



Terms and Conditions of Membership

The following terms and conditions shall apply to all Members of the Take it away Scheme (“the Scheme”) operated by Creative United and shall apply to the exclusion of all other terms and conditions, express or implied.

1. The Member’s obligations

- 1.1 The Member agrees to abide by and be bound by these Terms and Conditions.
- 1.2 The Member will at all times:
 - a) comply with the requirements of the Consumer Credit Act 1974 (as amended) including all regulations made thereunder; and
 - b) comply with any Operating Instructions and Procedures issued by the Credit Provider from time to time (“the Scheme Operating Procedures”)

2. The Scheme

- 2.1 The Take it away Scheme (“the Scheme”) is an Arts Council England initiative operated by Creative Sector Services CIC trading as Creative United (“Creative United”, “we/us”) to provide approved retailers of approved retailers of musical instruments (“Members”) with the ability to offer their customers interest-free loans to enable them to purchase musical instruments.
- 2.2 The Scheme is run by Creative United, currently in partnership with Secure Trust Bank PLC, trading as V12 Finance (“the Credit Provider”) which provides the loans to customers.
- 2.3 The Take it away ‘stamp’ logo is a registered trademark of Creative United.
- 2.4 For these purposes “musical instrument/s” may be described as wind (which may be subdivided into woodwind and brass), percussion, string, keyboard, and electronic instruments. Peripherals to these instruments such as bows, piano stools, amplifiers, contact microphones, music stands, and tuition may be included but only where an instrument is included as part of the sale and included on the credit agreement.
- 2.5 Public Address (PA) systems and computer hardware/software may not be included as part of the credit agreement.

3. Applications for membership

- 3.1 Scheme Membership is open to sole traders, partnerships, companies or charities operating in England. Where an applicant is a sole trader, the Member must be over 18 years of age.
- 3.2 Members must operate a UK bank account, and be capable of administering standard banking procedures on regular payments and BACS payments from their trading premises or registered offices.
- 3.3 By signing the Application Form the prospective Member agrees to be bound by the Scheme Terms of and Conditions of Membership in the form required by us and consents to Creative

United and the Credit Provider using the information to carry out credit reference enquiries of credit agencies and to undertake enquiries of the bankruptcy registers, electoral roll registers and Companies House registers.

- 3.4 We and the Credit Provider will assess all applications against the Criteria for Membership set out for convenience below. We may revise the Criteria from time to time. If you are unsuccessful we or the relevant Scheme Partner will inform you in writing, giving reasons.
- 3.5 If accepted for membership, Members must be willing to undertake mandatory training on a date to be arranged by us at our discretion. Failure to complete any mandatory training may lead to a suspension of membership until the training is completed.
- 3.6 As a pre-condition of admission to the scheme, all Members must sign an agreement between the Credit Provider and the Member in the form required by the Credit Provider ("the Credit Provider Agreement")
- 3.7 All Members must promptly complete and submit to us an annual survey in a form required by us, which we will use for evaluation and monitoring purposes.
- 3.8 We reserve the right periodically to review and reassess each Member's participation in the Scheme, to ensure that they continue to meet the standards and Criteria for Membership and are meeting all their obligations under these Terms. If not satisfied that you are in compliance we will inform you of the reasons and if you continue to fail to meet our standards we reserve the right to suspend or terminate your Membership at any time.

4. Criteria for Membership of the Scheme

- 4.1 The overall criterion is that the prospective member should be committed to promoting and selling musical instruments appropriate for the needs of all musicians, from entry level through to aspiring professionals. Creative United and Arts Council England seek to support musical instrument retailers who can provide specialist advice and support to a wide range of customers, particularly those who are new to music.
- 4.2 For assessment of applications, prospective members will be expected to meet the following criteria:
 - 4.2.1 To specialise in the sale of musical instruments appropriate for musicians across a range of abilities, and to offer before and after sales support and advice to all customers appropriate to their needs;
 - 4.2.2 To have been trading for a minimum of 12 months at the time of application and to be able to supply audited or independently inspected accounts for the previous year's trading demonstrating that the company has a positive net worth;
 - 4.2.3 To maintain a well-managed retail space, where the general appearance and style of display is accessible and of a high standard.
 - 4.2.4 For **members selling work online**, the design and layout out of the website must design and layout out of the website must be clear, accessible and user friendly;
 - 4.2.5 To undertake regular marketing activities in the promotion of the profile of the shop and its range of goods and services. These activities should include an appropriate mix of:
 - a) maintaining an up-to-date visitor mailing list
 - b) production of appropriate advertising and publicity material
 - c) regular mail shots
 - d) regular press releases

