



Hong Kong Arts Development Council Matching Fund Scheme

Guide to Application

(Valid for applications submitted between 10 February and 31 March 2021)

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Preamble

This Guide to Application (“the Guide”) provides basic information on the Matching Fund Scheme (“MFS”) of the Hong Kong Arts Development Council (“HKADC”), including its objectives, eligibility of applicants, application procedure, assessment mechanism, responsibilities of successful applicants, disbursement of funds, monitoring and evaluation mechanism of approved arts projects.

The MFS was devised by HKADC under the Government’s initiative introduced in 2016 to implement the Art Development Matching Grants Scheme (“ADMGS”) by the Home Affairs Bureau. The MFS aims to support the small and medium-sized arts groups/arts practitioners, including but not limited to the year grantees and project grantees of HKADC, to take part in the ADMGS and to create a supportive environment for the arts and culture in the community.

The MFS will be open for two rounds of applications in each financial year. The matching ratio is increased to **1:1.5**. Accordingly, a grantee may receive a matching grant of up to \$2,250,000 for an approved project if it obtains cash donations/sponsorships from non-government organisations of \$1,500,000. Completed applications together with all required documents and information must be received by HKADC by 6pm on or before **Wednesday, 31 March 2021** (Closing Date¹). Late applications will not be considered.

Enquiries about this Guide or application in respect of this funding exercise should be addressed to HKADC as follows:

Address: Hong Kong Arts Development Council
10/F, 1063 King’s Road,
Quarry Bay, Hong Kong
Telephone: (852) 2827 8786
Website: <http://www.hkadc.org.hk>

¹ Applications submitted in person must be deposited in the collection box located at Hong Kong Arts Development Council by 6p.m. on or before the Closing Date 31 March 2021. Submission by post or by courier will only be accepted if postmarked or if the pickup date shown on the bill is no later than the Closing Date. If typhoon 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.



Chapter I Introduction

- 1.1 The Government has announced it would make available a non-recurrent provision of \$300 million to launch the ADMGS in 2016/17, and has allocated more resources in its 2018/19 Budget to encourage donations from the business and private sectors in support of the development of arts groups. Developed upon the experience of the Springboard Grants of the Arts Capacity Development Funding Scheme, ADMGS seeks to help the more established arts groups/organisations enhance their ability in raising private donations and sponsorships through matching grants provided by the Government, hence widening the source of funding for the arts and promoting a culture of donation in the Hong Kong community.
- 1.2 The HKADC is selected as one of the eligible applicants of the ADMGS. The HKADC is allowed to obtain matching grants by raising private donations and sponsorships for/through its own arts projects and programmes. The matching grants received will be fully deployed to support local small and medium-sized arts groups/artists.
- 1.3 In order to enable small and medium-sized arts groups to take part in the ADMGS and be benefitted by the matching grants, HKADC has devised the MFS by taking advantage of its Hong Kong Arts Development Fund (the “Trust”) in which the resources could only be used for various purposes of arts development and not for the recurrent administrative expenses of HKADC. In light of the varying fundraising potential and performance of different projects, MFS endeavours to encourage small and medium arts organisations/artists to explore diversified funding sources for sustainable development by providing a wide funding bracket of **\$30,000 to \$1,500,000** of cash donations/sponsorships from non-government organisations for matching purpose. Donors/sponsors will have to **address the cash donations/sponsorships to HKADC as recipient direct**, such that they can be grouped together for matching under the ADMGS as part of donations/sponsorships solicited by HKADC. HKADC will match donations/sponsorships **in a ratio of 1:1.5 at most** and disburse the respective matching grants and donations/sponsorships to successful MFS grantees



(“Grantees”) as approved by the Hong Kong Arts Development Fund Advisory Committee (“Advisory Committee”). The MFS approved applicant (“Applicant”) may obtain the maximum amount of \$2,250,000 matching grant in a financial year to carry out the approved project(s). An Applicant may **implement no more than two approved projects at the same time** in a financial year and any subsequent application for MFS by the Applicant will not be considered.

- 1.4 The HKADC will apply to the Government for a matching grant in the Government’s annual funding exercises by combining the sponsorships and donations solicited for its own projects and programmes (paragraph 1.2) and the aggregate sum of the sponsorships and donations sought by approved MFS applicants.



Chapter II Objectives

2.1 The Government has set out the following permissible uses of the matching grants provided by the ADMGS as follows:

- Enhance the Applicant's organisational capacity;
- Support the development of all art forms;
- Support the development of the arts sectors;
- Support the grooming of the artistic talent and arts administrators;
- Promote audience building for the arts and culture;
- Promote arts education; or
- Support and promote cultural exchanges.

