

**Arts Capacity Development Funding Scheme
8th Round Funding Exercise (2018)
Guide to Application**

Table of Contents

Preamble

Chapter I Introduction

Chapter II Objectives

Chapter III Funding Support

Chapter IV Eligibility

Chapter V Application

Chapter VI Assessment Mechanism

Chapter VII Funding Agreement and Disbursement of Funds

Chapter VIII Publicity and Acknowledgement

Chapter IX Obligations

Chapter X Project Variation

Chapter XI Unallowable Costs

Chapter XII Miscellaneous Provisions

PREAMBLE

This Guide to Application (“Guide”) provides basic information on the Arts Capacity Development Funding Scheme (“ACDFS”), including its objectives, eligibility of applicants, application procedure, proposal assessment mechanism, responsibilities of successful applicants, disbursement of funds, monitoring and evaluation mechanism of approved proposals.

As mentioned in paragraph 5.2 below, the ACDFS will be open for the 8th round of applications from **12 November 2018** to **4 January 2019** (“Closing Date”). This Guide may be subject to change in subsequent rounds of the funding exercise and applicants (“Applicants”, and each of them, an “Applicant”¹) are advised to consult the latest version of such on the webpage: http://www.hab.gov.hk/en/policy_responsibilities/arts_culture_recreation_and_sport/acdfs.htm

Completed application forms together with all required documents and information must reach the Secretariat (“Secretariat”) of the ACDFS **by 6pm the latest** on or before the Closing Date^{2and3}. Late applications will not be considered.

Enquiries about this Guide or application in respect of this funding exercise should be addressed to the Secretariat as administered and supported by the Home Affairs Bureau (“HAB”) of the Government of the Hong Kong Special Administrative Region (“Government”):

Address: Secretariat of Arts Capacity Development Funding Scheme
Home Affairs Bureau
25/F, Wanchai Tower
12 Harbour Road
Wan Chai, Hong Kong

Telephone: (852) 3102 2934 / (852) 3102 2935

Fax: (852) 3102 5997

Email: acdfs@hab.gov.hk

Website: www.hab.gov.hk

Opening hours: From Monday to Friday, except public holidays;
9:12am to 1pm, 2pm to 6pm

¹ Eligibility criteria for Applicants are described in paragraph 4.6 below.

² If Tropical Cyclone Warning Signal No. 8 or above or black rainstorm warning signal is in force for any duration between 2pm and 6pm on the Closing Date, the application deadline will be postponed to 6pm on the next working day.

³ Applications sent by Hongkong Post will only be accepted if postmarked no later than the Closing Date.

- 1.1** The Financial Secretary announced in his Budget Speech in February 2010 a proposal to inject \$3 billion Hong Kong Dollars into the Arts and Sport Development Fund (“ASDF”) as seed money and for the investment returns thereon to provide sustainable resources for the long-term development of the arts and sport. Following approval from the Finance Committee of the Legislative Council in July 2010, \$1.5 billion Hong Kong Dollars (i.e. \$3 billion Hong Kong Dollars shared equally between the arts and sports portions) has been injected into the arts portion of the ASDF with a view to funding arts initiatives and projects that are conducive to building a vibrant local arts scene and boosting the city’s standing in the world’s cultural landscape.

- 1.2** An annual provision of around \$30 million Hong Kong Dollars is to be disbursed under the ACDFS with matching grant elements. The annual provision will be subject to an annual review of the investment returns in the previous year.

- 1.3** The ACDFS is designed and implemented by the Advisory Committee on Arts Development (“ACAD”) which advises the Government on policies and related matters pertaining to local arts development. Applications to the ACDFS (the “Applications”, and each of them, an “Application”) will be assessed and recommended by ACAD to the Government for approval. The Government will consider whether or not to approve such applications, the amount of the grants and what conditions should be attached taking into account the recommendations of ACAD.

2.1 With the objective of **strengthening the cultural software and building the capacity of the arts sector** of Hong Kong, the ACDFS will provide funding support for innovative and impactful proposals (“Proposals”, and each of them, a “Proposal”) that contribute to the objectives of:

- **capacity development of arts practitioners, arts groups, art forms and/or the arts sector;**
- **programme/content development;**
- **audience building; and**
- **arts education**

Proposals of **a large scale and/or of a long time frame** will be supported with a view to creating a greater impact on the arts scene of Hong Kong and on various professions, sectors and communities in Hong Kong. Applicants are encouraged to put forth proposals which will contribute to capacity development of a wider scope, such as proposals aiming to enhance capacities in various aspects including creativity, human resources and organisational capabilities; proposals seeking to develop the capacity of specific art form(s) and/or the arts sector as a whole in addition to building the applicants’ capacity; proposals supporting local artists on cultural exchange with the Mainland and/or abroad and taking them to the regional and international stage; proposals encompassing documentation, research, criticism, publication and/or other elements conducive to the sustainable development of the arts; proposals pioneering new frontiers in arts practices and related critical reflection; and proposals striving for artistic excellence and innovation in respect of programme/content development. While the target beneficiaries of the ACDFS are established arts practitioners/arts groups, we welcome proposals which encompass training opportunities/elements to nurture young artists and/or arts administrators.

- 2.2** The ACDFS aims to fill the gaps between various public funding schemes and sources for the arts and to support worthwhile initiatives which contribute to the cultural and arts development in the community, and seeks to promote various art forms including **performing arts, visual arts and multi-disciplinary arts**.
- 2.3** The ACDFS does not cover projects that fall under the scope of other dedicated Government funding schemes including the Cantonese Opera Development Fund, Film Development Fund and CreateSmart Initiative. Proponents of proposals seeking to promote Cantonese opera or film or to develop creative sectors (covering advertising, architecture, design, digital entertainment, publishing and printing and television) should make applications under the respective funding schemes instead.

3.1 Forms of Funding Support

3.1.1 Two types of grants are provided by the ACDFS: Springboard Grants and Project Grants (both “Grants”; and any of them, a “Grant”). Both types must be used to support the Proposals as detailed in the Funding Agreement (defined in paragraph 7.1). The Grant will cover costs incurred by the Applicant in implementing its Proposal, including creative and production costs, marketing and publicity costs, manpower and project administrative costs. The Government does not guarantee that the full amount as applied will be approved for successful Applications. In accepting the Grant, the Grantee has the obligation to find additional resources, if required, to ensure that the Proposal can be implemented as approved.

3.1.2 The ACDFS does not provide recurrent Grants and Applicants should not assume that similar applications will be approved in successive funding exercises. Neither ACAD nor the Government is bound to approve any such applications having regard to all relevant factors such as the prevailing themes and priorities that may be taken to promote local arts development at different stages.

3.1.3 Springboard Grants**Springboard Grants are matching grants.**

- (a) Springboard Grants are intended to support non-profit Proposals, i.e. proposals which are not implemented primarily to make a profit and are designed to elevate the Applicants to a higher level of professional performance with enhanced deliverables capable of contributing to the objectives of the ACDFS (viz. capacity development, programme/content development, audience building and arts education). The Applicant for a Springboard Grant must meet relevant criteria as set out in Chapter IV (Eligibility).