- e) maintenance of a website for the business or web presence on appropriate shared sites;
- 4.2.6 To embrace the ethos of Take it away and actively encourage music participation and instrument ownership across all sectors of society by providing appropriate customer service and advice when needed;
- 4.2.7 To operate from retail premises based in England which is open and available for customers to attend in person;
- 4.2.8 To have regular, advertised opening/office hours and not be open solely on an appointment basis;
- 4.2.9 To employ fully trained and well informed staff available during published working/office hours to talk to customers about the Scheme as well as being able to effect a sale. Internet based businesses must provide contact information on their website including a telephone number for enquiries and the hours during which staff are available;
- 4.2.10 To maintain appropriate standards of professional conduct and courtesy at all times;
- 4.2.11 To make available to all customers accurate and detailed information about the products available, including price lists and other information that may assist the customer in making their purchase
- 4.2.12 To operate a UK bank account capable of accepting payments by BACS;
- 4.2.13 To be (or be able to become) authorised and regulated by the Financial Conduct Authority under the Consumer Credit Act 1974 (as amended) covering the category of limited permission credit brokerage. This is a legal requirement. *(Please note: Creative United advises that a prospective Member which is not already authorised should not apply to the FCA until formally accepted for membership of the scheme. Any acceptance will be conditional upon the member obtaining such authorisation);*
- 4.2.14 To be prepared to attend training as required;
- 4.2.15 To participate in ongoing evaluations of the Scheme to monitor achievements against objectives (which we will use to share information and statistics with Scheme Partners on audiences, turnover and payments relating to the Scheme including ensuring the return of point-of-sale Customer Questionnaires to be completed by all customers applying successfully for a Scheme loan;
- 4.2.16 To advertise and promote the Retailer's membership of the Scheme in an effective means such as by displaying appropriate signage and customer information about the scheme both in the venue itself and on the Retailer's website;
- 4.2.17 To comply with the Take it away Brand Guidelines in the promotion of the Scheme;
- 4.2.18 To continue offering Take it away as a payment option for customers once the available loan subsidy quota allocation has been expended.

5. Financial Conduct Authority ("FCA") Authorisation

- 5.1 As a participant in the Scheme, Members will be involved in activities relating to credit and therefore as required by the Consumer Credit Act 1974 as amended ("the Act"), all Members must be authorised by the FCA under the Act, at least covering the category of limited permission credit brokerage ("being authorised"). Failure to be authorised at all times could result in:-
 - a) refusal of entry to the Scheme;
 - b) termination of existing membership;

- c) committing a criminal offence; and
 - d) the inability of the Member to carry out any consumer credit business in future.
- 5.2 We reserve the right to terminate your membership if your authorisation is revoked or you fail to renew it when it expires.
- 5.3 You must at all times comply with the requirements of authorisation. A guide to fulfilling these requirements has been published by the FCA (see Annex: [‘Being Regulated: A Guide for Consumer Credit Firms’](#)).
- 5.4 The Member warrants, represents and undertakes to Creative United that any actions carried out under the Scheme by the Member, or the Member’s employees and agents, will be competently performed and of a standard expected of a business carrying out consumer credit business under, the Consumer Credit Act 1974, as amended.
- 5.5 Creative United warrants that:
- a) in relation to any credit advertisement the contents of which are provided by Creative United to Members for use under the Scheme are legal, decent, honest and truthful and comply with the Consumer Credit (Advertisements) Regulations 2004 (as amended), the Consumer Credit Directive 2010, and all other relevant codes under the supervision of the Financial Conduct Authority or Advertising Standards Authority;
 - b) no documents, material, data or other information provided by Creative United to the Member for use under the Scheme, will infringe any Intellectual Property rights owned by third parties.

