



**Artsmark**  
AWARDED BY ARTS COUNCIL ENGLAND

## **Terms and Conditions**

### **Artsmark**

### **Academic Year 2015/2016**

These Terms and Conditions are important. They set out the legal contractual relationship between you and us as you commit to Artsmark.

This is a legal document and you should ensure that you fully understand your responsibilities before submitting your Statement of Commitment and thereby committing to Artsmark. By submitting your Statement of Commitment, you confirm that you accept these terms and conditions ('Terms and Conditions') and agree to be bound by them during your application for Artsmark Status and after you have gained Artsmark Status.

## **1. Definitions**

- 1.1. 'You' means a school, educational setting or consortium of schools that have registered, applied for and have achieved Artsmark Status.
- 1.2. 'We', 'us' and 'our' means Arts Council England and includes our employees and those acting for us.
- 1.3. 'Application' means your application for Artsmark Status signified by the submission of your Statement of Commitment.
- 1.4. 'Arts Council England Quality Principles' means a set of values designed to raise the quality of work by, with and for children and young people.
- 1.5. 'Artsmark' means the Arts Council England's arts and culture programme, the purpose of which is to support schools to embed arts and culture within their development plans to enable the delivery of quality arts provision for all children and young people.

- 1.6. 'Artsmark Award' means an award that demonstrates your commitment to putting arts and cultural provision at the heart of your school, educational setting or establishment.
- 1.7. 'Artsmark Guidelines' as defined in clause 7.6.
- 1.8. 'Artsmark Level' means any one of Artsmark Silver, Artsmark Gold or Artsmark Platinum assigned to you as part of your Artsmark Status.
- 1.9. 'Artsmark Status' means that you have achieved an Artsmark Award at an Artsmark Level.
- 1.10. 'Artsmark Trade Marks' means the trade marks set out in Schedule 1, and as may be updated by us from time to time.
- 1.11. 'Artsmark Website' means the website at [www.artsmark.org.uk](http://www.artsmark.org.uk).
- 1.12. "Artsmark Certification Programme" means the previous Artsmark Award program delivered in conjunction with Trinity College London.
- 1.13. 'Case Study' means the document submitted by you that evidences how you have delivered the objectives as laid out in your Statement of Commitment and the impact of this on your pupils, school and wider community.
- 1.14. 'Critical Friend Visit' means a visit to your school by a member of the Critical Friend network to offer support and challenge during the development, delivery or evaluation stage of your Artsmark journey.
- 1.15. 'Development Day' means the day of training for two members of staff to introduce Artsmark and support the development of a high level arts development plan.
- 1.16. 'Statement of Commitment' means the key arts planning document as submitted by you evidencing the tie in of arts provisions to overarching aims in your school strategy.
- 1.17. 'Validity Period' as defined in clause 8.2.

## **2. Application and Statement of Commitment**

- 2.1. The submission of your Statement of Commitment is your formal Application for Artsmark Status.
- 2.2. It must be finalised and signed off by the headteacher and chair of governors or such other authorised signatory.

- 2.3. You are entitled to submit one and only one Application at any one time. Multiple concurrent Applications are not permitted and we reserve the right to dismiss your Application(s) on that basis.
- 2.4. Where you have registered for Artsmark as a consortium, all members of the consortium must submit a Statement of Commitment. The terms of clause 2.3 above will also apply to consortium applicants.

### **3. Delivery**

- 3.1. You must send two members of staff to attend a Development Day. One of these must be a member of your Senior Leadership Team.
- 3.2. You must request a Critical Friend Visit after you have submitted your Statement of Commitment, but before you submit your Case Study.
- 3.3. You must refer to the Arts Council England Quality Principles as part of your planning and evaluation for your Artsmark Award.

### **4. Evidencing impact by Case Study**

- 4.1 Your Case Study should be appropriately evidenced, written in reference to your Statement of Commitment and be informed by the Arts Council England Quality Principles.
- 4.2 Where the Application is submitted as part of a consortium, all members of the consortium must submit a Case Study.

### **5. Levelling**

- 5.1 Your Case Study will be assessed by a panel of arts and education experts in order to award an Artsmark Level.
- 5.2 Levelling will take place once per academic term.
- 5.3 Your school will be levelled against what you have achieved with regard to arts provision, not against what you still intend to do.