2.2 The MFS adopts the above as objectives and set them in the perspective of the mission of HKADC which is to plan, promote and support the broad development of the arts including literary arts, performing arts, visual arts as well as film and media arts in Hong Kong. Aiming to foster a thriving arts environment and enhancing the quality of life of the public, HKADC is also committed to facilitating community-wide participation in the arts and arts education, encouraging arts criticism, raising the standard of arts administration and strengthening the work on policy research.



Chapter III Eligibility

3.1 The subject matter of the application as submitted by an eligible Applicant of MFS has to be **arts and culture related projects** that fulfil the objectives of the ADMGS as set out in paragraph 2.1 and to be **operated on non-profit-making basis**. Initial security of non-government donations/sponsorships has to be proved to be available when making application (paragraph 4.1.4).

3.2 Eligible Applicants

HKADC will accept applications from the following categories of arts groups:

- (a) The arts groups currently receiving or which have received in the past three years grants under the HKADC's Year Grant Scheme or the Literary Arts Platform Scheme; or
- (b) The arts groups currently receiving grants under HKADC's Project Grant, which are not included in (a) above. These Applicants should also be charitable institutions and trusts of a public character, which are exempt from tax under section 88 of the Inland Revenue Ordinance (Cap 112); or
- (c) Other arts groups not included in (a) and (b) above but with proven track record of promoting arts and culture in Hong Kong, led and managed by professional arts practitioners of reputation and recognition, with status of a charitable institution and trust of a public character, which are exempt from tax under section 88 of the Inland Revenue Ordinance (Cap 112).

3.3 The Applicant must be the principal organiser of the proposed project and will be required to provide documentary evidence of its incorporation status and bona fide nature to the satisfaction of HKADC.

3.4 The HKADC shall not in any circumstances be liable for any costs and expenses incurred by an Applicant in relation to its application or otherwise.

3.5 The Applicant must complete the application form and satisfy all the requirements set out in this Guide in order to be eligible for consideration by HKADC.



- 3.6 A successful Applicant must maintain the non-profit making nature of the proposed project by returning residual funds or operating surplus to HKADC upon completion of the approved activities in accordance with the Funding Agreement (defined in paragraph 7.1). If the Grantee has any other proposal for the use of such surplus/funds, it must state so when submitting the final report and auditor's report for the consideration of the Advisory Committee (please refer to paragraph 4.5 for details).



Chapter IV Funding Support

4.1 Forms of Funding Support

4.1.1 Grants provided by MFS (“Grants”; and each of them, a “Grant”) must be used to support the proposed project as detailed in the Funding Agreement. The Grant will cover costs incurred by the Applicant in implementing the approved project, including creative and production costs, marketing and publicity costs, manpower² and project administrative costs.

4.1.2 Application period

The MFS takes two rounds of application in March and September in each financial year (i.e. 1 April 2021 - 31 March 2022).

4.1.3 Matching criteria

- (a) In applying for MFS for the financial year concerned, eligible Applicant shall secure no less than **\$30,000** of cash donations/sponsorships from non-government organisations for each proposed project in each round of application.
- (b) The maximum amount of cash donations/sponsorships from non-government organisations for matching purpose in each financial year is **\$1,500,000**. An art group may, in the same financial year, obtain a Grant of up to \$2,250,000 for its approved project(s) and concurrently implement two approved projects at most.
- (c) The HKADC will match the cash donations/sponsorships raised by the Grantees from non-government organisations on a “**1:1.5**” matching ratio at most. Cash donations/sponsorships secured by the eligible Applicants will have to be paid to HKADC by way of a **crossed cheque** (payable to the “Hong Kong Arts Development Council”).

² Please refer to Chapter XI (Unallowable Costs) below.



4.1.4 Non-government donations/sponsorships

- (a) Only donations and/or sponsorships in cash from non-government organisations will be eligible for matching.
- (b) Monetary support from other public funding sources or income that generated from the proposed project shall not form part of the sponsorships and/or donations.
- (c) Donations and/or sponsorships in kind shall not be accepted.
- (d) The Applicant should state clearly in the application form the sources and amount of monetary donations/sponsorships to be obtained. The Applicant must also submit **documentary proof** (e.g. Letter of Intent/Sponsorship Letter) when submitting the application to prove to the satisfaction of the HKADC that the claimed amount of secured donations/sponsorships is deliverable and that it will be used in applying for the MFS and in the operation of the proposed project.
- (e) Any non-government cash income for matching purposes must come from a party or parties which is/are **not related to the Applicant** in terms of control or management or otherwise. The non-government sponsorships and/or donations **must not be a condition** in the agreement with the Applicant **to exchange for any products or services**.
- (f) The Applicant shall not accept sponsorships, donations or advertisements from, nor be in association in any form or manner with:
 - i. any person in the tobacco or tobacco-related industry; or
 - ii. for events specifically aimed at young people under 18, any person in the alcohol industry.

