

REQUEST FOR TENDER (RFT)

TITLE: THE PROVISION OF DESIGN SERVICES TO THE AUSTRALIA COUNCIL FOR THE ARTS

REFERENCE: RFT 2017/2018 005

The Australia Council for the Arts ('the Australia Council') is the Australian Government's arts funding and advisory body. We are currently seeking the services of a design agency for the provision of design services for Australia's representation at the Venice Biennale 2019. Services will fall into the following broad categories:

- Concept development;
- Graphic design and finished art;
- Catalogue/publication design;
- Development of marketing collateral including digital and printed assets as required;
- Development of internal signage as required;
- Production management and delivery of collateral including all digital and printed assets and external and internal signage as required; and
- Any other services that may be required in support of the above.

This document is available until the closing date.

Issue Date: 14 February 2018

Closing time: 16 March 2018, 2.00pm (AEDT)

Lodgement Address: tenders@australiacouncil.gov.au

LODGEMENT OF TENDERS

Applications should be sent by a secure email and lodged/received **by 2pm Australian Eastern Daylight Time (AEDT) on Friday, 16 March 2018.**

The application should be endorsed with the reference title addressed as follows:

Design Services for Australia's representation at the Venice Biennale 2019

By email to tenders@australiacouncil.gov.au

Include in email subject: RFT 2017/2018 005

Applicants are to submit an original application and any supporting material by the due date.

HAND OR POSTAL DELIVERY **will not** be accepted.

FAXED APPLICATIONS **will not** be accepted.

CONTACT OFFICER:

Contact for all enquiries relating to this RFT:

Celia Pavelieff, Marketing Manager

Australia Council for the Arts

PO Box 788 Strawberry Hills NSW 2012

Tel: +61 (0)2 9215 9137

Email: c.pavelieff@australiacouncil.gov.au

Prospective tenderers are required to send any enquiries via email in the first instance.

PART A – CONDITIONS FOR PARTICIPATION

A1. Invitation

Tenderers are invited to make an offer ("Tender") that meets the requirements of this Request for Tender (RFT).

This RFT is expressly not a contract between us and the tenderer. Nothing in this RFT or in any tender is to be construed as to give rise to any contractual obligations, express or implied.

We reserve the right to stop or vary the tender process, determine a shortlist of Tenderers, negotiate or decline to negotiate with any tenderer, negotiate with more than one tenderer, or re-tender, at any time. We are not bound to accept the lowest price tender or any tender.

If we make a variation to the original RFT, we will take all reasonable efforts to ensure that the Addenda or supplement is given the same distribution as the original RFT.

A2. Enquiries by Tenderers

All enquiries by potential tenderers for information should be addressed only to the nominated contact officer named on the cover page of this RFT.

A3. Lodgement of tenders

Tenders must be lodged by the Tender Closing Time shown on the cover page of this RFT. Before lodgement of tenders, the tenderer must initial any alterations or erasures made to a tender. Late tenders will not be accepted.

A4. Ownership of tender documents

All tender documents become the property of the Australia Council on lodgement.

A5. Non-Compliance

Any non-compliant tenders may be excluded from consideration.

A6. Tenderers to meet costs

- (a) Tenderers are to meet all costs of responding to this RFT, including preparation, submission, lodgement and negotiation costs.

A7. Tenderers to inform themselves

Tenderers are considered to have:

- (a) Examined the RFT and any documents referred to in the RFT; and
- (b) Satisfied themselves as to the correctness and sufficiency of their tenders including tendered prices.

A8. Improper assistance and collusive tendering

It should be noted that the Australia Council shall exclude from further consideration, tenders which have been compiled:

- (a) With improper assistance of employees, ex-employees, any consultant or adviser to the Australia Council; or
- (b) in collusion with other tenderers.

A9. Draft General Conditions of Contract

Draft general conditions of contract are attached to this RFT. These draft contract terms and conditions are intended to form the basis of any contract between a successful tenderer and the Australia Council.

Tenderers please note, the tenderer is taken to agree to accept these Draft Conditions of Contract.

Each part of this tender must be satisfactorily completed by the successful tenderer at the sole discretion of the Australia Council. Where a part of this tender is not satisfactorily completed, the Australia Council will reserve the right to end the contract.

A10. Conflict of Interest

You must declare any actual or perceived conflict of interest that is likely to arise if your submission is the successful tender and how this conflict is proposed to be managed. Where, in the opinion of the Australia Council, the conflict of interest is one that compromises the integrity of the tender process and likely to be unable to be satisfactorily managed, the Australia Council reserves the right to treat your submission as unsuccessful.

