

Producers' Alliance for Cinema and Television Limited  
C/o Nick Underhill  
Head of Interactive  
Procter House  
1 Procter Street  
Holborn  
London  
WC1V 6DW

16<sup>th</sup> March 2009

Dear Sirs

**NESTA Grant Funding in respect of NESTA Innovators Growth Programme:  
Innovation in commissioning of Public Sector Content in a Broadband World**

This agreement sets out the terms on which NESTA will make to the Producers' Alliance for Cinema and Television Limited (Company Number 02591474) whose registered address is at Fitzrovia House, Third Floor, 153-157 Cleveland Street, London W1T 6QW (the "**Recipient**"), a grant of up to £10,000 (Ten Thousand Pounds) (the "**Grant**") towards Delivery Partner Services for NESTA Innovators Growth Programme based upon the proposal set out in Schedule 1 ("**Proposal**").

In this agreement save where the context requires otherwise, "**you**" or "**your**" means the Recipient, and "**we**", "**us**" or "**our**" means The National Endowment for Science Technology and the Arts ("**NESTA**").

You agree that Nick Underhill shall be responsible for completing the Project on your behalf.

**1 The Contract**

- 1.1 In consideration of our making the Grant to you and of the agreements and undertakings in this agreement, we have granted to each other the rights and accepted the obligations contained in this agreement.

**2 Your Obligations To Us**

- 2.1 You will:
- 2.1.1 apply the Grant solely towards the purpose agreed by us based on the Proposal and milestones outlined in Schedules 1 and 2 (the "**Project**"); and
  - 2.1.2 monitor the success of the Project in accordance with the system agreed with us; and



- 2.1.3 carry out the Project in accordance with the Project details and timescales as set out in Schedule 2 unless otherwise agreed in writing between the parties; and
- 2.1.4 provide us with any information relating to the Project as we may reasonably request; and
- 2.1.5 meet with us or our nominated representatives at such reasonable intervals as we shall request to discuss the Project and its progress; and
- 2.1.6 seek our written consent in respect of any deviation or intended deviation from the details and timescales set out in Schedule 2; and
- 2.1.7 not sell any equipment or other assets purchased with funding from the Grant without our prior written agreement; if such permission is given you may be required to pay us a share of the money received by you from the sale of such equipment or other assets which shall be in proportion to the cost of the project originally met by the Grant; and
- 2.1.8 inform us of any changes to your banking arrangements; and
- 2.1.9 keep all financial records and accounts including receipts for items purchased with the Grant for at least 2 years from the end of the financial year in which the transaction took place. You understand that we can request access to your full accounting records at any time; and
- 2.1.10 carry out the Project in a competent and efficient manner; and
- 2.1.11 immediately inform us in writing of any significant development and/or problem that you encounter in relation to the Project; and
- 2.1.12 provide us with an evaluation following completion of the Project.

### **3 Our Obligation To You**

- 3.1 We will, subject to 3.2, and 4 below, pay the Grant to you in accordance with the payment table in Schedule 2 ("**the Payment Table**"). The payment of each instalment will be subject to our being satisfied that the associated milestone(s) (as set out in the Payment Table) have/has been achieved or our having waived such associated milestone(s).
- 3.2 Without prejudice to clause 4 below we reserve the right to withdraw and/or reclaim the Grant already paid to you if it appears in our reasonable opinion that the Project is not being properly and/or efficiently carried out, such right to withdrawal of funding shall be pro rata in respect of the work on the Project which has been funded by the Grant having been carried out already and in accordance with the terms of this agreement.

