

REQUEST FOR PROPOSAL

Disability Arts Services Needs Analysis and Audit

The Australia Council for the Arts (Australia Council) is the Australian Government's principal arts investment, development and advisory body. We are currently seeking proposals from a suitably experienced consultant(s) to undertake a needs analysis and audit of Australia's disability arts services, to develop a clear understanding of the services that are currently available, and those which may be missing at a national level.

Through desktop research and consultation with d/Deaf and disabled people involved in creating, working or engaging in arts and culture, the consultancy will identify arts and disability service needs and how these are currently being met. It will provide insights to the Australia Council on stakeholder preferences for service responses to needs, gaps and future trends.

Insights provided through the needs analysis and audit will be used by the Australia Council to inform decision-making on the approach, options, priorities, and format for direct investment in services to arts and disability through Delivery Partners investment in 2025-28. We recognise the research may identify a range of needs, considerations, options and possible formats for investment in Delivery Partners in the short, medium and longer term.

The Australia Council prioritises cultural safety of participants involved in the research. Consultants will need to demonstrate how stakeholder consultation will be disability-led. First Nations research components will need to demonstrate First Nations-led process and comply with the Australia Council's *Protocols for using First Nations Cultural and Intellectual Property in the Arts*.

We recognise that components of this work may require specific forms of expertise. The Council welcomes proposals from a consultant or a consortium of consultants, seeking to undertake discrete components. The selection process will establish a project lead to effectively coordinate the project team and deliver the project goals efficiently

- A. Desktop Review (Australia Council and publicly available information)

B. Qualitative Research

As well as a First Nations led component including a Desktop Review and Qualitative Research.

A. All three components will require separate reports as output

- 1) Desktop Review (AC & publicly available information)
- 2) Qualitative Research
- 3) First Nations Desktop Review & Qualitative Research

+ 1 Final synthesised report combining the above.

This document is available until the closing date.

Issue Date: Thursday 20 April 2023

Request for Proposal Closing Time: Thursday, 18 May 2023 2:00pm AEST

Lodgement Address: tenders@australiacouncil.gov.au

LODGEMENT OF PROPOSALS

Proposals should be sent by a secure email and received **by 2pm local Sydney, NSW time on Thursday 18 May 2023**. The proposal should include the below title in the email subject line.

By email to: tenders@australiacouncil.gov.au

Include email subject line: Arts & Disability Services

Applicants are to submit an original proposal and any supporting material by the due date; late applications will not be accepted.

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

FAXED APPLICATIONS **will not** be accepted.

All enquiries in relation to this Request for Proposal are to be emailed in the first instance.

Contact details:

Zohar Spatz, Head of Community and Experimental

E: tenders@australiacouncil.gov.au

PART A – CONDITIONS FOR PARTICIPATION

A1. INVITATION

Applicants are invited to submit a proposal that meets the requirements of this Request for Proposal (RFP).

This RFP is expressly not a contract between the Australia Council and the Applicant. Nothing in this RFP is to be construed as to give rise to any contractual obligations, express or implied.

We reserve the right to stop or vary the RFP process, determine a shortlist of Applicants, negotiate or decline to negotiate with any Applicant, negotiate with more than one Applicant, or readvertise, at any time. We are not bound to accept the lowest priced proposal.

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

A2. ENQUIRIES BY APPLICANTS

All enquiries by Applicants must be made via email in the first instance.

A3. LODGEMENT OF PROPOSALS

Proposals must be lodged by the Request for Proposal Closing Time as shown on the cover page of this RFP. Before lodging a proposal, the Applicant must initial any alterations or erasures made to the proposal. Late proposals will not be accepted.

A4. OWNERSHIP OF PROPOSAL DOCUMENTS

All proposal documents become the property of the Australia Council upon lodgement.

A5. NON-COMPLIANCE

Any non-compliant proposals may be excluded from consideration.

A6. APPLICANTS TO MEET COSTS

Applicants are to meet all costs of responding to this RFP, including preparation, submission, lodgement and negotiation costs.

A7. APPLICANTS TO INFORM THEMSELVES

Applicants are considered to have:

- (a) examined the RFP and any documents referred to in the RFP as being available;
- (b) satisfied themselves as to the correctness and sufficiency of their proposals including proposed quotes or prices.

