

# EXPRESSION OF INTEREST

## Artistic Director – Australian Program – 13<sup>th</sup> Festival of Pacific Arts & Culture

The Australia Council for the Arts (Australia Council) is the Australian Government's principal arts funding, development and advisory body. We are currently seeking expressions of interest for a contractor to provide artistic direction for the Australian delegation to the 13<sup>th</sup> Festival of Pacific Arts & Culture, Hawai'i, 6-16 June 2024.

Aboriginal and Torres Strait Islander applicants are encouraged to apply for this role.

**This document is available until the closing date.**

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Issue Date: 9 May 2023

Tender Closing Time: 6 June 2023, 2:00pm AEST

Lodgement Address: [firstnationsarts@australiacouncil.gov.au](mailto:firstnationsarts@australiacouncil.gov.au)

# LODGEMENT OF EXPRESSIONS OF INTEREST (EOI)

Applications should be sent by a secure email and received **by 2:00pm AEST time on 6 June 2023**.

By email to:

[firstnationsarts@australiacouncil.gov.au](mailto:firstnationsarts@australiacouncil.gov.au)

Include email subject line: EOI - Artistic Director - 13FestPAC

Applicants are to submit an original EOI 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 EOI must be emailed in the first instance to:**  
[firstnationsarts@australiacouncil.gov.au](mailto:firstnationsarts@australiacouncil.gov.au)

Contact details:

Joanne Brown

Director, First Nations Arts and Culture

Tel: +61 (0)2 9215 9045

Email: [j.brown@australiacouncil.gov.au](mailto:j.brown@australiacouncil.gov.au)

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

# **PART A – CONDITIONS FOR PARTICIPATION**

## **A1. INVITATION**

Applicants are invited to submit an Expression of Interest (**EOI**) that meets the Australia Council's requirements as per the below.

This EOI is expressly not a contract between the Australia Council and the applicant. Nothing in this EOI or in any subsequent negotiation or procurement process is to be construed as to give rise to any contractual obligations, express or implied.

We reserve the right to stop or vary the EOI process, determine a shortlist of applicants, negotiate or decline to negotiate with any applicant, negotiate with more than one applicant, or go out to an open tender, at any time. We are not bound to accept the lowest priced submission or any submission.

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

## **A2. ENQUIRIES BY APPLICANTS**

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

## **A3. LODGEMENT**

EOIs must be lodged by the EOI Closing Time shown on page 2 of this EOI. Before lodgement of a submission, the applicant must initial any alterations or erasures made to an EOI. Late EOIs will not be accepted.

## **A4. OWNERSHIP OF EOI DOCUMENTS**

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

## **A5. NON-COMPLIANCE**

Any non-compliant EOIs may be excluded from consideration.

## **A6. APPLICANTS TO MEET COSTS**

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

## **A7. APPLICANTS TO INFORM THEMSELVES**

Applicants are considered to have:

- a) examined this EOI and any documents referred to in the EOI as being available; and

- b) satisfied themselves as to the correctness and sufficiency of their EOIs including budgets and payment schedules.

## **A8. IMPROPER ASSISTANCE AND COLLUSION**

It should be noted that the Australia Council shall exclude from further consideration, EOIs 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. FALSE OR MISLEADING CLAIMS**

If you are found to have made false or misleading claims or statements in your application or having obtained improper assistance, we may reject your submission from any further consideration. You should be aware that giving false or misleading information to the Commonwealth is a serious offence under the *Criminal Code Act 1995*.

## **A10. UNLAWFUL INDUCEMENTS**

You and your officers, employees, agents and advisors must not violate any applicable laws or Australia Council policies in relation to unlawful inducements in connection with the preparation or lodgement of their submission and the EOI process.

## **A11. FREEDOM OF INFORMATION**

You should note the operation of the *Freedom of Information Act 1982* which gives members of the public the right of access to documents in the possession of Australian Government departments and their agencies. You should obtain your own independent professional advice on the impact of this Act on your participation in the EOI process.