### **6. Artsmark Status**

- 6.1 We will grant you an Artsmark Award if we, in our sole discretion, consider that you have achieved Artsmark Status. We will then authorise

you to use the Artsmark Trade Mark that corresponds to your Artsmark Level (as set out in Schedule 1), on your marketing and educational materials, including all on-line materials, in accordance with clause 7 below.

- 6.2 Your Artsmark Status (and Level) will be valid for two years from the date of grant of the Artsmark Award (the "**Validity Period**"), subject to your compliance with these Terms and Conditions.
- 6.3 You will be able to reapply at any time following the grant of Artsmark Status to develop your arts and culture priorities further and achieve your next Artsmark Level. In our written confirmation of your Artsmark Level, we will state the date by which you will need to reapply to us to continue to retain or improve upon your Artsmark Status.
- 6.4 The registration process for a reapplication will require you to re-apply and will be subject to a fresh application fee, further details of which can be found on the Artsmark Website.
- 6.5 If you do not re-apply to retain your Artsmark Status pursuant to clause 6.3 above, then you shall immediately upon expiry of the Validity Period, cease use of all and any of the Artsmark Trade Marks and comply with your obligations under clause 8.2 below.

## **7. Intellectual Property Rights**

- 7.1 Following the submission of your Statement of Commitment and the payment of the corresponding registration fee, you can describe your school, educational setting or consortium of schools as "WORKING TOWARDS ARTSMARK" on your marketing and educational materials, including all on-line materials.
- 7.2 You should not use any of the Artsmark Trade Marks until you have received further authorisation to do so during the Application process.
- 7.3 Use of any of the Artsmark Trade Marks during the Application process without further authorisation referred to in 7.2 above is strictly prohibited and may jeopardise your Application.
- 7.4 Notwithstanding 7.2 and 7.3 above, you may continue to use the Certification Trade Marks detailed at Section 1 of Schedule 1, as appropriate, until the expiry of the Artsmark Certification Programme period, after which time your authorisation to use the appropriate Certification Marks shall cease with immediate effect and you will comply

with your obligations under clause 7.8 below. You should use the appropriate Certification Trade Mark in Section 1, Schedule 1 at the same time as the appropriate Trade Mark in Section 2, Schedule 1.

In the event that there is an anomaly between your Artsmark Level and your Certification Trade Mark, you will inform us immediately.

- 7.5 Upon your receipt of our written confirmation to you that you have achieved Artsmark Status, you are authorised to use for the Validity Period the Artsmark Trade Mark that corresponds to your Artsmark Level and the Trade Marks reproduced at Section 2 and Section 3 of Schedule 1 as appropriate.
- 7.6 You will, at all times, comply with any Artsmark Trade Mark use guidelines that we may notify you of and/or publish on [www.artsmark.org.uk](http://www.artsmark.org.uk) from time to time ('**Artsmark Guidelines**').
- 7.7 You will:
- (a) only use the Artsmark Trade Marks in relation to the Artsmark Award and with all due skill, care and diligence;
  - (b) market and publicise the Artsmark Award in a manner consistent with our reputation, the reputation of the Artsmark Trade Marks, the Arts Council England Quality Principles and the Artsmark Guidelines;
  - (c) not use the Artsmark Trade Marks in any way which would tend to allow them to become generic, become liable to mislead the public, lose their distinctiveness or be materially detrimental to our good name, goodwill, reputation or image;
  - (d) use the <sup>TM</sup> device in respect of the Artsmark Trade Marks at the right upper corner of the Trade Marks unless agreed otherwise;
  - (e) neither claim nor obtain any right, title or interest in the Artsmark Trade Marks except the rights of use specifically provided according to these Terms and Conditions. Accordingly, you acknowledge that any goodwill generated by you as a result of the use of the Artsmark Trade Marks shall belong to us and no right or other advantage in the Artsmark Trade Marks will be available to you as a result of your use; and
  - (f) ensure that all marketing and educational materials indicate that Artsmark is awarded by Arts Council England (if not already indicated by the relevant Trade Mark in Section 2).