Each part of this RFP must be satisfactorily completed by the Applicant at the sole discretion of the Australia Council. Where a part of this RFP is not satisfactorily completed, the Australia Council will reserve the right to exclude the application from further consideration.

A8. IMPROPER ASSISTANCE AND COLLUSION

It should be noted that the Australia Council shall exclude from further consideration, proposals 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 Applicants.

A9. DRAFT GENERAL TERMS AND CONDITIONS OF CONTRACT

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

The Applicant is taken to have agreed to accept these Draft Terms and Conditions of Contract unless they include a statement that notes any part of the draft conditions of contract they do not agree with, stating reasons and alternatives where appropriate, for the Australia Council's consideration.

A10. CONFLICT OF INTEREST

Applicants must declare any actual or perceived conflict of interest that is likely to arise if their submission is the successful proposal 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 procurement process and is unlikely to be able to be satisfactorily managed, the Australia Council reserves the right to treat the submission as unsuccessful.

A11. PROCUREMENT TIMETABLE

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

Date	Activity
20/04/2023	Request for Proposal distributed
18/05/2023	Request for Proposal closes
19/05/2023	Submitted applications acknowledged Eligibility checked
Week commencing 22/05/2023	Proposals evaluated Shortlisted Applicants will be potentially invited to a meeting.
Week commencing 29/05/2023	(In this order) Successful Applicant notified and contract issued Contract executed by both parties Unsuccessful Applicants notified
12/06/2023	Work to commence

Where this timetable varies significantly, we will attempt to notify prospective Applicants 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 Applicant, its officers, employees, partners, related entities and nominated subcontractors.

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

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

A13. NOTIFICATION

All Applicants will be informed in writing of the outcome of their proposal at the earliest opportunity.

A14. CONFIDENTIALITY OF APPLICANT'S INFORMATION

Applicants should note that if successful, parts of their response may be included in a subsequent contract. Applicants must identify any aspects of their proposal or the proposed contract that they consider should be kept confidential, including reasons.

Applicants should note that the Australia Council will only agree to treat information as confidential in cases that it considers appropriate. In the absence of such an agreement, Applicants acknowledge that the Australia Council has the right to publicly disclose the information.

A15. PROPOSAL DOCUMENTS

Proposal documents should include the following:

- An overview and suggested timeline of the proposed activity, including
 - (i) A clear breakdown of who will lead each part of the proposal including relevant eligibility
 - (ii) Statement on your proposed methodology and key research methods
 - (iii) Project plan outlining key steps / actions
 - (iv) Indicative timeline
 - (v) In the case of a consortia proposal, please clearly outline which members of the consortia are responsible for key deliverables as outlined in this Request for Proposal.
- A breakdown of the total cost of the proposal, with detailed costing identifying the items or services proposed, including and noting GST where applicable.
- 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 insurance policies.
- Supporting information concerning the proposing organisation(s), its management structures and procedures, quality assurance procedures and demonstrated experience in the subject area of this RFP and related areas.
- Qualifications of the staff 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 RFP. This includes not agreeing to any of the draft conditions of contract stating reasons and alternatives where appropriate.

PART B – STATEMENT OF REQUIREMENTS

B1. BACKGROUND

Background Information

The Australia Council recognises the extensive consultation undertaken in recent years, and focuses on specific areas that have not been captured through previous consultation, sector engagement and research, including: the review of the National Arts and Disability Strategy (2018), Productivity Commission Review of the National Disability Agreement (2019), Australia Council *Re-Imagine* sector consultation on COVID-19 recovery (2020), Australia Council Arts and Disability Initiatives review (2021), the Disability Royal Commission (since 2019), Inquiry into Australia’s Cultural and Creative Industries and Institutions (2021), Arts Access Australia consultation on a National Code of Conduct (2021-22) and the National Cultural Policy (2022).

Key themes relating to arts and disability needs and services that have emerged across these consultations have been acknowledged in the National Cultural Policy *Revive*, which recognises that people living with disability have been denied access to the venues and spaces where culture happens.

Revive recognises challenges and gaps for people with disability to full participation in arts and culture. These included low expectations, attitudes, physical access, and other types of barriers to participation, limiting access to many arts and cultural spaces, venues and events for both audiences with disability and cultural and creative practitioners with disability. Training and professional development opportunities designed specifically for artists with disability are limited, and there are barriers to formal education.