A11. Procurement timetable

It is proposed that the following procurement timetable shall apply. We will strive to adhere to this timetable but reserve the right to vary dates whenever necessary.

Date	Task
14 February 2018	Request for Tender opens.
16 March 2018	Request for Tender closes.
Week commencing 19 March 2018	Submitted tenders acknowledged. Eligibility checked.
Week commencing 26 March 2018	Tenders evaluated by the Tender Evaluation Committee (TEC).
Week commencing 16 April 2018	Shortlisted tenders pitch to Australia Council.

Week commencing 23 April 2018	Successful tenderer notified and contract issued. Unsuccessful tenderers notified.
May 2018	Work to commence.

Where this timetable varies significantly, we will attempt to notify prospective tenderers as soon as is practicable.

A12. Security, Probity and Financial Checks

We may, as part of the evaluation process, conduct such security, financial or probity checks as we consider necessary in relation to any tenderer, its officers, employees, partners, related entities and nominated subcontractors.

Tenderers will be expected to provide reasonable assistance to us regarding such checks, including supplying further information as we may request.

Any failure by a tenderer to assist us in conducting these checks may have an adverse impact upon the evaluation of the affected Tender.

A13. Notification

All tenderers will be informed in writing of the outcome of their submission at the earliest opportunity.

A14. Tender documents

Tender documents should include the following:

1. Response to RFT providing relevant examples of your work and outlining your agency's experience in delivering graphic design services for similar projects, including:
 - Concept development for high-profile national and/or international projects within the cultural sector;
 - Concept development incorporating a "two-tier" branding structure (i.e. major brand and sub-brand);
 - Extensive graphic design experience in realising this concept throughout the suite of digital and printed assets, and internal signage.
 - Experience working and collaborating with artists, curators and/or cultural organisations;
 - Catalogue publication design experience involving working with artists, curators and/or cultural organisations; and
 - Production management of a suite of marketing collateral including digital and printed assets.

2. Agency details

- Company or organisation information such as corporate status, registered place of business, size, number of staff and turnover, and copies of financial statements demonstrating financial viability and insurance policies.
- Supporting information concerning the proposing organisation, its management structures and procedures, quality assurance procedures and demonstrated experience in the subject area of this RFT and related areas.
- Details of names, expertise, qualifications and experience of the proposed personnel. Please also include details of who will take overall responsibility for the project and act as the main point of contact with the Australia Council.
- A risk analysis, setting out perceived potential risks, the level of potential impact of such risks and the contingencies to mitigate any potential damage resulting from such risks.
- A declaration of any partial or non-compliance with any provisions of this RFT. This includes not agreeing to any of the draft conditions of contract stating reasons and alternatives where appropriate.
- Two referees to whom the Australia Council may address enquiries concerning previous experience in this area.

3. Budget

- A total budget for the project, including GST, with detailed costing identifying separately proposed services, staff costs, office and all other costs that may be incurred during the course of the contract. This should include the design and production management of all proposed services, designer fees, couriers, all proofs and administrative costs. If travel will be involved, this should also be itemised and costed.
- The budget does not need to include print costs, writer fees, editor fees, translation fees, freight of materials, nor the construction and management of the website or online delivery of material.

4. Schedule

- Project time-line: refer to Proposed Schedule of Requirements, pages 10-12.

PART B – STATEMENT OF REQUIREMENTS

B1. Requirement

The Australia Council requires the services of a design agency to provide: Design services for Australia's representation at the Venice Biennale 2019.

The new contract is for an initial period of up to 15 months (May 2018 – July 2019) with extensions exercisable at the sole discretion of the Australia Council.

Tenderers must be able to demonstrate that they have the necessary skills, resources, experience, financial capacity and relevant licenses, accreditations etc to fulfil the tender requirements.

B2. Further Details

INTRODUCTION

The Australia Council is inviting tenders from design agencies. We reserve the right to ask anyone to tender.

All submissions to the tender will be assessed as per A11 Procurement timetable, page 4. The Tender Evaluation Committee (TEC) comprises Australia Council staff. The successful agency will be appointed directly from the TEC meeting. The TEC may invite your agency to present examples of three (3) designs that were successfully delivered across a range of criteria, demonstrating the breadth and diversity of the agency's interpretation of and response to, a design brief.