### **4 Termination**



- 4.1 The terms of this agreement shall become effective on the date of signing it and, unless specified otherwise in this agreement, shall continue in effect for the duration of the Project as specified in Schedule 2.
- 4.2 Any amount of the Grant paid to you will, at our option, be refundable pro rata in respect of the work on the Project which has been funded by the Grant having been carried out already and in accordance with the terms of this agreement and any further instalments of the Grant maybe withheld if:
- 4.2.1 you fail to comply with the terms and conditions contained in this agreement; or
- 4.2.2 you cease to operate for any reason or there is any material change to the key members of the team described in the proposal made by you to us, who are responsible for carrying out the Project; or
- 4.2.3 you present a petition or have a petition presented by a creditor for your winding up or enter into any liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or are put into administrative receivership, or call a meeting of your creditors, or enter into an arrangement with your creditors or have a receiver in respect of all or any of your undertaking or assets appointed or you are deemed or can be deemed to be unable to pay your debts; or
- 4.2.4 the application form for the Grant was completed dishonestly or with incorrect or misleading information; or
- 4.2.5 you knowingly, recklessly or negligently engage in any conduct prejudicial to our reputation; or
- 4.2.6 you fail to provide us with any information requested by us or any information provided by you to us proves to be untrue; or
- 4.2.7 you are involved in any fraud, theft or corruption which involves the Grant ; or
- 4.2.8 you fail to carry out the Project efficiently or diligently and in accordance with the terms of this agreement.
- 4.2.9 you do not take any necessary steps to ensure, in relation to the use of the Grant, equal opportunities in your employment practices and the delivery of your services.
- 4.3 If we become aware of any breach by you of the terms of this agreement and if the breach is capable of remedy we will notify you and you will have 30 days to remedy that breach. If you successfully remedy the breach then we will not require repayment of the Grant or any part of it as set out above.
- 4.4 We agree that for the purposes of paragraph 4.2 above you will not be regarded as having failed to comply with any of the terms and conditions of this agreement if:
- 4.4.1 we deem the breach to be immaterial, and notify you of this in writing;  
or



- 4.4.2 the breach is due to circumstances beyond your reasonable control. However if the circumstances beyond your reasonable control delays the delivery of the Project for longer than 3 months then we may terminate this agreement with immediate effect by giving written notice.

## **5 Your Promises To Us**

- 5.1 In signing this agreement you are confirming to us that;
- 5.1.1 you will have or obtain all Intellectual Property rights, licences, consents, approvals, permissions, permits, tests and other certificates and authorities (whether public or private) necessary to carry on the Project; and
  - 5.1.2 all information, data and materials provided at any time by or on your behalf to us is and remains for the duration of the Project true and accurate and you have provided to us all information which it might reasonably be thought to be relevant to the decision by us to give the Grant to you; and
  - 5.1.3 you have the legal capacity to accept the Grant, to agree to the terms of this agreement and to repay the Grant if you are in breach of this agreement; and
  - 5.1.4 you do not have and could be expected to have knowledge of any actual or potential conflict of interest with us (including our trustees, officers or employees) in entering into and carrying out your obligations in accordance with the terms of this agreement and you will immediately let us know if you become aware of any actual or potential conflict of interest, whereupon it will be at our discretion whether or not to continue the arrangements as set out in this agreement.

## **6 Publicity**

- 6.1 You will comply with all our publicity requirements from time to time and any public announcement or promotion of the Project by you in any form for a period of 3 years after final payment of the Grant must acknowledge our funding and must be in the form approved by us in advance. In addition all publicity of the Project must make it clear that the opinions being explored and the opinions and/or views expressed as part of the Project are your opinions and views and not those of NESTA.
- 6.2 You agree that we will be entitled to make public, information relating to the Project and to make use of any materials arising out of or in respect of the Project provided we do not prejudice your confidential or commercially sensitive information.

## **7 Intellectual Property**

### **7.1 Intellectual Property**



- 7.1 Any intellectual property, including, but not limited to patents, design rights, copyright, recipes, trade secrets, trademarks or know-how, developed by you during or as a consequence of the Project shall be owned by you ("**Project Intellectual Property**").
- 7.2 You hereby agree to grant to us a perpetual, non-exclusive, royalty-free licence to use any Project Intellectual Property.

## **8 Variation of Funding**

- 8.1 For the avoidance of doubt, if you are required to pay any taxes (of whatever nature, including but not limited to VAT or any personal tax, if applicable) this is your responsibility and we will not be required nor will be in any way responsible for paying such taxes or refunding any amounts of such tax to you.
- 8.2 You will inform us in writing if at any time prior to completion of the Project you become entitled to funding other than the Grant in respect of the Project or any research or training proposals similar or identical to it and you confirm that you have not already received any other funding from a public body ("**Additional Funding**").
- 8.3 We may in our absolute discretion reduce the Grant by the amount equal or up to the Additional Funding and/or require you to revise your budget.
- 8.4 You understand that the Grant will not be increased as a result of any over spending by you or otherwise and any part of it not spent in accordance with the terms of this agreement must promptly be returned to us.

## **9 Limitation of Liability**

- 9.1 Neither party will be liable to the other in respect of economic loss or loss of opportunity in connection with any breach of their duties under the terms of this agreement. Each party's total liability to each other will be the amount of the Grant.
- 9.2 Notwithstanding paragraph 9.1 above, neither party may limit liability for death or personal injury caused by negligence.

