

# Artsmark

## Terms and Conditions

### September 2021



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.

In these Terms and Conditions “**We**”, “**us**” and “**our**” means Arts Council England and includes our employees and those acting for us. “**You**” means a school or educational setting that has registered, applied for and/or has achieved Artsmark Status. We and you are each a “**Party**” and collectively the “**Parties**” to these Terms and Conditions.

#### 1. Definitions

- 1.1. ‘Application’ means your application for Artsmark Status signified by the submission of your Statement of Commitment and Statement of Impact.
- 1.2. ‘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.
- 1.3. ‘Artsmark’ means our arts and culture programme, the purpose of which is to support schools and education settings to embed arts and culture within their development plans to enable the delivery of high-quality arts provision for all children and young people.
- 1.4. ‘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.
- 1.5. ‘Artsmark Level’ means any one of Artsmark Silver, Artsmark Gold or Artsmark Platinum assigned to you as part of your Artsmark Status.
- 1.6. ‘Artsmark Fee’ means the ‘Artsmark Application Fee Conditions’ published, and as may be updated by us from time to time on our website here: <https://www.artsmark.org.uk/artsmark-application-fee-conditions>
- 1.7. ‘Artsmark Self-Assessment framework’ means the document that outlines the criteria for Artsmark, which will be used to assess your Application for Artsmark Status.

- 1.8. 'Artsmark Status' means that you have achieved an Artsmark Award at an Artsmark Level.
- 1.9. 'Artsmark Trade Marks' means the trade marks set out in **Schedule 1**, and as may be updated by us from time to time.
- 1.10. 'Artsmark Website' means our website at [www.artsmark.org.uk](http://www.artsmark.org.uk)
- 1.11. 'Assessment' means the process of awarding an Artsmark Level.
- 1.12. 'Bridge Organisation' means an organisation funded by us that use experience and expertise to connect children, young people, schools and communities with arts and culture.
- 1.13. 'Controller, Data Controller, Processor, Data Processor, Data Subject, Personal Data, Processing and Appropriate Technical and Organisational measures' as set out in the Data Protection Legislation in force at the time.
- 1.14. 'Data Protection Legislation' means the UK GDPR, the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation relating to the use of personal data.
- 1.15. 'Artsmark Development Training', formerly called Development Day, means the training session for two (2) members of staff to introduce Artsmark and support the development of a high-level arts development plan.
- 1.16. 'Disclosure and Barring Service' means the non-departmental public body which prevents unsuitable people from working with vulnerable groups, including children.
- 1.17. 'Schedule 1' means **Schedule 1** Artsmark trade marks, published on our website here: <http://www.artsmark.org.uk/terms-and-conditions>
- 1.18. 'Schedule 2' means **Schedule 2** Artsmark complaints procedure, published on our website here: <http://www.artsmark.org.uk/terms-and-conditions>
- 1.19. 'Setting' means your school or educational setting.
- 1.20. 'Statement of Commitment' means the forward-thinking planning document that sets out your goals and ambitions for Artsmark. It will be used to assess your Application for Artsmark Status.
- 1.21. 'Statement of Impact' means the document, formerly called a Case Study, submitted by you that evidences and evaluates how you have delivered the objectives as laid out in your Statement of Commitment. It will be used to assess your Application for Artsmark Status.
- 1.22. 'Unique Weblink' means the unique, one-time use weblink that provides access to an online form for each of your Statement of Commitment and Statement of Impact submissions.

- 1.23. 'UK GDPR' means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 1.24. 'Validity Period' as defined in clause 6.2.

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

- 2.1. You must attend an Artsmark Development Training session and pay the Artsmark Fee before submitting a Statement of Commitment.
- 2.2. The submission of your Statement of Commitment is the first part of your formal Application for Artsmark Status.
- 2.3. After your Artsmark Development Training session and payment of the Artsmark Fee we shall provide the Unique Weblink for your Statement of Commitment submission by email to your contact's main email address that you provide to us when you register for Artsmark on our website here: <http://www.artsmark.org.uk/register-artsmark-award>
- 2.4. You must use the Unique Weblink provided to submit your written Statement of Commitment to us and complete all the questions within the word limits.
- 2.5. Certain fields in your submission via the Unique Weblink are pre-completed based on the information we hold for your Setting, for example your Setting's name and Department for Education (DfE) number (if applicable). If this information is incorrect or needs to be updated please do not complete the form and contact us by email: [artsmark@artscouncil.org.uk](mailto:artsmark@artscouncil.org.uk)
- 2.6. You must not:
  - (a) include additional information or evidence such as, but not limited to, images, media, hyperlinks, or weblinks in your submission as this additional information shall not be accepted.
  - (b) submit your Statement of Commitment via email as this shall not be accepted.
  - (c) share your Setting's Unique Weblink with other Settings.
- 2.7. The Statement of Commitment must be approved by your Headteacher and Chair of Governors or where those positions don't exist, persons with equivalent levels of responsibility. We recommend that you initially complete your Statement of Commitment on the Artsmark templates because your submission on the Unique Weblink cannot be saved and/or returned to at a later date.
- 2.8. You are able to access support from your Bridge Organisation when writing your Statement of Commitment and it is recommended that you make use of this support.