VENICE BIENNALE BACKGROUND

Established in 1895, the Venice Biennale is the world's oldest biennale of international contemporary art. Unique for its dual exhibition model, it comprises a curated show and individual exhibitions under the banner "national participations". It is an important forum for countries to affirm their nation's artistic and cultural identity. Nearly 90 countries take part, presenting in national pavilions in the Giardini della Biennale, the Arsenale and at other locations throughout the city.

AUSTRALIA AT THE VENICE BIENNALE

Australia's representation at the Venice Biennale began in 1954, and since then 39 distinguished contemporary visual artists have exhibited under the Australia banner. The Venice Biennale provides Australian artists with critical international coverage, exposing them to key new audiences, markets and contexts. This exposure helps build the profile of Australian contemporary visual arts and establishes international cultural links, networks and dialogue for individual Australian artists. The Biennale represents a significant platform for the Australia Council for the Arts and our supporters to showcase contemporary Australian visual arts across global borders. For more information about previous artists, visit our [website](#).

The project is managed by the Australia Council for the Arts, the Australian Government's arts funding and advisory body. The Council will hold the role of the Commissioner for Australia's

representation at the Venice Biennale 2019. This includes ownership and management of the Australian Pavilion. The Australian Pavilion was designed by Denton Corker Marshall and opened in May 2015.

For the Venice Biennale 2019, the Council has extended an open call for artistic proposals for the exhibition at the Australian Pavilion. The successful artist and curator will be selected by an independent external selection panel comprising national and international visual arts experts with deep artistic and curatorial knowledge and experience. This panel will be chaired by respected artist and academic Callum Morton, who represented Australia at the Venice Biennale 2007.

The successful agency will need to work collaboratively with the Australia Council's Venice Project Team, the artist/s and the curator/s on this project.

B3. Scope of Works

PROJECT TIMELINE

The successful design agency is expected to commence development of the Venice Biennale 2019 design concept from May 2018, with completion of design material and production required by February 2019, for the exhibition opening in May 2019. The design material required for the additional September 2019 events program will be finalised no later than June 2019. For a detailed timeline please refer to the proposed schedule of requirements from pages 10-12.

PROJECT OBJECTIVES

Communications Objectives:

1. To acknowledge and celebrate Australia's leading visual artists, raises international and national awareness of their work, and spark critical discourse that the Venice exhibition addresses;
2. To build excitement around the artist(s)' exhibition as one of the must-see destinations of the Biennale;
3. To position the Australia Council for the Arts as the leading advocate of contemporary Australian art, and the driving force behind Australia's involvement in this significant and prestigious event;
4. To continue to elevate the profile and bolster the reputation of Australia as a key player in the global contemporary art world;
5. To position the Australian Pavilion as a destination, a 'must see exhibition' at the Venice Biennale 2019, creating cut through against many other participating nations;
6. Increase the profile of the artist, nationally and internationally; and
7. Create a unique brand awareness for the exhibition.

Design Objectives:

The design concept for the Australian exhibition at the Venice Biennale 2019 must:

- First and foremost, complement and foreground the aesthetic of the artist and the artist's exhibition at the Venice Biennale 2019
- Support the visions of the artist(s) and curator through realising a concept that harmonises with this vision and the exhibition

- Raise visibility of the exhibition in an environment where Australia is one country amongst many exhibiting countries and curated exhibitions featuring hundreds of art works
- Appeal to a variety of target audiences in Australia and internationally
- Complement the Australia Council’s Australia at the Venice Biennale corporate branding (“Tier Two” branding)
- Create a design that is contemporary and of an extremely high design calibre

The designer must also consider how the concept can achieve the following outcomes:

- Ensure strong recognition of the Australia Council and its role as the producer of the Australian presence at the Venice Biennale.
- The integration of various sponsor and partner logos on most marketing materials – digitally and in print, including the official Venice Biennale logo.
- Ensure the concept can be adapted across multiple formats including but not limited to digital and print formats, full colour and mono and black and white iterations.
- Meet Council’s environmental sustainability and cost effectiveness goals. It is intended that online marketing initiatives will be implemented for the campaign, and that printed material be produced using environmentally responsible and cost-effective methods.
- Where possible consider Council’s commitment to ensuring that all of its marketing collateral is accessible.