## **A12. PRIVACY**

We are obliged to protect personal information in accordance with the Australian Privacy Principles (APPs) under the *Privacy Act 1988* ('Privacy Act'). We reserve the right at any time not to disclose any information that is subject to, or that we reasonably believe could be subject to, protection under the Privacy Act.

If we disclose any personal information to applicants, they must also comply with the applicable obligations under the Privacy Act, to which we are subject.

## **A13. AUDITOR-GENERAL ACT 1997**

Your attention is drawn to the *Auditor-General Act 1997* which gives the Auditor-General and any authorised person with a right, at all reasonable times, to access relevant information, documents and records in the Australia Council's possession. Applicants should obtain their own independent, professional advice on the potential impact of this Act on their participation in this EOI process.

## **A14. DRAFT GENERAL TERMS AND CONDITIONS OF CONTRACT**

Draft general terms and conditions of contract are attached to this EOI at **Part D**. These draft contract terms and conditions are intended to form the basis of any contract between a successful applicant and the Australia Council.

Applicants please note, the applicant is taken to agree to accept these Draft Terms and Conditions of Contract.

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

## **A15. CONFLICTS OF INTEREST**

You must declare any actual or perceived conflicts of interest that are likely to arise if your submission is the successful EOI and how these conflict(s) are proposed to be managed. Where, in the opinion of the Australia Council, a conflict of interest is one that compromises the integrity of the EOI process and is unlikely to be able to be satisfactorily managed, the Australia Council reserves the right to treat your submission as unsuccessful.

## **A16. TIMETABLE**

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

<b>Date</b>	<b>Activity</b>
9/5/2023	EOI published
6/6/2023	EOI closes
Week commencing- 6/6/2023	Submitted EOIs acknowledged. Eligibility checked
Week commencing- 12/6/2023	EOIs evaluated by the Tender Evaluation Committee (TEC)

Week commencing- 19/6/2023	Shortlisted Applicants will be potentially invited to an interview
Week commencing- 3/7/2023	Successful Applicant notified and contract issued Contract executed by both parties
Week commencing- 10/7/2023	Unsuccessful Applicants notified
17 July 2023	Work to commence

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

## **A17. SECURITY, PROBITY AND FINANCIAL CHECKS**

We may, as part of the evaluation process and prior to awarding a contract, conduct such security, financial or probity checks as we consider necessary in relation to any application, 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 application.

## **A18. NOTIFICATION**

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

## **A19. 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 response 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.

## A20. EOI DOCUMENTS

EOI documents should include the following:

- Outline your vision for the 13<sup>th</sup> FestPAC and how your artistic direction will assist us to create a presentation that embodies the festival theme **Ho'oulu Lahui: Regenerating Oceania** and the foundational values that align to the programming pillars of the festival.
- Provide evidence of your experience in Artistic Direction of a large-scale event including any First Nations cross cultural engagement.
- A detailed workplan including key milestones and any key personnel to be relied upon
- A breakdown of the total cost of service, 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.
- A risk analysis, setting out perceived potential risks, the level of potential impact of such risks and the contingencies to mitigate any potential damage resulting from such risks.
- A current copy of your CV and 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 EOI. This includes not agreeing to any of the draft conditions of contract stating reasons and alternatives where appropriate.

# PART B – STATEMENT OF REQUIREMENTS

## B1. FURTHER DETAILS

Applicants need to provide the following as part of their submission:

### ***Respondent Details***

Name: (full legal name)

ABN:

Is the Respondent a small to medium enterprise (SME)?

### ***Contact person***

Name:

Business/Organisation:

Position:

Address:

Telephone:

Fax:

Email:

*It is the applicant's responsibility to promptly notify the Australia Council of any changes to this information after lodgement of a submission.*

### **B1.2. BACKGROUND**

The Festival of Pacific Arts & Culture (FestPAC) is the world's largest celebration of Indigenous Pacific Islanders arts and culture, drawing artists, cultural practitioners, scholars and officials from member nations of the Pacific Community (SPC). FestPAC is held every four years in a different Pacific Island nation.

