

CreateSmart Initiative Guide

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Table of Contents

<u>Chapter</u>		<u>Page</u>
I	Introduction	3
II	Objectives	5
III	Funding Support	7
IV	Eligibility	8
V	Application	11
VI	Vetting and Assessment Procedures	15
VII	Project Agreement and Disbursement of Funds	20
VIII	Publicity and Acknowledgement	24
IX	Obligations	26
X	Project Variation	32
XI	Unallowable Costs	36
XII	Miscellaneous Provisions	40

CreateSmart Initiative Guide

Chapter I INTRODUCTION

- 1.1 The Create Hong Kong (CreateHK) is established by the Government in June 2009, with the objectives to promote and speed up the development of creative industries in Hong Kong. CreateHK's vision is to build Hong Kong into a regional creative capital and to foster a conducive environment in Hong Kong to facilitate creative industries development.
- 1.2 In June 2009, the Government established the HK\$300 million CreateSmart Initiative (CSI) to provide financial support to initiatives for the development of creative industries in Hong Kong, alongside the DesignSmart Initiative (DSI) which supported design initiatives, and the Film Development Fund (FDF) and the Film Guarantee Fund (FGF) which supported film initiatives, established prior to June 2009.
- 1.3 To rationalise funding arrangements for the creative sector and enable resources to be used in a more co-ordinated manner, the CSI and the DSI were consolidated by phases commencing June 2011, and the DBCS was placed under the CSI with effect from 24 May 2013. Applications under the DBCS received on or after 24 May 2013 are funded under the CSI. The DBCS, while placed under the CSI, operates according to the CreateSmart Initiative Guide for Design-Business Collaboration Scheme (please refer to <http://www.design.csi.gov.hk>) and is not subject to the following chapters of the CreateSmart Initiative Guide.
- 1.4 CSI is administered by CreateHK of the Culture, Sports and Tourism Bureau (CSTB) of the Government. Initiatives are processed by the CreateSmart Initiative Secretariat of CreateHK.

Design-related initiatives covered by CSI are processed by the CreateSmart Initiative (Design) Secretariat of CreateHK. CreateSmart Initiative Secretariat and CreateSmart Initiative (Design) Secretariat are hereunder collectively referred to as the “Secretariat”.

- 1.5 The Government will decide in its absolute discretion whether to approve the applications and disburse funds after having considered the recommendations from the CreateSmart Initiative Vetting Committee (CSI Vetting Committee), and the Secretariat.
- 1.6 Applicants should note that applications may not be approved, and even if approved, the amount approved may be different from the one proposed in the application. Moreover, completion reports may not be accepted, and even if accepted, the approved amount may not be disbursed in full. Should the applicants choose to incur/commit any expenditure for the projects under application before funding approval is confirmed, they will have to bear their own risk and pay for the incurred/committed expenditure themselves in case their funding applications are rejected or only partially approved subsequently.

Chapter II OBJECTIVES

- 2.1 This guide provides information on the application for the Government funds under the CSI.
- 2.2 This Guide shall not in any circumstances affect or limit the interpretation of the application form and unless the context otherwise requires, terms defined and expressions used in this Guide shall bear the meanings set out in the application form.
- 2.3 The CSI provides support to projects in the creative industries other than those for which dedicated Government funding schemes are already available. Such funding schemes include but are not limited to FDF (<http://www.fdc.gov.hk/en/services/services2.htm>), FGF (<http://www.fdc.gov.hk/en/services/services3.htm>), Innovation and Technology Fund (<http://www.itc.gov.hk/en/funding/itf.htm>), Arts Development Fund (Cultural Exchange Project) (http://www.hab.gov.hk/en/policy_responsibilities/arts_culture_re_creation_and_sport/CulturalExchangeProject.htm) and Grants of Hong Kong Arts Development Council (<http://www.hkadc.org.hk/en/content/home.do>).
- 2.4 The CSI will fund projects with objectives that are in line with our strategic direction to drive the development of the creative industries, namely—
- (a) Nurturing a pool of creative human capital which will form the backbone of our creative economy;
 - (b) Facilitating start-ups and development of creative establishments;
 - (c) Generating demand for innovation and creativity and expanding local market size for creative industries;
 - (d) Promoting creative industries on the Mainland and overseas to help explore outside markets;

- (e) Developing creative clusters in the territory to generate synergy and facilitate exchanges;
- (f) Fostering a creative atmosphere within the community;
and
- (g) Promoting Hong Kong as Asia's creative capital.

Chapter III FUNDING SUPPORT

3.1 Form of Funding Support

- 3.1.1 Funding support is given by way of a grant. It will cover only the net approved project cost after deducting the expected income during the project period, the amount of sponsorship and/or funding from other sources for the project (if any).
- 3.1.2 The funding support will be disbursed by instalments, tying with appropriate milestones or any other conditions offered when the grant is approved.
- 3.1.3 Final instalment of the funding support will only be released upon the completion of the project and the Government is satisfied with the completion report (paragraph 9.1.3 9.1.4) submitted by the project applicant.
- 3.1.4 For details about the disbursement of funding support, please refer to Chapter VII (Project Agreement and Disbursement of Funds) of this Guide.