TARGET MARKETS

<ul style="list-style-type: none"> • Media <ul style="list-style-type: none"> - Visual arts editors and media - Critics and commentators 	<ul style="list-style-type: none"> • Trade <ul style="list-style-type: none"> - Public museums and galleries - Commercial galleries - Collectors - Curators (independent and organisations)
<ul style="list-style-type: none"> • Stakeholders <ul style="list-style-type: none"> - Australian Government - Artist, curator, artist’s gallerist - City of Venice authorities - Venice Biennale authorities - Sponsors, partners and donors - Alumni (attendants/interns/emerging curators) 	<ul style="list-style-type: none"> • General Public <ul style="list-style-type: none"> - Australia Council audiences (subscribers/fans) - Art enthusiasts - Visitors to the Australian Pavilion - Online visitors - Visual art students/educators (primary/secondary/tertiary) - Potential visitors to the Venice Biennale
<ul style="list-style-type: none"> • Vernissage audience (3 day opening period) <ul style="list-style-type: none"> - Visual arts professionals - Visual arts media - Collectors - Supporters 	

OUTLINE OF REQUIREMENTS

The appointed agency will be required to:

- Work collaboratively with the Venice Project Team, artist and curator to develop the design concept for the Australian exhibition at the Venice Biennale 2019;
- Develop a style guide with details on how the concept is to be implemented consistently across all communications throughout the campaign;
- Design and manage the production of a major exhibition catalogue accompanying the Australian exhibition at the Venice Biennale, in liaison with an international publisher; and
- Design and manage the production of all marketing collateral for the Australian exhibition at the Venice Biennale 2019.

PROPOSED SCHEDULE OF REQUIREMENTS

Please note, this list of requirements is indicative of previous campaigns and is subject to change. Timelines and quantities may be subject to change based on campaign requirements.

Marketing Collateral:

Item	Description	Logo inclusions
Brand concept	Designer to work with Venice project team, curator and artist to develop a collaborative outcome. Masthead to incorporate exhibition title.	Venice Biennale logo Australia Council logo
Venice Biennale 2019 style guide	Overall style guide for all materials, products and information produced related to the Australian exhibition at the Venice Biennale 2019, with details on how the concept is to be implemented consistently throughout the campaign. Please note: Style guide to be provided to in-house web designers, who will adapt to the website template requirements.	Venice Biennale logo Australia Council logo
Lock-up	Lock- up in various file formats for use in advertising and other promotional material	
Promotional item/s	Up to five (5) items, format to be advised. These could take the form of a carry bag, a badge, postcard, or other item which relates to the exhibition	Venice Biennale logo Australia Council logo
Donor Pack, including information about Venice and invitations	Information packs (May and September 2019) for Australian supporters and donors participating in the Australian	Australia Council logo Sponsor logos within pack

	<p>events program at the Venice Biennale 2019.</p> <p>Information pack to be in hard copy and also available in an electronic format for hand-held devices. Designer to consider implications of the two formats.</p>	
Invitations	<p>Invitations to official events related to the Australian exhibition, including:</p> <ul style="list-style-type: none"> ○ Exhibition launch in Australia ○ Exhibition launch in Venice ○ Australian Party in Venice 	
Media press kit	<p>Press kit to include PDF for hard copies, USB memory stick label, press release template</p>	<p>Venice Biennale logo Australia Council logo</p>
Exhibition booklet / postcard	<p>Concise, informative takeaway item for visitors to the Australian exhibition, covering information about the artist and her exhibition.</p> <p>Will include message from curator (English and Italian) and a selection of images.</p> <p>This item will be adapted for any hand-held devices, designer to consider implications of delivery of this electronically.</p> <p>Anticipated specifications:</p> <ul style="list-style-type: none"> ○ Dimensions : between 210 x 120 mm and 210 x 155 mm (TBC) ○ Format: Portrait ○ Approximately 10 – 20 pages (TBC) ○ Bilingual <p>Images (Colour or B/W TBC)</p>	<p>Venice Biennale logo Australia Council logo Sponsor logos</p>
Exhibition and directional signage	<p>Clear signage to promote the Australian exhibition</p> <ul style="list-style-type: none"> ○ Bilingual ○ Format specifications TBC 	<p>Venice Biennale logo Australia Council logo Sponsor logos</p>
Exhibition wall signage	<ul style="list-style-type: none"> ○ Wall text/Artwork labels/sponsor signage as required ○ Bilingual 	<p>Australia Council logo Sponsor logos</p>

Exhibition Catalogue:

