Grant Agreement Tool | Model Contract Provisions

This document contains a variety of model contractual provisions for use in grant agreements. Most of these provisions are donor-friendly and should be used only when requested by the donor.

For convenience, “Funder” is used to refer to the other party to the contract, and terms such as “Grant Purpose,” “Program,” and “Project” are used in the model provisions. The user will need to adapt the terminology as appropriate.

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GRANT PAYMENTS

Key Issues:

- **If Funder conditions Grant**

- **If Client desires extension of grant period**

- **Impact of currency fluctuations**

**Matching Funds Grant**
Funder will make a grant of $________ to Client if Client raises new funds in an equal amount by no later than ________, 2___. Client will notify Funder in writing if Client raises such funds, and provide Funder with appropriate documentation, satisfactory to Funder, relating to the sources of such funds. Funder will make the grant within ___ days of receipt of the notice and documentation.

**Conditional Grant**
Funder will make a grant of $________ to Client if Client, no later than ____________, 2_____, meets the following conditions: _______________. Client will notify Funder in writing if Client meets such conditions, and provide Funder with appropriate documentation, satisfactory to Funder, demonstrating satisfaction of the conditions. Funder will make the grant within ___ days of receipt of the notice and documentation.

**Payment Conditions**
Future Grant payments are conditioned upon (a) Client making satisfactory progress with regard to the Project as determined by Funder in its sole discretion; (b) timely receipt and acceptance by Funder of Client’s narrative and financial reports and other deliverables specified in Exhibit __; and (c) Client’s compliance with all other terms and conditions of this Agreement. Funder may at any time defer, suspend, or reduce funding in its sole discretion.

**Currency**
Funder will make all payments in the currency of the country of Client’s principal location. Client will submit all budgets and financial reports to Funder in local currency and in U.S. dollar equivalents. [Within 10 business days of receipt of Funder’s Grant payments, Client will convert all Grant funds into a local currency account and report currency gains and losses to Funder. Funder may request a budget reallocation to account for currency gains or losses.]

**Extension [for use with limited grant period]**
Client may request, and Funder may grant, an extension of the Grant Period. Client must make any such request no later than 60 days prior to the end of the Grant Period. Funder may in its sole discretion decide whether to grant the extension and will notify Client of its decision at least 30 days prior to the end of the Grant Period.
USE OF FUNDS

Key Issue:

- To address Funder concerns about use of funds for political or other activity inconsistent with 501(c)(3) status

Use of Grant Funds
Client will use the Grant funds only for the purpose set out in Exhibit ___.

Prohibited Uses [shorter-form]
Client may not use the Grant funds (a) for any purpose other than the Grant Purpose; (b) to influence the outcome of any specific election for candidate for public office; (c) to carry out any voter registration drive; or (d) for any purpose that is inconsistent with Section 501(c)(3) of the Internal Revenue Code.

Prohibited Uses [general tax-exempt compliance]
Client will not use any portion of the Grant to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any improper private inurement or private benefit to occur, or to take any other action inconsistent with Client's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Prohibited Uses [lobbying]
Client acknowledges that Funder has not earmarked the Grant funds to support lobbying activity or to otherwise support attempts to influence local, state, federal, or foreign legislation. Client’s activities, and any materials produced with the Grant funds, will comply with applicable local, state, federal, or foreign lobbying laws.
WITHOLDING PAYMENT; REPAYMENT

Key Issue:

• If Funder demands ability to withhold or requires repayment of Grant funds

Repayment of Unused Funds at end of Grant Period
Unless otherwise agreed by Funder, Client must return to Funder any portion of the Grant funds not used for purposes of the Grant no later than ten days after the end of the Grant Period.

Repayment upon Termination
Client will repay to Funder any unused portion of the Grant funds, including any income earned from any investment of the Grant funds, within 30 days after delivery by Funder of written notice of termination as provided in Section __.

Repayment [allows income re-allocation]
Client will return promptly to Funder any Grant funds that have not been used for, or committed to, the Project by the end of the Grant Period. Client will apply any income that has not been used for, or committed to, the Project, to either another Funder-funded Client project (current or under consideration) or to another Client charitable project as approved by Funder.