Since its inception in 1972, FestPAC has been an important venue for the perpetuation of Pacific arts and cultures. It has developed into a strong entity in which cultural sharing and learning from differences has enhanced our appreciation and knowledge of the region. The goals of the festival were developed in 1975 and have remained the driving force of the event:

Preserving and revival of traditional arts and cultures of the Pacific,

Exploring new forms of cultural activities suited to the needs of the Pacific,

Creating greater awareness of the cultural richness of the Pacific throughout the world,

Fostering a greater sense of unity throughout the Pacific to promote excellence in arts,  
and

Promoting the development and use of ethnic [indigenous] languages.

**Ho'oulu Lāhui: Regenerating Oceania** will serve as the theme for the festival and its mission is to strengthen the physical and cultural resilience of people and communities



throughout Oceania to share, learn and grow whilst adapting to climate change and elevating our peoples together.

The Australia Council will lead a delegation of Australian First Nations artists, creatives and cultural leaders to the 13<sup>th</sup> FestPAC in Honolulu, Hawaii, 6-16 June 2024.

As an important international cultural exchange and diplomatic event, Australia's representation of First Nations Arts and Culture requires dedicated coordination by a number of stakeholders including government, agency, corporate, logistical and creative stakeholders.

## **B2. SCOPE OF REQUIREMENT**

### **B2.2. Delegation Selection**

The Artistic Director will work closely with the Executive Team, First Nations Arts & Culture and Industry advisors to select Australia's delegation to FestPAC from an open call out for expressions of interest from the First Nations Arts and Culture Sector.

### **B2.3. FestPAC Programming**

Australia's artistic program will respond to the festival theme of **Ho'oulu Lāhui: Regenerating Oceania** and be representative of the richness and diversity of Australia's First Nations Arts and Cultural practises and regions including both traditional and contemporary presentations.

The foundational values guiding 13 FestPAC are:

- Preservation and revival
- Exploration
- Awareness
- Unity
- Indigenous Languages

Programming Pillars include:

- Performing Arts (Ho'ike ike) – music, dance, drama, storytelling and poetry.
- Visual Arts (Ho 'ike Ki'i) – creative activities through drawing, painting, printmaking, sculpture, ceramics, architecture, photography and film.
- Heritage Arts (Hana No'eau) – fibre and other weaving, dye preparation and traditional cloth, adornment (feather and shell work), tatau, pottery, fashion, carving (wood/stone/bone). Traditional Elders program.

- Culinary Arts (Mea'ai) – showcasing entire culinary process from planting and harvesting to preparation, cooking and consumption. Ceremonial and ritual foods, everyday consumption and food sovereignty.
- Film, New Media, Fashion and Design – Film screening series, moving images, full length features, documentaries, short films and animation. Fashion and adornment.

#### Ceremony and Protocols:

- Voyaging (Wa'a)
- Opening (Wehena)
- Closing (Panina)
- Church (Ekalesia)

#### Strategic Programming:

- Conferences and Symposia – sharing of research and scholarly presentations, discussion of cultural practise, networking and collaboration opportunities. An inclusive hub of innovating thought and practise, solutions to challenges discussed. Social and emotional wellbeing discussions, traditional medicinal practice, talks, ideas, universities and colleges.
- Expo and Festival Marketplace - large entrepreneurial exhibit hall separate from the village. Arts & crafts for sale.

#### Youth Ambassadors Program (YAP):

A program within the festival for youth representatives to connect, share and collaborate with each other on projects undertaken in their home countries in the year leading into the festival. Australia's youth representative(s) will be aged 18-30.

## B2.4. Artistic Director Responsibilities

The activity associated with the role of the Artistic Director is broken into four (4) phases over a 15-month period as below.