Item	Description	Logo inclusions
Exhibition catalogue	<p>A high quality art exhibition catalogue that can be distributed from May 2019 for during of the exhibition in Venice to stakeholders and the international arts world, as well as a subsequent Australian/international tour of the exhibition in 2020.</p> <ul style="list-style-type: none">○ Both onshore and offshore (Asia) printing is to be factored in to timelines○ The publication will be distributed internationally and nationally <p>Anticipated specifications:</p> <ul style="list-style-type: none">○ Dimensions : between 240 x 210 mm and 280 x 245 mm (TBC)○ Format: Portrait○ Approximately 220 pages (TBC)○ Introductory pages and end pages○ 3-4 essays (Bilingual)○ Colour images	<p>Cover and spine: Venice Biennale logo Australia Council logo</p> <p>Within catalogue: Sponsor logos</p>

B4. Performance Standards Required

The successful tenderer will be expected to achieve a high performance standard by:

- Delivering to contract specifications;
- Delivering to deadlines;
- Regular reporting to and meetings with the Australia Council; and
- Delivering within budget.

B5. Specific risks and/or issues

The tenderer is expected to include its risk management strategy including risks or issues involved or identified and how these risks will be managed.

B6. Timeframes

The work is expected to commence in Mary 2018.

B7. Governance

The contractor will report to Celia Pavelieff, Marketing Manager.

The Marketing Manager reports to the Director, Communications.

The Director, Communications reports to the Executive Director, Strategic Development and Advocacy.

B8. Quotation

Your quote should include a comprehensive pricing breakdown.

EVALUATION OF TENDERS

B9. Criteria

The Australia Council will appoint a Tender Evaluation Committee (TEC) to review and select the successful tender against the following criteria

Criteria	Weighting
Demonstrated experience delivering similar projects, including working with artists and curators to develop design concepts	20%
Design approach (proposed methodology) and delivery plan to achieve the outcomes required	30%
Agency experience - including analysis of the risks and how risks are proposed to be managed	25%
Budget - Value for money and cost effectiveness	25%
Non weighted essential criteria	
Confirmation of the ability to commence the work in May 2018	
Acceptance of the draft Conditions of the Contract (see Part C)	
Evidence of all insurances and licences required to perform the contract	

B10. Your submission complying with all Parts of this Tender

Please note that in this evaluation, the Australia Council may seek information and referee reports from other sources. The selection of a preferred tenderer will be based on the most efficient outcome for the Australia Council and this involves assessing value for money and quality of service against this RFT.

PART C - DRAFT GENERAL TERMS AND CONDITIONS OF CONTRACT

1. Definitions

In this Contract:

“Australia Council” means the Australia Council for the Arts.

“Contract Price” means the total contract price specified in Part 1, including any GST component payable unless otherwise specified, but for the purposes of the Payment clause of the General Conditions of Contract only, does not include any simple interest payable on late payments.

“Encumbrance” means a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth).

“Goods and/or Services” means:

- (a) the Goods, Services, or Goods and Services specified in the Statement of Work; and
- (b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Australia Council as specified in the Statement of Work.

“GST” means a Commonwealth goods and services tax imposed by the *GST Act*.

“GST Act” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Intellectual Property” means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

“Material” means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

“Moral Rights” has the same meaning given in the *Copyright Act 1968*.

“Special Conditions” means the special conditions attached to this Contract required by the Australia Council (if any).

“Specified Personnel” means the personnel specified in the Contract to provide the Services.

“Contractor” means the person or company engaged to undertake the Services specified in Part 1.

2. Provision of Services

The Contractor must provide the Services to the Australia Council on the date agreed and in accordance with any instructions for the delivery of the Services specified in writing.

The Contractor must promptly notify the Australia Council if the Contractor becomes aware that it will be unable to provide all or part of the Services by the relevant delivery date and advise the Australia Council as to when it will be able to do so.

Any Services must be provided to the standard that would be expected of an experienced and professional contractor of similar services and any other standard specified in Part 1.

Any Services must be provided free from all Encumbrances and must meet any standard specified in this contract, unless otherwise stated or agreed.

3. **Acceptance**

The Australia Council may accept or reject the relevant Services within 14 days after delivery of the Services or part thereof. If the Australia Council does not notify the Contractor of acceptance or rejection within the 14 day period, the Australia Council will be taken to have accepted the Services on the expiry of the 14 day period.

