



Glasgow Arts Partnership (GAP)

NON-DISCLOSURE AGREEMENT

Contents:

Part I – What is this agreement for?

Part II – T&Cs

Part I – What is this agreement for?

SCHEDULE 1 (confidential info)

Party 1 Confidential Information

Glasgow Connected Arts Network will on occasion disclose to GAP members the details of bids for funding or bids for projects which have been developed by Glasgow CAN. This may include creative strategies, project proposals, proposed project budgets, and anything else required to respond in a tailored way to a particular opportunity.

Where this information has been created by the Glasgow CAN team, or by a group of GAP members to apply for a particular opportunity, individual members may not reproduce this information for any individual bids or other purposes (as described by the terms below). Where the opportunity is publicly available GAP members are welcome to make individual applications however they may not repurpose material developed by Glasgow CAN.

Where an opportunity is not publicly available, and is instead arranged directly between Glasgow CAN and the funder/buyer organisation, then the details of the opportunity are confidential and may not be used to approach the funder/buyer for any individual proposals.

Party 2 Confidential Information

The Glasgow Arts Partnership (GAP) member may apply to take part in projects arranged by Glasgow CAN. As part of an application process members may propose creative strategies, project proposals, project budgets and any other tailored responses to an opportunity.

These creative responses are confidential to the member making the proposal and may not be repurposed by Glasgow CAN for anything other than developing a project with the particular GAP member. Glasgow CAN may suggest collaborating with other members to deliver the proposal and in each case this will be by agreement of all parties.

In addition, the GAP member may provide various information about their business to enable assessment for particular opportunities, or as required by funder/buyer organisations. This information may be sensitive or confidential and may only be used for the purposes required relevant to the particular opportunity.

SCHEDULE 2 (purpose of the info)

The Stated Purposes

The purposes of the confidential information described above is to enable bids or applications to be compiled and assessed for various specific opportunities. The circumstances described above limit this information to specific use relevant to particular opportunities and exclude the copying or repurposing of this information for other bids or applications without permission.

SCHEDULE 3 (data protection)

Data Protection Policy

Glasgow CAN's data protection policy is available on request.

Part II – T&Cs

THIS AGREEMENT is made upon the date of that the Glasgow CAN member has applied to join the Glasgow Arts Partnership (GAP) and has selected via the application form that they have read and agree to this agreement.

BETWEEN:

- (1) Glasgow Connected Arts Network [a community interest company registered in Scotland under number company registration number SC483427] (“the First Party”) and
- (2) The Glasgow CAN member submitting an application (“the Second Party”)

WHEREAS:

- (1) The First Party wishes to disclose to the Second Party information (as outlined in Schedule 1) which is confidential to the First Party (such disclosure to be only for the Stated Purposes set out in Schedule 2).
- (2) Further to the First Party’s disclosure, the Second Party shall [be required to] disclose to the First Party information (as outlined in Schedule 1) which is confidential to the Second Party (such disclosure to be only for the Stated Purposes set out in Schedule 2).
- (3) Both Parties wish to ensure that the information is kept confidential and to prevent each other from misusing or further disclosing that information to third parties without authorisation.
- (4) In consideration of the mutual disclosure of Confidential Information hereunder, each Party hereby agrees that it will accept the other Party’s Confidential Information subject to, and in accordance with the terms and conditions of this Agreement which will accordingly take effect and be binding as a contract.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- “Confidential Information”** means the information outlined in Schedule 1 and any further information designated at or before the time of disclosure by the relevant Party as confidential, whether or not such information is of a commercially (or other) sensitive nature, and in whatever tangible or intangible form the information exists or is communicated;
- “Disclosing Party”** means either Party to this Agreement when disclosing Confidential Information to the other Party;
- “Intellectual Property Rights”** means (a) any and all rights (whether or not registered or registrable) subsisting in any jurisdiction in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights), trade, business and company names, internet domain names and email addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, trade and other secrets, rights in designs and inventions;
- (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);
- (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and
- (d) the right to sue for past infringements of any of the foregoing rights; and
- “Receiving Party”** means either Party to this Agreement when receiving Confidential Information from the other Party; and
- “Stated Purposes”** means the purposes set out in Schedule 2 for which the Parties may use the Confidential.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.3 "this Agreement" is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to this Agreement;
- 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include all genders.
- 1.6 References to persons shall include corporations.

