

REQUEST FOR TENDER

TITLE: National Arts Participation Survey 2019

REFERENCE: RFT 2018/19 002

The Australia Council for the Arts (Australia Council) is the Australian Government's primary arts funding and advisory body. We are currently seeking the services of a research provider to undertake the National Arts Participation Survey 2019.

The National Arts Participation Survey 2019 research aims to provide current trends on participation and attitudes to the arts among Australians.

The specific objectives of the research are to:

- Measure arts participation – both creation and attendance
- Measure the perceived benefits and value of the arts to the public
- Measure online engagement with the arts
- Understand how measures have changed over time

The key focus for the 2019 research will be quantitative research and analysis. While the 2019 questionnaire will be largely based on the 2016 questionnaire to ensure tracking of results over time, we are also looking to eliminate existing redundancies and explore new areas of interest.

This document is available until the closing date.

Issue Date: Friday 10 May 2019

Closing time: 2:00pm AEST, Tuesday 4 June 2019

Lodgement Address: tenders@australiacouncil.gov.au

LODGEMENT OF TENDERS

Applications should be sent by a secure email and received **by 2:00pm AEST, Tuesday 4 June 2019**. The application should be endorsed with the above reference number and title addressed as follows: National Arts Participation Survey 2019 RFT 2018/19 002

By email
Include Email Subject: National Arts Participation Survey 2019 tenders@australiacouncil.gov.au

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

CONTACT OFFICER:

Contact for all enquiries relating to this RFT:

Rebecca Sareff

Research Associate

Australia Council for the Arts

PO Box 788

Strawberry Hills NSW 2012

Tel: +61 (0)2 9215 9047

Email: tenders@australiacouncil.gov.au

All enquiries must be emailed in the first instance.

Applicants are required to check the Australia Council website for any additional information which may be published while this RFT is open.

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 the Australia Council 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 and must be made via email in the first instance.

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

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;
- (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	Activity
10/05/2019	Request for Tender published
4/06/2019	Request for Tender closes
Between 04/06/2019 and 07/06/2019	Submitted Tenders acknowledged Eligibility checked
Week commencing 10/06/2019	Tenders evaluated by the Tender Evaluation Committee (TEC) Shortlisted tenderers may be invited to present to the TEC in person in relation to their submission
Week commencing 24/06/2019	Successful tender notified; Contract issued and executed Notify unsuccessful tenders

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:

- A breakdown of the total cost of the service, with detailed costing identifying the items or services proposed.
- If travel will be involved this should also be itemised and costed.
- Company or organisation information such as corporate status, registered place of business, size, number of staff & 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.
- Qualifications of the personnel to be designated to the project.
- 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.
- Two referees to whom the Australia Council may address enquiries concerning previous experience in this area.
- 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.
- Details on any companies the tendering organisation may partner with – such as fieldwork supplier, or other third parties.

PART B – STATEMENT OF REQUIREMENTS

B1. Requirement

The Australia Council requires the services of a qualified research provider to deliver research and fieldwork services as outlined in the scope of works.

The contract would be for an initial period of six (6) months exercisable at the sole discretion of the Australia Council. The contractor will provide research services which are ISO 20252 certified to deliver these research services.

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

The Australia Council for the Arts is the Australian Government's principal arts funding and advisory body.

The arts have immense public value – from the intrinsic value of human expression, through to broader social, economic and cultural impacts. They are vital for our individual and community wellbeing. The arts contribute to our education, our health, our advancement and our international reputation. The arts give life meaning and Australians are proud of our artists.¹

The Australia Council is a champion for Australian arts both here and overseas. We invest in the arts by supporting all facets of the creative process, and we are committed to the arts being accessible to all Australians.

We achieve this through:

- a peer assessed grants program, fellowships and awards
- management of Government directed initiatives and frameworks
- national and international strategic activity that develops sector capacity and increases markets and audiences for Australian work
- research, evaluation and analysis
- co-investment and strategic partnership development
- advocacy for Australian arts and artists
- providing advice to the Government on matters connected with the arts.

For more information on the Australia Council's Research and Strategic Analysis program visit: <http://www.australiacouncil.gov.au/research>

¹ *Connecting Australians: Results of the National Arts Participation Survey*, The Australia Council for the Arts, 2017. <https://australiacouncil.gov.au/research/connecting-australians/>

The National Arts Participation Survey

The National Arts Participation survey (NAPS) is a landmark series conducted by the Australia Council for the Arts that has been conducted periodically since 2009. It measures Australians' engagement with the arts including attending arts events, exhibitions and festivals; reading; listening to music; sharing and connecting with the arts online; and creating art themselves. The arts encompass theatre, dance, visual arts and craft, music, literature, First Nations and cross-art form work. The survey also captures the value of the arts to Australians through their attitudes, views about the impacts of the arts, and propensity to donate time or money to the arts.

