

Creative Business Terms and Conditions

This page (together with the documents referred to on it) sets out the terms and conditions which shall be applicable to a creative business, as named on the application form submitted via the website (www.creative-credits.org.uk) (the "**Creative Business**"), 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 Creative Business' representative (the "**Creative Business' Representative**") is duly authorised with the legal authority to bind the Creative Business confirm that the Creative Business 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 CREATIVE BUSINESS STATUS

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

2.2 The Creative Business 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) have the primary business of one or a combination of any of the following fields:

- (i) Advertising or public relations
- (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) be a limited liability company, a limited liability partnership, a general partnership or an industrial or provident society;

(d) not be an academic institution;

(e) have less than 250 employees;

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

(g) have professional indemnity insurance.

2.3 Applications from individuals or sole traders are not permitted.

2.4 For the purposes of clause 2.2(c), the Creative Business 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 Creative Business 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. CREATIVE BUSINESS'S WARRANTIES

3.1 By submitting an Application through the Website, the Creative Business warrants that:

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

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

(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; and

(e) during the life of the Programme the Creative Business shall fully and actively participate in research carried out on behalf of NESTA.

4. HOW THE CONTRACT IS FORMED BETWEEN THE CREATIVE BUSINESS AND NESTA

4.1 After submitting an Application, the Creative Business 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. All Applications are subject to acceptance by NESTA, and NESTA will confirm such acceptance to the Creative Business by sending an e-mail that confirms that they have been approved (the "**Confirmation**"). The contract between NESTA and the Creative Business will only be formed when the Confirmation has been sent.

5. APPROVAL PROCESS AND GALLERY

5.1 Following the Confirmation NESTA shall assign the approved Creative Businesses ("**Approved Creative Business**") a password and account details whereupon the Approved Creative Business is encouraged to submit information to NESTA ("**Profile Information**") detailing the Approved Creative Business' services on offer to those SMEs selected by NESTA (the "**Selected SMEs**") under the Programme.

5.2 On receipt of the Profile Information NESTA shall review the contents in line with the Content Standards (described in clause 6). If the Profile Information satisfies the Content Standards it shall be displayed on a gallery (the "**Gallery**") together with other Approved Creative Businesses.

5.3 The Gallery shall be accessible by the public whereupon it is envisaged that any Selected SMEs may build relationship(s) with Approved Creative Businesses with the aim of delivering a creative project.

5.4 The Approved Creative Business shall also be given access to the company names of Selected SMEs participating in the Programme should they wish to offer their services directly. Contact details and email addresses of those Selected SMEs who have consented to the publication of such data, shall be published.

5.5 Projects carried out by Selected SMEs using a Creative Credit must meet the following criteria:

5.5.1 The Approved Creative Business used to complete the work must:

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

5.7.2 At least 80% of the £5,000 spend for the approved creative project (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 Projects 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.

6. CONTENT STANDARDS

6.1 These content standards apply to any and all material which the Approved Creative Business contributes to the Website ("**Contributions**"), and to any interactive services associated with it.

6.2 The Approved Creative Business must comply with the spirit of the following standards as well as the letter. The standards apply to each part of any Contribution as well as to its whole.

6.3 Contributions must:

- (a) Be accurate (where they state facts).
- (b) Be genuinely held (where they state opinions).
- (c) Comply with applicable law in the UK and in any country from which they are posted.

6.4 Contributions must not:

- (a) Contain any material which is defamatory of any person.
- (b) Contain any material which is obscene, offensive, hateful or inflammatory.
- (c) Promote sexually explicit material.
- (d) Promote violence.
- (e) Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- (f) Infringe any copyright, database right or trade mark of any other person.
- (g) Be likely to deceive any person.
- (h) Be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- (i) Promote any illegal activity.
- (j) Be threatening, abusive or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- (k) Be likely to harass, upset, embarrass, alarm or annoy any other person.

(l) Be used to impersonate any person, or to misrepresent your identity or affiliation with any person.

(m) Give the impression that they emanate from NESTA, if this is not the case.