The Applicant must demonstrate that it has secured or will secure **cash income of not less than \$1 million** Hong Kong Dollars of which not less than \$250,000 Hong Kong Dollars is non-government sponsorships and/or donations for its Proposal. A **200% matching grant up to a maximum amount of \$3 million Hong Kong Dollars** may be provided in respect of the Applicant's **actual cash income**. The funding period may last for a **maximum period of two years unless otherwise approved by the Government**.

- (b) Each successful Applicant (a "Successful Applicant") of Springboard Grants may apply for a **second Springboard Grant**. In the case of a successful application for a second Springboard Grant, the **maximum funding period is three years** for the Successful Applicant to implement its enhanced Proposal for a more sustainable development of its organisation. The Applicant must demonstrate that it has secured or will secure total **cash income of not less than \$1.5 million Hong Kong Dollars** of which not less than \$375,000 Hong Kong Dollars is non-government sponsorships and/or donations for its Proposal. A **200% matching grant up to \$4.5 million Hong Kong Dollars** may be provided in respect of the Applicant's **actual cash income**. Neither ACAD nor the Government is bound to recommend and approve respectively any application for a second Springboard Grant. Should a second grant application be approved, the Successful Applicant is not eligible to apply for any further Springboard Grant.

Income to be Matched

- (c) Cash income includes any revenue that the Applicant can generate from the approved Proposal including box office, admission fees, enrolment fees, participation fees and sales of merchandise developed as an integral part of the Proposal, in addition to non-government sponsorships and/or donations in cash. Cash income shall exclude administrative charges imposed by third parties, such as ticket commission, credit card commissions and handling

charges.

- (d) Cash support from other public funding sources for the Proposal, including cash support from other ACDFS projects, shall not form part of the cash income.
- (e) Sponsorships or donations in kind shall not form part of the cash income.
- (f) Applicants must explain how such funds and income are/will be raised (such as charging admission fees or soliciting commercial sponsorship). Applicants must set out clearly in the application form the sources of funds and income. The Applicant must also submit documentary proof to satisfy ACAD and the Government that the claimed amount of income is deliverable.

3.1.4 *Project Grants*

Project Grants are direct grants.

- (a) Project Grants are intended to support **non-profit Proposals of high artistic/professional merit** that fulfil **one or more of the objectives** of capacity development, programme/content development, audience building and arts education. Project Grants seek to fund large-scale, **impactful** arts projects which contribute to local arts development by allowing a longer duration for project implementation. The Applicant for a Project Grant must meet relevant criteria as set out in Chapter IV (Eligibility).
- (b) Applications involving Proposals with an overall **projected expenditure at or above \$800,000 Hong Kong Dollars** can be made for Project Grants.
- (c) **Part or whole** of the net approved project cost after deducting the expected income and revenue obtained from the project may be covered by this Grant. A **direct grant up to a maximum amount of \$2 million Hong Kong**

Dollars may be provided for a **maximum period of two years unless otherwise approved by the Government.**

3.2 Double Subsidy

3.2.1 Double subsidy in the form of cash support must be avoided. If support from other public funding sources⁴, has been granted to (a) particular expenditure item(s) of the approved Proposal, the same item(s) will not be eligible for funding. Applicants should not include such expenditure items having other public financial support in the projected expenditure of the Proposal. However, a Springboard/Project Grant may be made for a Proposal receiving **non-cash support from other public funding sources** (e.g. sponsorship of venue support and ticketing services by the Leisure and Cultural Services Department), subject to a recommendation from ACAD and approval by the Government at its absolute discretion. Consideration will be given on a case-by-case basis, in light of the prevailing circumstances.

3.2.2 The Applicant's cash income for the approved Proposal must not comprise any fees obtained by the Applicant from other public funding sources.

3.3 Non-government Sponsorships and Donations

3.3.1 The Applicant is required to list in the Application any non-government sponsorships and/or donations that it will be able to secure. Applicants for Springboard Grants are encouraged to explore different sources of funding support. Newly sourced non-government sponsorships and/or donations are preferred.

3.3.2 Any non-government sponsorships included in cash income for matching purposes must come from a party or parties which are not related to the Applicant in terms of control, management or otherwise.

⁴ Public funding sources refer to funding provided by Government Bureaux/Departments or public organisations receiving recurrent funding from the Government (e.g. Home Affairs Bureau, Leisure and Cultural Services Department, Hong Kong Arts Development Council, West Kowloon Cultural District Authority, Education Bureau, district councils).

3.3.3 The Successful Applicant of a Springboard Grant must produce satisfactory documentary evidence before disbursement of the first instalment that the pledged non-government sponsorships and/or donations of not less than the minimum amount as specified in paragraphs 3.1.3 (a) and 3.1.3 (b) are available. All committed non-government sponsorships and/or donations for matching of Springboard Grants must have been received before the last instalment of the Grant is paid by the Government.

3.3.4 The Successful Applicant shall not accept sponsorships, donations or advertisements from, nor be in association in any form or manner with:

- (a) any person in the tobacco or tobacco-related industry;
- (b) any person in the smoking products (including electronic cigarettes and heat-not-burn products) industry or any industry related thereto; or
- (c) for events specifically aimed at young people under 18, any person in the alcohol industry.

The Successful Applicant shall not accept any sponsorships, donations or advertisements which, in the reasonable opinion of the Government, may jeopardise the image or reputation of the Government.

3.4 Instalments

3.4.1 Grants will be disbursed by instalments during the Funding Period, on appropriate milestones/deliverables and subject to any other conditions attached to the approval of the Grants. The dates of the **instalment schedule** are to be agreed between the Successful Applicant and the Government, and will be stipulated in the Funding Agreement.

3.4.2 The first instalment is to provide start-up funds for the Successful Applicant and will be made upon the signing of the Funding Agreement and satisfaction of other conditions prescribed by the Government, up to a maximum of 30% of the approved Grant.

In most cases, the Grant will be paid by **four instalments** in the following manner and according to the arrangements as set out in paragraphs 7.3.1 to 7.3.5.

<u>Instalment</u>	<u>Springboard Grants</u>	<u>Project Grants</u>
First	Maximum of 30% of approved grant	Maximum of 30% of approved grant
Second	An amount equal to the approved grant minus the amounts of the First, Second Last and Final Instalments, to be disbursed upon satisfactory accomplishment of milestones/deliverables and evidence that a matching amount of income has been deposited	An amount equal to the approved grant minus the amounts of the First, Second Last and Final Instalments, to be disbursed upon satisfactory accomplishment of milestones/deliverables
Second Last	Not less than 10% of the approved Grant, and subject to satisfactory completion of all key milestones/deliverables of the Proposal and evidence that a matching amount of income (inclusive of proportional matching for the first instalment) has been deposited	Not less than 10% of the approved Grant, and subject to satisfactory completion of all key milestones/deliverables of the Proposal
Final	Not less than 10% of approved Grant subject to accomplishment of the stipulations as set out in	Not less than 10% of approved Grant subject to accomplishment of the stipulations as set

<u>Instalment</u>	<u>Springboard Grants</u>	<u>Project Grants</u>
	paragraph 7.3.2 and evidence that a matching amount of income for all instalments has been deposited	out in paragraph 7.3.2

Additional interim instalments may be considered provided that a genuine need of cashflow is evident as demonstrated by the Successful Applicant or the Grantee.

3.4.3 The Government expects to pay an instalment within 14 working days after its acceptance of the Successful Applicant's achievement of the milestones/deliverables and other conditions required for the payment of such instalment.

