic appliance or equipment) procured for the implementation of the project using their own funds. However, if the Grantee has applied for the BHCF grant to purchase any goods and capital items under the List of Approved Expenditure Items for the project, the title of all these goods and capital items will remain with the Government during the project period. The Grantee should also keep and maintain a register to record the movements of all these goods and capital items with individual cost of HK\$1,000 or above procured with the BHCF grant during the project period, including any movements or transfers of these items among users (such as the date of issue and the recipient, date and cost of acquisition, detailed description of the goods and capital items and their physical locations). The Grantee should also mark on each item to show that it is an asset of the project funded by the BHCF. During the project period, the project team may be required to submit the inventory records to the Secretariat for random checks as and when required.

4.10.2 No sale, transfer, mortgage or disposal of any goods and capital items procured with the BHCF grant will be allowed during the project period unless and until approval from the Government is given. Upon satisfactory completion of the project, the title of goods and capital items procured with the BHCF grant may be determined on a case-by-case basis.

#### 4.11 Restrictions on the Use of Project Deliverables

The Grantee shall not use or allow to be used directly or indirectly the project deliverables, except for the performance of the Funding Agreement and/or the project or with the approval of the Government. “Use” includes for the purposes of this clause 4.11, any acts restricted by copyright (including reproduction) set out in sections 22 to 29 of the Copyright Ordinance (Cap. 528).

## 5 Suspension/Termination of Funding

5.1 The Secretariat reserves the right to suspend/terminate funding for the project under any of the following circumstances:

- (a) if the Grantee does not commence the project within three months from the date of signing the Funding Agreement and no reasonable explanation has been provided;
- (b) if the Government considers that the project has not progressed satisfactorily and no reasonable explanation has been given;
- (c) if the Person-in-Charge or the Project Leader leaves the Grantee's organisation prior to completion of the project and there is no one available who has been involved in the project and considered suitable by the Secretariat as appropriate to take over their roles and such a change is likely to impact the progress of the project;
- (d) if any reports, statements of accounts or other deliverables submitted by the Grantee under the Funding Agreement are not up to reasonable standards, remain overdue without justification or advice from the Secretariat has not been addressed, and no reasonable explanation has been provided;
- (e) if the Grantee fails to comply with the funding conditions as set out in these *Conditions for the Use of Funds* and / or in the Funding Agreement and no reasonable explanation has been given;
- (f) if the project is being carried out under any of the circumstances set out in clause 3.7 without the Government's approval; and
- (g) if the required permit, licence, or consent from the relevant authority, building owner or tenant is no longer granted at any stage of the project resulted in an inability to conduct the project in accordance with the Approved Project Proposal.

In each instance of suspension/termination, the Government shall notify the Grantee, providing the reasons for the suspension/

termination. The Grantee will be given a one-month period to demonstrate that measures have been taken to address the problems and rectify the unsatisfactory situation to the satisfaction of the Government for lifting the suspension.

5.2 The Government may immediately terminate funding granted to a project upon the occurrence of any of the following events:

- (a) The Grantee has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security, the public interest of Hong Kong, public morals, public order or public safety;
- (b) The continued engagement of any organisation / contractor or the continued performance of the project is contrary to the interest of national security; or
- (c) The Government reasonably believes that any of the events mentioned above is about to occur or is occurring.

5.3 In the event of suspension, the Government, the ACBHC, the BHCF and its Secretariat shall not be responsible for paying the Grantee any further funds as specified in AIP Letter and the Funding Agreement. The Grantee will be liable to pay the Government a sum equal to the funds it has received under the Funding Scheme, together with all the costs and expenses incurred by the Government out of or incidental to the administration and operation of the Funds within four months following the formal issuance of the suspension of the project.