4.1.5 If a Grantee or Applicant is dissatisfied with the HKADC's decision as to whether a particular sponsorship or donation is eligible for matching, that person may apply for review within 30 calendar days of the said decision following the same procedure as contained in paragraph 6.5 below. The result of the review shall be final.



4.2 Double Subsidy

4.2.1 Double subsidy in any form must be avoided. The Applicant will not be eligible for funding if other financial support (whether in the form of equity or loan financing, grant or sponsorship or any other form) from the Government has been granted for the same elements (such as same events, activities or modules) of the approved project. However, a proposed project receiving non-cash support from other public funding sources (e.g. sponsorship in terms of venue support and ticketing services by the Leisure and Cultural Services Department (“LCSD”)) may be considered, while income generated from non-cash support cannot be used for fund-matching purpose.

4.2.2 The Applicant’s cash donations/sponsorships for the approved project must not comprise any fees obtained by the Applicant from other public funding sources, such as performance fees or curator’s fees from the LCSD for performing arts activities or exhibitions respectively; and fees that may be provided by other Government Bureaux/Departments or public organisations receiving recurrent funding from the Government.

4.3 Instalments

The HKADC is prepared to pay an instalment which **equals to the donations/sponsorships the Applicant raised and a maximum of 80% of Grants** within approximately 20 working days upon receipt of donations/sponsorships to the Hong Kong Arts Development Council. For approved applications, the concerned sponsors/donors may choose to deposit their sponsorships /donations to HKADC in one-go or by instalments. If instalment payment is chosen, each instalment in respect of the 100% of donations/sponsorships monies should be no less than \$100,000. The payment dates of the instalment schedule are to be agreed between the successful Applicant and HKADC, and will be stipulated in the Funding Agreement. The remaining 20% of Grants will be released subject to completion of approved project and accomplishment of the stipulations as set out in paragraph 7.3.2. In any event, the HKADC shall not be held liable for any claims, liabilities, interests, expenses and losses due to its delays in payment of the said sponsorships, donations and/or the Grants.



4.4 Donations and Sponsorships Exceeding/Lower than Approved Amount

4.4.1 Grants provided by MFS are to match the exact amount of cash sponsorships and donations received by the Trust through the approved projects of MFS **on a “1:1.5” basis at most**. Any amount deposited in HKADC will not be retrievable for the successful Applicant’s cash flow, production or any other needs without HKADC’s approval.

4.4.2 For successful Applicants that solicit sponsorships and donations after submitting the application at a total amount exceeding the secured and approved amount of MFS, the excess amount will not be matched and it will have to be taken into account in calculating the surplus or deficit of the approved project.

4.5 Surplus or Deficit

4.5.1 Any operating surplus/residual funds as set forth in the final report and auditor’s report must be returned to HKADC within three months upon submission of the above reports in accordance with the Funding Agreement, unless such surplus/funds are used for a purpose contributing to local arts development and in a manner disclosed to HKADC at the time of the submission of the above reports and approved by HKADC. Generally speaking, project surplus/residual funds could be used within the scope which is **in line with the objectives** of this scheme but Grantees shall, upon approval by HKADC of the relevant proposal on the use of such surplus/funds, provide supporting evidence such as receipts within one year of the approval date to verify the use of such surplus/funds in purposes approved by HKADC.

4.5.2 Under no circumstances will HKADC be liable for any liability for deficits arising from or in relation to an approved project. Grantees will be solely responsible for any deficits arising from implementing the approved project. In addition, Grantees will be solely responsible for any shortfall necessary in implementing and completing the approved project.



Chapter V Application

5.1 Details of Application Form

5.1.1 Each eligible Applicant is allowed to make **only one application** in each of the two rounds of MFS application in each financial year. The application could be for one single proposed project or a collection/series/composite of proposed projects. Submission of more than one application by the same Applicant in the same round of application will render all of its applications void and such applications will not be considered by HKADC.

5.1.2 The application form can be downloaded from the website (<http://www.hkadc.org.hk>) or can be obtained from the Administration Office. Application must be made on or before the Closing Date (please refer to paragraph 5.3.3 for details). Late applications, postal applications with insufficient postage, applications by fax, e-mail or other digital form, or applications which do not fully meet and comply with the conditions of this Guide, shall not be accepted or processed by HKADC.

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) Project Coordinator

- i) In each application, the Applicant must nominate a project coordinator;
- ii) If the application is approved, the project coordinator will be responsible for administering and operating the implementation of the approved project, 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 HKADC.



