

## Ontario Arts Council (OAC) Terms and Conditions & Notice of Collection

### Terms and Conditions of Access

To access the Ontario Art Council's NOVA system (the "OAC Application System"), you agree to abide to the following Terms and Conditions of Access:

This is a legal agreement between any user ("you" or "User") of the OAC Application System. By accessing, browsing, and using the OAC's OAC Application System, you acknowledge having read, understood and hereby agree to be bound by these terms and conditions, as modified or amended from time to time and each time you access the OAC's NOVA system for applications (the "**OAC Application System**"), you reconfirm your agreement. If you do not agree to these terms and conditions, you may elect not to access the OAC Application System. This Agreement is effective from the day you initially access the OAC Application System until such time as you cease to be an authorized User, supplier or customer of OAC.

### Terms:

**Security.** Reasonable precautions have been exercised in establishing this OAC Application System in order to prevent unauthorized use or tampering with applications and other information. In order to gain access to the OAC Application System, you will need to complete and submit some basic registration information. Once the registration information is submitted, you will be provided with your assigned login ID and temporary password ("access codes"). You must have a valid user ID and password to access the OAC Application System. For security purposes we will ask you to please change your password upon your initial login to the system. You determine what password you will use and the identity of your password is not communicated to us. Upon repeated consecutive unsuccessful attempts to use your password, your access to the system may be revoked. To re-establish your authorization to use the system, you must contact us to have your password reset or to obtain a new temporary password. You accept all responsibility for the security of your user ID and password, and utilization of the OAC Application System via the access codes. This includes unauthorized access by you or third parties, except for access by third parties resulting from OAC' sole negligence. Notify OAC immediately if you wish to terminate your user ID and password or have these access codes reissued. Do not disclose your access codes to anyone not authorized to act on your behalf. In the event of theft or loss of a password or User ID, you shall immediately notify OAC.

You agree to take all reasonable measures to:

- a) Protect your security in NOVA including, but not limited to, refraining from sharing your NOVA password;
- b) Prevent the loss, disclosure, modification, and unauthorized use of your NOVA password; and
- c) Control access to computers or devices containing your NOVA password.

**Prohibited Uses.** You agree that you shall not use the OAC Application System to do any of the following: (i) restrict or inhibit any other user from using and enjoying the OAC Application System; (ii) post or transmit any unlawful, illegal, obscene or pornographic information of any kind, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, provincial, national or international law; (iii) knowingly post or transmit any information, software, or malware which contains a virus, worm, Trojan horse or other harmful component; (iv) upload, post, publish, transmit, reproduce, distribute or participate in the transfer or sale, or in any way exploit any information, software or other material obtained through the OAC Application System which is protected by copyright or other proprietary right or derivative works with respect thereto, without obtaining permission of the copyright owner or right holder.

In addition to the foregoing, you will take all reasonable measures to ensure that accurate information is recorded in the OAC Application System and you will not:

- a) Interfere with or disrupt the OAC Application System;
- b) Attempt to gain unauthorized access to the OAC Application System, the password of others;
- c) Use the OAC Application System in any manner whatsoever that could disrupt the normal flow of Ontario Art Council business; or

You will use the OAC Application System solely for the purpose of preparing/reviewing Ontario Art Council grant applications as authorized by the individual/organizational applicant(s).

You will immediately cease accessing the OAC Application System if you are no longer authorized by the individual/organizational applicant(s).

You will notify Ontario Art Council's OAC Application System Customer Service immediately if:

- a) You have any reason to believe that your OAC Application System Enrolment Number and/or PIN is or may have been compromised or considered insecure;
- b) You have any reason to believe that there has been unauthorized collection, use, disclosure or disposal of personal information contained in the OAC Application System;
- c) Any of your identification and authentication information, or your contact information set out in the registration form, has changed or become otherwise incomplete or inaccurate; or
- d) Your position with the applicant individual/organization changes such that access to the OAC Application System is no longer necessary or proper.

