**GUIDANCE DOCUMENT**

Yes

No

Yes

No

Yes

No

a participant

an artist

**GUIDANCE DOCUMENT**

**PARTICIPANT RELEASE FORMS**

*Who should sign?*

Participants should sign themselves unless they are under the age of 18 years old. If the participant is under 18, their parent or guardian should sign on their behalf.

*Which form should I use?*

If the participant is aged 18 or over, the participant should sign a participant release form. If the participant is aged 18 or under, the participant’s parent or guardian should sign the under 18 participant release form.

*Which intellectual property option should I use?*

The participant release forms contain three options regarding the intellectual property created by the participants. Option 1 should be used when the intellectual property is owned by the artist. Option 2 should be used with the intellectual property is owned by the organisation. Option 3 should be used when intellectual property is owned by the participant.

*What is the artist/organisation allowed to do with the intellectual property when Option 3 is used?*

When Option 3 is used, the participant owns the results but the Artist and Organisation can each make use of the results for any purpose, including commercial purposes. They can also grant sub-licences to the results. The participant should be clearly identified as the author.

*Should I include the confidentiality clause?*

The confidentiality clause should be used where the project or results need to be kept confidential. This might be the case where, for example, the project information is sensitive or the artist/organisation may want to seek intellectual property protection.

*How do I explain the form to participants?*

The form sets out:

* the participant’s participation in the project;
* the fact that they are taking part free of charge;
* who owns what the participant creates (the participant, the artist or the organisation);
* how the participant’s personal data will be processed; and
* where confidentiality is a concern, the fact that project details and results must be kept confidential.

The form also requires participants to confirm that:

* the personal data they submit is correct;
* the work they create is their own; and
* their work will not infringe on anyone else’s intellectual property rights.

The form also sets out that the artist will not be liable for any loss, damage or injury suffered by the participant in connection with the project, unless the law requires otherwise.

*How do I explain simple permission forms to participants?*

Depending on the content of the form in question, the following phrases might be useful:

* You sign this form to consent to your answers being shared publicly.
* You sign this form to consent to the results you create being publicly displayed.
* You sign this form to consent to your participation in the project.
* You sign this form to consent to us storing the results you create.

**GUIDANCE DOCUMENT**

**INTELLECTUAL PROPERTY AGREEMENTS**

*What is the intellectual property agreement?*

The intellectual property agreement sets out the terms and conditions relating to intellectual property created during the engagement of an artist. It is intended to be used alongside a consultancy agreement, and does not contain terms regarding the engagement itself, payment or data protection etc., all of which should be dealt with under the consultancy agreement.

*Who should sign an intellectual property agreement?*

The intellectual property agreement is intended for freelance artists who have entered into a consultancy agreement with the organisation, only where that consultancy agreement does not contain any intellectual property clauses. It is not intended for employees of the organisations, and it is not intended for freelance artists whose consultancy agreements contain intellectual property clauses.

*What is the situation for artists who are employees of the organisations?*

This intellectual property agreement should not be used where the artist is an employee of the organisation. When employees create intellectual property as part of their employment, it will normally be owned by the organisation as their employer. This means that no further agreement will normally be required to enable the organisation to own the intellectual property. If the organisation wants its employee to own the intellectual property, this should be dealt with separately between the employee and the organisation, and we expect that organisations would want to draw up their own agreement for this.

*Which option should I use for intellectual property?*

Option 1 should be used where the outputs of the artist’s work are to be owned by the organisation. Option 1 gives the organisation the exclusive use of the intellectual property rights in the work. Option 2 means that the outputs of the work are owned by the artist. The artist will be free to use the outputs how they see fit, and will also be able to allow third parties to use them. The organisation will be permitted to use the intellectual property rights in the outputs subject to their acknowledging the artist as being the creator of the works.

*What value should I insert into clause 5.5?*

Clause 5.5 is the maximum value of artist’s liability to the organisation in connection with the services they will be providing. Organisations are free to take a view on what an appropriate liability cap should be, taking into consideration the main risks involved in the artist’s performance of the contract. This will involve looking at the likely consequences if the artist fails to perform the services property.