6. Credit Terms and Procedures

- 6.1 The Scheme is intended to offer interest free credit on a sum between £100 and £5,000 to qualifying individuals subject to status (subject to change). We hope to support all loan applications, but our capacity to do so will always depend on the level of demand from customers and the availability of resources.
- 6.2 In order that we can operate the scheme effectively within budget, each participating Member will (at the discretion of Scheme Partners) be issued a subsidy quota allocation. The value of the quota will be set at the start of each financial year and will vary according to the projected needs of each business and shall also be dependent on the number of Members participating in the Scheme. Once this quota has been expended, the Member shall be responsible for funding the full cost of any further loan applications for the remainder of the financial year at the prevailing unsubsidised rate as determined by the Credit Provider under its agreement with Creative United.
- 6.2.1 Participating Members may request that Creative United review their subsidy quota allocation in order to facilitate increased sales through the Scheme should their business need vary significantly from the projection made at the start of the financial year. Any renegotiation of quota allocations will be strictly at the discretion of the Scheme Partners, subject to their resources, and will not be precedential.
- 6.3 The Scheme does not offer credit to businesses, i.e. sole traders, partnerships or companies. Members must ensure that all applications for credit are only completed by individuals (i.e. natural persons) and then make it clear that the application for consumer credit is subject to acceptance by and at the discretion of the Credit Provider. The Member should also make clear to the customer that it is not the Member’s decision whether the customer is offered interest free credit under the Scheme but a decision of the Credit Provider whose decision is final.

6.4 Loans are not available to customers who have disclosed to a Member in the course of enquiry about the Scheme, that they

- a) intend to reside abroad or
- b) intend to relocate abroad for a substantial period of time, or
- c) are persons domiciled abroad, or
- d) are persons who are under the age of 18 years of age or
- e) are non-UK citizens.

If a Member is in any doubt, the Member should raise its concern with the Credit Provider before submitting the loan application.

6.5 Loans are available to staff of Members provided that the applicant has the permission of a Company Director or the Business manager who must process the loan application.

6.6 Loans are repayable by the customer to the Credit Provider by direct debit only, commencing in accordance with the terms of the loan agreement, in equal monthly instalments (subject to minimum monthly repayment of £10).

6.7 Any loan application must contain the full particulars of the customer in order to identify the customer accurately. A customer may apply for one or more concurrent or consecutive loans under the Scheme to buy one or more musical instruments.

6.8 Members may advise the customer that there are several factors involved in a decision to offer interest free or low rate credit on any particular sale, only some of which relate to customer's personal circumstances. Unsuccessful applicants should be given the Credit Provider's standard 'Decline' letter.

6.9 If the musical instrument/s cost more than the particular loan available to the customer, the customer must pay the balance of the purchase price to the Member before the goods are released to the customer. If the Member releases the goods before the full price is paid, the Member shall bear the risk of any amount unpaid.

6.10 A customer may repay the loan at any time without penalty for early repayment except for any allowance that may be permitted to the Credit Provider by the Consumer Credit (Early Settlement) Regulations 2004.

6.11 If a sale of a Musical Instrument has been concluded in accordance with these Terms, the default, death or bankruptcy of the customer should not affect the Member. The loan agreement will continue to bind the estate of the deceased or bankrupt customer, and his or her personal representatives.

6.12 Only authorised and approved current versions of the Credit Provider's loan agreement can be used for the Scheme. The Credit Provider will notify Members, in writing, of any new issues of the loan agreement from time to time.

6.13 A sale will be complete when the loan has been approved and the customer has signed the agreement and direct debit mandate.

6.14 The decision of the Credit Provider as to whether to grant or decline a loan application is final and no reasons need be given.

7. Loan Subsidy and Fees

7.1 Members will be required to pay the Credit Provider a fee equal to a fixed percentage of the amount of each loan ("the Fee"). The Fee is subject to review and may be changed from time to time at our sole discretion. We will notify Members of any changes in writing.