**Indemnity.** You agree to defend, indemnify and hold OAC and its affiliates, and its and their directors, employees and agents harmless from any and all liabilities, costs and expenses, including reasonable attorneys' fees related to or arising from (a) the use of the OAC Application System or the placement or transmission of any message, information, software or other material through the OAC Application System by you; (b) negligent acts or omissions by you in connection with the installations, use or maintenance of the OAC Application System; (c) claims for infringement of patents arising from the use of the OAC Application System by you, (d) misuse of Trademarks; and (e) claims of copyright infringement resulting from the use of the OAC Application System by you.

**Monitoring.** OAC may elect to electronically monitor your use and access to the OAC Application System and may disclose its findings or records of such use (i) to satisfy any law, regulation or government request, or (ii) to protect the rights or property of OAC.

**Termination and Modification.** OAC may terminate User access, or suspend any User's access to all or part of OAC Application System without notice, for any conduct that OAC, in its sole discretion, believes is in violation of any applicable law, contrary to the terms of these Terms and Conditions or is harmful to the interests of another person. Upon termination for whatever reason, your right to use or possess any information obtained from the OAC Application System will immediately terminate and you will promptly destroy all copies, electronic or otherwise, that you have in your possession by operation of this Terms of Access. OAC may elect to update, modify, change or terminate all or any part of the OAC Application System. Additionally, OAC may modify this Agreement from time to time. Any amendments or modifications may be provided to you through on-line notice. You agree that use of, or access to the OAC Application System after you have received, or should have received, notice of modifications or amendments to this Agreement will constitute acceptance of all such modifications or amendments.

#### **Breach of Terms and Conditions**

You will cooperate with the Ontario Arts Council and its contractors or auditors in any investigation into breach of these Terms and Conditions.

#### **Modifications of Terms and Conditions**

These terms and conditions may be amended from time to time by the Ontario Arts Council.

## **ADDITIONAL TERMS AND CONDITIONS**

1. **License.** Access to the OAC Application System is not sold, but licensed to you for your authorized use of submitting an application to the OAC. This license is for the period beginning with your acceptance of these Terms of Access until termination for failure to maintain authorized User status; is non-transferable and non-exclusive; and is for use only by you and only in accordance with these Terms of Access and any documentation provided to you or available on-line from time to time. You may NOT, except as otherwise provided in the documentation or on-line (a) copy any of the OAC Application System; (b) distribute, rent, sublicense or otherwise transfer or disclose, or transmit the OAC Application System electronically to any person or entity; (c) modify, translate, merge, or prepare derivative works of the OAC Application System; or (d) use any of the OAC Application System for other purposes not specified in these Terms of Access or the documentation. You may not decompile, disassemble, probe, or otherwise reverse engineer the OAC Application System.
2. **Trademarks.** The trademarks, service marks, and logos (the "Trademarks") used and displayed on the OAC Application System are registered and unregistered Trademarks of OAC and others. Nothing on the OAC Application System should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Trademark displayed on the OAC Application System, without the written permission of the Trademark owner. Trademarks of OAC may not be used in any way, without prior written permission of OAC. OAC prohibits use of any OAC Trademark as a "hot" link to this OAC Application System without prior written permission of OAC.
3. **Copyrights.** The copyright in all material provided on the OAC Application System is held by OAC or by the original creator of the material. Except as stated herein, none of the material may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of OAC or the copyright owner. You also may not, without prior written permission from OAC, "mirror" any material contained within this OAC Application System or any other site.
4. **Equipment.** You, at your own expense, shall obtain, maintain, and operate suitable equipment, communication devices, and services required to access the OAC Application System. You must have, at a minimum, access to Internet service and an email address. You can access the system seven days a week, twenty-four hours a day, although some or all system services may not be available occasionally due to emergency or scheduled system maintenance. We will use reasonable efforts to post notice of any extended periods of non-availability to the OAC Application System.
5. **Disclaimer of Warranty: Limitation of Remedies.** OAC is licensing the OAC Application System "AS IS" and "AS AVAILABLE." You assume total responsibility and risk for your use of the OAC Application System and your use of the Internet. OAC **HEREBY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, STATUTORY OR OTHERWISE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO INFORMATION OR SERVICE PROVIDED THROUGH THE SOFTWARE, Web site OR INFORMATIONAL DATABASES. IN NO EVENT SHALL OAC BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF DAMAGE, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THIS INFORMATION.**
6. **Controlling Law.** This Terms of Access and your use of the OAC Application System are governed by the laws in the Province of Ontario the federal laws of Canada applicable therein. The venue for any disputes arising out of this Agreement shall be, at OAC' sole and exclusive option, the courts in Toronto, Ontario or the courts with proper jurisdiction at your location.
7. **Links to Third Party Sites.** The OAC Application System may contain links to third-party sites. The linked sites are not under the control of OAC, and OAC is not responsible for the contents of any