- (b) Project Budget
- i) All monetary figures must be in Hong Kong currency;
 - ii) The Applicant is required to submit a proposed budget for implementing the approved project, showing all expenditure, non-government sponsorships and/or donations, income and revenue described in paragraphs 4.1.1 to 4.1.4 as well as justifications for and the calculations of the budget;
 - iii) When preparing the budget, all expenditure items have to be grouped under the specific categories of manpower, equipment, production, marketing, publicity and other direct project administrative costs;
 - iv) Costs of new equipment and goods procured, used and paid solely for implementing the approved project during the planning, preparation and operation periods as approved by HKADC can be charged to the project account. The Applicant will be responsible for maintenance and repair of the equipment and goods and such costs should not be included in the budget;
 - v) A list of unallowable cost items which cannot be charged to the project account is set out in Chapter XI (Unallowable Costs) below;
 - vi) The Applicant is required to declare in the application whether it has sought or is seeking other financial support for the proposed project from the Government or other public funding sources;
 - vii) The Applicant shall also declare the following actual or potential conflict of interest:
 - The organisation or any member of the organisation is affiliated to any donor to the organisation;
 - The organisation or any member of the organisation is affiliated to any vendor, supplier, or any other party providing or bidding for providing services to the organisation.



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

- (a) a proposed budget setting out all possible costs and expenditure;
- (b) a risk control/contingency plan if key milestones are not achieved as planned.

5.1.5 Applicants may provide recordings or documentation of previous works for reference.

5.2 Timing for Application

The Closing Date of MFS application will be on **31 March 2021 (Wednesday)**. Interested arts groups/arts practitioners are advised to look out for the notice of the next round of MFS application in the second half of 2021.

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 or of the Application Form (as the case may be), the English version will prevail.

5.3.2 No application fee will be charged.

5.3.3 The Applicant must submit by 6pm on or before the Closing Date **8 sets** of the completed application form (including the original copy), and all information and documents required by the application form and this Guide, together with **the electronic copy** (text in Word format, and budget in Excel format to be stored in CD ROM/ USB), to the collection box at the Administration Office (Address: 10/F, 1063 King's Road, Quarry Bay, Hong Kong). Please state on the envelope "Application for Matching Fund Scheme)". Submission by post is accepted if it is postmarked no later than the deadline. Submission by courier is also accepted if the pickup date shown on the bill issued by the courier service provider is on or before the deadline.



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 and all information submitted by an Applicant will be retained by the HKADC for record and audit purposes and will not be returned to the Applicant. The Applicant should therefore make its own copies of these documents for record purposes.

5.4 **Re-submission**

If an application is rejected, the Applicant may not re-submit an application of the same proposed project for MFS in any subsequent rounds of application unless significant and substantial changes have been made to that proposed project, or the Applicant is able to produce new information and documents which show an in-depth review of the proposed project. A re-submitted application must be made by way of a fresh and a completed application form.

5.5 **Applicants with uncompleted prior funding agreements**

An Applicant is not eligible to apply for the MFS if any of the following circumstances occurs in respect of such Applicant, except otherwise waived by HKADC:

5.5.1 there remains two or more uncompleted pre-existing approved MFS projects by the Closing Date, regardless of whether the “performance period” of such project(s) (as defined in paragraph 7.1.2) has been approved by the HKADC to be extended; or

5.5.2 there is any failure to comply with any requirement in relation to any pre-existing approved MFS projects by the Closing Date (including requirements relating to accounts as set out in paragraphs 7.2 and 9.1 and any obligations under the relevant funding agreement).



Chapter VI Assessment Mechanism

6.1 Vetting procedure

- 6.1.1 Upon receipt of an application, the HKADC will conduct a preliminary screening and may seek clarification or supplementary information from the Applicant. Failure to provide such information within specified time without reasonable excuse acceptable at the sole discretion of the HKADC will result in the application being deemed to having been withdrawn without further notice.
- 6.1.2 If an application meets all the requirements set out in Chapter III (Eligibility), HKADC will proceed to arrange for the Arts Advisors/Examiners/Assessors and Advisory Committee to assess the application.
- 6.1.3 The Advisory Committee comprising HKADC Members and other community leaders will assess all the applications.
- 6.1.4 The Applicant and its team members may be required to attend an interview to present its proposed project to the Arts Advisors/Examiners/Assessors and the Advisory Committee to answer questions upon it.
- 6.1.5 The Advisory Committee will determine whether or not to approve an application and the amount of the Grant.

6.2 Application Assessment

- 6.2.1 Applications will be assessed according to the criteria set out in paragraph 2.1. The Applicant's performance in implementing the arts projects under the HKADC's previous round(s) of Project Grant(s)/Multi-Project Grants, if applicable, will also be taken into consideration.
- 6.2.2 HKADC 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 proposed project is made which cannot be fulfilled or delivered; or
- (d) the Applicant is in default of its obligation(s) under other agreements with the HKADC.

6.2.3 If HKADC has had reasonable grounds to believe that the proposed project infringe 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 Applicant can prove to the satisfaction of the HKADC that the dispute or allegation has been conclusively resolved.