Chapter IV ELIGIBILITY

- 4.1 Unless the Secretariat recommends to the Government that an exception be granted, an application must satisfy all requirements set out in paragraph 4.2 and 4.3.
- 4.2 Project duration is expected to be less than one year in general.
- 4.3 Eligible Applicant
- 4.3.1 An applicant should normally be a locally registered institution/organisation, which include the following: local academic institutes, industry support organizations, trade and industry associations, professional bodies, research institutes and companies ¹.
- 4.3.2 CreateHK and other Government departments are also eligible to apply.
- 4.3.3 Projects which are covered under the scope of FDF, FGF, and other dedicated Government funding schemes, and those which will receive or have received funding from other Government sources will NOT be considered.
- 4.3.4 Each application shall have only ONE applicant. However, the applicant is required to list out in the application all other parties (if any) that it will collaborate with in carrying out the proposed project and their respective roles or contribution.
- 4.3.5 The applicant should have a substantial connection to Hong Kong, i.e. it must have a significant proportion of its development, production, management or general activities located in Hong Kong.

¹ The applicant should be a body or company established or incorporated under the Hong Kong laws including the Companies Ordinance (Cap 32). Applicant may be required to produce valid evidence showing that it is a going concern.

4.3.6 If the application is approved, the applicant will become the recipient of the funding support and has to sign an agreement with the Government. Please refer to Chapter IX (Obligations) of this Guide on the obligations of the project applicant.

4.4 Sponsorship (where applicable)

4.4.1 To demonstrate industry support to the project, the applicant is required to list out in the application the sponsorship that it would be able to secure for the project.

4.4.2 Sponsorship in kind can be provided in the form of donation of equipment and consumable that is exclusively used for carrying out the project. Discount in purchases, time cost of equipment, manpower costs and consultancy services would be excluded from such sponsorship.

4.4.3 All committed sponsorship should be received with evidence before issue of the last instalment of the funding support by the Government.

4.5 Double Subsidy

4.5.1 To avoid double subsidy, project elements which will receive or have received funding from other Government or known funding sources will not receive funding from the CSI. The applicant will not be eligible for funding from the CSI if other financial support (whether in the form of equity or loan financing, grant or sponsorship or any other form) has been granted for the same elements of the Project, unless the CSI Vetting Committee recommends to the Government that an exception be granted. The following example can be considered as reference:

A project to be held at a venue under the auspices of the Leisure and Cultural Services Department (LCSD). LCSD has agreed to waive the cost of renting the venue.

The above example is used only for illustration purpose. The Government has no obligation to grant funding from the CSI to a project similar to the above example. It will depend on the unique circumstances of each application, which will be approved/rejected on a case-to-case basis.

Chapter V APPLICATION

5.1 Application Form

5.1.1 For initiatives other than the design-related ones, applications are made through the computerised application system (www2.createsmart.csi.gov.hk/menu.asp). Each application can only cover one project. Enquiries can be sent to createsmart@createhk.gov.hk.

5.1.2 For design initiatives covered by the CSI, applications are made through the computerised application system (www.design.csi.gov.hk). Each application can only cover one project. Enquiries can be sent to enquiry@design.csi.gov.hk.

5.1.3 The applicant must also submit all information and documents that are required to be provided by the application form and this Guide, including but not limited to:

(a) Project Coordinator

- (i) In each application, the project applicant should nominate a project coordinator;
- (ii) If the application is approved, the project coordinator is responsible for overseeing the project generally; monitoring its expenditure and ensuring the proper usage of project funds in accordance with the approved project budget, this Guide and other instructions set for the projects; answering enquiries; and attending progress meetings on the project, if required.

(b) Project Budget

- (i) All monetary figures should be in Hong Kong currency;
- (ii) The project applicant is required to submit a proposed budget on the project, showing all expenditure, sponsorship, income and justifications for the budget;
- (iii) When preparing the project budget, all expenditure items have to be grouped under the categories of manpower, equipment and other direct costs. Unspecified cost items such as miscellaneous, sundry and contingency etc. will not be accepted;
- (iv) Costs of new equipment and goods that have been received, used and paid for the project during the project period could only be charged to the project account. However, the project applicant is encouraged to share the use of equipment within its organization or from other organizations with its costs (including maintenance cost) charged on a pro-rata basis. The project applicant is required to maintain a record on the usage of the equipment by the concerned projects for cost allocation purpose. For the sake of clarity, such maintenance/rental cost (if any) should be placed under “Other Direct Costs”;
- (v) A list of unallowable cost items which cannot be charged to the project account is set out in Chapter XI (Unallowable Costs)

below;

- (vi) The project applicant should endeavor to generate income so as to recoup part of the cost of the project;
- (vii) For projects involving recurrent expenditure, the project applicant has to demonstrate that such expenses will be for a specified period or that the project will become self-financing after its completion;
- (viii) The project applicant is required to declare in the application whether it has sought or is seeking funding support for the project from other public funding sources.

5.2 Timing for Application

- 5.2.1 The CSI is open for applications throughout the year, unless otherwise announced.
- 5.2.2 CreateHK may also from time to time issue theme-specific topics to solicit applications.