The Australia Council may reject the Services where the Services do not comply with the requirements of the Contract. If the Australia Council rejects the Services the Australia Council may:

- (a) require the Contractor to repair or amend the Services, within a period determined by the Australia Council, at the Contractor's cost, so that the Services meet the requirements of the Contract; or
- (b) require the Contractor to provide, at the Contractor's cost, replacement Services which meet the requirements of the Contract, within a period determined by the Australia Council; or
- (c) terminate the Contract in accordance with the Termination clause of the General Conditions of Contract.

Replacement, amended or modified Services are subject to acceptance under this clause.

The Contractor will refund all payments related to the rejected Services unless replacement or amended Services are accepted by the Australia Council.

4. **Title and Risk**

Title to the Services transfers to the Australia Council upon their acceptance by the Australia Council in accordance with the Acceptance clause of the General Conditions of Contract.

The risk of any loss or damage to the Services remains with the Contractor until their delivery to the Australia Council.

5. **Invoice**

The Contractor must submit a correctly rendered invoice to the Australia Council. An invoice is correctly rendered if:

- (a) it is correctly addressed and calculated in accordance with the Contract;
- (b) it relates only to the Services that have been accepted by the Australia Council in accordance with the Acceptance clause of the General Conditions of Contract;
- (c) it is for an amount which, together with all previously correctly rendered invoices, does not exceed the Contract Price;
- (d) it includes a purchase order number (if relevant); and

(e) it is a valid tax invoice in accordance with the GST Act.

Approval and payment of an amount of an invoice is not evidence of the value of the obligations performed by the Contractor, an admission of liability or evidence the obligations under the Contract have been completed satisfactorily, but is payment on account only.

The Contractor must promptly provide to the Australia Council such supporting documentation and other evidence reasonably required by the Australia Council to substantiate performance of the Contract by the Contractor.

6. Payment

The Australia Council must pay the invoiced amount to the Contractor within 30 days after receiving a correctly rendered invoice or if this 30 day period ends on a day that is not a business day, payment is due on the next business day.

The last day of this period is referred to as the “due date”.

7. Price Basis

The Contract Price is the maximum price payable for the Services and is inclusive of all GST and all taxes, duties (including any customs duty) and government charges imposed or levied in Australia or overseas.

The Australia Council is not required to pay any amount in excess of the Contract Price including, without limitation, the cost of any travel, packaging, marking, handling, freight

and delivery, licences, insurance and any other applicable costs and charges.

8. Offset

If the Contractor owes any amount to the Australia Council in connection with the Contract, the Australia Council may set off that amount, or part of it, against its obligation to pay any correctly rendered invoice.

9. Quality Assurance

Upon request by the Australia Council, the Contractor must provide the Australia Council and its nominees with access to the Contractor’s premises to undertake quality audits and quality surveillance as defined in the relevant Australian Quality Standards of the Contractor’s quality system and/or the production processes related to the Services.

10. Insurance

The Contractor must obtain and maintain such insurances and on such terms and conditions as a prudent contractor, providing services similar to the Services contracted for, would procure and maintain and if requested, must provide the Australia Council with evidence the insurances remain in force.

11. Indemnity

The Contractor indemnifies the Australia Council, its officers, employees and contractors against any liability, loss, damage, cost (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), compensation or expense arising out of or in any way in connection with:

- (a) a default or any unlawful, wilful or negligent act or omission on the part of the Contractor, its officers, employees, agents or subcontractors; or
 - (b) any action, claim, dispute, suit or proceeding brought by any third party in respect of any use, infringement or alleged infringement of that third party's Intellectual Property rights or Moral Rights;
- in connection with the Services.

The Contractor's liability to indemnify the Australia Council under paragraph (a) is reduced to the extent that any wilful default or unlawful or negligent act or omission by the Australia Council, its officers, employees or contractors is proven to have contributed to the liability, loss, damage, cost, compensation or expense.

The Australia Council holds the benefit of this indemnity on trust for its officers, employees and contractors.

12. Approvals and Compliance

The Contractor must obtain and maintain any licences or other approvals required for the lawful provision of the Services and arrange any necessary customs entry for the Services if relevant.

The Contractor must comply with and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in the State, Territory or other jurisdictions in which any part of the Contract is to be carried out and all Commonwealth laws and policies relevant to the Services.

13. Conflict of Interest

The Contractor warrants that no conflict of interest exists, or is anticipated, relevant to the performance of its obligations under the Contract.

If a conflict of that kind arises, the Contractor must notify the Australia Council immediately. The Australia Council may decide in its absolute discretion, without limiting its other rights under the Contract, that the Contractor may continue to provide the Services under the Contract.