## **10 Rights of Third Parties**

- 10.1 A person who is not a party to this agreement may not rely upon it or enforce any rights pursuant to the Contract (Rights of Third Parties) Act 1999.

## **11 Entire Agreement**

- 11.1 This agreement (including any documents referred to in it) and the Schedules to it set out the entire agreement between us relating to the Grant and replaces and cancels all previous agreements or arrangements between us (whether written or oral) relating to the Grant.

## **12 Access to Records, Provision of Information and Freedom of Information**



- 12.1 You will ensure that we or our authorised representatives will be allowed access at all reasonable times and upon giving at least 5 days notice to examine all your documentation and records relevant to the Project in whatever form.
- 12.2 You will on written request from us provide us with any information relating to the Project as we may reasonably require.
- 12.3 You acknowledge that we are subject to, and agree to provide us all assistance in complying with our obligations under the Freedom of Information Act 2000, and all regulations made under it and any amendment or re-enactment of it, including any guidance issued by the relevant bodies in respect thereof ("**FOI Legislation**").
- 12.4 You will within 5 business days of a request from us, provide us with any information held by you on our behalf, in such form as we may reasonably request in order for us to respond to a request for information under the FOI Legislation.
- 12.5 We shall solely determine whether or not any information is exempt under the FOI Legislation and what information if any should be disclosed.

### **13 Confidentiality**

- 13.1 Both parties will at all times keep all information disclose as marked as confidential or ought reasonably be considered confidential ("**Confidential Information**") strictly secret and confidential, not disclose it to any third party and only use it for the purposes of the Project. This obligation of confidence will not apply to information:
  - 13.1.1 which either party is required to disclose by law; or
  - 13.1.2 which is already lawfully in the public domain; or
  - 13.1.3 which the disclosing party can show that it already lawfully had in its possession, or had lawfully received from a third party; or
  - 13.1.4 which is disclosed with the other party's express consent.

Both parties agree to return all Confidential Information upon written request.

- 13.2 Both parties shall procure that anyone having access to the Confidential Information through shall be subject to the same confidentiality obligations as set out in clause 13.1.
- 13.3 The obligations contained in clauses 13.1 and 13.2 shall survive the expiry or the termination of this agreement for whatever reason.

### **14 Assignment and Variation**

- 14.1 You may not assign your obligations set out in this agreement and any amendment to the terms of this agreement must be agreed by both parties.

### **15 No Partnership**



15.1 Nothing in this agreement creates a partnership, a joint venture, the relationship of employer and employee, or establishes a relationship of principal and agent or other fiduciary relationship between any of the parties to this agreement and no party will describe themselves or hold themselves out as another's agent or representative.

## **16 Independent Legal Advice**

16.1 You acknowledge and agree that where you are concerned about any of the terms of this agreement, you will take independent legal advice and are not relying on any representations whether oral or written given by NESTA.

## **17 Further Assurance**

17.1 You shall do or procure to be done all such further acts and things, and execute or procure the execution of all such other documents, as we may from time to time reasonably require in order to give us the full benefit of this agreement, whether in connection with any registration of title or other similar right or otherwise.

## **18 Prevention of Corruption**

18.1 You agree at all times to act lawfully, ethically and in good faith in your dealings with us and comply fully with the Prevention of Corruption Acts 1889 to 1916 and any related regulations rules, procedures or like legislation.

18.2 You agree to comply at all times with such reasonable directions as NESTA shall make as to the establishment of procedures and controls to detect fraud, theft and/or corruption in relation to the Grant.

18.3 You will report to us immediately any fraud, theft or corruption, actual or suspected, which involves the Grant.

## **19 Other Statutory Requirements**

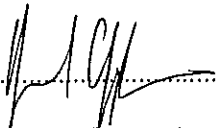
19.1 This Grant is being made on the basis that it is not a State Aid. You will comply with all State Aid Rules (Articles 86 to 89 (both inclusive) of the EC Treaty (as amended) and any applicable judgment, court order, statute, statutory instrument, regulation, directive, framework or legally binding decision relating to the provision of any aid, benefit or assistance from any Government or public body), relevant statutory requirements and other laws and regulations relating to NESTA and the Project.