- 2.9. You are entitled to submit only one (1) Application at any one time. Multiple concurrent Applications are not permitted and we reserve the right to dismiss your Application(s) on that basis.

### **3. Delivery**

- 3.1. You have two (2) years after your Statement of Commitment is accepted to submit a Statement of Impact.
- 3.2. Your Statement of Commitment and Statement of Impact will be the only documentation used to determine your Artsmark Status. You must use the Unique Weblink to complete and submit the Statement of Commitment and Statement of Impact to us.
- 3.3. You must refer to the Arts Council England Quality Principles and Artsmark criteria as described in the Artsmark Self-Assessment framework as part of your planning and evaluation for your Artsmark Award.
- 3.4. You are encouraged to access support from your Bridge Organisation throughout your Application for Artsmark Status.

### **4. Evidencing impact by Statement of Impact**

- 4.1. You must submit a Statement of Commitment before submitting a Statement of Impact.
- 4.2. The submission of your Statement of Impact is the second and final part of your formal Application for Artsmark Status.
- 4.3. The Statement of Impact should appropriately evidence and evaluate in writing the impact of delivering your goals and ambitions with regards to the development of your arts and cultural provision as described in your Statement of Commitment.
- 4.4. After submission of your Statement of Commitment, we shall provide the Unique Weblink for your Statement of Impact submission by email one (1) year before your Statement of Impact deadline to your contact's main email address that you provide to us when you register for Artsmark on our website here: <http://www.artsmark.org.uk/register-artsmark-award>
- 4.5. Certain fields in your submission via the Unique Weblink are pre-completed based on the information we hold for your Setting, for example your Setting's name and DfE number (if applicable). If this information is incorrect or needs to be updated please do not complete the form and contact us by email: [artsmark@artscouncil.org.uk](mailto:artsmark@artscouncil.org.uk)
- 4.6. You must use the Unique Weblink provided to submit your written Statement of Impact to us and complete all the questions within the word limits.

- 4.7. You must not:
- (a) include additional information or evidence such as, but not limited to, images, media, hyperlinks, or weblinks in your submissions as this additional information shall not be accepted.
  - (b) submit your Statement of Impact via email as this shall not be accepted.
  - (c) share your Setting's Unique Weblink with other Settings.
- 4.8. The Statement of Impact must be approved by the Headteacher and Chair of Governors or where those positions don't exist, persons with equivalent levels of responsibility. We recommend that you initially complete your Statement of Impact on the Artsmark templates because your submission on the Unique Weblink cannot be saved and/or returned to at a later date.
- 4.9. You are able to access support from your Bridge Organisation when writing your Statement of Impact and it is recommended that you make use of this support.

## **5. Assessment**

- 5.1. Your Statement of Commitment and Statement of Impact submissions will be assessed by Artsmark assessors, a panel of arts and education experts, whose assessment will determine whether to award an Artsmark Status and at which Artsmark Level.
- 5.2. Assessment will take place periodically over the year. You will receive the outcome of your application for Artsmark Status by the end of the following academic term after the submission of your Statement of Impact, at the latest.
- 5.3. The assessors can only take your Statement of Commitment and Statement of Impact submissions into consideration for Assessment. The assessors cannot consider any additional information or evidence such as, but not limited to, images, media hyperlinks, weblinks, or additional evidence documents included in, or submitted separately to, the submission made via the Unique Weblink.

## **6. Artsmark Status**

- 6.1. We will grant you an Artsmark Award if we, at 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 (Intellectual Property Rights) below.

- 6.2. Your Artsmark Status (and Level) will be valid for two (2) 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 Status. In our written confirmation of your Artsmark Status we will state the date that your award will expire.
- 6.4. The registration process for a reapplication will require you to re-register online and you will be subject to a new Artsmark Fee, further details of which can be found on our website here: <https://www.artsmark.org.uk/get-involved/how-artsmark-works>
- 6.5. If you do not re-register and submit a new application to achieve your next 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.
- 6.6. You are entitled to only hold one (1) Artsmark Status at any one time. Multiple concurrent Artsmark Statuses are not permitted. If you re-register, apply, and achieve your next Artsmark Status, pursuant to clause 6.3 above, this Artsmark Status will override your previous Artsmark Status. Any time left on the Validity Period of your previous Artsmark Status will expire. Your Artsmark Status will be valid pursuant to clause 6.2 above.

