

Applicant Terms and Conditions

This page (together with the documents referred to on it) tells you the terms and conditions which shall be applicable to the applicant, as named on the application form submitted via the website (www.creative-credits.org.uk) (the "**Applicant**"), to the Creative Economy Creative Credits Programme (the "**Programme**") which shall be administered by the National Endowment for Science Technology and the Arts ("**NESTA**").

Please read these terms and conditions carefully before submitting the application (the "**Application**") to be considered for the Programme. You should understand that by submitting the Application you as the Applicant's representative (the "**Applicant's Representative**") is duly authorised with the legal authority to bind the Applicant confirm that the Applicant is to be bound by these terms and conditions.

A copy of these terms and conditions should be printed for future reference.

Please select the option for accepting these terms and conditions on the application form if you accept them. Please understand that if you refuse to accept these terms and conditions, you will not be able to proceed in the Programme.

1. ABOUT NESTA

www.creative-credits.org.uk (the "**Website**") is a site operated by NESTA of 1 Plough Place, London EC4A 1DE.

2. PROGRAMME AVAILABILITY AND APPLICANT STATUS

2.1 The Programme is only open to those Applicants who satisfy the conditions detailed in clauses 2.2 to 2.6 ("**Eligibility Criteria**").

2.2 The Applicant must:

(a) have a main office in one of the following areas ("**Programme Areas**"):

(i) City of Manchester;

(ii) City of Salford;

(iii) Stockport;

(iv) Tameside;

(v) Trafford (Greater Manchester South);

(vi) Bolton;

(vii) Bury;

(viii) Oldham Rochdale;

(ix) Wigan (Greater Manchester North);

- (x) The former Borough of Congleton;
- (xi) The former Borough of Macclesfield;
- (xii) The former Borough of Vale Royal; or
- (xiii) Warrington.

(b) not have the primary business (which shall be regarded as more than 50% of the business) of one or a combination of any of the following fields:

- (i) Advertising or PR
- (ii) Architecture
- (iii) Art and Antiques
- (iv) Crafts
- (v) Design or web design
- (vi) Designer Fashion
- (vii) Film and Video
- (viii) Computer games
- (ix) Music
- (x) The performing arts
- (xi) Publishing
- (xii) Software
- (xiii) Television and Radio

(c) not be based within the agriculture, forestry or fisheries sectors;

(d) not be an academic institution;

(e) have less than 250 employees;

(f) not have a turnover exceeding £46 million;

(g) not have been granted any funding under the Programme previously;

(h) be VAT registered; and

(i) be a limited liability company, a limited liability partnership, a general partnership or an industrial or provident society.

2.3 Applications from individuals or sole traders are not permitted.

2.4 For the purposes of clause 2.2(i), the Applicant must be able to demonstrate that it has been trading or conducting commercial operations for a minimum period of one year prior to the date of the Application and provide to NESTA accounts or any other supporting documentation as NESTA may require.

2.5 Applicant entities which are owned or managed by employees of NESTA and the immediate families of such employees are not eligible for the Programme.

2.6 Eligibility for the Programme will be determined by NESTA acting in its sole and absolute discretion. NESTA's decision is final and not open to negotiation. No correspondence will be entered into.

3. APPLICANT'S WARRANTIES

3.1 By submitting an Application through NESTA's site, the Applicant warrants that:

(a) all information provided to NESTA is factually correct and not misleading;

(b) the Applicant's Representative is legally capable of entering into binding contracts on behalf of the Applicant;

(c) it satisfies all the Eligibility Criteria;

(d) it shall not at any time make use of NESTA's intellectual property, whether registered or unregistered, including but not limited to NESTA's logo;

(e) the funding support offered to the Applicant as part of the Programme (the "**Funding**") shall only be used in the Approved Scheme (as defined in clause 5.5);

(f) the receipt of the Funding will not exceed any limits relating to state aid or funding applied by any regulation, legislation or any other funding which the Applicant is subject to; and

(g) during the life of the Programme they shall fully and actively participate in research for, or carried out on behalf of, NESTA which they acknowledge shall continue at least until 31 December 2011.

4. HOW THE CONTRACT IS FORMED BETWEEN THE APPLICANT AND NESTA

4.1 After submitting an Application, the Applicant shall receive an e-mail from NESTA acknowledging that they have received the Application. This does not mean that the Application has been approved. The Application constitutes acceptance of the terms and conditions herein and an offer to NESTA to participate in the Programme.

4.2 All Applications are subject to acceptance by NESTA, and NESTA will confirm such acceptance to the Applicant by sending an e-mail that confirms that they have received the Application (the "**Confirmation**").