14. Warranties

The Contractor must obtain all relevant third party warranties in respect of the Services that the Australia Council receives in relation to the Contract.

15. Access to Contractor's Premises

The Contractor agrees to give the Australia Council, or its nominee, all assistance reasonably requested for any purpose associated with this Contract or any review of the Contractor's performance under the Contract. This will include, but is not limited to, access to premises, material and personnel associated with the Services and the Contract.

16. Criminal Code Acknowledgement

The Contractor acknowledges that the giving of false or misleading information to the Australia Council is a serious offence under Section 137.1 of the schedule to the *Criminal Code Act 1995*.

The Contractor must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

17. Waiver

If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

18. Variation

No agreement or understanding varying or extending the Contract, including in particular the scope of the Services, is legally binding upon either party unless it is in writing and agreed to by both parties.

19. Security and Safety

When accessing any Australia Council place, area or facility, the Contractor must comply with any security and safety requirements notified to the Contractor by the Australia Council or of which the Contractor is, or should reasonably be, aware. The Contractor must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Contractor must ensure that any material and property (including security-related devices and clearances) provided by the Australia Council for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by the Australia Council.

20. Conduct at Agency Premises

The Contractor must, when using Australia Council provided premises or facilities, comply with all reasonable directions of the Australia Council, and act consistently with the behaviours set out in the Australia Council Code of Conduct.

21. Contractor not to make representations

The Contractor must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Australia Council, or as otherwise able to bind or represent the Australia Council. The Contract does not create a relationship of employment, agency or partnership between the parties.

22. Privacy Requirement

The Contractor agrees to comply, and ensure that its officers, employees, agents and subcontractors comply, with the *Privacy Act 1988* (Cth) and do (or refrain from doing) anything required to ensure the Australia Council is able to comply with its obligations under that Act.

The Contractor will immediately notify the Australia Council if the Contractor becomes aware of a breach or possible breach of any of its obligations under this clause.

23. Confidential Information

The Parties agree not to disclose each other's Confidential Information without prior written consent unless required or authorised by law or Parliament.

24. Record Keeping

The Contractor must maintain proper business and accounting records relating to the supply of the Services and allow the Australia Council or its authorised representative to inspect those records when requested.

The Contractor will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Contractor's accounts and records.

25. Freedom of Information (FOI) Act 1982 requirements

Where the Australia Council has received an FOI request for access to a document created by, or in the possession of the Contractor or its subcontractors that relates to the Contract and is required to be provided under the FOI Act, the Contractor must promptly provide the document to the Australia Council, on request, at no cost.

26. Commonwealth Records and Archives Act 1983 Requirements

The Contractor must not transfer, or permit the transfer of, custody or the ownership of any Australia Council record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Australia Council.

27. Moral Rights

To the extent permitted by laws and for the benefit of the Australia Council, the Contractor consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Australia Council of Material, even if the use may otherwise be an infringement of their Moral Rights.

You agree not to exercise any Moral Rights you may have against us in respect of the following uses of the Agreement Materials:

- (a) failure to identify the authorship or any content in the Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));
- (b) materially altering the style, format, colours, content or layout of the Material and dealing in any way with the altered **Material** or infringing copies (within the meaning of the Copyright Act 1968 (Cth));
- (c) reproducing, communicating, adapting, publishing or exhibiting any Material, including dealing with infringing copies, within the meaning of the Copyright Act 1968 (Cth), without attributing the authorship; and
- (d) adding any additional content or information to the Material.

28. Notices

Any notice or communication under the Contract will be effective if it is in writing and delivered to the postal address, or email address, or facsimile number set out in this contract.

29. Specified Personnel

The Contractor must ensure that the Specified Personnel provide the Services and are not replaced without the prior consent of the Australia Council.

At the Australia Council's request, the Contractor, at no additional cost to the Australia Council, must promptly replace any Specified Personnel that the

Australia Council reasonably considers should be replaced with personnel acceptable to the Australia Council.

30. Intellectual Property and copyright licences

The Australia Council will own all Intellectual Property Rights in the Agreement Materials you create as part of the Services. You assign all present and future Intellectual Property rights subsisting in Agreement Materials to us.

If the Materials contain third party proprietary rights or your own previous material, you grant us an irrevocable, perpetual, non-exclusive, worldwide, royalty free licence to use, reproduce, publish, adapt and communicate all Intellectual Property Rights included as part of the Agreement Materials so that we can enjoy the full benefit of 30 (a) the Services provided under this Agreement.