3.4.4 For details about the Grants, please refer to Chapter VII (Funding Agreement and Disbursement of Funds) of this Guide.

3.5 Surplus or Deficits

3.5.1 Grantees must return to the Government any residual funds and operating surplus (including the sale proceeds from all or any equipment and/or goods disposed of) generated from the Proposal, up to the amount of the Grant at the time of the submission of the audited account report (see paragraph 9.1.4). No residual funds nor operating surplus may be used for any other purposes unless the Government has approved the use for a purpose contributing to local arts development. The Government will only consider granting approval if ACAD considers that the use will be in an acceptable manner, in which case ACAD will make a recommendation for the Government to determine at its discretion.

3.5.2 Under no circumstances will ACAD and the Government accept any liability for deficits arising from or in relation to an approved Proposal. Grantees will be solely responsible for any deficits arising from implementing the approved Proposals. In addition, Grantees will be solely responsible for any shortfall necessary in implementing and completing the Proposals.

3.6 The Government reserves the right to suspend or terminate the Grant for an approved Proposal as set out in paragraphs 10.2.1 to 10.2.4.

- 4.1** The subject matter of the Proposal should relate to **arts and culture**. The Proposal must be **non-profit** and the Applicant must demonstrate to ACAD's satisfaction such nature of the Proposal. A Proposal that is eligible for funding from existing public funding sources or is deemed to be financially self-sufficient whether with or without support from the existing public funding sources and/or the community will be given lower priority unless the Applicant can demonstrate how the additional resources, if provided by the ACDFS, will enable the Proposal to better fulfil the objectives of capacity development, programme/content development, audience building and arts education.
- 4.2** A Proposal which is seeking/receiving **non-cash support from other public funding sources** is eligible to apply for the ACDFS. The Applicant should also note paragraphs 3.2.1 and 3.2.2.
- 4.3** **No more than one Application** is to be submitted by each Applicant in respect of this funding exercise.
- 4.4** The Government shall not in any circumstances be liable for any costs and expenses incurred by an Applicant in relation to its Application or otherwise.
- 4.5** Unless ACAD recommends to the Government that an exception be made in which case it will be up to the Government to grant an exception at its absolute discretion, an application must satisfy all the requirements set out in this Chapter in order to be eligible for consideration by ACAD and the Government.
- 4.6 Eligible Applicants**
- 4.6.1 Individual arts practitioners, specially formed ensembles of professional arts practitioners, entities (including commercial entities) incorporated in Hong Kong and arts groups not receiving recurrent subvention from the Government are eligible to apply for **Project Grants** for implementing **non-profit Proposals**. Applicants should also note related requirements in paragraph

4.6.3. **Ensembles and groups** as described in paragraph 4.6.2 are eligible to apply for **Springboard Grants**.

4.6.2 Successful Applicants for **Springboard Grants** must be charitable institutions or trusts of a public character which are exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) or companies incorporated and registered under the Companies Ordinance (Cap. 622) or the old Companies Ordinance (Cap. 32) as limited by guarantee whose objects and powers do not include the distribution of profits to members. **Such legal status must have been acquired by the Applicant prior to entering into the Funding Agreement.** The Applicant will be required to provide documentary proof to the satisfaction of the Government that it has met the requirements of this paragraph.

4.6.3 Successful Applicants for **Project Grants** must be charitable institutions or trusts of a public character which are exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) or companies incorporated under the Companies Ordinance (Cap. 622) or the old Companies Ordinance (Cap. 32). **Such legal status must have been acquired by the Applicant prior to entering into the Funding Agreement.** The Applicant will be required to provide documentary proof to the satisfaction of the Government that it has met the requirements of this paragraph.

4.6.4 A Successful Applicant must maintain the non-profit nature of the Proposal by returning residual funds or operating surplus to the Government upon completion of the Proposal or proposing alternative use of such funds for purposes contributing to local arts development (with full details including estimated budget) which will be considered by ACAD. Applicants should also note related requirements in paragraphs 3.5.1, 3.5.2 and 7.1.1 to 7.2.3.

4.6.5 The Applicant must not be receiving recurrent funding of any form from the Government (such as subvention provided by the Home Affairs Bureau and the Leisure and Cultural Services Department to the nine major performing arts groups and the

Hong Kong Arts Festival Society respectively) during the Funding Period. In addition, to avoid double subsidy (see paragraphs 3.2.1 and 3.2.2), a Successful Applicant for Springboard Grant which is receiving a Year Grant of the Hong Kong Arts Development Council must undertake to relinquish any such grants before signing of the Funding Agreement.

4.6.6 The Applicant must be the organiser of the Proposal, unless specifically mentioned in the Proposal, or under special circumstances and approval has been obtained from the Government in advance.

4.6.7 **Joint applications** (e.g. applications made by two or more groups as set out in paragraphs 4.6.1 and 4.6.2) are allowed. Except in the case of an incorporated joint venture or a partnership, all the parties constituting the Applicant must sign the application form and the Funding Agreement. A principal will have to be designated for the administration of the approved Proposal, and the respective responsibilities of all the parties constituting the Applicant should be stated clearly in the application form.

5.1 Application Form

5.1.1 The application form can be obtained from the Secretariat or downloaded from the ACDFS website. Details are as follows:

Address: Secretariat
Arts Capacity Development Funding Scheme
Home Affairs Bureau
25/F, Wanchai Tower
12 Harbour Road
Wan Chai
Hong Kong

Website: http://www.hab.gov.hk/en/policy_responsibilities/arts_culture_recreation_and_sport/acdfs.htm

5.1.2 The application form must be duly completed and signed by the Applicant. **Each Application is to cover only one Proposal for either Springboard Grant or Project Grant. Each Applicant is only allowed to submit one application** in respect of this funding exercise as specified in paragraph 4.3.

5.1.3 The Applicant must submit all information and documents required as specified in the application form and this Guide, including but not limited to the following:

(a) Proposal/Operation Coordinator

- (i) In each Application, the Applicant must nominate a proposal/operation coordinator;
- (ii) If the Application is approved, the proposal/operation coordinator will be responsible for administering and operating the implementation of the Proposal, monitoring its expenditure and ensuring the proper use of the Grant in accordance with the approved budget, this Guide and other instructions set for the Grantee,

answering enquiries and attending progress meetings with the Secretariat and/or ACAD, if required.

(b) Project/Operation Budget

- (i) All monetary figures must be in **Hong Kong currency**;
- (ii) The Applicant is required to submit a proposed **budget** for implementing the Proposal, showing all expenditure, non-government sponsorships and/or donations, income and revenue described in paragraphs 3.1.1 to 3.1.4 as well as justifications for and the calculations of the budget. In considering the amount of grant, the Government will take into account the net project costs after deducting expected income (including the amount of sponsorships and donations) from the expected expenditure of the Proposal;
- (iii) When preparing the budget, all **expenditure** items have to be grouped under the specific categories of manpower, production costs and other project costs as specified in Section C of the application form;
- (iv) If contingency and miscellaneous expenses are included in the budget, the total amount of these expenses should not exceed 3% of the total grant amount applied and the Successful Applicant will be required to account for the actual spending of such contingency and miscellaneous costs during implementation of the Proposal;
- (v) Costs of **new equipment and goods** procured, used and paid solely for implementing the Proposal during the planning, preparation and operation periods as approved by ACAD may be charged to the Project/Operation Account (see paragraph 7.2). The Applicant will be responsible for maintenance and repair of the equipment and goods and such costs should not be included in the budget;

- (vi) The Grantee must charge items to the Project/Operation Account in accordance with the requirements set out in Chapter XI (Unallowable Costs) below;
- (vii) For a Proposal which relates to an event that is intended to become an **annual or regular event**, the Applicant has to demonstrate that the Grants will be used for a specified period, provide details of its **long term plan** in relation to the Proposal and acknowledge that the Grants, if approved, may not be provided to fund future editions of the event; and
- (viii) The Applicant is required to **declare** in the Application whether it has sought or is seeking other financial support for the Proposal from **the Government or other public funding sources**.