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

- (a) the impact of the arts project in strengthening the capacity development of the arts in Hong Kong, as manifested by the objectives in paragraph 2.1;
- (b) the proposed project 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 proposed project can serve the interests of the arts sector or the community as a whole;
- (d) the overall planning, organisational structure and duration of the proposed project is practical and reasonable;
- (e) 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 proposed project;



- (f) whether the proposed budget is reasonable and realistic, whether the Applicant is committed to prudent exercise of financial management and control; and whether the proposed project has been financed or should be financed by other public funding sources; and
- (g) any other special factors which are relevant and contribute towards the objectives of MFS.

6.3 **Avoidance of Conflicts of Interest**

To avoid conflicts of interest, Arts Advisors/Examiners/Assessors, Advisory Committee and Council Members 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 **Notification of Results**

- 6.4.1 The Advisory Committee may either approve or reject the application and the decision shall be final.
- 6.4.2 If an application is rejected, it is expected that the Applicant will be notified in writing within four months from the Closing Date when the relevant funding exercise closed.
- 6.4.3 If an application is approved, the Applicant will be informed of the result together with any terms and conditions that may be imposed by HKADC.
- 6.4.4 The approved project 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, license, consent, approval or the like from the authorities concerned.
- 6.4.5 The approval of an application by the HKADC for the Grants does not constitute any advice, representation or guarantee from the HKADC as to the viability, the lawfulness and the ability of generating surplus through the approved project(s).



6.4.6 The approval of an application will not consequentially enable the Applicant to acquire the necessary venue and support services from the respective public or private providers. The Applicant therefore bears the responsibility for making arrangements for the implementation and execution of the approved project.

6.5 Review Procedure

6.5.1 The decision of the Advisory Committee is final. However, the HKADC reserves the exclusive discretion to receive review applications over the decision of the Advisory Committee by unsuccessful Applicants, which would be reviewed by the Review Committee in the HKADC. Review applications must be made in writing by completing a standard form obtainable from the HKADC and submitted within 30 calendar days from result notification.

6.5.2 Review applications against artistic appreciation and judgement will not be accepted. The Review Committee will review cases only on grounds of improper processing procedures and/or rejection of proposal due to the decision being based on inaccurate information. These claims must be substantiated by the unsuccessful Applicant by concrete reasons and evidence.

6.6 Withdrawal of Application

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



Chapter VII Funding Agreement and Disbursement of Funds

7.1 Funding Agreement

- 7.1.1 If an application is approved, a **conditional offer letter** (“Offer Letter”) and an agreement (in form and substance prescribed by HKADC) (“Funding Agreement”) will be sent to the Applicant. The Funding Agreement will set out the amount of funding support to be offered by the HKADC 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 The successful Applicant will be required to sign and return the Funding Agreement in duplicate to the HKADC within the period specified in the Offer Letter (“Offer Period”) if it accepts the Grant on the general terms and conditions set out in the Offer Letter. HKADC may at any time before its receipt of the signed Offer Letter withdraw the offer. The offer of a Grant to a successful Applicant will lapse if HKADC does not receive the duly signed Funding Agreement on or before the expiry of the Offer Period (ie **within 3 months** as set out in the Offer Letter). For the avoidance of doubt, the performance of the Funding Agreement by the Applicant within the specified time prescribed in the Funding Agreement (“performance period”) shall be a condition of the Grant. The performance period is extendable for once of no more than 12 months (calculated from the date of expiry of the original performance period) subject to written consent of HKADC. The application for extending the performance period must be made in writing within 45 working days prior to the expiry of the original performance period. The application must include such content and supporting materials as HKADC may reasonably require.
- 7.1.3 No binding agreement will be made between HKADC and the successful Applicant unless and until the Funding Agreement is executed by HKADC and the successful Applicant.



- 7.1.4 The Grantee should start the approved project **within six months** after the date of the Offer Letter and should complete the approved project in, **one year (i.e. twelve months)**, unless otherwise approved by HKADC.
- 7.1.5 The donor/sponsor giving monetary support to the approved project is required to sign an undertaking (in form and substance prescribed by HKADC) indicating their understanding that such donations/sponsorships will be used for grant-matching for public money by the successful Applicant and all the Grants allocated will be solely used in the arts initiatives stated in the approved project. The provision of the undertaking shall be the Grantee's obligation under the Funding Agreement.
- 7.1.6 The Grantee must comply with all the terms and conditions laid down in the Funding Agreement.
- 7.1.7 The Funding Agreement shall contain, among other things, the following:
- (a) the terms and conditions as required by HKADC;
 - (b) the terms and conditions set out in this Guide; and
 - (c) details of the approved project.

7.2 **Project Account**

The Grantee shall keep complete and accurate books and records of all income, expenditure and liabilities in respect of the approved project in accordance with generally accepted accounting principles in Hong Kong. In addition, for Grantee receiving a Grant of \$2 million or more, it is also required to open and maintain with a licensed bank in Hong Kong a designated bank account for implementing and materializing the sole purposes of the approved project. All Grantees shall keep a proper and independent set of accounts within its accounting system specifically for processing all receipts/income and payments/expenditure of the approved project. The independent 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 project. All income and expenditure relating to the approved project should be recorded properly and timeously in such accounts.