(n) Advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.

6.5 NESTA will determine, at our sole discretion, whether there has been a breach of this acceptable use policy through your use of our Website. When a breach of this policy has occurred, NESTA may take such action as we deem appropriate.

6.6 Failure to comply with these content standards constitutes a material breach of the terms and conditions and terms of use upon which you are permitted to use our site or participate in the Programme, and may result in our taking all or any of the following actions:

(a) Immediate, temporary or permanent withdrawal of the Approved Creative Business' right to use the Website.

(b) Immediate, temporary or permanent withdrawal of the Approved Creative Business' right to participate in the Programme.

(c) Immediate, temporary or permanent removal of any posting or material uploaded by the Approved Creative Business to the Website.

(d) Issue of a warning to the Approved Creative Business.

(e) Legal proceedings against the Approved Creative Business for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative and legal costs) resulting from the breach.

(f) Further legal action against the Approved Creative Business.

(g) Disclosure of such information to law enforcement authorities as NESTA reasonably feel is necessary.

6.7 NESTA exclude's its liability for actions taken in response to breaches of these content standards. The responses described in this policy are not limited, and NESTA may take any other action we reasonably deem appropriate.

6.8 NESTA may revise this acceptable use policy at any time by amending this page. The Approved Creative Business is expected to check this page from time to time to take notice of any changes NESTA make, as they are legally binding on it. Some of the provisions contained in this acceptable use policy may also be superseded by provisions or notices published elsewhere on NESTA's site.

7. SELECTED SMES

7.1 NESTA is not affiliated or linked to any of the Selected SMEs. NESTA cannot give any undertaking or warranty that the relationship, payment for services or any other information the Approved Creative Business receives from the Selected SMEs (including via NESTA) will be true, of satisfactory quality or suitable for the Approved Creative Business' requirements and any such warranties are disclaimed by NESTA absolutely.

7.2 Any dispute the Approved Creative Business may have with a Selected SME shall be resolved independently of NESTA.

8. USE OF CREATIVE BUSINESSES DATA

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

8.2 During the course of the Programme NESTA may share the Creative Business' 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 names, contact details and profile of all Approved Creative Businesses on the Website. It will not display information relating to the number of employees or financial information.

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

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

9. INDEMNITY

9.1 The Creative Business 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 Creative Business' 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 Creative Business (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 Creative Business in respect of a proposed or approved creative project or costs incurred in becoming a Creative Business 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 NESTA's liability for death or personal injury arising from our negligence, nor NESTA's 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 Creative Business shall be strictly limited to the value of the funding provided by NESTA to a Selected SME under the Programme, subject to a maximum amount of £4,000.

11. WRITTEN COMMUNICATIONS

Applicable laws require that some of the information or communications NESTA send to the Creative Business should be in writing. When using the Website, the Creative Business accepts that communication with NESTA will be mainly electronic. NESTA will contact the Creative Business by e-mail or provide the Creative Business with information by posting notices on the Website. For contractual purposes, the Creative Business agree to this electronic means of communication and the Creative Business acknowledges that all

contracts, notices, information and other communications that NESTA provides to the Creative Business electronically comply with any legal requirement that such communications be in writing. This condition does not affect the Creative Business's statutory rights.

12. NOTICES

All notices given by the Creative Business 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 Creative Business at either the e-mail or postal address the Creative Business 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 Creative Business and NESTA is binding on the Creative Business and NESTA and on their respective successors and assigns.

13.2 The Creative Business may not transfer, assign, charge or otherwise dispose of this contract, or any of the Creative Business' 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 Creative Business' 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 Creative Business 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 Creative Business 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 Creative Business 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;

(b) the Creative Business 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;

(c) the Creative Business or Selected SME (which is the Creative Business' partner in an 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 Creative Business in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between NESTA and the Creative Business, whether oral or in writing.

18.2 NESTA and the Creative Business each acknowledge that, in entering into these terms and conditions neither NESTA nor the Creative Business 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.