The 2016 survey and report (released in 2017), *Connecting Australians: Results of the National Arts Participation Survey* was the third in the series, following editions in 2009 and 2013. Engagement with a person's own cultural background through the arts was articulated for the first time in 2016, along with festival attendance and community arts and cultural development activities. The report is available at: <https://australiacouncil.gov.au/research/connecting-australians/>

At the time of this Request for Tender being published and tenders being evaluated, the Australia Council will be commissioning separate qualitative research that is designed to inform the development of the NAPS 2019 questionnaire. This research will be made available to the successful tenderer, and the Australia Council will expect that the successful tenderer makes use of this research to inform the survey design, along with the previous findings from NAPS 2016.

Involvement of State and Territory Jurisdictions

In 2016, two state arts agencies partnered with the Australia Council to commission the research provider to boost the sample for their state and to write a state specific report of the 2013 findings (VIC and WA).

For the 2019 research, the Australia Council will invite all State and Territory jurisdictions to take part in this research based upon the following parameters:

- The Australia Council plans to fund the core project including a base sample of 7000 Australians provided by the successful tenderer and national analysis and reporting as per the 2016 survey.
- State and Territory Arts Agencies (jurisdictions) will be invited to contribute to the survey financially to increase the sample size for their state/ territory if desired. To do this they must form a contract directly with the research provider to purchase additional interviews.
- Contracts formed between the research provider and jurisdictions must allow the Australia Council to share in the data and Intellectual Property that is produced as an outcome of this research. The Australia Council has final approval over all aspects of the project.
- Those jurisdictions that contribute financially will be invited to comment on the overall survey questionnaire and will also have the option of asking a limited number of survey questions particular to their jurisdiction, to be agreed with the research provider.
- The Australia Council will form an Agreement to share data with each jurisdiction in relation to their involvement in this project.

- The jurisdictions will then each form contracts with the successful research provider for the delivery of the research services (above) that they purchase. These research services may include additional sample, analysis or reporting. The jurisdictions will be responsible for fees owed to the research provider in relation to these services.
- While these contracts are outside the scope of this RFT, these relationships will need to be managed with the entire project in mind (e.g. the additional questions contributed by each state must be managed within the allowed time frame for the entire survey and the nature of the survey questions must fit within the nature of the overall report).
- Jurisdictions may choose to work individually with the research provider on the wording of additional questions for their jurisdiction. The Australia Council will co-ordinate feedback on the overall survey questionnaire and maintain final decision making over any amendments.
- This invitation in no way guarantees that any State or Territory arts agencies will accept the invitation to participate as described above.

B3. Scope of Works

Methodology

Approach

We anticipate using a similar methodology as the previous surveys to ensure we can track changes over time. The 2016 survey used a combination of Computer Assisted Telephone Interviews (CATI) and an online survey for the first time, where the 2009 and 2013 editions of NAPS exclusively used a CATI method. While we anticipate most of our responses to be gathered through online surveying, other approaches to data collection are also welcome. Whatever approach is suggested, it must allow for comparisons to previous waves of data.

Sampling approach

We expect best-practise sampling to ensure we are able to make statistically reliable inferences from the data. Previous studies used stratified random sampling to represent:

- All states and territories
- Metropolitan and regional areas
- Age groups 15 years and over
- Males and females

The sample frame will need to be generated by the research provider. It will not be provided by the Australia Council.

Data will need to be adjusted to have balanced representation according to ABS data on age, gender and location. While we understand this is necessary, we expect that most of the representativeness will be achieved through quality sampling and recruitment.

The recruitment approach for previous surveys involved random digit dialling. While there is not a specific selection method we expect to be used in multi-person households, we do expect it to be good practice (for example, selecting based on last/next birthday).

For further details please see the Research Approach section of the 2016 report available here (pp. 23):

<https://www.australiacouncil.gov.au/workspace/uploads/files/connecting-australians-natio-59520692c614a.pdf>

Target population and quotas

The target population is all Australians aged 15 years and over, whether they have engaged with the arts or not. This means that age is the only eligibility criteria.

The survey will need to be broadly representative of the target population by location (state, regional/metro), gender, and age. It will need to include representation from people with disability, from culturally diverse backgrounds and Aboriginal and Torres Strait Islanders. We are interested in analysing by these groups, and so expect a robust sample size to allow us to do this. The 2016 edition of NAPS used a sample size of 7000.