5.3 Application Procedures

- 5.3.1 The application form can be completed either in English or Chinese.
- 5.3.2 No application fee will be charged.
- 5.3.3 Applications are made through the computerised application system (<http://www.createsmart.gov.hk/cfais/>).
- 5.3.4 The applicant will be requested by the Secretariat to provide

supplementary documents and information from time to time for processing the application. Failure to provide such information within a reasonable time frame will deem the application to be unsuccessful without further notice.

- 5.3.5 The application form and all information submitted by an applicant will be retained by the Secretariat for record and audit purposes and will not be returned to the applicant. The applicant should make copies of these documents for their own record.
- 5.4 Re-submission
- 5.4.1 A declined application may be resubmitted only if it has been revised substantially or if it has been able to produce additional information to address the comments made by the CSI Vetting Committee in its earlier review. The project applicant should set out clearly the differences of the resubmitted application vis-à-vis the previous one.
 - 5.4.2 Any revised application will be treated as a new application.

Chapter VI VETTING AND ASSESSMENT PROCEDURES

6.1 Vetting Procedures

- 6.1.1 Upon receipt of an application, the Secretariat will conduct a preliminary screening and may seek clarification or supplementary information from the project applicant. Failure to provide such information within a reasonable time frame will deem the application to be unsuccessful without further notice.
- 6.1.2 Unless an exception is granted (paragraph 6.1.3), an application must satisfy all requirements set out in Chapter IV (Eligibility) in order to be eligible for consideration by the CSI Vetting Committee and the Government.
- 6.1.3 If an application does not meet all the requirements set out in Chapter IV (Eligibility), the Secretariat shall refer the application to the CSI Vetting Committee which may, in its absolute discretion, recommend to the Government that exception to the Eligibility Criteria (whether or not in whole or in part and whether subject to qualifications or otherwise) be granted for that application. An exception will be granted if the Government, having considered the recommendations of the CSI Vetting Committee and in its absolute discretion, considers that an exception will achieve the objectives of the CSI.
- 6.1.4 If the Secretariat is satisfied that an application meets all the requirements set out in Chapter IV (Eligibility) or if the Government has granted an exception for that application, the Secretariat will submit the application together with its comments to the CSI Vetting Committee for consideration.
- 6.1.5 The CSI Vetting Committee comprises professionals,

representatives from the private sector, academics and other relevant members of the public. It assesses applications, makes recommendations to the Permanent Secretary for Culture, Sports and Tourism (PSCST) (referred below as “the Controlling Officer”), monitors and reviews the quality of approved projects.

- 6.1.6 The project applicant and its project team members may be required to attend assessment panel meetings to present their applications and answer questions.
- 6.1.7 Any individual application requesting funding support of more than \$10 million will be submitted to the Finance Committee of the Legislative Council for approval.
- 6.1.8 After receipt of recommendations from the CSI Vetting Committee, the Controlling Officer will consider, in his/her absolute discretion, whether or not to approve an application, taking into account the recommendations of the CSI Vetting Committee.

6.2 Assessment Criteria

- 6.2.1 Approval of applications depends on their individual merits.
- 6.2.2 The Government reserves the right to reject an application on grounds including:
 - (a) applications that are incomplete or contain incorrect information or fail to comply with the requirements set out in this Guide;
 - (b) a petition is presented or a proceeding is commenced or an order is made or a resolution is passed for the winding up or bankruptcy of the project applicant;

- (c) a false, inaccurate or incomplete statement or representation is contained in the application or a promise or a proposal is made knowingly or recklessly that it will not be able to fulfill or deliver such promise or proposal; or
- (d) the project applicant is in default of its obligation(s) under other project agreement with the Government.

6.2.3 If the Secretariat notices that a certain application involves breach of third party's intellectual property rights, the application will not be processed further and may be rejected unless the dispute or allegation has been satisfactorily resolved.

6.2.4 In considering an application, due consideration will be given to the following factors, wherever applicable:

- (a) the potential of the project in promoting and speeding up the development of creative industries in Hong Kong; in fostering a conducive environment in Hong Kong to facilitate creative industries development; and in building Hong Kong into a regional creative capital;
- (b) whether benefits accrued from the project can serve the interests of individual creative sectors or the entire creative industries as a whole, and not just an individual private company or a consortium of private companies;
- (c) whether the project is non-profit making by nature. Special consideration could be given for projects that can ultimately be self-financing;
- (d) whether the project objectives are in line with the seven strategic directions to drive the

development of the creative industries as set out in paragraph 2.4 of this Guide;

- (e) whether there is a demonstrated need for the project, or value can be added to the project with the CSI funding support;
- (f) whether the project is duplicating or likely to duplicate the work carried out by other entities;
- (g) the overall planning, organizational structure and duration of the project;
- (h) the capability of the project team, i.e. the project team's technical capabilities, project management capabilities, expertise, experience, qualifications, track record, and the resources available for the project;
- (i) whether the project is cost-effective and the proposed budget is reasonable and realistic, and whether the project has been funded or should be funded by other sources; and
- (j) any other special factors which are relevant and contribute towards the objectives of the CSI.

6.3 Avoidance of Conflict of Interest

6.3.1 To avoid conflict of interest, members of the CSI Vetting Committee will be required to declare whether they are directly or indirectly related to an application and, if so, will be refrained from participating in the discussion of that application.