- 7.8 We will monitor and reserve the right to audit your use of the Artsmark Trade Marks for the purposes of ensuring compliance with these Terms and Conditions. You will provide us with all necessary and reasonable cooperation, which may include providing us with access to your premises and/or delivering up to us all relevant written materials relating to Artsmark.
- 7.9 Following such audits, we may require you to make changes at your cost to your marketing and educational materials and any other material which makes use of the Artsmark Trade Marks. You will make these changes within the time period specified by us.
- 7.10 You agree to indemnify and keep us indemnified against any and all damages, expenses or losses we suffer arising out of or in connection with any material breach by you of any of your obligations under these Terms and Conditions. This indemnity will not apply to the extent that the claim arises as a result of our gross negligence, fraud or fraudulent misrepresentation. Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone may not be an adequate remedy. Accordingly, we will be entitled to the remedies of injunction, specific performance or other equitable relief to cure any threatened or actual breach by you of your obligations under these Terms and Conditions.

## **8. Breach of these terms and conditions, withdrawal, revocation, termination or expiry of Artsmark Status**

- 8.1 We may, in our absolute discretion, terminate your Artsmark Status and your authorisation to use the Artsmark Trade Marks with immediate effect on written notice if:
- 8.1.1 you breach these Terms and Conditions and such breach (where it is capable of remedy) continues for a period of fourteen (14) days after receipt by you of a written notice alleging such breach;
- 8.1.2 you act or omit to act or conduct your business and operations in such a manner that, in our opinion, is detrimental to our

reputation or image and/or to the reputation or image of Artsmark.

- 8.1.3 you have provided in the Application, Case Study or at any time after being granted Artsmark Status, any information that was or is wrong or misleading, either by mistake or because you were trying to mislead us.
- 8.1.4 you challenge the validity of the Artsmark Trade Marks or use the Artsmark Trade Marks in manner which is not fully compliant with these Terms and Conditions.
- 8.1.5 you are declared bankrupt or become insolvent, any order is made, or resolution is passed, for you to go into administration, be wound up or dissolved; an administrator or other receiver, manager, liquidator, trustee or similar officer is appointed over all or a considerable amount of your assets; or you enter into or propose any arrangement with the people you owe money to; and/or,
- 8.1.6 you act illegally or negligently at any time, and we believe it has significantly affected your Artsmark Status, or is likely to harm our or your reputation and/or that of Artsmark.

## **Post Termination**

- 8.2 If your Artsmark Status is terminated or expires and is not renewed by you, you will:
  - 8.2.1 immediately cease to use any of the Artsmark Trade Marks in anyway howsoever including use on your principal website and all other online sites controlled by you, including social media;
  - 8.2.2 at our election but at your cost, either return to us or destroy any marketing and education materials incorporating the Artsmarks Trade Marks and, in the case of destruction, provide us with a sworn statement to that effect within five (5) working days of receiving our instruction to destroy the materials;
  - 8.2.3 immediately cease to make any claims or any statements that imply or expressly state that you still hold Artsmark Status;
  - 8.2.4 notify all interested parties that you no longer hold Artsmark Status and provide us with a sworn statement to that effect within five (5) working days of the date of effective termination;
  - 8.2.5 not at any time after termination use any trade marks which are identical or confusingly similar to the Artsmark Trade Marks;

- 8.2.6 not be entitled to the refund of any registration fee paid; and
  - 8.2.7 not be able to reapply for Artsmark Status for a period of not less than three (3) academic years in the event that we have terminated your Artsmark Status for breach.
- 8.3 Expiry or termination of your Artsmark Award (howsoever occasioned) will not affect any accrued right (including any right of action or remedy) or liability of either party, nor will it affect the continuance of any provision which is expressly or by implication intended to survive termination.

## **9. Resolving Disputes**

- 9.1 Any disputes or claims arising out of or in connections with these Terms and Conditions are governed by and construed in accordance with the laws of England and you irrevocably agree that the courts of England and shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms and Conditions.
- 9.2 Any dispute relating to maladministration or access to information should be resolved by using our two stage complaints procedure, as set out at Schedule 2 ('our Complaints Procedure').
- 9.3 If you are not happy with the outcome of our Complaints Procedure, you can have your complaint investigated by The Parliamentary and Health Service Ombudsman and you agree that you will not challenge the findings of the Ombudsman.
- 9.4 If any other dispute arises out of or in connection with these Terms and Conditions then senior representatives of the parties with authority to settle the dispute shall, within 28 days of a written request from one party to the other party, meet in a good faith effort to resolve the dispute.
- 9.5 Neither party may commence any court proceedings in relation to a claim or dispute arising out of these Terms and Conditions until it has attempted to settle the dispute pursuant to clause 9.4 above .