5.4 In the event of termination, the Grantee shall:

- (a) make reasonable efforts to cancel any expenditure already incurred before the date of termination to be specified by Government (“**Cut-off Day**”) and immediately stop incurring new expenditure for the project. Any new expenditure incurred after the Cut-off Day shall not be reimbursed;

- (b) freeze the bank account of the project as specified in clause 1.2.2 above immediately (if applicable) and refund any surplus (that is, any income derived from the project that exceeds the expenditures incurred prior to the Cut-off Day for the running of the project, including all interest income generated from the disbursed funds of the project as specified in clause 1.4.2 above) to the Government within four months counting from Cut-off Day;
  - (c) submit the project deliverables created, developed or produced up to the Cut-off Day;
  - (d) submit, to the satisfaction of the Government, a certified / audited statement of accounts with all invoice / receipts / procurement records for the project expenditures incurred as at the Cut-off Day and a report on the latest position of the project up to the Cut-off Day within four months counting from Cut-off Day; and
  - (e) return the goods and capital items procured for the project using the funds as noted under clause 4.10 within four months counting from Cut-off Day.
- 5.5 Any suspension or termination of project will impact the Grantee's future opportunities for funding from BHCF, and the management of the Grantee will be notified.

## **6 Prevention of Bribery Ordinance / Probity Requirement / Conflict of Interest / National Security**

- 6.1 The Grantee shall observe the Prevention of Bribery Ordinance, Cap. 201 (“**PBO**”)<sup>3</sup> and shall advise its associates, associated persons, project team, directors, employees, agents, consultants, contractors and other personnel who are in any way involved in the project (including the co-organising/assisting/supporting/sponsoring bodies, if any)

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<sup>3</sup> Grantee should observe the Best Practice Checklist issued by the Corruption Prevention Department of the Independent Commission Against Corruption namely “*Strengthening Integrity and Accountability – Government Funding Schemes Grantee’s Guidebook*” ([https://cpas.icac.hk/UPLoadImages/InfoFile/cate\\_43/2017/43903a1c-f8c9-4bac-b4f8-e7ed80b9a004.pdf](https://cpas.icac.hk/UPLoadImages/InfoFile/cate_43/2017/43903a1c-f8c9-4bac-b4f8-e7ed80b9a004.pdf))

(collectively, the “Relevant Personnel”) that they are prohibited from offering, soliciting or accepting any advantages as defined under the PBO, such as money, gifts, loans, discounts, favour, etc. in the conduct of or in relation to the project. If offences are committed under the said Ordinance by the Grantee or its Relevant Personnel in undertaking the approved project, the Government shall be entitled to terminate the agreement and shall hold the Grantee liable for any loss or damage the Government may thereby sustain.

- 6.2 The offer of an advantage to any government officers or the Chairperson or Members of the ACBHC while having business dealing with them or with a view to influencing the application results is an offence under the PBO. Any such offer by the Grantee, or the Relevant Personnel may cause conflict of interest with the government officers involved in BHCF or the Chairperson or Members of the BHCF and those be seen as such will render the application null and void. The Government may also cancel the application approved and hold the applicant/Grantee liable for any loss or damage which the Government may sustain.
- 6.3 The Grantee shall ensure that the Relevant Personnel shall avoid conflict of interest situations as and when necessary and not to disclose any confidential information in the conduct of or in relation to the project, unless prior written approval has been obtained from the ACBHC.
- 6.4 The Grantee shall ensure that the Relevant Personnel shall not accept lavish, unreasonably generous or frequent entertainment, or which is likely to give rise to any actual, potential or perceived conflict of interest situations.
- 6.5 The Grantee shall at all times observe the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, and must not engage in any act or activity which endangers national security.

## **7 Others**

- 7.1 The Government, the ACBHC, the BHCF and its Secretariat shall have no responsibility, financial or otherwise, for expenditure or other liabilities arising from the project.
  
- 7.2 The Government, the ACBHC, the BHCF and its Secretariat may at any time, if they consider fit, amend or add to the above conditions, without prior notice to the Grantee.