- 7.2 The Fee will be deducted by the Credit Provider from the loan amount financed under the loan agreement.
- 7.3 The Member may not charge the customer any part of the Fee or any other charge for credit, or charge the customer any amount other than the Total Cash Price of the goods, plus (where applicable) any delivery charge. To do so may render the loan agreement unenforceable and may also result in termination of membership of the Scheme. If a Member is found to have breached this term, or any of the other Terms, we also reserve the right to invoice the Member for the full cost of the loan at the unsubsidised rate chargeable by the Credit Provider.
- 7.4 The funding from the Credit Provider, paid or retained, shall be deemed to include Value Added Tax ("VAT") if applicable, and Members who are registered for VAT must account to HMRC for any VAT due on each sale accordingly.
- 7.5 All payments fees and charges will be calculated and paid in sterling.

8. Data Protection

- 8.1 The Member undertakes to Creative United that all processing by the Member of customer records and any other processing of personal data carried out by the Member or on the Member's behalf under the Scheme shall at all times comply with the Data Protection Act 1998, as amended ("the DPA"). For the purposes of this and the following paragraph the terms "processing" and "personal data" shall be interpreted in accordance with the DPA.
- 8.2 If required under the Data Protection Act 1998 ("DPA") Member Retailers must notify their personal data processing activities to the Office of the Information Commissioner and are responsible for complying with their obligations under the DPA, including (but not limited to) the need to process personal data fairly and keep it securely.
- 8.3 The Member undertakes that in the event that Creative United and the Member are found to be joint data controllers and/or data controllers in common of any personal data the Member will indemnify Creative United and keep Creative United indemnified in respect of all costs and expenses (including but not limited to legal costs and expenses) and all damages (including but not limited to any damages or compensation payable by either party on the advice of their respective legal advisers to compromise or settle any claim) arising out of any and all actions, claims, and proceedings which may be made or brought against Creative United (whether separately or as joint defendants) relating to or in consequence of the processing of the personal data by the Member (or on the Member's behalf) in breach of Paragraph 8.1.
- 8.4 Any personal data given by any prospective Member in the course of the application for Membership and any information subsequently provided whilst a Member of the Scheme, will be held by us and may be shared with the Credit Provider and the Scheme Partners. The personal data will be used to enable the Credit Provider to conduct credit reference, bankruptcy and other relevant inquiries about the Member Retailer and subsequently for Scheme administration purposes.

9. Records and Information

- 9.1 The Member agrees to keep true and accurate books and records relating to all Scheme transactions including amounts received from the customer and the Credit Provider in relation to each loan, customer invoices, the date of each loan and the categories of instruments and services purchased and to make such records available for inspection and copying by Creative United or Creative United's appointed representatives during normal business hours, on reasonable notice.

9.2 The Member agrees if Creative United requests to have the Member's books and records relating to business under the Scheme independently examined annually by a recognised, independent examiner approved by Creative United at Creative United's cost; any report shall be made available to both parties to this on request and shall contain an opinion as to whether the loan agreements and financial amounts are in accordance with the terms of this these Terms and Conditions.

10. Promotional Literature

These Terms describe the Scheme and the conditions and procedure governing its operation. All descriptions of the Scheme and all advertisements, statements and announcements relating to it must be consistent with the Consumer Credit Act (and all regulations made under the Act) and compliant with the FCA guidelines, as well as these Terms, and must include the Scheme logo and the logo of the relevant Scheme Partner.

11. Management Information

Our duly authorised representatives may from time to time visit any Member without prior notice during working hours to monitor the Member's compliance with the Terms of the Scheme. The Member will co-operate fully with the authorised representatives' reasonable requests.

12. Variation of the Terms and Termination of the Scheme

12.1 We may from time to time amend these Terms as we deem necessary, expedient or convenient for the proper management of the Scheme or to take into account changed circumstances. We will give the Members at least 30 days' written notice of any amendment to these Terms.

12.2 We may, in our discretion, at any time resolve to terminate this Scheme on 30 days' written notice to Members at any time.