Inadequate Progress
If Funder determines, in its reasonable discretion, that Client has failed to or is unable to carry out any provision of this Agreement, including, without limitation, making reasonable progress towards the achievement of the Grant Purpose, Funder may elect to withhold further Grant payments under this or any other grant agreement, and Funder may demand return of all or part of any Grant funds not properly spent or committed to third parties. Prior to terminating, withholding, or reducing the Grant, Funder will give Client 30 days’ advance written notice and an opportunity to respond to and resolve the issues, but the determination to continue, reduce, withhold, or terminate the Grant will remain in Funder’s discretion.

Clawback
For a period of __ years after the final Grant payment, Funder may, in its discretion, require Client to return the Grant funds or terminate this Agreement if: (a) _____ or (b) ______. In recognition of the impact on Client of such an action, Funder will advise Client if Funder intends to, or is considering, exercise of its rights under this Section __, and, if requested by Client, will meet with Client before exercising such right. If after that meeting Funder decides to so exercise, Funder will notify Client in writing of the decision, and Client will return the funds no later than ____ days after receipt of such written notice.
FUNDS MANAGEMENT

Key Issues:

- If Funder requires Client to track how Grant funds are managed and used
- If Funder concerned about how Client manages funds

Funds Tracking
Client will track the Grant funds in a manner that allows Funder to review Client’s receipts and expenditures relating to the Grant.

Funds Management
Client will manage the Grant funds in accordance with applicable law, the provisions of this Agreement, and Client policies. Client may combine the Grant funds with Client’s other assets for investment purposes.

Investment of Funds
Client will invest the Grant funds in highly liquid investments with the primary objective of preserving the principal (e.g. in an interest-bearing account or a money market mutual fund) so that the Grant funds are available for the Project. Together with any progress or final reports required under this Agreement, Client will report the amount of any currency conversion gains (or losses) and the amount of any interest or other income generated by the Grant funds. Client must use such income for the Project.
REGULAR REPORTING; RECORDS

Key issues:

- If Funder requires more extensive reporting from Client
- If Funder requires recordkeeping and ability to inspect records

REPORTING

Reporting [short form]
Client will provide Funder with narrative or financial reports as set out in Exhibit A.

Required Reports and Records [long form]
Client will submit narrative and financial reports, as set out in Exhibit __. The narrative reports should summarize the progress made in carrying out the purposes of the Grant. The financial reports should describe how Grant funds were spent based upon the budget Client submitted to Funder. Client will report on this Grant annually or as otherwise required in Exhibit __ until the termination or expiration of this Agreement.

Report Follow-up; Meetings and Calls
Client will make available its senior management team and key personnel responsible for implementing the Project for meetings and telephone calls as Funder may reasonably request.

Additional Information
Client will provide information regarding the Project, in addition to the narrative and financial reports described in Section __, as may be reasonably requested by Funder.

Reliance on Reports
Client acknowledges that Funder is relying on the information Client provides in reports and during the course of any due diligence conducted prior to and during the Grant Period. Funder may continue to rely on this information and on any additional information Client provides regarding the Project.

RECORDS

Recordkeeping
Client will maintain its books and records in a manner that will provide Funder with sufficient detail to review Client’s receipts and expenditures relating to the Grant. Client will make such records available for review by Funder upon reasonable notice during the Grant Period and for four years after the termination or expiration of this Agreement, [for the purpose of making financial audits, program evaluations, or verifications concerning the Grant as Funder deems necessary].
EVENT REPORTING AND NOTICES

Key Issue:

- **Whether Funder requires notification of significant changes**

**Changes in Funds Use or Personnel**
Client will inform Funder if there are material changes in the use of Grant funds or personnel who are important to accomplishing the purposes of the Grant, or if Client cannot, or determines it sub-optimal to, expend the Grant funds within the Grant Period.

**Project Changes**
Client will not make any material changes in the project Plan without Funder’s prior consent. Material changes include, without limitation, any budget modification that results in a variance in any annual expense category sub-total or annual output or outcome total in the budget greater than 20%, whether or not the requested variance will affect achievement of the Grant purpose.

**Change in Tax-Exempt Status [adapt for international]**
Client will notify Funder immediately of any change to Client’s tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

**Material Developments [include only items that Funder requires]**
Client will promptly notify Funder of: (a) any changes in its status as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code; (b) any changes in Client’s senior management team or key personnel responsible for carrying out the Program; (c) loss of other funding, the filing of any litigation, or any other development that has or could have a material adverse effect on Client’s financial condition or otherwise materially affect its ability to carry out the Program; (d) any material changes in Program design or implementation; or (e) any other substantive issues or concerns regarding Client that have the potential to substantially impair the purposes or progress of the Program.