7.3 Disbursement of Matching Grants

- 7.3.1 Upon approval of the proposed project and HKADC's receipt of the donations/sponsorships as stipulated in paragraph 4, HKADC will disburse to the Grantee the **donations/sponsorships received and 80% of the Grants** matched by HKADC (being up to 1.5 times of the donations/sponsorships), in full or by instalments, strictly in accordance with the terms and conditions of the Funding Agreement.
- 7.3.2 Subject to paragraph 10.2 below, disbursement of the final 20% of the Grant will be made only upon the following:
- (a) successful implementation of the approved project and production of satisfactory documentary evidence of deliverables in accordance with the Funding Agreement;
 - (b) due compliance with the Funding Agreement;
 - (c) the submission of the final report and the auditor's report within six months upon the completion due date of the project as specified in the Funding Agreement, in form and substance to the satisfaction of HKADC and complying with the reporting requirements set out in paragraph 9.1; and
 - (d) deposit of all committed non-government sponsorship and donation to HKADC.
- 7.3.3 The HKADC reserves the right to withhold any payment to the Grantee if in its opinion that there is any major irregularity of the conduct of the approved project and/or if there is operating surplus or if there is any delay in submission of the final and auditor's reports or any of such submitted reports does not comply with the requirements set out in the Funding Agreement.
- 7.3.4 If the approved project fails to secure the non-government donations and/or sponsorships as set out in paragraph 4.1.3, HKADC shall be entitled to cease to make any further payment of the Grant and/or shall require the Grantee to repay such part or all of the Grant received by such time as HKADC shall direct.



- 7.3.5 If for any reasons (whether or not outside the control of the Grantee) an approved project is not completed by the due date as specified in the Funding Agreement, or is suspended by the Grantee, HKADC may require the Grantee to repay part or whole of the Grant, and to indemnify HKADC against any loss or expenses incurred as a result of or in relation to the above.



Chapter VIII Publicity and Acknowledgement

- 8.1 The Grantee will be responsible for the publicity and marketing of the approved project and follow up action with a view to maximizing benefits to the arts sector of Hong Kong and the community at large.
- 8.2 The Grantee shall acknowledge the funding support under HKADC in all publicity, advertising and promotional materials and publications as well as at media events relating to the approved project. HKADC reserves the right to require the Grantee to immediately cease and desist from using any promotional materials in which reference is made to HKADC. The Grantee must also ensure that a disclaimer as prescribed by HKADC be included in any publicity materials, publications and media events related to the approved project.
- 8.3 The Grantee shall obtain prior written approval of HKADC of all publicity, advertising and promotional materials and publications relating to the approved project in which the acknowledgement and disclaimer are proposed to appear before publication or circulation of such materials and publications.
- 8.4 The Grantee shall provide HKADC with details of achievements of the approved project, if any, including creation of works in which Intellectual Property Rights subsist, successful marketing and commercialisation of deliverables and awards. The HKADC may from time to time disclose to the public details of such achievements including announcing them on the web or through publications or by showcasing them at exhibitions for publicity and reference.
- 8.5 It is the Grantee's responsibility to ensure that all the information provided to the HKADC is accurate and not misleading, and that the same can be lawfully disclosed to the public free from civil and criminal liabilities. The Grantee shall indemnify the HKADC and keep the HKADC indemnified of all claims, liabilities, expenses and losses arising out of or resulting from the disclosure by the HKADC of the said information in accordance with paragraph 8.4.



Chapter IX Obligations

9.1 Reporting Requirements

- 9.1.1 The donor/sponsor giving monetary support to the approved project is required to sign an undertaking indicating their understanding that such donations will be used for grant-matching for public money by the successful Applicant and all the Grants allocated will be solely used in the arts initiatives stated in the approved project.
- 9.1.2 The Grantee is required to submit a final report and an audited account report, duly certified as accurate by **an authorised auditor appointed by HKADC**, on the final financial position, **within six months** from either the approved project completion date or if earlier the termination date of the Funding Agreement.
- 9.1.3 The final report must be in a format prescribed by HKADC and include details of the results, performance, achievements and evaluation of the implemented project. The final report must be submitted together with an audited account report (duly certified as accurate by an authorised auditor) on an accrual basis on the final financial position of the implemented project audited by an auditor as appointed by HKADC to ensure that the Grant was fully and properly applied to the approved project for which all Grant monies were paid, received and expended in accordance with the approved budget. Such financial statement shall contain an audited statement of the total expenditure and income of the implemented project.
- 9.1.4 The Grantee may be required to make presentation(s) of the results and its experience in implementing the approved project to HKADC and to report on the achievement of deliverable(s).
- 9.1.5 The Grantee must keep all financial statements, books and records of the approved project for at least seven years after either the project completion date or if earlier the termination date of the Funding Agreement, or as otherwise specified by HKADC within that seven-year period, and make them available for inspection at any time.