6.4 Notification of Results

6.4.1 After considering the recommendations of the CSI Vetting Committee, the Controlling Officer may either

approve or reject the application. The applicants will be informed of the assessment result within 50 clear working days after receipt of full information of the application.

6.4.2 If an application is rejected, the applicant will be notified in writing and will be informed of the reason(s) for the decision. The applicant can, after revising the project details, re-submit the application. Please see paragraph 5.4 for details of re-submission.

6.4.3 If an application is approved and recommended for funding support, the project applicant concerned will be informed of the result together with any terms and conditions that may be imposed by the CSI Vetting Committee. The project applicant may need to revise its application accordingly before the funding support could be approved and issued ².

6.5 Withdrawal of Application

6.5.1 The project applicant can write to the Secretariat to withdraw its application at any time before the project agreement is signed between the Government and the project applicant.

² For projects requesting funding support of more than \$10 million, approval from the Finance Committee of the Legislative Council is required.

Chapter VII PROJECT AGREEMENT AND DISBURSEMENT OF FUNDS

7.1 Project Agreement

7.1.1 If an application is approved, a Letter of Approval will be sent to the applicant. The Letter of Approval will set out the amount of funding support to be offered, and the terms and conditions as set out by the Government.

7.1.2 The successful applicant will be required to sign and return the acceptance of offer attached in the Letter of Approval to the Government within the period specified therein (“Offer Period”) if it accepts the proposed grant of Government funding on the terms and conditions set out in the Letter of Approval. The Government may at any time before the Government’s receipt of the acceptance of offer duly signed by the successful applicant withdraw the proposed grant of the Government funding. The Government shall be deemed to have withdrawn the offer to make the proposed funding support to a successful applicant if the Secretariat does not receive the duly signed acceptance of offer on or before the expiry of the offer period, as set out in the Letter of Approval.

7.1.3 For each successful application, the project applicant will be the recipient of the approved funding support and has to sign a project agreement with the Government. The project applicant has to comply with all the terms and conditions laid down in the project agreement.

7.1.4 The project agreement shall contain the following:

- (i) the terms and conditions as set out in the Letter of Approval by the Government;

- (ii) the terms and conditions set out in this Guide; and
- (iii) the approved project proposal , or the final project proposal submitted through the computer system in the case of design projects.

7.2 Designated Bank Account

- 7.2.1 Unless otherwise approved by the Secretariat, the project applicant is required to keep a designated bank account solely and exclusively for the purpose of the project. The applicant shall keep the project funds separate from other monies belonging to the applicant.
- 7.2.2 The applicant shall deposit the approved project funds into the above mentioned designated bank account only.
- 7.2.3 The project funds and all other receipts relating to the project will be paid into and all payments relating to the project to be paid out of the designated bank account.
- 7.2.4 All receipts and payments in respect of the project should be properly and timely recorded.

7.3 Disbursement of Approved Funding Support

- 7.3.1 The first instalment will only be effected after the project agreement has been duly signed and the project applicant has submitted all the required documents.
- 7.3.2 The approved funding support will be disbursed by instalments on satisfactory performance of appropriate milestones, and strictly in accordance with the terms and conditions as set out in the project agreement. Unless otherwise stated in the project agreement,

disbursement of the approved funding support will normally be made by two instalments, one at the commencement of the approved project and the other upon project completion.

7.3.3 Subject further to paragraph 10.2 below, disbursement of the last instalment of the CSI project funds will be made only upon the following –

- (a) successful implementation of the project and production of the project deliverables in accordance with the project proposal by the completion date specified in the project proposal or by such other date as the Secretariat may approve in writing;
- (b) the due compliance with the project agreement;
- (c) the submission of the completion report and the final audited account report in form and substance to the satisfaction of the Secretariat and complying with the reporting requirements set out in paragraphs 9.1.3 and 9.1.4, within four months after the project completion date specified in the project proposal or by such other date as the Secretariat may approve in writing; and
- (d) evidence showing that all committed sponsorship (if any) have been in place.

7.3.4 The Secretariat reserves the right to withhold any further payment to the project if in the opinion of the Secretariat a large amount of funds remain unspent in the project account or if there is any delay in submission of the completion report or the completion report does not comply with our requirements.

7.3.5 Interest income derived from project funds will be kept

by the project applicant for use in the projects concerned during the project period. Any unused balance upon the completion of the project will be returned to the Government.

Chapter VIII PUBLICITY AND ACKNOWLEDGEMENT

- 8.1 The project applicant should be responsible to publicize the project and follow-up action with a view to maximize benefits to local creative industries. It should also provide the Secretariat with information about the events and the project achievements so that the Secretariat may put it on its website.
- 8.2 The project applicant shall acknowledge the funding support from CreateHK in publicity/media events as well as in publications (including but not limited to press releases, promotional literatures, websites, etc.) issued to promote the project. If CreateHK's logo, and the names of CreateHK and CSI are mentioned in these publications, the project applicant is required to seek the Secretariat's approval of the publications prior to production. However, the Secretariat reserves the right to require the project applicant to immediately cease and desist from using any promotional materials in which any references to the Government, CSTB and CreateHK is found. The following disclaimer should also be included in any publications and media events related to the funded project —

“The Government of the Hong Kong Special Administrative Region provides funding support to the project only, and does not otherwise take part in the project. Any opinions, findings, conclusions or recommendations expressed in these materials/events (or by members of the project team) are those of the project organizers only and do not reflect the views of the Government of the Hong Kong Special Administrative Region, the Culture, Sports and Tourism Bureau, Create Hong Kong, the CreateSmart Initiative Secretariat or the CreateSmart Initiative Vetting Committee.”