## **10. General conditions**

- 10.1 You agree to ensure that the quality of your Artsmark Status is maintained throughout the period specified in clause 6.2 above.



- 10.2 You agree and confirm that you have taken all reasonable steps to ensure the safety of children, young people or vulnerable adults (“vulnerable people”) and that you have obtained the written agreement from the legal carer or guardian before any person having any direct contact with any vulnerable people. You will have and carry out an appropriate written policy and have a set of procedures to check backgrounds and disclosures of all employees, volunteers, trustees or contractors who will supervise, care for or otherwise have significant direct contact with vulnerable people with the Disclosure and Barring Service.
- 10.3 You agree and consent to the reproduction by us of any part of your Application, Statement of Commitment, Case Study or subsequent information for illustrative or promotional purposes without further notice.
- 10.4 You will ensure that you are at all times correctly constituted and that you can maintain the applied for and awarded Artsmark Status under the terms of your constitution and if asked by us you will provide a legal opinion from your solicitors confirming this. Where the Application and Case Study has been submitted is a consortium, this clause will apply to all members of the consortium. The award of Artsmark Status will apply to all members in the consortium. You should inform us immediately and seek our written agreement should a member wish to leave the consortium. New members will not be permitted to join after the grant of Artsmark Status.
- 10.5 You must tell us in writing as soon as possible of any investigation concerning your organisation (or any one of the organisations in the case of a consortium), trustees, directors, employees or volunteers carried out by the Police, Charity Commission, HM Revenue & Customs or any other regulatory body.
- 10.6 You must tell us in writing as soon as possible if any legal claims are made or threatened against you and/or which would adversely affect the Artsmark Status held by you (or any one of the organisations in the case of a consortium).
- 10.7 If you fail to meet any term of these Terms and Conditions and we do not enforce one or more of our rights straight away, this does not mean that we will not do so in the future. We may give up our right to enforce these Terms and Conditions only if we notify you in writing that we will do so.
- 10.8 We will not be held responsible for any action you take, any actions you fail to take, or for any other of your liabilities. You are fully responsible for

every part of your business and the decisions about them. We will not be responsible to anyone else who may take, or threaten to take, proceedings against you.

- 10.9 You accept that there is no guarantee that Artsmark will be available following the expiry of your current Artsmark Award nor that it will be administered and run by us in the future.
- 10.10 We will not in any circumstance have any liability to you if we are for any reason prevented from, or delayed in, performing our obligations under these Terms and Conditions or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control and we shall be entitled to such extension of time so as to permit us to perform our obligations.
- 10.11 These Terms and Conditions are personal to you and shall not be transferred, assigned, charged, sub-contracted or dealt with in any other manner.
- 10.12 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of the rights or obligations under these Terms and Conditions.
- 10.13 Nothing in these Terms and Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between us and you, constitute you as our agent or otherwise authorise you to make and enter into any commitments on our behalf.
- 10.14 You agree and accept that we may share information about your Artsmark Status and all documents pertaining to it with any parties of our choice as well as with members of the public under the Freedom of Information Act 2000. Details may also be broadcast on television, on our website, in newspapers and through other media.
- 10.15 No person who is not a party to our contractual relationship with you in accordance with these Terms and Conditions shall have the right to enforce these Terms and Conditions pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.16 The Artsmark registration terms as set out on the Artsmark Website, these Terms and Conditions and any documents referred to in them constitute the whole agreement between us and you and supersede any previous arrangement, understanding or agreement relating to the subject matter of these Terms and Conditions.

## **11. Additional conditions**

11.1 You agree that we have the right to impose additional terms and conditions if:

- 11.1.1 we have reasonable grounds to believe that it is necessary to protect our reputation or that of Artsmark;
- 11.1.2 you are in breach of these Terms and Conditions; and/or,
- 11.1.3 we withdraw your Artsmark Status.