Revive commits to action on these issues following a long history of inaction and delay, including development of an Arts and Disability Associated Plan, under Australia’s Disability Strategy 2021–31, to enable people with disability to access and participate fully in the cultural and creative life of Australia.

Some key themes around needs identification and services that have emerged from the body of consultative activity from 2018-22 include:

- People with disability in the arts have diverse needs that must be considered in appropriate ways, recognising First Nations experiences, cultural diversity and diverse lived experience of disability.
- Barriers and inequities in the arts and culture reflect and intersect with inequities, discrimination and disadvantage in the wider workforce and society.
- d/Deaf participants in sector consultations highlighted the challenge of being grouped with people with disability, specific access needs at all stages and recognition and inclusion of Auslan.

- Responses to the COVID-19 pandemic have shown the speed at which accessibility measures – advocated for by the disability sector for many years – can be deployed. It is important that those measures are not reversed once they are less relevant to non-disabled people. The pandemic has also further disadvantaged and isolated many artists and arts workers with disability, who were already contending with a pay gap and other inequities.
- Education, training and learning are vital for pathways into careers in the arts, but not accessible to everyone. There is a need for a range of accessible avenues and pathways for learning and skills development tailored to needs and access, and recognition of credentials.
- Though traineeships and work placements are vital, there is a need for coaching programs that support the career progression of practising artists and creative practitioners.
- There are barriers to employment in the arts for artists and creative practitioners as well as leadership, technical, managerial, administrative and other roles.
- Creative and cultural sectors provide positive artistic, cultural, economic, social, wellbeing and other outcomes but many avenues to participate and contribute are not fully accessible. Recognition, visible role models and promotion of success and achievement is needed.
- The social model of disability needs to be recognised and integrated into policy. Programs and services for arts and disability need to be connected-up across whole of government.
- During the pandemic, the sector showed great resilience, but current precarity, workloads and poor remuneration are unsustainable. There is a need for new sustainable and inclusive business models to support creative practice.
- Participants with disability in sector consultations have highlighted the differences among people with disability, the need to address cultural safety and inclusion, and the burden of educating others.
- Consultation, co-design and disability-led processes are needed in the development of strategies, programs and policies impacting people with disability in the arts.
- Arts and disability advocates have identified the need for promoting the value of the arts for people with disability for employment, enterprise, social inclusion, cultural identity, and health and wellbeing outcomes.
- Arts and disability advocates have identified the need to break down barriers to access and participation in the arts, removing inequity, improving financial and artistic independence, and removing the significant disadvantages that people with disability face in the arts in Australia, and the design of programs and investment around equity and impact.

- Arts and disability advocates have also called for national, harmonised standards to support the cultural inclusion of Australian artists and arts workers with disability, and recognition of these standards in public funding conditions.

B2. GOALS AND OBJECTIVES

The goals and objectives of this needs analysis and audit are to provide insights and answers to the following research questions:

What are the critical service needs? (Noting and building on insights from previous consultations):

- What types of services do stakeholders need most – as individuals? - collectively?
 - (e.g., individuals: support for arts practice and creation, accessibility, pathways into specific technical and other roles, internships, leadership development, skills and professional development, mentoring)
 - (e.g., collective: codes of conduct, avenues and platforms for presenting / publishing / exhibiting / performing, networks and relationship building, demonstrating impact, knowledge and advocacy)

What (if any) targeted capacity building programs and initiatives should be prioritised?

- Business training and development programs
- Programs with a specific focus on leadership development
- Producer development programs
- Independent artists development programs
- Awards, residencies and fellowships
- Showcase platforms of work and artists
- Other

What (if any) sector engagement and advocacy should be prioritised?

- Establishment and management of a functioning network (artists, companies, presenters and producers)
- Sector gatherings
- Network meetings
- Digital marketing and information sharing (e.g. E-newsletters, website, social media)
- Creative development feedback and dialogue
- Other

What (if any) advocacy should be delivered?

- Codes of Practice
- Guides
- Government Submissions
- Other

Who to the best of your knowledge is delivering one or more of the above?

- What and how well are stakeholder needs currently being met? Where are the main centres of service activity and capability?

- Where are the gaps? In terms of service quality, geographic / location, art form, specific access needs, and specific cultural needs or barriers?
- How should targeted arts and disability services interact with other services available from disability or wider arts sector organisations more generally?

B3. METHODOLOGY

The Council will engage research consultant/s with relevant expertise, and experience of disability services and an innovative approach to consultation.