2. Disclosure

- 2.1 Each Party has a commercial or other interest in all such Confidential Information as it may disclose to the other Party after the Parties enter into this Agreement.
- 2.2 Each Receiving Party shall, subject to the provisions of Clause 7, at all times maintain as confidential and shall not use or exploit [or reproduce] any part or the whole of the received Confidential Information directly or indirectly for any purposes other than the Stated Purposes without the express written consent of the Disclosing Party. Such unauthorised purposes may include, but are not limited to:
 - 2.2.1 Reproducing (or attempting to reproduce) any part of that Confidential Information, or to investigate or uncover otherwise undisclosed aspects of it (including, but not limited to, related confidential information);
 - 2.2.2 Using that Confidential Information, whether directly or indirectly, to procure (or attempt to procure) any commercial advantage for the Receiving Party, or a commercial disadvantage to the Disclosing Party;
 - 2.2.3 Carrying out any processes, making any inventions, further developments or applications for any registered Intellectual Property Rights from or based upon that Confidential Information;
- 2.3 Each Receiving Party shall take all reasonable organisational, physical and technical measures to preserve the confidentiality of the Confidential Information that it receives.
- 2.4 In the event that Confidential Information disclosed under this Agreement incorporates any personal data (as defined by the Data Protection Act 1998) ("the Act"), the Receiving Party shall ensure that it fully complies with the Act and in particular:

- 2.4.1 The Receiving Party shall ensure that it has in place suitable organisational, physical and technical measures to facilitate its compliance with the Act [such measures evidenced in the Parties' respective Data Protection Policies attached in Schedule 3]; and
- 2.4.2 Where any relevant Confidential Information is transferred to a third party, as under Clause 5, the Receiving Party so transferring shall take all reasonable organisational, physical and technical measures to ensure that such third parties are bound to comply with the Act to the same extent as the Parties under this Agreement.
- 2.5 Following the fulfilment of the Stated Purposes or, if sooner, on demand by the relevant Disclosing Party, the Receiving Party shall return all Confidential Information forthwith to that Disclosing Party.

3. Storage of Confidential Information

- 3.1 Where Confidential Information is held in hardcopy form, it must be stored in a locked location when not in use.
- 3.2 Where Confidential Information is held electronically, the computer, laptop or cloud storage services on which the Confidential Information is stored must be protected using a password which may be shared only with those authorised to access the Confidential Information, and when not in use, the computer must be kept in a locked location.
- 3.3 If either Party is not satisfied with any aspect of the other Party's storage arrangements, it shall have the right to request any such reasonable changes to those arrangements as it may deem necessary to satisfy the requirements described in this Agreement.

4. Employee Undertakings

- 4.1 Each Receiving Party shall obtain from any and all of its employees to whom the Confidential Information or any part of it is to be disclosed or to whom the Confidential Information may be accessible, undertakings to the Disclosing Party which are enforceable by it and are binding upon those employees to the same extent as this Agreement is binding upon the Receiving Party.
- 4.2 Neither Party shall disclose any Confidential Information to the other until any and all undertakings as described in sub-Clause 4.1 have been provided and obtained by both Parties.

5. Third Party Disclosure and Undertakings

- 5.1 In the event that either Receiving Party requires or otherwise engages the services of a professional adviser or other third party who is not an employee and that third party reasonably requires access to the Confidential Information for the Stated Purposes, that Receiving Party must not disclose,

or allow access to, the Confidential Information or any part of it to the third party:

- 5.1.1 without the express written consent of the Disclosing Party; and
 - 5.1.2 without first obtaining an enforceable undertaking from the third party which is enforceable by the Disclosing Party and is binding upon the third party to the same extent as this Agreement is binding upon the Receiving Party.
- 5.2 Neither Disclosing Party shall grant the consent referred to in sub-Clause 5.1.1 unless it is first in receipt of the third party undertaking set out in sub-Clause 5.1.2.

6. **Proprietary Rights**

The Confidential Information and all Intellectual Property Rights subsisting therein shall remain the property of the respective Disclosing Party (or that Party's licensors, as appropriate) and the disclosure of the Confidential Information to the other Party shall not confer upon that Receiving Party any rights whatsoever in any part of the Confidential Information.