**Notifications [specific to the Grant]**
Client will promptly notify Funder of: (a) any potential or threatened litigation, claim, assessment, or audit involving Client related to the purpose of the Grant; (b) any challenge that arises that may prevent Client from achieving the purpose of the Grant in accordance with the schedule set out in Exhibit __, including any issues with partners, contractors, and subgrantees; (c) any actual inability to achieve the purpose of the Grant in accordance with the schedule set out in Exhibit __; or (d) any potential or actual changes in the leadership, staff, subgrantees or contractors who Client selected to carry out Grant activities.
EVALUATION

Key issues:

• If Client obtains third party evaluation of Client program effectiveness

• If Funder requires evaluation of Client project or program effectiveness

Evaluation [commissioned by Client]
Client will notify Funder and provide copies of any reports or findings if Client conducts or commissions any third-party research or evaluation regarding the Project.

Evaluation [commissioned by Funder]
If Client is selected to participate in Funder-funded research or evaluation relating to the Project, Client will: (a) designate a primary point of contact for the evaluation firm; (b) cooperate with the evaluation firm as reasonably required to implement an evaluation plan; (c) provide or facilitate the collection of data as reasonably requested by the evaluation firm; and (d) permit dissemination of resulting reports or findings as Funder may determine. Funder will provide Client with copies of any reports or findings of such research or evaluation.
SITE VISITS

Key issue:

- **Whether Funder may visit Client program sites**

Visits

Funder may visit sites related to the Project (collectively, “Sites”) and film, tape, photograph, interview, and otherwise document Client’s operations during normal business hours and with reasonable advance notice. Funder will comply with Client’s site visit terms and [__________] Policy during any visits to Sites. The presence of Funder representatives on the Sites will not limit or affect in any way Client’s obligations under this Agreement.
CONTROL; CONTRACTORS

Key issues:

- If Funder wants to emphasize Client’s control over project management
- If Funder wants clear statement that Funder not dictating choice of contractors, sub-grantees and others

Responsibility
Client will have sole responsibility for the planning, management, and implementation of its own activities relating to Program execution, including, without limitation, managing its Program budget, hiring, assigning, and managing employees, selecting consultants, contractors, sub-grantees, or other entities to assist in carrying out the Program, recruiting volunteers, maintaining facilities and equipment, paying expenses, performing contracts, and paying all other liabilities that it may incur in its operations.

Responsibility for Others
Client will ensure that Client’s subgrantees, subcontractors, agents, and affiliates assisting with the Program comply with the terms of this Agreement.

Contractors [short form]
If budgeted for, Client is authorized to select contractors of its choice to achieve the purpose of the Grant. Client confirms that Funder has not required, either in writing or orally, that Client must use Grant funds for any specific subgrantee or contractor. Client is responsible for ensuring that all contractors use the Grant funds solely in a manner that is consistent with this Agreement.

Contractors [long form]
Client confirms that it retains full discretion and control over the process of selecting any persons or organizations (e.g. researchers, employees, independent contractors, secondary grantees, consultants, vendors, or suppliers) or any equipment, supplies, or products, to carry out the purposes of this Grant, completely independently of the Funder. Client confirms that there is no agreement, either written or oral, that Funder can cause the selection of particular persons or organizations or direct the use of the Grant funds for any particular expenditures.
FUTURE FUNDING

Key issue:

- If Funder wishes to emphasize that Grant is a one-time event

Future Funding [short form]
Client acknowledges that Funder and its representatives have made no actual or implied promise of funding by Funder beyond this Grant. Funder has the sole discretion to determine any future funding.

Future Funding [long form]
Funder is not, as a result of entry into or performance by either party under this Agreement, obligated to provide future grants, program-related investments, or other financial or technical support to Client, or to extend the relationship with Client in any respect, or to engage in any other transaction or relationship with Client. Client acknowledges that Funder has not made to Client any representations, promises, or assurances about future funding or other support.

No Further Requests for Funding
Client acknowledges that the Grant is a one-time contribution, and that Funder is under no obligation to make future grants. The Grant is a separate and independent transaction from any other transaction between Client and Funder. Out of respect for the time and privacy of Funder, Client will not seek any further gifts, contributions, follow-up calls, or meetings from or through Funder, unless Funder requests additional information or proposals, or otherwise agrees.
PUBLICITY

Key issues:

- Consider level of privacy or publicity Funder desires
- Consider if Client desires approval rights of any Funder publicity materials

PUBLICITY (CLIENT)

Acknowledgements
Client will acknowledge Funder as set out in Exhibit __.