linked sites, any link contained in a linked site, any changes or uploads to such linked sites, or any transmission from any linked site. OAC provides these links to third-party sites only as a convenience, and the inclusion of any link does not imply endorsement by OAC of the site.

8. **Notices.** Any consent, notice or report required or permitted to be given or made under this Terms of Access by one party to the other party shall be in writing and delivered to the other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor. Any such consent, notice or report shall be effective upon receipt by the addressee.
9. **Survival of Obligations.** The obligations concerning protection of confidential information and use of information shall survive termination of this Agreement.
10. **Waiver and Severability.** Failure to enforce any of the provisions of this Terms of Access will not be construed as a waiver of such provisions. If any of the provisions of this Terms of Access are held unlawful or otherwise ineffective by a court of competent jurisdiction, the remainder of the Agreement will remain in full force.
11. **Remedies.** In the event of your violation of this Terms of Access, OAC shall be entitled, in addition to any other rights or remedies which it may have at law or in equity, to seek specific performance or injunctive relief.

27034390.1

#### **NOTICE OF COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION**

In accordance with Section 39(2) of the Freedom of Information and Protection of Privacy Act ("FIPPA"), the Ontario Arts Council (the "OAC") collects personal information about applicants for OAC grants and individuals serving as assessors in order to fulfill our mandate and administer our activities as set out in the Arts Council Act, R.S.O. 1990, c. A.30.

The personal information that you submit through Nova will be used for the following purposes:

To administer your application for an OAC grant or to assume the role of an OAC assessor:

- Create and provide you with access to your profile and protected content
- Create a unique contact identification number linked to your application history, to your role with OAC and contact information.
- Contact you concerning your application or request
- Determine applicant eligibility and for consideration during the peer assessment process of program applications
- Serve as an additional pool of potential peer assessors
- Consult with other Canadian arts funders, including federal, provincial or municipal government institutions to confirm funding sources, or disclosed where OAC has established a partnership program and its disclosure is consistent with that program's guideline
- Provide authorized employees and directors access to help OAC perform business, technical or professional activities in fulfillment of its mandate.
- Generate mailing lists for the dissemination of OAC publications, surveys and other information to the arts community

To meet OAC's obligations to:

- Enhance transparency, oversight and accountability of public resources through routinely publishing data for public reference, including in an open data environment, on past recipients

and assessors. By way of example, grant results by program and deadline, including the assessors' names and locations (i.e. city/town/First Nation), recipient's' names, locations (i.e. city/town/First Nation), and grant amounts, will be posted on the Ontario Arts Council's website and may be published in the Ontario Arts Council's Annual Report Grants Listing, other communications of the Ontario Arts Council as well as part of the part of the Government of Ontario Open Data initiative.

- Plan, evaluate and review programs, in audits, and for generating statistics for these activities: statistical reporting, studies, issue and trend analysis
- Report under the Income Tax Act: your Social Insurance Number (SIN) is collected for the purposes of issuing income reporting on T4As. In some cases, the SIN and other information is shared with the Canada Revenue Agency
- To comply with applicable laws or regulatory requirements, search warrants, subpoenas or court orders; to investigate unauthorized attempts to access, alter or delete data, the spreading of viruses and other illegal intrusions

If you have any questions about the collection of your personal information, please contact:

FOI Coordinator  
121 Bloor Street East, 7<sup>th</sup> Floor  
Toronto ON M4W 3M5  
[FOI\\_AI@arts.on.ca](mailto:FOI_AI@arts.on.ca)  
1-800-387-0058 ext. 5111