The Disability Arts Services Needs Analysis and Audit will integrate consultation as well as a review of internal and external literature, including research, existing consultation and feedback material.

To ensure a broad range of views and experiences is canvased, targeted focus groups and/or interviews will include groups such as:

1. those working at the intersection of disability and culturally and linguistically diverse communities
2. those who identify as d/Deaf and/or disabled but who are not among active advocates
3. a separately managed and led First Nations component.

It is anticipated that the research methods and activities will include both a desktop review and qualitative research project as outlined below:

DESKTOP REVIEW COMPONENT:

- A desktop review of Australia Council information, and wider research relating to d/Deaf and disabled arts activity in Australia - including reports from policy consultations and reviews, and research relating to accessibility, employment, career pathways, engagement, programming and creative practice.
- A desktop review of publicly available information from relevant Australian agencies and peak bodies, cultural institutions, small to medium arts organisations and artists relating to arts participation, access and inclusion in arts employment, creative practice, leadership and the barriers, as well as programming information, reports on relevant arts and disability activities and outcomes, and outputs providing insights on sector activity, mapping and needs.

QUALITATIVE RESEARCH COMPONENT:

- Qualitative research through engagement with key stakeholders, including:
 - (i) Australian Government departments and agencies where appropriate, including (but not limited to):
 - Australia Council for the Arts
 - Arts Queensland
 - Arts South Australia
 - Arts ACT

- Arts NT
 - Arts Tasmania
 - Creative Victoria
 - Create NSW
 - The Office for the Arts
 - The National Disability Insurance Agency (NDIA)
 - Regional Arts Australia.
- (ii) Key arts sector and cultural and creative industries stakeholders, including (but not limited to):
- First Nations peak bodies and organisations providing services to artists (eg ANKA, Desart etc)
 - Arts and disability peak and service bodies (including eg Arts Access Victoria, Access Arts (QLD), DADAA (WA), Accessible Arts (NSW), Access2Arts (SA))
 - Small to medium arts organisations creating work or providing services to d/Deaf and disabled artists and participants
 - d/Deaf and disabled artists and arts workers
 - Arts organisations deliver arts and cultural programs by, with and for d/Deaf and disabled people
- (iii) Qualitative collection and analysis, including engagement with key stakeholders.
- (iv) Further analysis of policies and international approaches to the provision of services to the d/Deaf and disabled arts sectors if deemed necessary.

B4. OUTPUTS AND DELIVERABLES

Consultants will provide regular reporting on their findings based on agreed milestones. A synthesis of the components will be submitted as a final report, inclusive of a summary of insights on the range of service needs and gaps and considerations to support the Council's deliberations on investment for 1 July 2024 and beyond and a set of options for how they might be addressed.

This draft report will be presented to the Council, for review and feedback. The final report will be presented to the Australia Council Executive.

After the final report has been received, the Council will coordinate a general briefing for d/Deaf and disabled stakeholders on key insights from the needs analysis and audit through an online resource and briefing session. The Council will liaise with the consultant(s) to ensure research participants are notified of this general briefing. The Council may also draw on insights from the final report to inform future analysis and research, including for publication.

The final report should consist of:

- a) Executive Summary
- b) Desktop Review Report
- c) Qualitative Research Report
- d) First Nations Desktop Review & Qualitative Research Report
- e) A synthesis of key insights on the range of service needs and gaps; and considerations to support the Council's deliberations on investment priorities for Partnership Delivery

Written deliverables must first be submitted in draft format. The project timeline should allow for at least two rounds of feedback.

B5. TIMELINE

The successful Applicant will be required to submit these deliverables within the timeframes indicated below. Potential Applicants are welcome to propose their own reporting plan to include additional outputs, updates, meetings or teleconferences as appropriate.

ACTIVITY/MILESTONE	DUE DATE
Commissioning meeting	Week commencing 12/06/2023
Work to commence	Week of 12/06/2023 following commissioning meeting
Written project updates	3 x written updates provided during weeks commencing 03/07/23, 24/07/23 & 14/08/23
Delivery of draft report(s)	28/08/2023
Delivery of final report(s)	11/09/2023

B6. BUDGET

The budget for this project is \$80,000 excluding GST. Your quote should include a comprehensive pricing breakdown, including clear allocations to each research component, including and noting where GST is applicable.