Publicity by Client
Client will obtain Funder’s prior written consent before: (a) issuing a press release or other public announcement regarding this Grant; or (b) making any public use of Funder’s name or logo, except in each case as may be required by law.

Funder Anonymity
Client will not use Funder’s name or logo in any Client external communications, or otherwise publicly identify Funder as a supporter, except as may be otherwise required by law.

Publicity by Others
Client will ensure that Client's subgrantees, subcontractors, agents, or affiliates do not disclose to third parties that Funder directly funds or otherwise endorses their activities.

No Authority to Act for Funder
Client will not hold itself out as an agent or representative of, permit its employees, agents, and representatives to speak or act on behalf of, or purport to speak or act on behalf of Funder, including, without limitation, making statements that purport to be official positions of Funder.

PUBLICITY (DONOR)

Publicity by Funder
Funder may include information about the award of the Grant, including Client’s name, in its periodic public reports, and may make such information available on its website and as part of press releases, public reports, speeches, newsletters, tax returns, and other public disclosures.

Media
Funder may make all such video, photographic, audio, written, and other materials (collectively, “Materials”) created by Funder in connection with site visits or otherwise relating to the Project available on Funder’s website, in Funder’s publications, or through any other media. Client grants Funder all copyrights and all other rights that Client might have in the Materials. Funder will obtain appropriate consents from third parties Client may allow at Sites while Funder is present.
INTELLECTUAL PROPERTY

Key issue:

- **Whether Client is preparing reports or other materials with Grant funds**

**Intellectual Property**

All rights, title, and interest in and to all intellectual property based on, or derived from activities undertaken by Client and funded in whole or in part by this Grant (“Grant Works”), will be owned by Client. Client will make the Grant Works available to the public at no cost, or, when justified, at a reasonable cost. To that end, Client will obtain assignments or licenses from Client employees, contractors, and sub-contractors as may be necessary or appropriate in connection with such public availability obligation. Client may transfer or license the Grant Works only to persons who agree to maintain public availability of the Grant Works.

**Grant of License to Funder [white paper or other report]**

Client will develop a white paper as described in Exhibit ___ (“Grant Content”). Client grants to Funder a fully paid, irrevocable, non-exclusive, non-commercial, worldwide, perpetual, assignable license, with a right to sublicense, to use, reproduce, distribute copies of, create derivative works from, publicly display, and otherwise use all or any portion of the Grant Content for any purpose related to Funder’s charitable purposes and in any and all mediums.
COMPLIANCE

Key issue:

- Consider compliance issues Funder is most concerned about

GENERAL AND TAX STATUS

Legal Compliance [general]
Client will comply with all laws applicable to its activities relating to the Grant.

Nonprofit and Tax-Exempt Status [adapt for non-U.S. affiliates]
During the Grant Period, Client will remain in good standing as a nonprofit entity in the jurisdiction of its incorporation, maintain its tax-exempt status, and comply with [Internal Revenue Code] requirements applicable to Client as a tax-exempt organization.

TERRORISM

Anti-Terrorism [short-form]
Neither Client nor Funder will: (a) engage in illegal activities or (b) provide resources or support to, receive resources or support from, or associate in any way with any individual or entity that engages in drug trafficking or activities of terrorism.

Anti-Terrorism [long-form]
Client will not use funds provided under this Agreement, directly or indirectly, in support of activities: (a) prohibited by U.S. laws related to combating terrorism; (b) with persons on the List of Specially Designated Nationals (www.treasury.gov/sdn) or entities owned or controlled by such persons; or (c) with countries against which the U.S. maintains comprehensive or targeted sanctions (currently, Cuba, Iran, (North) Sudan, Syria, North Korea, and the Crimea Region of Ukraine), unless such activities are fully authorized by the U.S. government under applicable law and specifically approved by Funder in its sole discretion.

CORRUPTION

Anti-corruption [short form]
Client will not offer or provide money, gifts, or any other things of value directly or indirectly to anyone in order to improperly influence any act or decision relating to Funder or the Project, including by assisting any party to secure an improper advantage.