5.1.4 Apart from the above, the Applicant must provide a comprehensive **plan** covering the following:

- (a) **a feasibility evaluation** of the Proposal having regard to the market demand of the community, the availability of venue(s), talents and expertise required and other determining factors;
- (b) **a time-line** showing how the Proposal will be implemented;
- (c) **a proposed budget** setting out all costs and expenditure and the income and revenue to be generated;
- (d) **a cashflow statement** designating milestones for financial entries and outlay;
- (e) **an implementation strategy** for implementing and administering the Proposal with effective manpower development and for ensuring the proper and effective use of the Grant;
- (f) **an evaluation proposal** detailing how the Proposal will meet

the themes and priorities as well as the objectives of this funding exercise and what performance indicators will be used for measuring the performance of the Applicant; and

(g) **a risk control/contingency plan** if key milestones are not achieved as planned.

5.1.5 The Applicant for a second Springboard Grant is required to show how the Proposal will further elevate its professional performance/capacity on top of the outcome of the approved Proposal implemented with the first Springboard Grant, and bring about continued development upon completion of the Proposal implemented with the second Springboard Grant.

5.1.6 Applications from past and existing grantees will be considered in conjunction with the Applicants' performance under the previous round(s) of grant(s). In case their Proposals under the previous round(s) of grant(s) are not yet completed at the time of assessment, the Applicants' interim performance will be taken into account. If any of such Applicants is selected, approval-in-principle will be granted subject to the Applicant's satisfactory completion of its Proposal under the previous round(s) of grant(s). Any grants for such Applications, if approved, will only be paid after satisfactory completion of the Proposal funded by the previous round(s) of grant(s).

5.1.7 Applicants may provide recordings or documentation of up to 3 previous works for reference.

5.2 Timing for Application

The ACDFS will be open for the 8th round of applications from 12 November 2018 to 4 January 2019.

5.3 Application Procedure

5.3.1 The application form must be completed either in **English or Chinese**. In the case of any inconsistency between the English version and the Chinese version of the Guide to Application or

of the application form (as the case may be), the English version shall prevail.

- 5.3.2 No application fee will be charged.
- 5.3.3 The Applicant must submit the **original copy** of the completed application form with **2 photocopies** and the electronic version of the same, together with all information and documents (text information in Word format, proposed Budget and Cash Flow Projection in Excel format; stored in CD-ROM/USB) required by the application form and this Guide, to the following address:

Secretariat
Arts Capacity Development Funding Scheme
Home Affairs Bureau
25/F, Wanchai Tower
12 Harbour Road
Wan Chai
Hong Kong

- 5.3.4 The Applicant may be required to provide **supplementary documents and information** from time to time in respect of the Application. Failure to provide such information within the specified time will result in the Application being deemed to having been withdrawn without further notice.
- 5.3.5 The application form and information submitted by an Applicant will be retained by the Secretariat for record and audit purposes. The Applicant should therefore make its own copies of these documents for record purposes. Reference materials submitted such as publications, photos, visual/audio CDs will not be returned to the Applicant.

5.4 Re-submission

If an Application is rejected (“Rejected Application”), the Applicant may not re-submit an Application for an ACDFS grant to implement the same Proposal in any subsequent rounds of application unless significant and substantial changes have been made to that Proposal, or

the Applicant is able to produce new information and documents which show an in-depth review of the Proposal. A re-submitted application must be made by way of a fresh and a completed application form (“New Application”). The Applicant must indicate that it is a New Application developed upon the Rejected Application and show changes that have been made to the original Proposal.

6.1 Vetting procedure

- 6.1.1 Upon receipt of an Application, the Secretariat will conduct a **preliminary screening** and may seek clarification or supplementary information from the Applicant. Failure to provide such information within the specified time will result in the Application being deemed to have been withdrawn without further notice.
- 6.1.2 If an Application meets all the requirements set out in Chapter IV (Eligibility) or if an exception has been granted in respect of that Application (see paragraph 4.5), the Secretariat will proceed to arrange for a panel of ACAD members and expert advisers (see paragraph 6.4.2) to assess the Application.
- 6.1.3 Assessment panels comprising ACAD members and expert advisers will assess Applications for Springboard Grants or Project Grants under the ACDFS in accordance with the criteria and guidelines approved by ACAD, to make recommendations to ACAD, and to make suggestions to ACAD to fine-tune the selection criteria and process as required.
- 6.1.4 The Applicant and its team members may be required to attend interviews to present its Proposal to the assessment panel and to answer questions regarding such.
- 6.1.5 After receiving ACAD's recommendations, the Government will consider whether or not to approve an Application, the amount of the Grant and what conditions should be attached taking into account the recommendations of ACAD.

6.2 Assessment Criteria

- 6.2.1 Applications will be assessed according to the following criteria:

- **artistic/professional merit;**
- **creativity and originality;**
- **impact on the arts sector and the community;**
- **technical feasibility;**
- **financial viability; and**
- **experience and execution capability of the Applicant, partner, participating artists and arts practitioners in respect of the Proposal.**

The Applicant's performance in implementing the Proposal under the previous round(s) of grant(s), if applicable, will also be taken into consideration.

6.2.2 The Government reserves the right to **reject** an Application on grounds including but not limited to:

- (a) the Application is incomplete or contains incorrect information or fails to comply with the requirements set out in this Guide;
- (b) a petition is presented or proceedings are commenced or an order is made or a resolution is passed for the winding up or bankruptcy of the Applicant;
- (c) a false, inaccurate or incomplete statement or representation is contained in the Application or a promise or a Proposal is made which cannot be fulfilled or delivered; or
- (d) the Applicant is in default of its obligation(s) under other agreements with the Government.

6.2.3 If the Secretariat has had reasonable grounds to believe that a Proposal or any matters proposed to be performed or conducted under a Proposal infringes or is likely to infringe any **Intellectual Property Rights of any party**, the Application will not be processed further and may be rejected unless the dispute or allegation has been satisfactorily resolved.

6.2.4 In considering an Application, due consideration will be given to the following factors, wherever applicable:

- (a) the **impact** of the Proposal in strengthening the capacity development of the arts in Hong Kong, as manifested by the **four objectives** of the ACDFS viz. capacity development of arts practitioners, arts groups, art forms and/or the arts sector; programme/content development; audience building; and arts education;
- (b) the Proposal is **innovative** and of **high artistic merit** in comparison to the art works available in the same or similar art forms;
- (c) whether benefits accrued from the Proposal can **serve the interests of the arts sector or the community as a whole**;
- (d) whether the Proposal is **non-profit** by nature;
- (e) whether the Proposal is **creative and original**;
- (f) the overall planning, organisational structure and duration of the Proposal are **practical and reasonable**;
- (g) the **capability** of the Applicant's team, i.e. the team's project management and technical capabilities, expertise, experience, qualifications, track record, and the resources available for implementing the Proposal;
- (h) whether the proposed budget is **reasonable and realistic**, whether the Applicant is committed to **prudent exercise of financial management and control**; and whether the Proposal has been financed or should be financed by other public funding sources; and
- (i) any other special factors which are relevant and contribute towards the objectives of the ACDFS.