13. Complaints

13.1 You can complain if you think that:

13.1.1 'maladministration' has taken place (for example, if we have delayed, made mistakes in or failed to follow the procedures in our application process); or

13.1.2 we have failed to give you access to information or have given you incorrect advice or information; or

13.1.3 we have not treated you politely; or

13.1.4 we have discriminated against you or not treated you fairly.

13.2 However, if your complaint is about our refusal to admit you to membership of the Scheme, we can only look at your application again if:

a) we discover (through dealing with a complaint) that we did not follow the published procedures for assessing your application;

b) you can show that we have misunderstood a significant part of your application; or

c) you can show that we did not take notice of relevant information.

13.3 All complaints should be made by following the Scheme's Complaint Procedure, available upon request from us.

14. Duration and Termination

- 14.1 These Terms and Conditions shall continue in force indefinitely until terminated by either party giving to the other one month's written notice or until terminated by Creative United under Paragraph 14.2.
- 14.2 In addition to the right of termination set out in Paragraph 14.1 of this Agreement, Creative United may terminate this agreement by written notice having immediate effect:
- a) if the Member shall have committed a material or persistent breach of these Terms and Conditions or the Scheme Rules and such breach shall have remained unremedied for 28 days following the service of a written notice calling upon the Member to remedy the same (if capable of remedy);
 - b) if the Member makes or offers to make any arrangement or composition with its creditors or if any resolution or petition to wind up the Member or any other company the Member controls, shall be passed or presented (and not vacated within 30 days), otherwise than for the purposes of amalgamation or reconstruction, or if any administrator or administrative receiver is appointed over any of the Member's businesses, undertakings, property, assets or any parts thereof, or the Member cease to carry on business;
 - c) if the Scheme is suspended or wound up; or
 - d) if Creative United has terminated the Member's participation in the Scheme pursuant to these Terms and Conditions or the Scheme Rules.
- 14.3 Termination of this agreement shall be without prejudice to the rights of the parties accrued prior to such termination.
- 14.4 If on termination any monies are owed to us, Creative United reserve the right to charge the Member interest (both before and after judgment) on any amounts due to Creative United and unpaid at the rate of 4% per annum above the Bank of England's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and/or to set off any sums owed by the Member to Creative United against any sums payable by Creative United to the Member.
- 14.5 Paragraphs 8, 16 and 17 shall survive the termination of this Agreement.
- 14.6 On termination of this agreement the Member will immediately cease to display or use any of the Scheme materials which the Member will return to Creative United or destroy, as Creative United may require.
- 15. Restriction on Liability**
- 15.1 For the avoidance of doubt, Creative United will not incur any liability to the Member, either during or after termination of this Agreement, for any monies owing to the Member by the Credit Provider, by a customer or any other third party.
- 15.2 In no event shall Creative United incur any liability to the Member or any third party under or in connection with this Agreement or the Scheme for any consequential or special damages or indirect loss, including loss of profits or sales.
- 15.3 In no event shall Creative United incur any liability to the Member in the event that Creative United withdraws, suspends or varies the terms of the Scheme, which Creative United reserves the right to do at any time without giving any reasons.
- 15.4 Creative United's maximum liability to the Member under or in connection with these Terms and Conditions shall be limited to the total value of loans processed by the Member in the preceding period of 12 months.