31. Service Levels

All formal reporting will adhere to the Australia Council Style Guides, which outline the organisations accepted conventions for spelling, grammar, style, graphs and tables.

The Australia Council is also committed to communicating in 'plain English'. All reports will be written in plain, clear English, and be precise, clear, and readable. The Australia Council reserves the right to contract an editor should formal reports not meet these guidelines.

32. Assignment

The Contractor must not assign or subcontract any of its rights under the

Contract without the prior written consent of the Australia Council.

33. Subcontracting

Subcontracting the whole or part of the Contractor's obligations under the Contract will not relieve the Contractor from any of its obligations under the Contract.

The Contractor must make available to the Australia Council the details of all subcontractors engaged to provide the Services under the Contract. The Contractor acknowledges that the Australia Council is required to disclose such information.

The Contractor must ensure that any subcontract entered into by the Contractor for the purpose of fulfilling its obligations under the Contract imposes on the subcontractor the same obligations that the Contractor has under the Contract (including this requirement in relation to subcontracts).

34. Termination

The Australia Council may terminate the Contract in whole or in part if:

- (a) the Contractor does not deliver any or all of the Services by the relevant delivery date, or notifies the Australia Council that it will be unable to deliver the Services by the relevant delivery date;
- (b) the Australia Council rejects any or all of the Services in accordance with the Acceptance clause of the General Conditions of Contract;
- (c) the Contractor breaches the Contract and the breach is not capable of remedy;

- (d) the Contractor does not remedy a breach of the Contract which is capable of remedy within the period specified by the Australia Council in a notice of default issued to the Contractor; or
- (e) the Contractor:
 - (i) is unable to pay all its debts when they become due;
 - (ii) if incorporated – has a liquidator, administrator or equivalent appointment under legislation other than the *Corporations Act 2001* (Cth) appointed to it; or
 - (iii) if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth).

35. Termination or Reduction for Convenience

In addition to any other rights it has under the Contract, the Australia Council, acting in good faith, may at any time terminate the Contract or reduce the scope or quantity of the Services by notifying the Contractor in writing.

The Australia Council can terminate this Agreement, or reduce its scope, even though you are not in default, at any time by giving you written notice on the grounds of a material reduction in our parliamentary appropriation.

If the Australia Council issues such a notice, the Contractor must stop or reduce work in accordance with the notice; comply with any directions given by the Australia Council and mitigate all loss, costs (including the costs of its compliance with any directions) and

expenses in connection with the termination or reduction in scope.

Where the Contract is terminated under this clause, the Australia Council will be liable for payments to the Contractor only for Services accepted in accordance with the Acceptance Clause in the General Conditions of Contract, before the effective date of termination (to a maximum of the Contract Price less any payments already made), and any reasonable costs incurred by the Contractor that are directly attributable to the termination, if the Contractor substantiates these amounts to the satisfaction of the Australia Council.

The Contractor will be entitled to profits for the proportion of the Services accepted before the effective date of termination but will not be entitled to profit anticipated on any part of the Contract that is terminated or subject to a reduction in scope.

36. Survival

Clauses 2, 21, 22, 23, 24, 25 and 26 of the General Conditions of Contract survive termination or expiry of the Contract.

37. Dispute Resolution

For any dispute arising under the Contract:

- (a) both parties will try to settle the dispute by direct negotiation as expeditiously as possible;
- (b) if unresolved, the party claiming that there is a dispute will give the other party a notice setting out the details of the dispute;
- (c) within five (5) business days, each party will nominate a senior

representative of their organisation, not having prior direct involvement in the dispute;

communications, agreements, statements and understandings, whether oral or in writing.

- (d) the senior representatives will try to settle the dispute by direct negotiation; and
- (e) failing settlement within a further ten (10) business days, either the Australia Council or the Contractor may commence legal proceedings.

The Australia Council and the Contractor will each bear its own costs for dispute resolution.

Despite the existence of a dispute, the Contractor will (unless requested in writing by the Australia Council not to do so) continue its performance under the Contract.

The procedure for dispute resolution does not apply to action relating to termination or to legal proceedings for urgent interlocutory relief.

38. Compliance with Laws

The Contractor must ensure that it and all subcontractors comply with all relevant laws in connection with the Contract and all of its obligations under Australian tax laws.

39. Applicable Law

The laws of New South Wales apply to the Contract.

40. Entire Agreement

The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers (except to the extent they are incorporated into the Contract in writing) and prior representations,