6.3 Self-evaluation

6.3.1 The Applicant is required to propose evaluation methods and performance indicators for their Proposals. Such evaluation methods and performance indicators should encompass **qualifiable and quantifiable deliverables**. In addition, the Applicant shall suggest documentary evidence such as survey results, online responses and the like.

6.3.2 ACAD may require the Applicant to adjust its evaluation methods and performance indicators. The agreed set of evaluation methods and performance indicators shall form **part of the reporting requirements** of the Proposal should it be approved for the Grant.

6.4 Avoidance of Conflicts of Interest

6.4.1 To avoid conflicts of interest, members of ACAD will be required to declare whether they are directly or indirectly related to an Application and, if so, will be required to refrain from participating in the discussion and determination of that Application.

6.4.2 ACAD will invite **experts, professionals, experienced arts practitioners and academics** to give advice in respect of individual Applications on the artistic merit, creativity, originality, technical feasibility, financial viability, track record and execution ability of the Applicant, and the importance and impact of the Proposal on the long-term development of the arts industry. Any such persons will also be required to declare whether they are directly or indirectly related to an Application and, if so, will be required to refrain from assessing the Application.

6.5 Notification of Results

6.5.1 After considering the recommendations of ACAD, the Government may either approve or reject the Application. The Government's decision shall be final.

6.5.2 If an Application is rejected, it is expected that the Applicant will be notified in writing **within 5 months** of the date when the relevant funding exercise closed.

6.5.3 If an Application is approved, the Applicant will be informed of the result together with any terms and conditions that may be imposed by ACAD and/or the Government. The Applicant may need to revise its Proposal accordingly before the Grant is made.

6.5.4 The Proposal has to comply with the **laws of Hong Kong**. It is the responsibility of the Applicant to observe any legal requirements and obtain the relevant permit, licence, consent, approval or the like from the authorities concerned.

6.5.5 For the avoidance of doubt, the Applicant is responsible for acquiring the necessary **venue and support services** it requires to implement the Proposal.

6.6 Withdrawal of Application

The Applicant may inform the Secretariat in writing that its Application is withdrawn at any time before the Funding Agreement is signed between the Government and the Applicant.

7.1 Funding Agreement

7.1.1 If an Application is approved, an **Offer Letter** and an agreement (in form and substance prescribed by the Government) (“Funding Agreement”) will be sent to the Applicant. The Funding Agreement will set out the amount of funding support to be offered by the Government and the terms and conditions attached to such offer. The Successful Applicant will be the recipient of the Grant and is required to sign the Funding Agreement after which it will become the Grantee.

7.1.2 **No binding agreement will be made between the Government and the Successful Applicant as to the Grant unless and until the Funding Agreement is executed by the Government and the Successful Applicant.**

7.1.3 The Grantee must comply with all the terms and conditions laid down in the Funding Agreement.

7.1.4 The **Funding Agreement** shall contain, among other things, the following:

(a) the terms and conditions as required by ACAD and/or the Government;

(b) the terms and conditions set out in this Guide; and

(c) details regarding the approved Proposal.

7.2 Project/Operation Account

7.2.1 The Grantee shall keep complete and accurate books and records of all income, expenditure and liabilities in respect of the approved Proposal in accordance with generally accepted accounting principles. The Grantee is required to keep a

proper and unique set of accounts within its accounting system specifically for processing **all receipts/income and payments/expenditure** of the Proposal. The unique set of **accounts** should be maintained in such a manner as to enable the production of a Statement of Income and Expenditure and Balance Sheet in respect of the approved Proposal. All income and expenditure relating to the Proposal should be recorded properly and timely in such **accounts**.

7.2.2 The Grantee shall open and maintain with a licensed bank in Hong Kong a designated bank account “Project/Operation Account” for the sole purposes of keeping and operating all monies (including all interest generated) received in relation to the approved Proposal. The Grant will only be deposited into the above mentioned Project/Operation Account.

7.2.3 The Grant and all other receipts relating to the approved Proposal as well as all payments relating to the approved Proposal will be handled through the Project/Operation Account. All interest shall be kept in the Project/Operation Account and shall not be withdrawn or used for any purpose apart from implementing the approved Proposal.

7.3 Disbursement of Grants

7.3.1 The Grants will be disbursed by instalments on satisfactory accomplishment of appropriate milestones and deliverables (upon production of satisfactory documentary evidence of such accomplishment), and strictly in accordance with the terms and conditions of the Funding Agreement. The instalment arrangements are summarised in paragraphs 3.4.1 to 3.4.3.

7.3.2 Subject to paragraph 10.2 below, disbursement of the **final instalment** of the Grant will be made only upon the following:

- (a) successful implementation of the approved Proposal and production of satisfactory documentary evidence of milestones/deliverables accomplished in accordance with the Funding Agreement by the completion date specified

in the Funding Agreement or by such later date as the Government may approve in writing;

- (b) due compliance with the Funding Agreement;
- (c) the submission of the final report and the audited account report in form and substance to the satisfaction of the Government and complying with the reporting requirements set out in paragraphs 9.1.3 and 9.1.4, **within six months** after the project completion date as specified in the Proposal or by such other date as the Government may approve in writing; and
- (d) in respect of a Springboard Grant, production of satisfactory documentary evidence showing that all committed non-government sponsorships and donations are in place.

7.3.3 The Government reserves the right to suspend any payment to the Grantee if in its opinion a considerable amount of the Grant remains unspent in the Project/Operation Account; or if there is an operating surplus; or if there is any delay in submission of the progress, final and/or audited account reports; or any of such reports does not comply with the requirements set out in the Funding Agreement.

7.3.4 In the event a Springboard Grantee fails to secure a cash income meeting the minimum requirement (as set out in paragraphs 3.1.3 (a) and 3.1.3 (b)) in terms of the total amount as well as the amount for non-government sponsorships and/or donations, the Government reserves the right to cease to make any further payment of the Grant and/or shall require the Grantee to reimburse such part or all of the Grant received by such time as the Government shall direct.

7.3.5 If for any reasons (whether or not outside the control of the Grantee) a Proposal is not completed by the due date as specified in the Funding Agreement, or is suspended by the Grantee, the Government may require the Grantee to repay part or whole of

the Grant, and to indemnify the Government against any loss or expenses incurred as a result of or in relation to the above.