5. APPROVAL PROCESS

5.1 From those Applications where a Confirmation has been sent to the Applicant NESTA shall randomly select 75 Applicants (the "**Selected Applicants**") from those who have

submitted an Application and if they satisfy the Eligibility Criteria, they shall be asked to submit their proposed scheme within 6 weeks of being confirmed as a Selected Applicant ("**Proposed Scheme**") for approval.

5.2 Further Applicants shall, at NESTA's discretion, be selected as reserves should any Selected Applicant not be found to satisfy the Eligibility Criteria.

5.3 All Applicants not selected under clause 5.2 shall be notified within 7 days of the closing date for applications.

5.4 A Proposed Scheme shall detail the Selected Applicant's intention to seek services from a Creative Supplier (as defined in clause 6.1) and a full break down of the scope of the work envisaged.

5.5 NESTA shall at its sole discretion consider the Proposed Scheme and if thought fit shall deem it an approved scheme (an "**Approved Scheme**"). In approving the Proposed Scheme NESTA gives no warranty as to its quality or the likely success the Approved Scheme in the achieving the aims of the Selected Applicant.

5.6 In considering the Proposed Scheme NESTA shall have regard to the following factors in determining whether it shall become an Approved Scheme (the "**Scheme Eligibility**").

5.7 Approved Schemes carried out using a Creative Credit must meet the following criteria:

5.7.1 The Creative Suppliers (as defined in clause 6.1) used to complete the work must:

- (a) Be listed on the Creative Credits Gallery containing the eligible Creative Suppliers for the Programme;
- (b) **NOT** be owned or managed by family members or relations of the owners, managers or employees of the Applicant business or NESTA; and
- (c) **NOT** have completed paid work for the Applicant business within the last 5 years.

5.7.2 At least 80% of the £5,000 spend for the Approved Scheme must be spent on creative activities.

NESTA shall determine in its sole discretion whether or not an activity is considered creative. The following list gives examples of activities that in NESTA's view would **NOT** be considered creative. Whilst these activities (or combination thereof) may be included in projects, they must **NOT** constitute more than 20% of the £5,000 total spend.

- (a) Legal or registration costs in connection with the protection of intellectual property;
- (b) Physical distribution or listing costs;
- (c) Purchasing space for trade stands or tradeshow fees;
- (d) Staffing costs for events or face-to-face selling;
- (e) Sponsorship;
- (f) Funding promotions or discounts to customers;
- (g) Printing costs or printing set up charges;
- (h) Direct postal mail or phone campaigns;
- (i) Data collection;
- (j) Purchasing of advertising space or airtime;
- (k) Webhosting;
- (l) Search engine pay-per-click campaigns;
- (m) Installation or purchasing of 'off the shelf' content management systems; and
- (n) Purchasing of domain names.

5.7.3 Approved Schemes that involve expenditure in relation to a website must clearly involve one of the following innovation improvements:

- (a) Opening up a new market to the business.
e.g. Providing a route to do business with the public where only trade customers had been targeted previously.
- (b) Altering the way the business distributes its products.
e.g. Adding e-commerce to a site where it wasn't previously used.
- (c) Providing a new way of interacting with customers.
e.g. adding functionality for newsletters or blogs or interaction with social media.
- (d) Improving the way a site performs on search engines or user experience.
e.g. Search Engine Optimisation (SEO).

Changes that only alter the design or text content of a website without providing one of the above improvements will not be eligible. NESTA shall determine in its sole discretion if the proposed changes meet this criteria.

5.7.4 Eligibility for the Programme will be determined by NESTA acting in its sole and absolute discretion. NESTA's decision is final and not open to negotiation. No correspondence will be entered into.

5.8 NESTA shall provide each Selected Applicant that achieves an Approved Scheme with a Creative Credit ("**Credit**") which may be redeemed in accordance with clause 7.

6. CREATIVE SUPPLIERS

6.1 Throughout the Programme a database of companies, based in the Programme Areas, who provide creative services shall be displayed on the Website (the "**Creative Suppliers**"). A Selected Applicant is encouraged to engage with the Creative Supplier in order to deliver the Proposed Scheme.

6.2 NESTA is not affiliated or linked to any of the Creative Suppliers. NESTA cannot give any undertaking or warranty that products, services or advice the Selected Applicant receives from the Creative Supplier will be true, of satisfactory quality or suitable for the Selected Applicant's requirements, and any such warranties are disclaimed by NESTA absolutely.