The Artistic Director will be required to provide artistic updates to the Australia Council's First Nations Arts and Cultural Strategy Panel, the Australia Council Board and interdepartmental working groups where required throughout the planning process.

Dates	Activity	Key tasks/ milestones
<p style="text-align: center;"><b>Phase 1: Delegation Selection</b></p> <p style="text-align: center;"><i>July - August 2023</i></p> <p>(up to 20 hrs per week for an 8 week period)</p>	Delegation selection	<p>Assessment and selection of delegation through expression of interest (EOI) submissions in collaboration with Australian Council First Nations Executive Team</p> <hr/> <p>Provide creative oversight on the composition of the delegation in informing Australia's response(s) to festival theme.</p> <p>Prepare an artistic brief for the First Nations Arts and Culture Strategy Panel</p>
	Stakeholder Engagement (ongoing)	<p>Participate in weekly/ fortnightly meetings with the Australia Council Executive Team and FestPAC working Group</p> <hr/> <p>Provide updates to Australia Council Executive Team, First Nations Arts and Cultural Strategy Panel and Australia Council Board.</p>
	<p style="text-align: center;"><b>Phase 2: Launch and Scoping</b></p> <p style="text-align: center;"><i>September – November 2023</i></p> <p>(12 weeks at FT equivalent)</p>	Program Launch
Festival event artistic scoping and curation		<p>Work with the Project Manager and Production Manager to scope and curate Australian involvement in festival events as follows:</p> <ul style="list-style-type: none"> <li>- Festival Program</li> <li>- Australian Welcome Event</li> <li>- FestPAC ceremonies and protocols</li> <li>- Parade of Nations</li> <li>- Festival Village</li> </ul>

<p><b>Phase 3: Delivery</b></p> <p><i>January – June 2024</i></p> <p>(up to 20 hrs per week January–April increasing to FT equivalent May - June)</p>	Stakeholder Engagement	<p>Provide reports to First Nations Arts and Culture Strategy panel as required.</p> <p>Attendance Australia Council and interdepartmental working groups meetings and artistic consultation as required.</p>
	Delegation Engagement	<p>Participate in online pre-departure delegation briefings</p> <p>Participate in in-person pre-departure delegate briefing in Sydney</p>
	Delivery	<p>Final First Nations Australian Program Event plan for:</p> <ul style="list-style-type: none"> <li>- Australian Welcome Event</li> <li>- FestPAC ceremonies and protocols</li> <li>- Parade of Nations</li> <li>- Festival Village</li> </ul> <p>Participate in diplomatic relations with executive team, government representatives, diplomatic delegations, and Media opportunities.</p>
<p><b>Phase 4: Reporting</b></p> <p><i>July 2024</i></p> <p>(up to 20 hrs per week for 4 weeks)</p>	Reporting and debriefing	<p>Submit artistic report and recommendations to Australia Council</p> <p>Participate in debrief sessions with delegation and working groups</p>

### **B3. PERFORMANCE STANDARDS REQUIRED**

The successful applicant will be expected to achieve a high-performance standard by adhering to all policies and codes of conduct adopted by Australia Council. These documents will be made available to the successful candidate. The Australia Council will monitor performance by way of requiring regular meetings in accordance with periods of activity. i.e., weekly during assessment, scoping and pre-deliver periods and monthly or fortnightly meetings as necessary in-between the high-volume activity periods.

#### **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.

### **B4. 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.

## **B5. TIMEFRAMES**

The work is expected to commence on 17 July 2023. The required hourly commitment is outlined in the above table ranging from up to 20 hours per week scaling up to full time at 35 hours per week when required and leading up to the festival.

## **B6. GOVERNANCE**

The contractor will report to the Director First Nations Arts and Culture.

The Director reports to the Executive Director, First Nations Arts and Culture.

## **B7. QUOTATION**

Your quote should include a comprehensive pricing hourly breakdown excluding GST where applicable.