9.1.6 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 shall report to HKADC the results of an examination conducted by him.

9.2 Procurement Procedures

9.2.1 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 HKADC agrees otherwise:

- (a) for every procurement the aggregate value of which is more than \$5,000 but less than \$10,000, quotations in written form from at least two suppliers must be obtained;
- (b) for every procurement the aggregate value of which is \$10,000 or more but less than \$500,000, 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 or more but less than \$1,400,000, quotations in written form from at least five suppliers must be obtained.
- (d) for every procurement the aggregate value of which is \$1,400,000 or more, open tendering shall be adopted; and

In all four scenarios above, 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 HKADC.

9.2.2 In case the Grantee intends to procure goods or services from one supplier (without following the procurement process set out in paragraph 9.2.1 above), it has to provide details in advance to HKADC, its relationship with the supplier concerned and justifications for not following the open



procurement process set out in paragraph 9.2.1 above and obtain the HKADC's written approval for such intended procurement.

9.2.3 All quotations under the implemented project must be retained for the HKADC's inspection.

9.3 **Hiring of Project Staff**

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

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 procure appropriate insurance policies, including but not limited to, employee compensation, an all-risks insurance in respect of equipment purchased or hired for the approved project and public liability in the joint names of the HKADC and the Grantee including coverage of occupier's liability and to meet any claim which may arise as a result of the approved project.

9.4.2 Under no circumstances will HKADC be liable or accountable for any claims, loss or damages arising from or in relation to any approved project.

9.5 **Intellectual Property Rights³**

9.5.1 The Grantee is required to inform HKADC of any intellectual property rights that may arise in the implementation of his approved project and how such intellectual property rights would be handled, including the acquisition and use of such intellectual property rights. HKADC may impose terms and conditions in the Funding Agreement on this aspect. The Grantee shall make available to the public the implemented project and any work, deliverable, report or material arising out of the approved project (each a "**Work**").

³ Intellectual property rights means patents, trade marks, 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.



- 9.5.2 Any intellectual property rights in the Works will be owned by the Grantee.
- 9.5.3 (a) The Grantee grants unconditionally to HKADC, its authorised users, assigns and successors-in-title a non-exclusive, perpetual, irrevocable, royalty-free, worldwide and sub-licensable license to do the acts restricted by copyright that are stipulated in sections 23 to 29 of the Copyright Ordinance (Cap. 528) in relation to any Works.
- (b) In relation to any parts of the Works to which the Grantee is not empowered to grant the aforesaid license, the Grantee undertakes to procure at its sole cost and expense (but such cost and expense shall not be paid out of the Grant) the grant of such rights for the benefit of HKADC, its authorised users, assigns and successors-in-title by the relevant third party intellectual property rights owners, including without limitation, any collaborating party.
- 9.5.4 Agreement or arrangement 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 or in connection to the approved project. A brief description of any such agreement or arrangement should be provided to the HKADC's reference within 30 calendar days after such agreements or arrangements come into existence.



Chapter X Freeze Policy

10.1 Modification and Amendment

10.1.1 An approved project is required to be carried out strictly in accordance with the approved schedule appended to the Funding Agreement. Any modification, amendment or addition to the approved project or 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 prior written consent from HKADC and it is the responsibility of the Project Coordinator to inform HKADC 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 final report. Notwithstanding this, **prior written approval must be sought from HKADC** 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 account rests with HKADC.

10.2 Termination of Grant

10.2.1 The Freeze Policy is a precautionary measure to hold Grantees responsible for the timely and orderly completion of approved projects and submission of reports. Grantees are required to properly complete an approved project within the performance period prescribed for such project (which is only extendable in any manner **for once** at most), failing which they may be placed on the HKADC Frozen List. All persons and organisations whose names are on the HKADC Frozen List are not eligible to apply for and receive any grant during the frozen period as HKADC may impose. Grant applications made during the frozen period by any such person in the capacity of “key personnel involved” will also be automatically rejected.



10.2.2 HKADC may terminate the Grant to a Grantee for an approved project and list the Grantee on the Frozen List 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 project in a material way; or
- (c) failure, or likelihood of failure, to complete the approved project by the completion date mentioned in the application or to adhere to the time-line in the application; or
- (d) HKADC sees the need to terminate the Grant in the public interest.

10.2.3 In the event of termination referred to under paragraph 10.2.2, HKADC 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 damage HKADC may sustain as a result of or in relation to any breach or default by the Grantee.

10.2.4 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 HKADC prior to such 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 approved project or the termination of the Funding Agreement.