- 8.1** The Grantee will be responsible for the publicity and marketing of the approved Proposal and relevant follow-up actions with a view to maximising benefits to the arts sector of Hong Kong and the community at large.
- 8.2** The Grantee shall **acknowledge** the funding support under the ACDFS as prescribed by the Government in all publicity, advertising and promotional materials and publications including printed and electronic versions as well as at media events relating to the Proposal. The Government reserves the right to require the Grantee to immediately cease and desist from using any promotional materials in which reference is made to the Government. The Grantee must also ensure that a **disclaimer** as prescribed by the Government will be included in any publicity materials, publications and media events related to the Proposal.
- 8.3** The Grantee shall obtain prior written approval of the Government of all publicity, advertising and promotional materials and publications relating to the Proposal in which the acknowledgement and disclaimer are proposed to appear.
- 8.4** The Grantee shall provide the Secretariat with details of achievements of the approved Proposal, if any, including creation of works in which Intellectual Property Rights subsist, successful marketing and commercialisation of deliverables and awards. The Secretariat may from time to time disclose to the public details of such achievements including announcing them on the internet or through publications or by showcasing them at exhibitions for publicity and reference.

Chapter IX OBLIGATIONS

9.1 Reporting Requirements

- 9.1.1 The Grantee will be required to submit progress report(s) as well as a final report and an audited account report, duly audited, dated and signed by an auditor⁵ approved by the Government, on the final financial position.
- 9.1.2 The **progress report** must be in a format prescribed by the Government. It must include details of the progress of the approved Proposal and a financial statement of the latest financial position on a cash basis accounting approach.
- 9.1.3 The final report and the audited account report, duly audited, dated and signed by an auditor approved by the Government, must be submitted by the Grantee **within six months** from either the Proposal completion date or if earlier the termination date of the Funding Agreement.
- 9.1.4 The **final report** must be in a format prescribed by the Government and include details of the results, performance, achievements and evaluation of the implemented Proposal. The final report must be submitted together with an **audited account report** (duly audited, dated and signed by an auditor approved by the Government) on an accrual basis on the final financial position of the implemented Proposal audited by an auditor as arranged by the Grantee to ensure that the Grant was fully and properly applied to the Proposal for which all Grant monies were paid, received and expended in accordance with the approved budget. This financial statement shall contain an audited statement of the total expenditure and income of the implemented Proposal, and shall be prepared from a proper and separate set of accounts.

⁵ An auditor means a certified public accountant who for the time being is registered as such under the Professional Accountants Ordinance (Cap. 50) and holds a practicing certificate within the meaning of that Ordinance.

- 9.1.5 The Grantee may be required to make presentation(s) of the results and its experience in implementing the approved Proposal to ACAD and to report on the achievement of deliverable(s).
- 9.1.6 The actual expenditure for external **audit fees** relating to the approved Proposal and arising from compliance with the provisions of the Funding Agreement may be included in the budget, subject to the maximum of \$20,000 Hong Kong Dollars.
- 9.1.7 The Grantee must keep all financial statements, books and records of the approved Proposal for at least **seven years** after either completion date of the Proposal, or if earlier, the termination date of the Funding Agreement, or as otherwise specified by the Secretariat within that seven-year period, and make them available for inspection by the Government at any time.
- 9.1.8 The **Director of Audit** may conduct an **examination** into the economy, efficiency and effectiveness with which the Grantee has used the Grant. The Director of Audit shall have a right of access at all reasonable times to all such documents or information in the custody and control of the Grantee as he may reasonably require for conducting an examination and shall be entitled to require, from any person holding or being accountable for any such document or information, such information and explanation as he considers reasonably necessary for that purpose. The Director of Audit may report to the Secretary for Home Affairs and the President of the Legislative Council the results of an examination conducted by him.

9.2 Procurement Procedures

- 9.2.1 In the event the Grantee has a Board of Directors which comprises not fewer than 5 members, such Board shall establish unbiased, fair and open policies and procedures on procurement of goods and services to ensure that the purchases represent value for money and that the Grant shall be properly applied and spent pursuant to the requirements of the Funding Agreement. When establishing the procurement system, the Board of Directors of

the Grantee is required to draw reference from the Best Practice Checklist – Strengthening Integrity and Accountability – Government Funding Schemes Grantee’s Guidebook issued by the Independent Commission Against Corruption.

9.2.2 In the event that paragraph 9.2.1 does not apply to the Grantee, the Grantee must ensure that all procurements for goods and services will be carried out in an unbiased and fair manner and must comply with the following procedures unless the Secretariat agrees otherwise:

- (a) for every procurement the **aggregate value** of which is **more than \$5,000 Hong Kong Dollars but less than \$10,000 Hong Kong Dollars**, quotations in written form from at least **two suppliers** must be obtained;
- (b) for every procurement the **aggregate value** of which is **\$10,000 Hong Kong Dollars or more, but less than \$500,000 Hong Kong Dollars**, quotations in written form from at least **three suppliers** must be obtained; and
- (c) for every procurement the **aggregate value** of which is **\$500,000 Hong Kong Dollars or more**, quotations in written form from at least **five suppliers** must be obtained.

In the above scenarios (a) to (c), the supplier that has submitted the lowest bid should be selected. If the lowest bid is not selected, full justification must be given by the Grantee to the Government. In the event the Grantee intends to procure goods or services from **one supplier** without an open procurement process, details are required to be provided by the Grantee **before the procurement** to the Secretariat, illustrating the relationship with the supplier concerned and providing justifications for not following the open procurement process set out in this paragraph.

9.2.3 The Grantee must not procure charged services provided by the Grantee or any associate or associated person of the Grantee, such as accounting services, personnel services, procurement services, library services, security services, cleansing services,

legal services, and central administrative services.

9.2.4 The Government reserves the right to inspect all quotations under the implemented Proposal. The Grantee should keep all quotations for inspection.

9.2.5 The Grantee must procure that its governing body, officers and staff shall keep themselves regularly informed of the relevant requirements and procedures relating to procurement of goods and services and amendments thereto (if any) from time to time.

9.3 Hiring of Programme/Project Staff

9.3.1 The Grantee is required to abide by the principle of **openness and competitiveness** in hiring staff for implementing the Proposal.

9.3.2 The Grantee is required to observe all **laws regulating the employment of persons** in Hong Kong.

9.4 Insurance

9.4.1 The Grantee will be required in the Funding Agreement to take out **appropriate insurance policies**, including employee compensation, an all-risks insurance in respect of equipment purchased or hired for the approved Proposal and public liability including coverage of occupier's liability and to meet any claim which may arise as a result of the Proposal.

9.4.2 Under no circumstances will the Government and/or ACAD be liable or accountable for any claims, loss or damages arising from or in relation to any Proposal.

9.5 Intellectual Property Rights⁶

9.5.1 The Grantee is required to inform the Secretariat of any Intellectual Property Rights that may arise in the implementation of his Proposal and how such Intellectual Property Rights would be handled, including the acquisition and use of such Intellectual Property Rights. The Government and/or ACAD may impose terms and conditions in the Funding Agreement in this respect. The Grantee shall make available to the public the implemented Proposal and deliverables arising out of the Proposal.

9.5.2 Any Intellectual Property Rights in the deliverables arising out of the Proposal will be owned by the Grantee.

9.5.3 (a) Upon the Government's request, the Grantee shall grant unconditionally to the Government, its authorised users, assigns and successors-in-title a non-exclusive, perpetual, irrevocable, royalty-free worldwide and sub-licensable licence to do the acts restricted by copyright that are stipulated in sections 23 to 29 of the Copyright Ordinance (Cap. 528) in relation to the deliverables arising out of the Proposal. In relation to any parts of the deliverables arising out of the Proposal to which the Grantee is not empowered to grant the licence aforesaid, the Grantee undertakes to procure at its sole cost and expense the grant of such rights for the benefits of the Government, its authorised users, assigns and successors-in-title by the relevant third party Intellectual Property Rights Owners including without limitation collaborating party or parties.