7. **Exceptions to Non-Disclosure and Confidentiality**

The obligations of confidentiality set out in this Agreement relating to Confidential Information shall not apply [(where the same can be proven using documentary evidence produced by the relevant Receiving Party)] to any information that:

- 7.1 is already known to, or in the possession of, the Receiving Party at the time of its disclosure by the Disclosing Party, and the Receiving Party is free of any other obligations of confidentiality with respect to it;
- 7.2 is in, or comes into, other than through any breach of this Agreement or other wrongful act or default of the relevant Receiving Party, general circulation in the public domain;
- 7.3 is received by the Receiving Party from a third party free of any obligations of confidentiality similar to those set out in this Agreement, provided such receipt is not of itself a breach of this Agreement [or any similar agreement between that third party and the Disclosing Party];
- 7.4 is, prior to disclosure by the Disclosing Party, already in the possession of the Receiving Party having been independently developed by the Receiving Party;
- 7.5 is disclosed to a third party by the Disclosing Party free of any obligations of confidentiality similar to those set out in this Agreement;
- 7.6 is approved for disclosure in writing by the Disclosing Party;
- 7.7 is declared by the Disclosing Party in writing to no longer be confidential;
- 7.8 is required to be disclosed by the Receiving Party under the Freedom of

Information Act 2000; or

7.9 is required by law, by any court of competent jurisdiction, or by any government agency lawfully requesting the same to be disclosed provided that the Receiving Party notifies the Disclosing Party in advance of such disclosure.

8. Term

8.1 The obligations of confidentiality set out in this Agreement shall continue indefinitely, subject only to the exclusions set out in Clause 7.

8.2 As fully detailed in sub-Clause 2.5, following the expiry or termination of this Agreement, each Receiving Party shall return the Confidential Information to the respective Disclosing Party and shall ensure that no copies thereof are retained.

9. Enforcement and Indemnity

9.1 Both Parties hereby acknowledge that damages alone are unlikely to be an adequate remedy for any breach by either Receiving Party of this Agreement.

9.2 The First Party shall, without prejudice to any and all other rights and remedies which may be available, be entitled to the remedies of injunction, specific performance and other equitable relief for any breach of this Agreement by the Second Party, actual or threatened.

9.3 In addition to any rights or remedies whether at law or in equity to which the First Party may be entitled, the Second Party hereby agrees to indemnify the First Party against any and all liabilities and financial or other loss, damage, costs or expenses (including legal costs on a full indemnity basis), [direct] [or indirect] which may arise out of its breach of this Agreement (including, where applicable, any breaches by the Second Party of the Data Protection Act 1998 which render the First Party liable).

9.4 The Second Party shall, without prejudice to any and all other rights and remedies which may be available, be entitled to the remedies of injunction, specific performance and other equitable relief for any breach of this Agreement by the First Party, actual or threatened.

9.5 In addition to any rights or remedies whether at law or in equity to which the Second Party may be entitled, the First Party hereby agrees to indemnify the Second Party against any and all liabilities and financial or other loss, damage, costs or expenses (including legal costs on a full indemnity basis), [direct] [or indirect] which may arise out of its breach of this Agreement (including, where applicable, any breaches by the First Party of the Data Protection Act 1998 which render the Second Party liable).

10. **Exclusion and Limitation of Liability**

- 10.1 Neither Party shall have any obligation either to enter into any further transaction or agreement with the other Party or to provide any, or any particular, information to the other Party.
- 10.2 Neither Party, nor any of their respective employees, officers, agents, sub-contractors, subsidiaries or any other third parties associated therewith shall owe any duty of care in the provision of any information to the other Party or accept any responsibility or liability for, or makes any representation or warranty, express or implied, that the Confidential Information disclosed by either Party is accurate or complete.
- 10.3 Nothing in this Agreement shall limit or exclude the liability of either Party for fraud or fraudulent misrepresentation.

11. **Non-Assignment of Agreement**

Neither Party may assign, transfer, sub-contract, or in any other manner make available to any third party the benefit and/or burden of this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld.

12. **Communication**

- 12.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by the Party giving the notice or by a duly authorised officer thereof, as appropriate.
- 12.2 Notices shall be deemed to have been duly given:
 - 12.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or
 - 12.2.2 when sent, if transmitted by facsimile or email and a successful transmission report or return receipt is generated; or
 - 12.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 12.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 12.3 All notices under this Agreement shall be addressed to the most recent address, facsimile number, or email address notified to the other Party.

13. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

14. Severance

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

15. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

16. Third Party Rights

No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

17. Variation

No variation of or addition to this Agreement shall be effective unless in writing signed by each of the Parties or by a duly authorised person on its behalf.

18. Law and Jurisdiction

18.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of Scotland.

18.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the [exclusive] jurisdiction of the courts of Scotland.