Previous surveys have approached representativeness by location by achieving 20 interviews in each federal electorate (150 electorates). While this approach does not have to be used in the 2019 arts participation research, whatever approach is used must ensure that we are able to robustly compare results to previous waves of the research.

Questionnaire

The full survey will cover both the core questions (as per the 2016 survey) and any additional State/Territory related questions. It is expected to be a maximum length of 20 minutes on average, and contains no open-ended questions.

Jurisdictions' involvement will need to be carefully managed by the supplier to ensure that the average survey length is under 20 minutes.

The 2016 questionnaire is available here:

<https://www.australiacouncil.gov.au/workspace/uploads/files/arts-participation-survey-2016-598cfe945eec6.pdf>

Scope

The scope of this project includes:

- Project management including set up of project, sample checking, fieldwork and analysis.
- Re-development of questionnaire and development of new questions that reflect the project objectives.
- Fieldwork management and operations, including quality control of surveys
- Provision of clean data sets

- OPTIONAL: Data analysis, including comparison to previous waves and flagging of statistically significant differences. Please cost this as an optional addition.
- OPTIONAL: Other statistical tests as agreed. Please cost this as an optional addition.
- OPTIONAL: Qualitative research to support and enhance the research. This could take the form of focus groups and/or in-depth interviews. Please cost this as an optional addition, with associated travel costs quoted separately.

The scope of this project **does not** include:

- Management and provision of additional sample and questions by jurisdictions – these will be formed as separate agreements between the jurisdictions and the research provider. However this arrangement with jurisdictions needs to be managed with the overall requirements of the project in mind, such that the quality and timeliness of the overall project is not hampered in any way.
- Reporting of findings.

While reporting is not within the scope of this request for tender, we are happy to receive tenders that include it as an optional item.

Deliverables, milestones and timelines

Key desired deliverables include:

- Questionnaire design.
- Complete and cleaned data files in Excel and Q Research Software (with identifying information removed) for the 2019 survey.
- Complete and cleaned data files in Excel and Q Research Software (with identifying information removed) for the merged data (data file including 2009, 2013, 2016 and 2019 data sets).

Although not a deliverable of this RFT, jurisdiction data sets and reports will also need to be shared with the Australia Council as per our agreement with the jurisdictions. Any contractual agreement made with the jurisdictions needs to ensure that Australia Council retains the licence to any data or other deliverables produced as an output of agreements with jurisdictions.

B4. Performance Standards Required

The successful tenderer will be expected to achieve a high performance standard as would be expected from an experienced research provider, in accordance with ISO 20252 certification and align with the Australian Market and Social Research Society (AMSRS) code of professional conduct and privacy code.

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 on the week commencing 24 June 2016. A draft timeline for delivery is below:

Milestone	Due dates
Commencement date	24 June 2019
Kick off meeting	Week commencing 24 June 2019
Establish agreements with jurisdictions	July 2019
Sign off on questionnaire	August 2019
Fieldwork	September-October 2019
Provision of clean data	End of October 2019

B7. Governance

The contractor will report to the Research Program Manager, Chris Pope.

The Research Program Manager reports to the Director Research and Knowledge Management, Rebecca Mostyn.

The Director Research and Knowledge Management Reports to the Executive Director Strategic Development and Advocacy, Wendy Were.

B8. Quotation

Your quote should include a comprehensive pricing breakdown.

We may be partnering with State and Territory arts agencies on this research. They may commission additional sample from the supplier, which is outside the scope of this project (i.e. should not be included in the cost quoted for this project).

However, we need to inform the jurisdictions of the indicative costs of participating in the research as part of their involvement. To this end please provide an indication of the costs in the table below, which we will provide to the jurisdictions to guide their decision making. In addition to costs for additional interviews, please also include a

cost breakdown for analysis and reporting, as this may be a service some jurisdictions require.

	Additional interviews (\$ exl GST)	Analysis and Reporting (\$ exl GST)	Total: Additional interviews + analysis + reporting (\$ exl GST)
n=200	\$	\$	\$
n=300	\$	\$	\$
n=400	\$	\$	\$
n=500	\$	\$	\$

If there is variance in costs for different states and territories, please indicate that in your tender.

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 understanding, knowledge and experience of large-scale quantitative social research	30%
Proposed methodology (or delivery plan) to achieve the outcomes required	30%
Value for money and cost effectiveness	15%
Demonstrated experience dealing with a diverse range of stakeholders	15%
Analysis of the risks and how risks are proposed to be managed	10%
Non-weighted essential criteria	
Confirmation of the ability to commence the work on 27 June 2019	
Acceptance of the draft Conditions of the Contract (see Part C)	
Evidence of all insurances 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;
- (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, communications, agreements, statements and understandings, whether oral or in writing.