(b) The Grantee grants for the benefits of the Government, its authorised users, assigns and successors-in-title a non-exclusive, perpetual, irrevocable, royalty-free, worldwide and sub-licensable licence to do the acts restricted by copyright that are stipulated in sections 23 to

⁶ Intellectual property rights means patents, trademarks, service marks, trade names, design rights, copyrights, domain names, database rights, rights in know-how, new inventions, designs or 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.

29 of the Copyright Ordinance (Cap. 528) in relation to all reports and related materials referred to in paragraph 9.1. In relation to any parts of the reports and materials to which the Grantee is not empowered to grant the licence aforesaid, the Grantee undertakes to procure at its sole cost and expense the grant of such rights for the benefits of the Government, its authorised users, assigns and successors-in-title by the relevant third party Intellectual Property Rights owners including without limitation the collaborating party or parties.

9.5.4 Agreement between the Grantee and the collaborating party (or parties) should be made on the sharing of the royalties or any other sorts of income to be generated from the Proposal. Brief description of any such arrangements should be available for the Secretariat's reference.

10.1 Modification and Amendment

10.1.1 The approved Proposal will be incorporated into the Funding Agreement. The Grantee will be required to carry out such strictly in accordance with the approved schedule appended to the Funding Agreement. Any modification, amendment or addition to the Proposal or other parts of the Funding Agreement, including change of the commencement or completion dates, key project staff and/or artistic personnel, key equipment, scope, methodology, budget, sponsorship or cash flow projection, requires the **mutual agreement of the Government and the Grantee** and it is the responsibility of the proposal/operation coordinator to **inform the Secretariat in writing well in advance of any such proposed modification, amendment or addition.**

10.1.2 Justification is required for any **spending in excess of the budget** items in the relevant progress report, if any, and/or final report whereas explanatory notes are required for underspends. Notwithstanding these, prior written approval must be sought from the Secretariat if budgeted expenditure is to be transferred to any **unbudgeted expenditure** item (e.g. new/alternative equipment item, new staff, revised number/rank of the staff, new/alternative consumable item). The final decision on whether certain items of income and/or expenditure should/can be included/charged to the Project/Operation Account rests with the Government.

10.2 Suspension or Termination of Grant

10.2.1 The Government may suspend or terminate the Grant to a Grantee for an approved Proposal and the Funding Agreement for reasons including but not limited to:

- (a) **breach** of all or any of the terms and conditions of the Funding Agreement; or

- (b) **lack of progress** of the implementation of the approved Proposal in a material way; or
- (c) the failure, or likelihood of failure, to complete the Proposal by the completion date mentioned in the Proposal or to adhere to the time-line in the Proposal; or
- (d) the Government sees the need to suspend or terminate the Grant in the **public interest**.

10.2.2 The Government may **terminate or suspend** the Grant and/or terminate the Funding Agreement by serving one-month's notice in writing upon the Grantee at any time.

10.2.3 In the event of suspension or termination based on paragraph 10.2.1 or paragraph 10.2.2, the Government may demand from the Grantee an immediate return of all or part of the Grant, in which event the Grantee shall be liable for any loss or damages the Government may sustain as a result of or in relation to any breach or default by the Grantee.

10.2.4 During the period of such suspension or upon termination, the Funding Agreement shall cease to have effect and no Grant or other financial support will be made available to the Grantee, but without prejudice to:

- (a) any rights and claims accrued to the Government prior to such suspension or termination including those arising from any breach by the Grantee of the Funding Agreement; and
- (b) any provisions of the Funding Agreement which are required by the context or are otherwise expressed to continue in force and effect notwithstanding the completion of the Proposal or the suspension or termination of the Funding Agreement.

10.3 Management of the Funding Support

- 10.3.1 The Government may require the Grantee to **return** the Grant, in whole or in part, if any of the following events occur:
- (a) breach of all or any of the terms and conditions of the Funding Agreement; or
 - (b) without prejudice to the generality of the foregoing, where any Grant not having been expended in accordance with Chapter XI (Unallowable Costs); or
 - (c) any warranty or representation made by the Grantee in its Application or in the Funding Agreement or in the completion report which is incorrect, incomplete or false.
- 10.3.2 Any record of **mishandling** of public funds or lack of discipline in financial management or **breach** of the Funding Agreement or any other irregularity is a factor which the Government may take into account in considering future applications for the ACDFS or other public funding or financial support by the Grantee or any of its team members.

Except where specified in the Proposal and approved by the Government, the Grant can only be used for **non-recurrent** expenditure.

11.1 Manpower

11.1.1 Unless otherwise approved by the Government, the Grant must not be used to pay any emolument to a person who is already on the **payroll** of the Grantee's organisation. This principle applies irrespective of whether the relevant service/work is carried out within or outside normal working hours of the person concerned. If the Applicant has justifiable circumstances for including in the proposed budget the whole or part of the emolument of any person who is already on the payroll of its organisation, such circumstances should be clearly stated in the Proposal at the time of application.

11.1.2 The Grant must only be used by the Grantee in carrying out the approved Proposal in accordance with the approved budget set out in the Funding Agreement. Unless otherwise approved by the Government and included in the approved budget, the Grant or any part thereof shall not be used to cover the following expenditure items:

- (a) annual salary increment; and
- (b) gratuities, fringe benefits and allowances other than (i) an employer's contribution to the Mandatory Provident Fund; and (ii) expenditure for employees' compensation insurance for persons hired solely for the implementation of the Project.

11.2 Production Costs

11.2.1 The Grant must not be used to cover:

- (a) rental/time cost of premises owned by the Grantee;
- (b) rental/time cost of venue/space hired not solely for the implementation of the Proposal;
- (c) rental/time cost and maintenance cost of existing equipment and goods owned by the Grantee; and
- (d) depreciation/amortisation or provisions not representing actual expenses incurred.

11.2.2 Equipment specifically acquired for implementing the Proposal must be either included in the approved budget or the funding of which has been specifically approved in advance by the Government. Otherwise the costs of such items cannot be charged to the Project/Operation Account.

11.3 Other Project Costs

The Grant must not be used to cover entertainment expenses and any prizes (either in the form of cash or other types of souvenir) in carrying out the Proposal unless such requirement is integral and essential to the nature of the event concerned. In such case, full justification for the proposed expenses, which have to be modest and commensurate with operational needs, has to be provided in the Proposal.

11.4 Indirect Costs

11.4.1 The Grant must not be used to cover:

- (a) costs related to prior/subsequent year(s)/period(s) adjustment(s);
- (b) capital financing expenses, e.g. mortgage and interest on loans/overdrafts; and
- (c) administrative and overhead costs of establishing and/or maintaining the operation or administration of the

Applicant, including rental, utility charges, renovation, maintenance and repair expenses.

11.4.2 The above list is not exhaustive. The Grantee should consult the Secretariat if it has any doubts about whether an item may be charged to the Project/Operation Account.

12.1 Prevention of Bribery

12.1.1 The Applicant shall observe the **Prevention of Bribery Ordinance (Cap. 201)** (“PBO”) and shall advise its employees, subcontractors, agents and other personnel who are in any way involved in the Proposal that they are not allowed to offer to or solicit or accept from any person any money, gifts or advantage as defined in the PBO in the conduct of or in relation to the Proposal.