Anti-corruption [long form; calls out FCPA]
Funder agrees that, in carrying out its responsibilities under this Agreement, Funder will not, directly or indirectly, pay, promise to pay, or authorize the payment of any money, or give, promise to give, or authorize the giving of anything of value to any official or employee of any government, or of any agency or instrumentality of any government (including any official or employee of Funder) or to any political party or official thereof, or to any candidate for political office or to any official or employee of any public international organization, for the purpose of influencing any act or decision of such official or employee or otherwise in respect of the work contemplated by this Agreement, in violation of local or other applicable anti-corruption, anti-bribery or similar laws including, without limitation, the U.S. Foreign Corrupt Practices Act. Funder represents and warrants to Client that it has made no such payment, authorization, promise, or gift prior to the date of this Agreement. In no event shall Client
be obligated under this Agreement or otherwise to take any action or omit to take any action that Client believes, in good faith, would cause it to be in violation of any laws applicable to Client including, without limitation, the U.S. Foreign Corrupt Practices Act.
INDEMNIFICATION BY CLIENT

Key issue:

- If Funder requires indemnification by Client

**Indemnification by Client**

Client will indemnify, defend, and hold Funder harmless from and against any and all third party claims, liabilities, damages, and expenses, including reasonable attorneys’ fees and expenses, resulting from (a) any breach by Client of this Agreement or (b) execution by Client of the Program. Client will have no obligation to indemnify Funder to the extent the liability is solely caused by Funder’s gross negligence or willful misconduct.
REPRESENTATIONS AND WARRANTIES

Key issue:

- **If Funder requires Client to provide additional representations and warranties**

Representations and Warranties [general]
Client: (a) is an entity duly organized and validly existing and in good standing under the laws of the jurisdiction of its formation and it is properly registered in all jurisdictions required under applicable laws; (b) has full power and authority to enter into and perform its obligations under this Agreement; and (c) has obtained all permits, licenses, and other governmental authorizations and approvals required for its performance under this Agreement.

Authority to Enter Agreement
Client has full power, right and authority to enter into, and perform its obligations under, this Agreement.

Binding Nature of Agreement (Client)
This Agreement, assuming it constitutes the valid and binding obligation of Funder, constitutes the valid and binding obligation of Client, enforceable against Client in accordance with its terms, subject to laws: (a) relating to bankruptcy, insolvency and the relief of debtors and (b) governing specific performance, injunctive relief, and other equitable remedies.

No Conflict
Neither the execution and delivery of this Agreement by Client nor the consummation by Client of the transactions contemplated by this Agreement will: (a) result in a violation by Client of any provision of the articles of incorporation or bylaws of Client or (b) result in a violation by Client of any law or governmental regulation applicable to Client.

Ownership of Grant Content
Client is the original author, owner, or licensed user of the Grant Content and its contents, and that the creation and publication of the Grant Content will not violate, infringe, or misappropriate (a) any copyright, right of privacy, right of publicity, trademark, trade name, trade secret, or other common law or statutory intellectual property, or (b) any contract or other right of any nature of any third party; or be libelous or defamatory in any respect.

Funder Data Privacy and Security
Client’s donor data, privacy and security practices comply with applicable law [and Client’s privacy policies]. Such practices are customary for an organization of the type and scope of the Project and Client. There has been no breach, security incident or violation of any donor data.
TERMINATION

Key issue:

- If Funder requires ability to terminate upon breach or upon certain conditions

Material Breach
Funder will have the right to terminate this Agreement, in whole or in part, in addition to any other rights Funder may have in law or in equity, upon any material breach by Client of its obligations under this Agreement. Upon termination, Client will return or otherwise dispose of the Grant, in such manner directed by Funder, any portion of the Grant not spent in compliance with this Agreement.

Termination
Funder may modify, suspend, or discontinue any payment of the Grant or terminate this Agreement if: (a) Funder is not reasonably satisfied with Client’s progress on the Project; (b) there occurs turnover or other material changes in Client’s senior management team; (c) there is a change in Client’s tax status; or (d) Client fails to perform any material obligation under this Agreement. Any action, including termination, under this Section __, will be effective five days after Funder delivers written notice to that effect to Client.

Immediate Termination [Client]
Client may immediately terminate this Agreement in the unlikely event that Client determines, in good faith, that circumstances have changed such that continued association with Funder would materially adversely impact the reputation, image, mission, or integrity of Client.

Immediate Termination [Funder]
Funder may immediately terminate this Agreement if Client (a) loses its tax-exempt status, (b) commences any proceeding under any bankruptcy or insolvency law, (c) uses the Grant funds for any purposes other than the Project, or (d) makes any intentional misrepresentation in any report or other document delivered or statement made to Funder. The termination will be effective five days after Funder delivers written notice to that effect to Client.