B7. PERFORMANCE STANDARDS REQUIRED

The successful applicant will be expected to achieve a high-performance standard. The Australia Council will monitor performance by way of requiring fortnightly meetings.

Communications Standards

All formal reporting will adhere to the Australia Council Style Guide, which outlines the organisations accepted conventions for spelling, grammar and style.

The Australia Council is committed to communicating in 'plain English'. The successful Applicant must ensure that all reports are written in plain, clear English, and are precise, clear, readable and efficient.

Supplier Code of Conduct

The successful applicant will be required to adhere to the Australia Council's Supplier Code of Conduct which will form part of the terms and conditions of their contract.

B8. SPECIFIC RISKS AND/OR ISSUES

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

The risk management strategy should include declaration and mitigation of any potential real or perceived conflicts of interest (including employment or consultancy relationships with arts organisations involved in arts and disability or accessibility services).

B9. PROJECT GOVERNANCE

The successful Applicant will report to Zohar Spatz – Head of Community & Experimental.

The Head of Community & Experimental reports to the Executive Director, Arts Investment.

The Executive Director, Arts Investment reports to the Chief Executive Officer.

EVALUATION OF PROPOSALS

B10. CRITERIA

The Australia Council will appoint an Evaluation Committee to review and select the successful proposal against the following criteria:-

Criteria	Weighting
Demonstrated understanding, knowledge and experience of the disability services, and capacity to ensure consultation processes are disability-led	25%
Compliance with the RFP requirements - including proposed First Nations consultation to be undertaken by a First Nations researcher.	25%
Demonstrated experience and expertise in relevant research methods, and quality and innovation proposed methodology (or delivery plan) to achieve the outcomes required	25%
Analysis of the risks and how risks are proposed to be managed	15%
Value for money and cost effectiveness	10%
Non weighted essential criteria	
Confirmation of the ability to commence the work on 12/06/2023	
Acceptance of the draft Terms and Conditions of the Contract (see Part C)	
Evidence of all insurances required to perform the contract	

B11. YOUR SUBMISSION COMPLYING WITH ALL PARTS OF THIS RFP

Please note that in this evaluation, the Australia Council may seek information and referee reports from other sources. The selection of a preferred proposal 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 RFP.

PART 3

GENERAL TERMS AND CONDITIONS OF CONTRACT

1. Definitions

In this Contract:

“**Agreement Materials**” means all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Deliverables including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means.

“**Australia Council**” means the Australia Council for the Arts, ABN 38 392 626 187.

“**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.

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

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

“**Force Majeure Event**” means an event beyond the control of any of the Parties, which prevents a Party or Parties from complying with any of its obligations under this Agreement, including but not limited to:

- A natural disaster such as, but not limited to, violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought, explosion, fire;

- Acts of war, whether declared or not, acts of threats of terrorism, acts of civil unrest or disobedience, invasion, act of foreign enemies, mobilisation, requisition, or embargo; rebellion, revolution, insurrection, or military or usurped power, or civil war;
- Plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction;
- Other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected party to take precautions and which the affected party cannot avoid even by using its best efforts.

“**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.

“**Partner**” or “**partnership**” refers to the Parties’ collaborative approach to fulfilling the objectives of the Contract and not to a legal relationship which subsists between persons carrying on a business in common with a view of profit.

“**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.

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, willful 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(s) 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 Supplier 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, the Australian National Audit Office 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 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 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. Force Majeure

No party shall be liable or responsible to the other party or parties, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such

failure or delay is caused by a Force Majeure Event.

37. Survival

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

38. 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.

39. Compliance with Laws

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

40. General Data Protection Regulation (GDPR) (EU)

Where required the Contractor agrees to comply with the **General Data Protection Regulation (GDPR) (EU) 2016/679** and to use adequate safeguards with respect to the protection of privacy and the fundamental rights and freedoms of individuals whose personal data you process under this Services Agreement.

41. Modern slavery and the Supplier Code of Conduct

In performing the obligations under this Services Agreement, the Contractor will (and will ensure that each and any of its subcontractors will):

- (a) comply with the Australia Council's Supplier Code of Conduct;
- (b) comply with the *Modern Slavery Act 2018*; and
- (c) take reasonable steps to mitigate and address modern slavery risks in the Contractor's or subcontractors supply chains or in any part of their business.

42. Applicable Law

The laws of New South Wales apply to the Contract.

43. 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.