12.1.2 The **offer of an advantage** to the Secretariat or any members of ACAD with a view to influencing the approval of an Application is an offence under the PBO. Any such offer by the Applicant or any person associated with the Applicant, its employee(s) or agent(s) will render the Application null and void. The Government may also withdraw any approval that may have been issued to the Application in question, if any, and hold the Applicant concerned liable for any loss or damages, which the Government may sustain.

12.2 Representations and Warranties

The Applicant represents, warrants and undertakes that:

- (a) the Proposal will be performed and completed in an **impartial, timely and diligent manner;**
- (b) all information supplied, and statements and representations made by or on its behalf in its Application, in the Proposal and in the course of conducting the Proposal, or otherwise in the progress, final and audited account reports, financial statements or project materials are **true, accurate and complete;**
- (c) it shall comply, and shall ensure that every person employed or engaged by it for the purposes of the

Proposal complies, with the **laws of Hong Kong** in relation to the conduct of the Proposal;

- (d) if the Application is approved, the **Funding Agreement** will be duly executed by the Applicant, that is the Grantee, within the specified time and all terms and conditions in the Funding Agreement shall constitute legally binding and valid obligations on its part in accordance with their terms;
- (e) the provision of any work or material by the Grantee in performing the Proposal, the use or possession by the Government and its authorised users, assigns and successors-in-title of any work or material relating to the Proposal, deliverables arising out of the Proposal or any part thereof for any of the purposes contemplated by the Funding Agreement does not and will not infringe any Intellectual Property Rights of any party; and
- (f) in respect of any materials used by the Grantee in the performance of the Proposal and in respect of which any Intellectual Property Rights are vested in a third party, the Grantee shall have obtained the grant of all necessary clearances for itself and its authorised users authorising the use of such materials for any of the purposes contemplated by the Funding Agreement.

12.3 Indemnity

If the Application is approved, the Applicant shall indemnify and keep indemnified the Government, its authorised users, assigns and successors-in-title, from and against:

- (a) all and any claims, actions, investigations, demands, proceedings, threatened, brought or instituted against the Government; and
- (b) all liabilities (including liability to pay compensation and damages), damages, losses, costs, charges and expenses

which the Government may sustain or incur (including all legal and other costs, charges, and expenses, on a full indemnity basis, which the Government may pay or incur in relation to any demand, claim, action, proceeding or investigation instituted by or against the Government), which in any case arise directly or indirectly from, or as a result of, or in connection with, or which relate in any way to:

- (i) any damage to property or personal injury or death suffered by any person in the connection with or in the course of or as a result of any activity (indoor or outdoor) organised or carried out by the Applicant in relation to the Proposal;
- (ii) the breach by the Applicant of any provision in the Funding Agreement or the application form;
- (iii) the negligence, recklessness, or wilful misconduct of the Applicant or of any of its employees, agents, consultants or contractors in relation to the conduct of the Proposal; or
- (iv) the Proposal or its deliverables or materials developed or produced or created in the Proposal or any part thereof infringes or is alleged to infringe any Intellectual Property Rights of any party.

12.4 Personal Data

12.4.1 The personal data provided as part of the application process will be used by the Government to process the Application, and to conduct research and surveys, and to enforce its rights and powers under the Funding Agreement if signed. The provision of personal data by means of this Application is voluntary. However, if the Applicant does not provide information mandatory for the processing of the Application as indicated on the application form, the Application shall be rejected.

12.4.2 The personal data provided in the Application may from time to time be disclosed to any Government bureaux, commissions and departments for the purposes mentioned above. However, in the interests of transparency of the operations of the ACDFS, by signing and submitting an Application, a Successful Applicant consents to the disclosure of details of the Proposal to the public. Even if an Application is not successful, by submitting an Application, the Applicant shall be deemed to have consented to the disclosure of its name, Proposal title and amount of Grant sought to the public for general information.

12.4.3 Applicants will have the right of access and correction with respect to personal data as provided for in sections 18 and 22 of and Principle 6 in Schedule 1 to the Personal Data (Privacy) Ordinance (Cap. 486). The Applicant's right of access includes the right to obtain a copy of the personal data provided in the Application at a reasonable charge.

12.5 Relationship of the Parties

12.5.1 If an Application is successful, the Successful Applicant shall enter into the Funding Agreement with the Government as a Grantee. The Grantee shall not represent itself as an employee, servant, agent or partner of the Government.

12.5.2 All rights and powers of the Government under the Funding Agreement may be exercised by the Secretary for Home Affairs or such other Government officer as may be appointed by him from time to time. All powers exercised by the Secretary for Home Affairs or his appointee are exercised for and on behalf of the Government.

12.6 Assignment

The Applicant shall not assign, transfer, dispose of or otherwise deal with any of its rights or obligations under the Funding Agreement or otherwise in relation to its Application, or purport to do so without the prior written consent of the Government.

12.7 Governing Law and Jurisdiction

The Funding Agreement (if entered into) shall be governed by and construed in accordance with the laws of Hong Kong. Each of the parties thereto will irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

12.8 Enquiry

Enquiries regarding the application for funding support under the ACDFS should be addressed to the Secretariat:

Address: Secretariat
Arts Capacity Development Funding Scheme
Home Affairs Bureau
25/F, Wanchai Tower
12 Harbour Road
Wan Chai
Hong Kong
Telephone: (852) 3102 2934 / (852) 3102 2935
Fax: (852) 3102 5997
Email: acdfs@hab.gov.hk
Website: www.hab.gov.hk

12.9 Disclaimers and Others

12.9.1 This Guide shall not in any circumstances affect or limit the interpretation of the application form or the Funding Agreement or any other document to which the Government is a party in relation to the ACDFS. Unless the context otherwise requires, terms defined and expressions used in this Guide shall bear the same meanings as set out in the application form and/or the Funding Agreement.

12.9.2 Whilst the information provided by the Government in this Guide has been prepared in good faith, it does not claim to be comprehensive or to have been independently verified. Neither the Government, nor any of its officers, agents or advisers, accepts any liability or responsibility as to, or in

relation to, the adequacy, accuracy or completeness of the information contained in this Guide or any other written or oral information which is, has been or will be provided or made available to any Applicant; nor do they make any representation, statement or warranty, express or implied, with respect to such information or to the information on which this Guide is based. Any liability in respect of any such information or any inaccuracy in this Guide or omission from this Guide is expressly disclaimed. Nothing in this Guide or in any other written or oral information which is, has been or will be provided or made available to any Applicant should be relied on as a representation, statement or warranty as to the intentions, policy or action in future of the Government, its officers or agents.

- 12.9.3 This Guide does not constitute an offer nor does it constitute the basis of any contract which may be concluded in relation to the ACDFS or the implementation and completion of any project.
- 12.9.4 Each Applicant should make its own independent assessment of the proposed terms of the ACDFS after making such investigation and consulting its own professional advisers and taking such other advice as may be prudent in order to assess the risks and benefits of an application for the ACDFS as well as in respect of any financial, legal, tax and other matters concerning a project.
- 12.9.5 The Government reserves the right, without prior consultation or notice, to change terms of the ACDFS. The Government also reserves the right to terminate any or all negotiations in its discretion before executing the Funding Agreement or any binding contract with a Successful Applicant.