6.3 Any dispute the Selected Applicant may have with a Creative Supplier shall be resolved independently of NESTA.

7. CREDIT REDEMPTION

7.1 The Selected Applicant may redeem a Credit up to the sum agreed with NESTA on its issue (to the maximum of £4000) by submitting to NESTA an invoice for the Approved Scheme.

7.2 Redemption of the Credit in accordance with clause 7.1 may only occur if the following conditions have been satisfied:

- (a) a claim form relating to the Approved Scheme must be provided to NESTA (in the form to be agreed between the parties);

- (b) the Approved Scheme is completed by 31 March 2010;
- (c) a confirmation of satisfaction of the invoice received from the Creative Supplier relating to the Approved Scheme is provided to NESTA;
- (d) the invoice received from the Creative Supplier is for a sum of at least £5000;
- (e) an invoice is submitted to NESTA from the Applicant for the Credit sum no later than 16 April 2010;
- (f) the Eligibility Criteria and Scheme Eligibility remain satisfied on the completion of the Approved Scheme.

7.3 The invoice submitted in accordance with this clause 7 shall be paid in accordance with NESTA's standard payment terms.

8. USE OF APPLICANTS' DATA

8.1 NESTA shall process information about the Applicant in accordance with NESTA's privacy policy.

8.2 During the course of the Programme NESTA may share the Applicant's data, which may include personal data and any responses to research carried out, with Aston and Warwick Business School for the purposes of:

- (a) Researching innovation practices in SMEs; and
- (b) Evaluating the programme.

8.3 NESTA shall display the business names and project needs of all Selected Applicants, and those selected in clause 5.2, on the Website, provided they have consented to such use.

8.4 The Applicant acknowledges that, as part of the Programme, NESTA shall publish the contact names and email addresses of all Selected Applicants on the Website UNLESS NESTA is advised in writing by a Selected Applicant at the time of submitting its Proposed Scheme that it does not wish such information to be published.

8.5 At a future date NESTA may wish to share the Applicant's data with a third party for research and ancillary purposes, whereupon NESTA shall seek the Applicant's consent for such use.

8.6 By using the Website and submitting an Application, the Applicant consents to the processing detailed in this clause 8 and it warrants that all data provided is accurate.

9. INDEMNITY

9.1 The Applicant shall indemnify NESTA against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by NESTA arising out of or in connection with:

- (a) any breach of the warranties contained in clause 3;

(b) the Applicant's breach or negligent performance or non-performance of these terms and conditions;

(c) any claim made against NESTA for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with NESTA's use of any information provided by the Applicant (including registered and unregistered trade marks), or details of the Approved Scheme;

(d) any claim made against NESTA by a third party arising out of or in connection with the Approved Scheme; and

(e) any claim made against NESTA by a third party for death, personal injury or damage to property arising out of or in connection with defective goods related to the Approved Scheme.

10. NESTA'S LIABILITY

10.1 NESTA shall not be liable, in any way, for any sum due to the Applicant in respect of a Proposed or Approved Scheme or costs incurred in becoming an Applicant or their participation in the Programme.

10.2 Whilst we take care to review the information that is displayed on our site, the material displayed on our site is provided without any guarantees, conditions or warranties as to its accuracy. To the extent permitted by law and subject always to the provisions of clause 10.3, we, hereby expressly exclude:

10.2.1 all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity; and

10.2.2 any liability for any direct, indirect or consequential loss or damage incurred by any person howsoever relating to the Programme or in connection with our site or in connection with the use, inability to use, or results of the use of our site, any websites linked to it or any materials posted on it, including (but not limited to):

10.2.2.1 loss of income or revenue;

10.2.2.2 loss of business;

10.2.2.3 loss of profits or contracts;

10.2.2.4 loss of anticipated savings;

10.2.2.5 loss of data;

10.2.2.6 loss of goodwill; or

10.2.2.7 wasted management or office time; and

whether caused by tort (including negligence), breach of contract or otherwise, even if foreseeable, provided that this condition shall not prevent claims for loss of or damage to your tangible property or any other claims for direct financial loss that are not excluded by any of the categories set out above.

10.3 This does not limit our liability for death or personal injury arising from our negligence, nor our liability for fraudulent misrepresentation or misrepresentation as to a fundamental matter, nor any other liability which cannot be excluded or limited under applicable law.

10.4 Subject to clause 10.3 above, NESTA's entire liability to the Applicant shall be strictly limited to the value of the funding provided by NESTA to the Applicant under the Programme.