16. Trademarks and other intellectual property

- 16.1 The Take it away 'stamp' logo is a registered trade mark of Creative United. Other than as permitted by these Terms and Conditions, or with the prior written consent of Creative United, the Member may not use these trade marks (or any name or mark similar to or capable of being confused with the trade marks) or any other trade mark, name or designation associated with the Scheme, or any name under which the Scheme may be marketed.
- 16.2 The Member agree not to apply for the registration of any trade mark, name or designation associated with the Scheme or any name or designation similar thereto as a trade mark or service mark.
- 16.3 The Member may use the 'Take it away' trade mark and logo on any marketing and promotional material the Member produces regarding the Scheme provided that
- a) these conform to the Take it away Brand Guidelines
 - b) they are true and accurate and properly describe the Scheme features and
 - c) do not in the opinion of Creative United bring the Scheme into disrepute.
- 16.4 Nothing in this these Terms and Conditions shall be construed so as to reserve to the Member any rights, either solely or jointly, in relation to any ideas, know-how, methodologies, Intellectual Property and techniques used by or developed by the Member in the course of membership or this Agreement. The rights to the same shall vest in Creative United absolutely.
- 16.5 Creative United shall retain ownership of all Intellectual Property rights of whatever nature created by or arising out of the Scheme, and, whether registered or not and in the Scheme documents and material (other than material supplied to the Member which is the property of the Credit Provider) or other materials and data or other information provided to the Member in the context of the Scheme and this Agreement.
- 16.6 The Member undertakes that the Member will not at any time after termination use the Intellectual Property in any manner whatsoever or claim or assist others to claim any right to use the Intellectual Property.
- 16.7 In this Agreement, "Intellectual Property" includes, without limitation, all vested, contingent and future rights of copyright and design right (whether registered or unregistered) and trade marks (whether registered or unregistered).

17. Confidentiality

- 17.1 The Member and Creative United each agrees that it will not at any time divulge any confidential information relating to the other, its business or operations other than as is necessary to be divulged to the Credit Provider or to the Scheme Partners in connection with the operation of the Scheme.
- 17.2 The restrictions in this Paragraph 17 shall not apply to any information which is in the public domain or which can be shown to be lawfully received by the receiving party from a third party or other source not under a duty of confidence or which is required to be disclosed by law or any legally binding requirement of any governmental or regulatory authority.

18. Assignment

The Member may not assign or sub-contract any of the Member's rights or obligations under this Agreement. Creative United may assign or sub-contract its rights or obligations without requiring the Member's consent.

19. General

- 19.1 These Terms and Conditions (together with any other documents referred to in these Terms and Conditions) supersede all previous agreements, contracts, and arrangements whatsoever between the parties and, contains the entire understanding of the parties on the subject. No alteration, amendment or addition to any of the terms shall be valid unless in writing and signed by the parties to this Agreement.
- 19.2 Any notice required to be given hereunder shall be validly given if in writing and delivered in person or sent by pre-paid first class post to the address for the party to be served as stated on the Application Form submitted by the Member or as notified in writing from time to time by the Member. Any notice shall be deemed duly served if delivered personally at the time of delivery or if posted on the second day after being put in the post.
- 19.3 No forbearance, waiver or indulgence on the part of either party to this in enforcing these terms and conditions shall prejudice its rights hereunder nor shall it be construed as a waiver thereof.
- 19.4 In these Terms and Conditions headings are for convenience only and shall not affect the interpretation of any provision
- 19.5 In the event that any term or condition of this shall be held by any court or competent authority to be illegal, unenforceable or void, such provision shall be deemed to have been severed or removed from this these Terms and Conditions but without prejudice to the remaining provisions of this Agreement, and the parties shall endeavour to agree such other provisions as shall be lawful and shall approximate as nearly as possible the severed provisions.
- 19.6 No person who is not a party to this shall have any rights under the Contracts (Rights of Third Parties) Act 1999 in connection with this Agreement.
- 19.7 Nothing in these Terms and Conditions shall be construed so as to imply any relationship of agent, partner or employee between the parties hereto.
- 19.8 The Member shall bear its own costs of professional advice in relation to the terms and effects of this these Terms and Conditions.
- 19.9 The Member has no authority to enter into legally binding contracts concerning, or representations binding, Creative United.
- 19.10 The Member and Creative United shall use their best endeavours to negotiate and in good faith settle amicably any dispute that may arise out of this these Terms and Conditions. If any dispute cannot be settled amicably the matter shall be referred for Mediation to the Centre for Dispute Resolution. The costs of the Mediator and facilities shall be borne equally between the parties unless otherwise resolved within the Mediation. The costs of professional advice in relation to the Mediation shall be borne by the party requiring the advice.
- 19.11 These Terms and Conditions shall be governed by and construed in accordance with the laws of England.

Last updated: April 2017