- 8.3 The project applicant shall provide the Secretariat with details of the project achievements, if any, including creation of intellectual property in which intellectual property rights subsist, successful marketing and commercialisation of the project deliverables and

awards. The Secretariat may from time to time disclose to the public details of such project achievements including announcing them on the web or through publications or by showcasing at exhibitions for publicity and reference. The Secretariat may also publicise the details of approved project and contact information of the project applicant on the web for public information.

Chapter IX OBLIGATIONS

9.1 Reporting Requirements

- 9.1.1 The project applicant will be required to submit a completion report and an audited account report, duly certified as accurate by an auditor approved by the Government, on the final financial position. The project applicant may also be required to submit progress report(s). The project agreement will specify the reporting requirements of the project concerned.
- 9.1.2 The progress report if required should be in a standard format provided and stipulated by the Secretariat. It should include details on progress of the project and a financial statement on cash basis on the latest financial position.
- 9.1.3 The completion report and the final audited account report, duly certified as accurate by an auditor approved by the Government, should be submitted within four months from either the project completion date or earlier termination date of the project agreement. The project applicants will be informed of the evaluation result within 50 clear working days after receipt of full information of the completion report.
- 9.1.4 The completion report should include details of the results, performance, achievements and evaluation of the project. The completion report should be submitted together with an audited account report (duly certified as accurate by an auditor³ approved by the Government) on accrual basis on the final financial position of the project audited by an auditor as arranged by the project applicant to assure that the project funds were fully and

³ An auditor means a certified public accountant who for the time being is registered as such under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of that Ordinance.

properly applied to the project for which they were paid, received and expended in accordance with the approved project budget. The audited account report shall be prepared in accordance with the latest version of the Notes for Auditors of Recipient Organizations issued by the Secretariat. Such financial statement shall contain an audited statement of the total expenditure and incomes of the project.

- 9.1.5 A standard format for the completion report will be provided and prescribed by the Secretariat.
- 9.1.6 The project applicant may be required to make presentation(s) of the outcome of their project to the CSI Vetting Committee, and to report the commercialisation status of the project deliverable(s) if applicable.
- 9.1.7 The actual expenditure for external audit fees relating to the project and arising from compliance with the provisions of the CSI agreement could be included in the budget, subject to the following requirements –
- (a) a project costing less than \$1 million: A maximum of \$5,000 to be included in the budget;
 - (b) a project costing between \$1 million and \$5 million: A maximum of \$10,000 to be included in the budget; and
 - (c) a project costing more than \$5 million: A maximum of \$20,000 to be included in the budget.
- 9.1.8 The project applicant should keep all financial statements, books and records of the project for at least seven years after either the project completion date or earlier termination date of the project agreement, or as otherwise specified by the Secretariat within that

seven-year period, and allow for inspection at any time.

9.1.9 The Director of Audit may conduct an examination into the economy, efficiency and effectiveness with which the project applicant has used the project funds. The Director of Audit shall have a right of access at all reasonable times to all such documents or information in the custody and control of the project applicant as he may reasonably require for conducting an examination and shall be entitled to require, from any person holding or being accountable for any such document or information, such information and explanation as he considers reasonably necessary for that purpose. The Director of Audit may report to the Controlling Officer and the President of the Legislative Council the results of an examination conducted by him.

9.1.10 The project applicant may be required to complete and return a post-project evaluation questionnaire for its project to report on the efforts in publicizing the project and the comments of the project by the beneficiaries, and to provide quantitative measurement on the benefits to the creative sectors concerned or the creative industries as a whole, and adoption of the project achievements by the industry.

9.2 Procurement Procedures

9.2.1 The project applicant should ensure that all procurements for goods and services should be carried out in an unbiased and fair manner and must comply with the following procedures unless the Secretariat agrees otherwise:

- (a) for every procurement the aggregate value of which is more than \$5,000 but less than \$10,000, quotations in written form from at least two suppliers or service providers should be obtained;

- (b) for every procurement the aggregate value of which is \$10,000 or more, but less than \$500,000, quotations in written form from at least three suppliers or service providers should be obtained; and
- (c) for every procurement the aggregate value of which is \$500,000 or more, quotations in written form from at least five suppliers or service providers should be obtained.

In all the three scenarios above, the supplier or service providers (as the case may be) that has submitted the lowest bid should be selected. If the lowest bid is not selected, full justifications must be given.

9.2.2 In case the project applicant intends to procure goods or services from one supplier or service provider, it shall seek prior approval from the Secretariat. In this regard, it should submit for the Secretariat's consideration details, including but not limited to its relationship with the supplier or service provider concerned and justifications for not following the open procurement process set out in paragraph 9.2.1 above.