## PART C - EVALUATION

### C1. CRITERIA

The Australia Council will appoint an Evaluation Committee to review the EOI applications against the following criteria:

Criteria	Weighting
Demonstrated understanding, knowledge and experience of large-scale events, First Nations Arts & Culture sector and Indigenous Cultural Intellectual Property protocols	35%
Proposed methodology (or delivery plan) to achieve the outcomes required	25%
Analysis of the risks and how risks are proposed to be managed	20%
Value for money and cost effectiveness	10%
Demonstrated experience dealing with a diverse range of stakeholders or experience relevant to this project	10%
<b>Non weighted essential criteria</b>	
Confirmation of the ability to commence the work in July 2023	
Acceptance of the draft Terms and Conditions of the Contract (see Part C)	
Evidence of all insurances required to perform the contract	
Current valid Australian Passport and a willingness and ability to travel internationally	

### C2. INITIAL ASSESSMENT

Each application submitted in response to this EOI will be initially assessed to ensure that:

- (a) the submission was submitted by the Closing Time;
- (b) at the time of receipt, the submission meets the minimum format and content requirements specified in this EOI, and includes all required information, statements, certifications and declarations; and
- (c) the submission satisfies the Conditions for Participation set out in Part A.

### **C3. REJECTION AFTER INITIAL ASSESSMENT**

If we consider a submission does not satisfy the initial assessment requirements we will:

- (a) not consider the submission any further and reject the applicant from further participation in the EOI process;
- (b) promptly notify the applicant that they have been rejected from participating in the EOI process on the basis of the initial assessment of their submission; and
- (c) provide a written explanation for rejection to the applicant, upon request.

### **C4. YOUR APPLICATION COMPLYING WITH ALL PARTS OF THIS EOI**

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

# PART D - 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.

“**Consultant**” means the same thing as Contractor.

“**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).

“**Goods and/or Services**” means:

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

the purposes of the Australia Council as specified in the Statement of Work.

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

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

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

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

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

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

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

## 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 30 (a) the Services provided under this Agreement.

## **31. Service Levels**

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

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

## **32. Assignment**

The Contractor must not assign or subcontract any of its rights under the Contract without the prior written consent of the Australia Council.

## **33. Subcontracting**

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

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

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

### **34. Termination**

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

- (a) the Contractor does not deliver any or all of the Services by the relevant delivery date, or notifies the Australia Council that it will be unable to deliver the Services by the relevant delivery date;
- (b) the Australia Council rejects any or all of the Services in accordance with the Acceptance clause of the General Conditions of Contract;
- (c) the Contractor breaches the Contract and the breach is not capable of remedy;
- (d) the Contractor does not remedy a breach of the Contract which is capable of remedy within the period specified by the Australia Council in a notice of default issued to the Contractor; or
- (e) the Contractor:
  - (i) is unable to pay all its debts when they become due;
  - (ii) if incorporated – has a liquidator, administrator or equivalent appointment under legislation other than the *Corporations Act 2001* (Cth) appointed to it; or
  - (iii) if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth).

### **35. Termination or Reduction for Convenience**

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

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

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

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

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

### **36. Survival**

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

### **37. Dispute Resolution**

For any dispute arising under the Contract:

- (a) both parties will try to settle the dispute by direct negotiation as expeditiously as possible;
- (b) if unresolved, the party claiming that there is a dispute will give the other party a notice setting out the details of the dispute;
- (c) within five (5) business days, each party will nominate a senior representative of their organisation, not having prior direct involvement in the dispute;
- (d) the senior representatives will try to settle the dispute by direct negotiation; and
- (e) failing settlement within a further ten (10) business days, either the Australia Council or the Contractor may commence legal proceedings.

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

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

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

### **38. Compliance with Laws**

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

### **39. 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.

### **40. 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 any modern slavery risks in the Contractor's or subcontractors supply chains or in any part of their business.

### **41. Applicable Law**

The laws of New South Wales apply to the Contract.

### **42. 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.