

REQUEST FOR PROPOSAL

Digital Strategist-in-Residence

The Australia Council for the Arts (Australia Council) is the Australian Government's principal arts funding, development and advisory body. We are currently seeking proposals for digital strategists and creative technologists to consult with arts organisations on digital strategy and transformation.

This document is available until the closing date.

Issue Date: 11 July 2022

Request for Proposal Closing Time: 5 August 2022, 2:00pm AEST

Lodgement Address: digital@australiacouncil.gov.au

LODGEMENT OF PROPOSALS

Proposals should be sent by a secure email and received **by 2pm local Sydney, NSW time on 5 August 2022.**

By email to: digital@australiacouncil.gov.au
Include email subject line: Digital Strategist-in-Residence Proposal

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 to digital@australiacouncil.gov.au.

Contact details:

Sophie Penkethman-Young, Manager, Digital Culture Initiatives
Australia Council for the Arts

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.

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.

Each part of this RFP must be satisfactorily completed by the successful 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.

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
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11/07/2022	Request for Proposal published
21/07/2022	Online information session
5/8/2022	Request for Proposal closes
Week commencing 9/8/2022	Submitted applications acknowledged Eligibility checked Proposals evaluated
Week commencing 15/8/2022	Shortlisted Applicants will be potentially invited to an interview
Week commencing 22/8/2022	Successful Applicants notified and contract issued Contracts executed by both parties Unsuccessful Applicants notified
15/09/2022	Induction to the Digital Strategist-in-Residence program
19/09/2022	Residencies 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:

- A written response outlining how the individual, company or organisation proposes to meet the requirement of the project (no more than two pages).
- A breakdown of your quote, including availability and capacity to deliver the requirements within the budget requirements of this document (refer part B6). Your quote must include and note GST where applicable.
- Individual, company or organisation information such as corporate status, registered place of business, size, number of staff and insurance policies.
- Qualifications of the staff to be designated to the project.
- 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

The *Digital Strategist-in-Residence* program connects arts and cultural organisations with creative technologists to bring new thinking, innovation and digital culture to the sector.

The *Digital Strategist-in-Residence* program, for Australian small-medium and large arts and cultural organisations, is one of the suite of programs developed as part of the Digital Culture Strategy. The initiative assigns consultants to eligible and selected organisations to increase the digital capacity and potential of the organisation and to uncover new opportunities for transformation.

The program was piloted in 2021 with four arts organisations from around Australia and has since been delivered twice with 15 organisations around Australia. A Digital Strategist-in-Residence closed wiki-page has been created to support the strategists and participating organisations and will be available to successful applicants.

More details on the program can be found [here](#).

The Cultural Digital Strategy creates a vision for a digitally enabled arts and creative industry by 2024 with the following key outcomes:

1. Audiences can easily discover and access Australian arts and culture online.
2. Australian creative practitioners embrace digital and emerging technologies to develop their practice.
3. Digital environments support sustainable creative careers and business models.
4. Australian creative practitioners are digitally confident and proficient.
5. First Nations arts and cultural experiences are amplified through digital mediums.
6. Digital environments are accessible, inclusive and safe for all practitioners and audiences.

Applicants can review the Digital Culture Strategy [here](#).

The Australia Council requires the services of consultants to join a team to deliver the Digital Strategists-in-Residence program. The consultants are required to provide advice, guidance, mentorship, and support to arts organisations in the development and advancement of their digital strategy and capabilities.

B2. GOALS AND OBJECTIVES

In line with the key priorities of the Digital Culture Strategy, the development programs and initiatives are designed to create a collaborative space for learning, sharing and experimenting with digital strategy and practice.

The goal of this residency program is to embed expert knowledge and skills within existing organisations to enable digital transformation and build digital capacity and strategic thinking.

The program will provide a digital strategy and foundation for the organisation to continue, self-directed, on completion of the residency.