11. WRITTEN COMMUNICATIONS

Applicable laws require that some of the information or communications NESTA send to the Applicant should be in writing. When using the Website, the Applicant accepts that communication with NESTA will be mainly electronic. NESTA will contact the Applicant by e-mail or provide the Applicant with information by posting notices on the Website. For contractual purposes, the Applicant agrees to this electronic means of communication and the Applicant acknowledges that all contracts, notices, information and other communications that NESTA provides to the Applicant electronically comply with any legal requirement that such communications be in writing. This condition does not affect the Applicant's statutory rights.

12. NOTICES

All notices given by the Applicant to NESTA must be made for the attention of the Programme Manager for Creative Credits at creativecredits@nesta.org.uk. NESTA may give notice to the Applicant at either the e-mail or postal address the Applicant provides to NESTA when placing the Application. Notice will be deemed received and properly served immediately when posted on the Website, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

13. TRANSFER OF RIGHTS AND OBLIGATIONS

13.1 The contract between the Applicant and NESTA is binding on the Applicant and NESTA and on their respective successors and assigns.

13.2 The Applicant may not transfer, assign, charge or otherwise dispose of this contract, or any of the Applicant's rights or obligations arising under it, without NESTA's prior written consent.

13.3 NESTA may transfer, assign, charge, sub-contract or otherwise dispose of this contract, or any of their rights or obligations arising under it, at any time during the term of the contract.

14. EVENTS OUTSIDE NESTA'S CONTROL

14.1 NESTA will not be liable or responsible for any failure to perform, or delay in performance of, any of NESTA's obligations under this contract that is caused by events outside NESTA's reasonable control (Force Majeure Event).

14.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond NESTA's reasonable control and includes in particular (without limitation) the following:

- (a) Strikes, lock-outs or other industrial action.
- (b) Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
- (c) Fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster.
- (d) Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- (e) Impossibility of the use of public or private telecommunications networks.
- (f) The acts, decrees, legislation, regulations or restrictions of any government.

15. WAIVER

15.1 If NESTA fail, at any time during the term of a Contract, to insist upon strict performance of any of the Applicant's obligations under the Contract or any of these terms and conditions, or if NESTA fail to exercise any of the rights or remedies to which NESTA is entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve the Applicant from compliance with such obligations.

15.2 A waiver by NESTA of any default shall not constitute a waiver of any subsequent default.

15.3 No waiver by NESTA of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to the Applicant in writing in accordance with clause 12.

16. TERMINATION

16.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, NESTA may terminate this agreement immediately if:

- (a) the Applicant or its employees, agents or officers commits, or threatens to commit, any illegal act or any acts which are wholly or primarily contrary to the aims, objectives or policies of the Programme or NESTA;
- (b) the Applicant commits a material breach of any material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the Applicant repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the Applicant or Creative Supplier (which is the Applicant's partner in the Approved Scheme):

(i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(ii) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

(iii) has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with their winding up;

(iv) has an application made to court, or an order made, for the appointment of an administrator or a notice of intention to appoint an administrator given or an administrator is appointed;

(v) has a receiver or an administrative receiver appointed over their assets;

(vi) has a creditor or encumbrancer attach or take possession of, or any distress, execution, sequestration or other such process levied or enforced on or sued against, the whole or any part of their assets and such attachment or process is not discharged within 14 days; or

(vii) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

(d) if requested to do so by its sponsor department, currently the Department for Business, Innovation & Skills.

17. SEVERABILITY

If any of these terms and conditions or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

18. ENTIRE AGREEMENT

18.1 These terms and conditions and any document expressly referred to in them represent the entire agreement between NESTA and the Applicant in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between NESTA and the Applicant, whether oral or in writing.

18.2 NESTA and the Applicant each acknowledge that, in entering into these terms and conditions neither NESTA nor the Applicant has relied on any representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between them prior to such Application except as expressly stated in these terms and conditions.

18.3 Neither party to these terms and conditions shall have any remedy in respect of any untrue statement made by the other, whether orally or in writing, prior to the date of the Application (unless such untrue statement was made fraudulently) and the other party's only remedy shall be for breach of contract as provided in these terms and conditions.

19. NESTA'S RIGHT TO VARY THESE TERMS AND CONDITIONS

19.1 NESTA have the right to revise and amend these terms and conditions from time to time to reflect changes in the management of the Programme, changes in relevant laws and regulatory requirements and changes in NESTA's system's capabilities or for any other reason.

19.2 You are expected to check these terms and conditions from time to time to take notice of any changes we may have made, as they are binding on you.

20. LAW AND JURISDICTION

Any dispute or claim arising out of or in connection with or the subject matter or formation (including non-contractual disputes or claims) of these terms and conditions will be governed by English law. Any dispute or claim arising out of or in connection with these terms and conditions or their formation (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England.