**20 Governing Law and Jurisdiction**

20.1 The terms and conditions of this agreement will be governed by and construed in all respects in accordance with the Laws of England and the courts of England shall have exclusive jurisdiction.

Yours faithfully

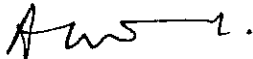
  
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06/04/09

SIGNED for and on behalf of  
NESTA  
Daniel Oppenheimer

Date

We hereby acknowledge receipt of the above letter including the Schedules to it, of which this is a copy, and agree to be bound by its terms.



.....  
Nick Underhill  
SIGNED by Nick Underhill, Head of Interactive  
for and on behalf of

.....  
Date

Producers' Alliance for Cinema and Television Limited

**Schedule 1**  
**Proposal**

**Project Summary and Objective**

**Background**

Digital convergence presents new challenges and opportunities for stimulating the growth of the UK's audiovisual and interactive creative industries. Ofcom's research shows that most people (75%) think that the internet is a valuable source of information and learning and that internet users (62%) claim they have used the internet to access content matching a definition provided of 'public service content'. Government departments, NGOs and cultural organisations are increasingly meeting this need by producing content for broadband and increasing their delivery of services online.

However commissioning best practice guides for the production of Public Sector Content in this emerging and increasing important area need updating and re-defining for this new media. If this does not occur it has the potential to inhibit growth, creativity and innovation.

This pilot project will look to gather the main stakeholders together to produce a good practice guide to the commissioning of Public Sector Content. The guide will investigate what barriers and best practice exist.



The pilot aims to investigate:

- The best commissioning approaches for public sector digital content that are being used across the EU and in other sectors.
- The highly creative Public Sector Content projects which have engaged audiences that have been successfully commissioned in the UK.

The benefits of adapting standard IP rights approaches in commissioning Public Sector Content for digital media content

- Create a flexible guide for the commissioning of Public Sector Content that producers and commissioners can use effectively.
- How the cultural sector and others are looking to create partnerships with the independent production sector to create and distribute Public Service Content.

Likely stakeholders are:

Public Sector – (The Arts Council, The Tate, Science Museums, N.P. Gallery, COI, OPSI, DIUS, OGC and RDAs)

Producers – (Independent Content Producers)

"...we need to ensure that Britain is well positioned to take advantage of the opportunities around innovation in new media content. Our track record in creativity and technical innovation in existing media provides an excellent base, but this needs to be married to development of business models that enable content creators to flourish on new platforms. We must also have the research and development programmes that will help us maintain our position".

**Stephen A Carter – Minister for Communications – Digital Britain Report Jan 2009**



## **Schedule 2**

### **Timetable and Deliverables**

In return for NESTA providing you with the Grant, you are required to carry out the following:

1. Investigate, consult and produce a draft guidelines document which can act as the basis for the final deliverable.
2. Organise and Produce a 1 day Workshop / Roundtable consultation discussion with key stakeholders. Draft stakeholder list and programme to be provided for comment by NESTA before finalising.
3. Produce a finalised and published Guidelines Document.

Pact's Head of Business Affairs & Senior Policy Executive will draft the documentation in conjunction with an expert group of digital media suppliers and publish it after the consultation with the stakeholders.

All documents will be published on a publicly-available URL under a Creative Commons Share-alike licence.

### **Your responsibilities:**



You agree that:

- Nick Underhill, Senior Policy Executive will carry out the project management. You will report directly to Jon Kingsbury, Director, Creative Economy Innovation Programme at NESTA on a regular basis.
- You will liaise with NESTA as described above and on material issues arising on content or progress of Project.
- You will make it clear when carrying out this Project and in publicising its outputs, that this Project is not being carried out by or undertaken on behalf of NESTA, rather being part-funded by NESTA along with other projects as part of the Creative Economy Programme. In particular, You will communicate that the options being explored and the views being expressed are those of PACT and not NESTA.
- You will ensure that those carrying out the work being funded by the Grant have appropriate technical expertise in this area.

**Payment Timetable:**

NESTA will pay the Grant to you subject to completion of the Deliverables shown below as follows:

<b>Milestone Number</b>	<b>Payment Amount</b>	<b>Deliverable</b>	<b>Deadline</b>
1.	£4,000	Submission of written draft Guidelines to NESTA for input.	30 <sup>th</sup> March 2009
2.	£3,000	Delivery of workshop.	30th April 2009
3.	£3,000	Production of final written Guidelines.	8th May 2009
<b>Total</b>	<b>£10,000</b>		