10.3 **Management of the Funding Support**

10.3.1 The HKADC 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 final report which is incorrect, incomplete or false.



Chapter XI Unallowable Costs

11.1 Manpower

11.1.1 Unless otherwise approved by the Trust, 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 circumstance 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 circumstance should be clearly stated in the proposed project at the time of application.

11.1.2 The Grant can only be used for non-recurrent expenditure.

11.1.3 The Grant must only be used by the Grantee in carrying out the approved project in accordance with the approved budget set out in the Funding Agreement. Unless otherwise approved by the Trust 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 an employer's contribution to the Mandatory Provident Fund.

11.2 Equipment

11.2.1 The Grant must not be used to cover:

- (a) rental/time cost of existing equipment owned by the Grantee; and
- (b) depreciation/amortisation or provisions not representing actual expenses incurred.

11.2.2 General office and IT equipment specifically acquired for implementing the approved project must be either included in the approved budget or the funding of which has been specifically approved in advance by the Advisory Committee. Otherwise the costs of such items cannot be charged to the project account.



11.3 Other Direct Project Costs

11.3.1 In general, the Grant must not be used to cover:

- (a) entertainment expenses and any prizes (either in the form of cash or other types of souvenir) unless such requirement is integral and essential to the nature of the project 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 approved project;
- (b) costs related to prior/subsequent year(s)/period(s) adjustment(s);
- (c) capital financing expenses, e.g. mortgage and interest on loans/overdrafts;
- (d) charges for 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; and
- (e) costs/rental of accommodation or venues owned by the Grantee.

11.3.2 The above list is not exhaustive. The Grantee should consult HKADC if it has any doubts about whether an item may be charged to the project account.



Chapter XII Miscellaneous Provisions

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 approved project 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 approved project.

12.1.2 The offer of an advantage to Arts Advisors/Examiners/Assessors, Advisory Committee and any Council Members 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 HKADC 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 damage, which the HKADC may sustain.

12.2 Representations and Warranties

The Applicant has to represent, warrant and undertake in the application that:

- (a) the approved project 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 approved project and in the course of conducting the approved project, or otherwise in the final and auditor’s 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 approved project complies, with the laws of Hong Kong in relation to the conduct of the approved project;



- (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 approved project, the use or possession by HKADC and its authorised users, assigns and successors-in-title of any work or material relating to the approved project, Works arising out of the approved project 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 approved project 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 authorizing 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 HKADC, its authorised users, assigns and successor-in-title, from and against:

- (a) all and any claims, actions, investigations, demands, proceedings, threatened, brought or instituted against the HKADC with respect to all matters arising out of or in connection to the approved projects or the Applicant's conduct of the same so long as the said claims, actions, investigations, demands and proceedings do not arise out of or result from the HKADC's gross negligence, fraud or wilful default; and
- (b) all liabilities (including liability to pay compensation and damages), damages, losses, costs, charges and expenses which HKADC may sustain or incur (including all legal and other costs, charges, and expenses, on a full indemnity basis, which HKADC may pay or incur in relation to any



demand, claim, action, proceeding or investigation instituted by or against HKADC), 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 course of or as a result of any project (indoor or outdoor) organised or carried out by the Applicant in relation to the approved project;
- 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 approved project; or
- iv) the approved project or its deliverables or materials developed or produced or created in the approved project 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 HKADC 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 sufficient information, HKADC may not be able to process its application.

12.4.2 The personal data provided in the application may from time to time be disclosed to any Council Members, Advisory Committee, Arts Advisors, Examiners, Assessors, the government bureaux, and any other persons involved in the adjudication of the applications. However, in the interests of transparency of the operations of MFS, by signing and submitting an application, a successful Applicant consents to the disclosure of details of the approved project 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, the proposed project 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 (PDPO). 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**

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

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 HKADC.

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 **Disclaimers and Others**

12.8.1 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 HKADC is a party in relation to the MFS. 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.

12.8.2 Whilst the information provided by HKADC in this Guide has been prepared in good faith, it does not claim to be comprehensive or to have been independently verified. Neither HKADC, nor any of its officers,



agents or advisors, 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 HKADC, its officers or agents.

- 12.8.3 This Guide does not constitute an offer nor does it constitute the basis of any contract which may be concluded in relation to MFS or the implementation and completion of any project.
- 12.8.4 Each Applicant should make its own independent assessment of the proposed terms of MFS after making such investigation and consulting its own professional advisors and taking such other advice as may be prudent in order to assess the risks and benefits of an application for MFS as well as in respect of any financial, legal, tax and other matters concerning a project.
- 12.8.5 The HKADC reserves the right, without prior consultation or notice, to change terms of MFS. The HKADC 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.

Hong Kong Arts Development Council
February 2021

(In case of any inconsistency between the English and the Chinese versions of the Guide, the English version shall prevail.)