B3. METHODOLOGY

Successful Applicants will be contracted to join a group of strategists to work alongside the Australia Council digital team and be assigned to a specific arts organisation as a Digital Strategist-in-Residence to facilitate the program. The strategists will undertake the following tasks in collaboration with their assigned organisation:

- assess the organisation's digital capabilities using an online assessment tool, the [digital culture compass](#)
- recommend processes and strategic directions to enhance the organisation's digital capacity
- develop a framework for improving digital strategy, planning and activities
- assist in co-designing digital futures tailored to the values, people and context of each organisation
- facilitate and support the organisation to design and develop a digital strategy that aligns with the organisations' values and broader strategic plan and activities

B4. OUTPUTS AND DELIVERABLES

Digital Strategists-in-Residence will each work closely with an assigned arts organisation for a three-month (13 week) period. The program overview and design will be available for strategists in the *Digital Strategist-in-Residence handbook* to support program delivery on commencement of the project. The program follows a three-phase process to provide blended (online and in-person) workshops around digital literacy and capability with members of the organisation to:

1. **Assess:** The main focus of this stage is to combine the work that the organisation may have done in this area already with a comprehensive audit of the existing digital capabilities and digital maturity. The *Digital Culture Compass* tool is a core component of this phase, and an induction to the tool will be provided to successful Applicants.
2. **Develop/Ideate:** In this phase, you will work with the organisation to come up with a complete set of proposals that respond to these challenges and opportunities and will form the basis of the final digital strategy.
3. **Draft:** This phase uses the set of fully developed proposals for meeting the digital challenges and opportunities that the digital maturity audit uncovered to draft a digital strategy with the organisation.

Additional deliverables

- Travel to organisations may be required and is to be negotiated with the Australia Council team prior to being incurred. Consultants are required to arrange their own travel, and detail as an additional cost in the monthly reporting.
- Contractors will be required to join regular internal meetings with the larger group of strategists and the Australia Council digital team.
- A two-page written report on the residency must be submitted on completion of the three-month (13 week) residency.

B5. TIMELINE

The successful Applicants 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	15 September 2022
Residency to commence with the assigned organisation	19 September 2022
Phase 1: Assess	19 September – 20 October 2022
Phase 2: Develop	21 October – 17 November 2022
Phase 3: Draft	18 November 2022 – 16 December 2022
Final online gathering with all organisations and strategists	15 December 2022
Written report due	13 January 2022

B6. BUDGET

A budget of \$11,000 (excluding GST) is allocated for each organisation's residency.

This is based on 1 day/week (8 hours/week) for a 3-month period (13 weeks) at \$916 per day.

Strategists may apply to work with up to five organisations each period (up to 5 days/week).

Please indicate your availability (and capacity to deliver individually or with your organisation) in your proposal as per the following guidelines:

	1 day/week	2 days/week	3 days/week	4 days/week	5 days/week
3-month period (13 weeks)	\$11,000	\$22,000	\$33,000	\$44,000	\$55,000

**Figures above listed to do not include GST and must be added to your quote if applicable.*

The contract is for a minimum of three months (13 weeks), with an option to extend to a maximum of twelve months to deliver additional residencies each quarter at the sole discretion of the Australia Council.

B7. PERFORMANCE STANDARDS REQUIRED

The successful Applicants will be expected to achieve a high-performance standard and the Australia Council will monitor performance by way of requiring monthly performance review 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.

B9. PROJECT GOVERNANCE

The successful Applicants will report to Sophie Penkethman-Young, Manager, Digital Culture Initiatives.

The Manager, Digital Initiatives reports to the Director, Industry Initiatives.

The Director, Industry Initiatives reports to the Executive Director Development and Strategic Partnerships.

EVALUATION OF PROPOSALS

B9. CRITERIA

The Australia Council will review and select the successful proposals against the following criteria:

Criteria	Weighting
Demonstrated knowledge and experience of organisational digital capability, strategy and transformation.	35%
Demonstrated ability to deliver the project and achieve proposed outcomes required, including ability to facilitate within organisations.	25%
Demonstrated knowledge and commitment to digital inclusion and accessibility, community engagement and cultural safety.	20%
Demonstrated experience working with a diverse range of stakeholders, especially in the arts and creative industry.	20%
Non weighted criteria	
Acceptance of the draft Conditions of the Contract (see Part C)	
Ability to commence the Digital Strategist-in-Residence program on 19 September 2022	

B10. 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 C

GENERAL TERMS AND CONDITIONS OF CONTRACT

1. Definitions

In this Contract:

“**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 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, 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(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, 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 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.