9.2.3 All quotations under the project should be kept for a period of at least seven years from the completion of the project or the date of termination of the project agreement, whichever is later, and shall be made available without delay for the Secretariat's inspection upon request.

9.3 Hiring of Project Staff

The project applicant is required to abide by the principle of openness and competitiveness in hiring staff for the approved project

9.4 Title to Equipment

9.4.1 The title to all equipment procured under a CSI project shall vest with the project applicant. Upon the completion or termination of the project under paragraph 10.2 below, the Controlling Officer may require the project applicant to dispose of the equipment at market price or make other arrangements for disposal in accordance with the procedure agreed by the Controlling Officer. The project applicant shall comply with such requirement. The sales proceeds from such disposal shall be apportioned between the project applicant and the Government in proportion to their contributions to the total project cost.

9.5 Return of Residual Funds

9.5.1 The project applicant should return to the Government all residual CSI funds remaining in the project account mentioned in paragraph 7.2.1 above upon completion of the project or earlier termination of the project agreement within two months after such completion or earlier termination. The Secretariat may take such action as may be deemed necessary in the event of any unreasonable delay in the return of residual funds and interest income to the Government.

9.6 Intellectual Property Rights⁴

9.6.1 The project applicant is required to inform the Secretariat of any Intellectual property rights that may arise under the performance of the project and how such intellectual property rights would be handled, including the ownership, acquisition, use and access

⁴ Intellectual property rights means patents, trade marks, service marks, trade names, design rights, copyrights, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights.

rights. The Government may impose terms and conditions in the project agreement on this aspect. The project results, deliverables and related events are expected to make available to the public.

9.6.2 Any intellectual property rights derived from the project will be owned by the project applicant.

9.6.3 If necessary (such as when public interests are involved or in order to fulfill the objective of providing support to the community and the industries), the project applicant may be requested to grant unconditionally to the Government and parties acting on behalf of the Government a non-exclusive, perpetual, irrevocable, royalty-free worldwide licence to exploit or dispose of the relevant intellectual property rights or, when the project applicant does not have the ownership, to procure the grant of the requisite licence.

9.6.4 Agreement between the project applicant and the collaborating party (or parties), should be made on the sharing of the royalties or any other sorts of income to be generated from the project achievements. Brief description of such arrangement should be available for the Secretariat's reference.

Chapter X PROJECT VARIATION

10.1 Modification and amendment

- 10.1.1 An approved project is required to be carried out strictly in accordance with its proposal appended to the project agreement. Any modification, amendment or addition to the project or the agreement, including change of the project commencement or completion dates, key project staff or key equipment, scope, methodology, project deliverables, budget (other than circumstances set out in paragraph 10.1.3 of this Guide), sponsorship, income or cash flow projection, will require prior written approval by the Secretariat.

- 10.1.2 For any modification or amendment in any aspect to the project, the project coordinator should seek the approval from the Secretariat well in advance by submitting an official amendment request in writing.

- 10.1.3 For budget control purpose, the actual expenditure for any individual item may exceed at most 15% of the approved budgeted expenditure for that item if this does not result in any increase in the overall total approved project cost and in the total amount of CSI project funds approved and that all expenditure follows the relevant requirements set out in this Guide.

- 10.1.4 Justification is required to be disclosed for any spending in excess of the approved budget items in the relevant progress report, if applicable, and/or completion report. Notwithstanding this, prior written approval is required to be sought from the Secretariat if budgeted expenditure is to be transferred to any unbudgeted expenditure item (e.g. new/alternative equipment item, new project staff, revised number/rank of the project staff, new/alternative consumable item.) The final decision on whether certain items of income

and/or expenditure should/can be included/charged to a project vests with the Secretariat.

10.1.5 Failure to comply with the project proposal and the project agreement will entitle the Government to abstain from releasing the project funds to the project applicant.

10.2 Suspension or Termination of Funding Support

10.2.1 The Controlling Officer reserves the right to cease to provide any further funding support if any event(s) of fault has occurred and the project applicant fails to remedy the event(s) of fault (paragraph 10.2.3 of the Guide) within a specified time limit.

10.2.2 The Secretariat reserves the right to terminate or suspend the funding support to a project and the project agreement by serving one month's notice to this effect at any time and demand immediate return of all or part of the disbursed project funds with interest to accrue in accordance with paragraph 10.3.2 and hold the project applicants liable for any loss or damages the Government may sustain if the project applicant is in breach of any of the terms and conditions of funding and undertakings made for the approved projects.

10.2.3 The Controlling Officer reserves the right to suspend or terminate the funding support to a project and the project agreement for reasons including, but not limited to:

- (i) non-compliance with all or any of the terms and conditions as set up in the project agreement; or
- (ii) lack of progress of the project in a material way; or
- (iii) slim chance of completion of the project in

accordance with the project proposal; or

- (iv) the original objectives of project are no longer relevant to the needs of the creative industry as a result of material change in the circumstances; or
- (v) objectives and relevance of the project have been overtaken by events; or
- (vi) The Controlling Officer sees need to suspend or terminate the project in public interest.