## **7. Intellectual Property Rights**

- 7.1. You should not use any of the Artsmark Trade Marks outlined in **Schedule 1** without receiving our express notification by email from us.
- 7.2. Following the submission of your Statement of Commitment and the payment of the corresponding Artsmark Fee, you can describe your school or educational setting as "*Working towards Artsmark*" on your marketing and educational materials, including all online materials. You will receive a Working Towards Artsmark logo in your Statement of Commitment acceptance email.
- 7.3. Use of any of the Artsmark Trade Marks, Artsmark Standard Logo and variations, or Artsmark Level Trade Marks, as set out in **Schedule 1**, during the Application process without authorisation referred to in clause 7.1 above is strictly prohibited and may jeopardise your Application.
- 7.4. 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 3 of **Schedule 1**, as appropriate.

- 7.5. You shall, at all times, comply with any Artsmark Trade Mark use guidelines that we may notify you of and/or publish on the [Artsmark Website](#) from time to time.
- 7.6. You will:
- (a) subject to clause 7.5, 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 and the reputation of the Artsmark Trade Marks;
  - (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; and
  - (d) 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.
- 7.7. 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.
- 7.8. 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.
- 7.9. 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, at our absolute discretion, terminate your Artsmark Status and your authorisation to use the Artsmark Trade Marks with immediate effect on written notice if:

- (a) 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;
- (b) 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;
- (c) you have provided in the Statement of Commitment, Statement of Impact 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;
- (d) 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;
- (e) 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,
- (f) 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 you will:

- (a) 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;
- (b) at our election but at your cost, either return to us or destroy any marketing and education materials incorporating the Artsmark 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;
- (c) immediately cease to make any claims or any statements that imply or expressly state that you still hold Artsmark Status;



- (d) 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;
  - (e) not at any time after termination use any trade marks which are identical or confusingly similar to the Artsmark Trade Marks;
  - (f) not be entitled to the refund of any Artsmark Fee paid; and
  - (g) 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 connection with these Terms and Conditions are governed by and construed in accordance with the laws of England and Wales and you irrevocably agree that the courts of England and Wales 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 of Artsmark or access to information should be resolved by using our two (2) 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.
- 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 twenty-eight (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 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.

- 10.2. You agree and consent to the reproduction by us of any part of your Statement of Commitment, Statement of Impact or subsequent information for further research, analysis, illustrative or promotional purposes without further notice.
- 10.3. 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 or governing document and if asked by us you will provide a legal opinion from your solicitors confirming this.
- 10.4. You must tell us in writing as soon as possible of any investigation concerning your organisation, trustees, directors, employees or volunteers carried out by the Police, Charity Commission, HM Revenue & Customs or any other regulatory body.
- 10.5. 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.
- 10.6. 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.
- 10.7. 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.
- 10.8. 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.
- 10.9. 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.
- 10.10. These Terms and Conditions are personal to you and shall not be transferred, assigned charged, sub-contracted or dealt with in any other manner.

- 10.11. 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.
- 10.12. 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.
- 10.13. 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 websites, in newspapers and through other media.
- 10.14. 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.
- 10.15. The Artsmark fee conditions, these Terms and Conditions, as set out on our website here: <http://www.artsmark.org.uk/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.
- 10.16. Settings may undertake the Artsmark Award with the support of a consortium, federation or multi academy trust. Each Setting that wishes to gain Artsmark Status must register separately and submit their own Statement of Commitment and Statement of Impact. Joint registrations cannot be accepted.
- 10.17. You should inform us at [artsmark@artscouncil.org.uk](mailto:artsmark@artscouncil.org.uk) if you believe you will have difficulty completing your Application for Artsmark Status.
- 10.18. You will not be entitled to a refund of the Artsmark Fee (in whole or in part) if you have attended an Artsmark Development Training session.

## **11. Data Protection**

- 11.1. The Parties shall comply with their respective obligations under the Data Protection Legislation. Each Party is the Controller for the personal data it holds in order to fulfil its own functions. Each Party will be independently responsible for ensuring that its obligations as Controller are complied with and the rights of the data subjects protected in respect of such personal data. This provision is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

- 11.2. Each Party will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the other for the duration and purpose of these Terms and Conditions.
- 11.3. If either Party is required to process any Personal Data as a joint Controller in the course of these Terms and Conditions the Parties shall enter into a separate data sharing agreement in respect of such processing.

## **12. Additional conditions**

- 12.1. You agree that we have the right to impose additional terms and conditions if:
  - (a) we have reasonable grounds to believe that it is necessary to protect our reputation or that of Artsmark;
  - (b) you are in breach of these Terms and Conditions; and/or
  - (c) we withdraw your Artsmark Status.