10.2.4 Upon such suspension or termination, the project agreement shall cease to have effect and no funds will be made available to the project applicant, but without prejudice to:

- (a) any rights and claims accrued to the Government prior to such suspension or termination including those arising from any non-compliance by the project applicant with the project agreement; and
- (b) any provisions of the project agreement which are required by the context or are otherwise expressed to continue in force and effect notwithstanding the completion of the project or the suspension or termination of the project agreement.

10.3 Management of the Funding Support

10.3.1 The Controlling Officer reserves the right to require the project applicant to return project funds, in whole or in part, together with interest to accrue in accordance with paragraph 10.3.2 if any of the following events occur:

- (a) non-compliance with all or any of the terms and conditions as set up in the project agreement; or

- (b) without prejudice to the generality of the foregoing, any project funds not having been expended in accordance with Chapter XI (Unallowable Costs); or
- (c) any warranty or representation made by the project applicant in its application or in the project agreement or in the completion report is incorrect, incomplete or false.

10.3.2 Interest shall accrue from the date of disbursement by the Government of the project funds up to the date of actual refund in full by the project applicant, at the average best lending rates quoted by the note-issuing banks in Hong Kong. Such interest shall accrue on a daily basis and in a year of 365 days.

10.3.3 Any record of mishandling of public funds or lack of discipline in financial management or non-compliance with the terms and conditions of the project agreement or any other irregularity is a factor which the Secretariat or other Government departments or bureaux will take into account in considering future applications from the same applicant or the same project team members.

Chapter XI UNALLOWABLE COSTS

11.1 Manpower

11.1.1 Unless otherwise agreed by the Secretariat, the funding support should not be used to pay any emolument to a person who is already on the payroll of the project applicant⁵. This principle should apply irrespective of whether the relevant service/work is carried out within or outside normal working hours of the person concerned.

11.1.2 Unless otherwise agreed by the Secretariat, the funding support can only be used for non-recurrent expenditure⁶.

11.1.3 In general, project funds should only be expended by the project applicant in carrying out the project in accordance with the budget set out in the approved project proposal. Unless otherwise agreed by the Secretariat, the project funds shall not be used to cover the following expenditure items:

- (a) annual salary increment, except cost of living adjustment at a rate comparable with and applicable to civil service;
- (b) gratuities, fringe benefits and allowances other than employer's contribution to the Mandatory Provident Fund; and
- (c) creation of any civil service posts.

⁵ If a deployment is absolutely necessary for the project and has obtained prior approval by the Secretariat, project coordinator and key project team members may charge their efforts to the project on a full-time basis or a pro-rata/hourly basis. A monthly time-sharing record of their working time devoted to the project should be maintained. Applicants are strongly advised to provide justifications at the time of application so that the Secretariat and the CSI Vetting Committee can have a more thorough review of the case.

⁶ Under exceptional circumstances where the approved project consists of a recurrent item (e.g. staff cost), the funds approved can only be of a one-off nature.

11.2 Equipment

11.2.1 Project funds cannot be used to cover:

- (a) rental/time cost of existing equipment owned by the project applicant; and
- (b) depreciation/amortization or provisions not representing actual expenses incurred.

11.2.2 For general office and IT equipment specifically required for the project, they have to be either included in the approved budget or the funding of which has been specifically approved by the Secretariat, or otherwise the costs of such items cannot be charged to the project account.

11.3 Other Direct Costs

11.3.1 In general, project funds cannot be used to cover:

- (a) building facilities (including office and accommodation) - rates; rental; renovation; operation, repair and maintenance expenses;
- (b) costs of setting up office or forming association;
- (c) charges for electricity, gas, water, telephone, fax;
- (d) shuttle bus services and travelling expenses between accommodation and workplace;
- (e) general administration and office and overhead expenses not directly related to the project;
- (f) staff-related costs – provident fund handling charges, staff training and development costs and staff facilities;

- (g) meals for project staff (except for voluntary helpers);
- (h) entertainment expenses including but not limited to food and beverage expenses (except for light refreshments such as for coffee breaks and receptions);
- (i) any prizes, either in the form of cash or other types of souvenir;
- (j) advertisement (except for disseminating the project information; or recruitment of staff listed in the approved budget or subsequently approved by the Secretariat);
- (k) costs related to prior/subsequent year(s)/ period(s) adjustment(s);
- (l) capital financing expenses, e.g. mortgage and interest on loans/ overdrafts; and
- (m) charges for services provided by the project applicant - accounting services, personnel services, procurement services, library services, security services, cleansing services, legal services, and central and departmental administrative services.
- (n) Unspecified cost items such as miscellaneous, sundry and contingency.

11.3.2 The above list is not exhaustive. The project applicant should consult the Secretariat if it has any doubts about whether an item could be charged to the project.

11.3.3 Notwithstanding para. 11.3.1 above, certain

educational institutions⁷ are allowed to include administrative overheads as part of the project cost in the project budget. The administrative overheads to be included in the project budget can be at most 15% of the institution's manpower cost requested for the project. Disbursement however will be capped at 15% of the institution's manpower cost utilised for the project within the approved budget.

⁷ These institutions include the UGC-funded universities, and Vocational Training Council and institutes thereunder.

Chapter XII MISCELLANEOUS PROVISIONS

12.1 Prevention of Bribery

12.1.1 The project applicant shall observe the Prevention of Bribery Ordinance (Cap. 201) (PBO) and shall advise their employees, subcontractors, agents and other personnel who are in any way involved in the project that they are not allowed to offer to or solicit or accept from any person any money, gifts or advantage as defined in the PBO in the conduct of or in relation to the project.

12.1.2 The offer of an advantage to the Secretariat or any member of the CSI Vetting Committee with a view to influencing the approval of an application is an offence under the PBO. Any such offer by any of the project member(s), applicant(s) or their employee(s) or agent(s) will render the application null and void. The Government may also cancel the application approved and hold the project applicant concerned liable for any loss or damage, which the Government may sustain.

12.2 Representations and Warranties

12.2.1 The authorized signatory of the project applicant represents and warrants that:

- (a) the project will be performed and completed in an impartial, timely and diligent manner;
- (b) all information supplied, and statements and representations made by or on its behalf in its application for the project fund, the project proposal and in the course of conducting the project, or otherwise contained in the completion reports, financial statements or project materials are true, accurate and complete;

- (c) it shall comply, and shall ensure every person employed or engaged by it for the purposes of the project complies, with all applicable laws and regulations in the conduct of the project;
- (d) if the application is approved, the project agreement will have been duly executed by it and all terms and conditions in the project agreement constitute legally binding and valid obligations on its part in accordance with their terms.

12.3 Indemnity

12.3.1 If the application is approved, the project applicant shall indemnify and keep indemnified the Government from and against:

- (a) all and any claims, actions, investigations, demands, proceedings, threatened, brought or instituted against the Government; and
- (b) all liabilities (including liability to pay compensation and damages), damages, losses, costs, charges and expenses which the Government may sustain or incur (including all legal and other costs, charges, and expenses, on a full indemnity basis, which the Government may pay or incur in relation to any claim action or proceeding instituted by or against the Government), which in any case arise directly or indirectly from, or as a result of, or in connection with, or which relate in any way to –
 - (i) any accidental damage to property or personal injury or death suffered by any person in the connection with or in course of or as a result of any activity (indoor or

outdoor) organized or carried out by the project applicant in the performance of the project;

- (ii) the breach by the project applicant of any provision in the grant agreement;
- (iii) the negligence, recklessness, or willful misconduct of the project applicant or of any of their employees, agents, consultants or contractors in the conduct of the project; or
- (iv) the project or the project deliverables or materials developed or produced or created in the project or any part thereof infringes or is alleged to infringe the intellectual property rights of a third party.

12.4 Personal data

12.4.1 The personal data provided as part of the application process will be used by the Government to process the application, and to conduct research and surveys, and to enforce its rights and powers under the project agreement (if one is awarded). The provision of personal data by means of this application is voluntary. However, if the applicant does not provide sufficient information, it may not be able to process its application.

12.4.2 The personal data provided in the application may from time to time be disclosed to other Government bureaux, commissions and departments for the purposes mentioned above. However, in the interests of transparency of the operations of the CSI, by signing and submitting an application, a successful applicant consents to the disclosure of details of the project to the public. Even if an application is not successful, by

submitting an application, the applicant shall be deemed to have consented to the disclosure of the name of the applicant, project title and amount of funds sought to the public for general information.

12.4.3 Applicants will have the right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance, Cap. 486 (PDPO). The applicant's right of access includes the right to obtain a copy of the personal data provided in the application.

12.4.4 The person to whom access to data or correction of data or for information of the policies and practices and kinds of data held is to be addressed as follow:

Senior Executive Officer (Administration)
Culture, Sports and Tourism Bureau
Address: 21/F, West Wing
Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

E-mail: cstbenq@cstb.gov.hk

12.5 Relationship of the Parties

12.5.1 If the application is successful, the project applicant enters into the project agreement with the Government as a grantee and shall not represent itself as an employee, servant, agent or partner of the Government.

12.5.2 All rights and powers of the Government under the project agreement may be exercised by the Controlling Officer or the Secretariat or such other Government officer as specified herein. The Secretariat acts for the Controlling Officer. All powers exercised by the

Controlling Officer and/or the Secretariat are exercised for and on behalf of the Government.

12.6 Assignment

12.6.1 None of the project applicant may assign transfer, dispose of or otherwise deal with any of its rights or obligations under the project agreement, or purport to do so without the prior written consent of the Government.

12.7 Governing Law and Jurisdiction

12.7.1 A project agreement if awarded shall be governed by and construed in accordance with the laws of Hong Kong. Each of the parties thereto will be subject to the exclusive jurisdiction of the courts of Hong Kong.

12.8 Enquiry

12.8.1 Enquiries regarding the application for funding support under the CSI should be addressed to the Secretariat:

Address: Create Hong Kong
CreateSmart Initiative Secretariat
30/F, Immigration Tower
7 Gloucester Road
Wanchai
Hong Kong

Telephone: (852)2294 2774
(for non-design-related initiatives)
(852)2294 2786
(for design-related initiatives)

Fax: (852)3165 1389
E-mail: createsmart@createhk.gov.hk
Website: <http://www.createhk.gov.hk>

Create Hong Kong
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