

Request for Tender

Design, Development and Maintenance of a new Creative Australia website

Reference: RFT 2023-2024 04

Creative Australia is the Australian Government's principal arts investment and advisory body. We are currently seeking the services of a web design and development agency to scope, build, and project manage the launch of a new corporate website for our organisation (built on Wordpress) and to provide ongoing development support.

This document is available until the closing date.

Issue Date: 23 January 2024

Tender Closing Time: 13 February 2024, 2:00pm AEDT

Lodgement Address: tenders@creative.gov.au

Lodgement of Tenders

Applications should be sent by secure email and received **by 2pm AEDT on 13 February 2024**.

The application should be endorsed with the above reference number. Your email subject line should read: **New Creative Australia website RFT 2023-2024 04**

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

FAXED APPLICATIONS **will not** be accepted.

LATE APPLICATIONS **will not** be accepted.

All enquiries in relation to this Request for Tender ('RFT') must be emailed in the first instance.

Contact details:

Mick Walsh, Digital Manager

Email: tenders@creative.gov.au

Applicants are strongly encouraged to check Creative Australia's website for any additional information or addenda which may be published while this RFT is open.

Part A – Conditions for Participation

A1. Invitation

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

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

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

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

A2. Enquiries by Tenderers

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

A3. Lodgement of tenders

Tenders must be lodged via secure email by the Tender Closing Time shown on the cover page of this RFT. Late tenders will not be accepted.

A4. Ownership of tender documents

All tender documents become the property of Creative Australia upon lodgement.

A5. Non-Compliance

Any non-compliant tenders may be excluded from consideration.

A6. Tenderers to meet costs

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

A7. Tenderers to inform themselves

Tenderers are considered to have:

- a) examined the RFT and any documents referred to in the RFT as being available; and
- b) satisfied themselves as to the correctness and sufficiency of their tenders including tendered prices.

Each part of this tender must be satisfactorily completed by the Tenderer at the sole discretion of Creative Australia. Where a part of this tender is not satisfactorily completed, we reserve the right to exclude the tender from further consideration.

A8. Improper Assistance and Collusive Tendering

We shall exclude from further consideration tenders which have been compiled:

- a) with improper assistance of employees, ex-employees, or any consultant or adviser to Creative Australia; or
- b) in collusion with other Tenderers.

A9. Draft General Terms and Conditions of Contract

Draft General Terms and Conditions of Contract are attached to this RFT. These draft terms and conditions are intended to form the basis of any contract between a successful Tenderer and Creative Australia.

The Tenderer is taken to have agreed to accept these Draft Terms and Conditions of Contract unless the Tenderer requests an amendment in their RFT. Any requested amendments to the Draft Terms and Conditions of Contract must include reasons for the request(s) and an alternative where possible.

All or parts of the successful Tenderer's response may be included in a subsequent contract.

A10. Conflict of Interest

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

A11. Procurement timetable

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

Date	Activity
23/01/2024	Request for Tender published
13/02/2024	Request for Tender closes

Week commencing 12/02/2024	Submitted Tenders acknowledged Eligibility checked
Week commencing 12/02/2024	Tenders evaluated by the Tender Evaluation Committee (TEC)
Week commencing 19/02/2024	Shortlisted Tenderers may potentially be invited to an interview/meeting/demonstration
Week commencing 19/02/2024	Successful Tenderer notified and contract issued Contract executed by both parties
Week commencing 19/02/2024	Unsuccessful Tenderers notified
26/02/2024	Work to commence

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

A12. Security, Probity and Financial Checks

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

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

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

A13. Notification

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

A14. Confidentiality of Tenderer's Information

Tenderers must identify any aspects of their response or the proposed contract that they consider should be kept confidential, including reasons.

We will only agree to treat information as confidential in cases that we consider appropriate. In the absence of such an agreement, Tenderers acknowledge that we have the right to publicly disclose the information if required.

A15. Tender documents

As well as responding to the Statement of Requirements at Part B, tender documents should include the following:

- A breakdown of the total cost of the 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.
- Qualifications or relevant experience 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 we may address enquiries concerning previous experience in this area.
- A declaration of any partial or non-compliance with any provisions of this RFT. This includes not agreeing to any of the draft conditions of contract, stating reasons and alternatives where appropriate.
- Completed Vendor Security Assessment Questionnaire (attached separately)
- Completed IT Services – Procurement Questionnaire (attached separately)
- IT Support Service Level Agreement to cover the ongoing support and maintenance period post-Go Live (approximately six months) covering quality of service, support, security and operations requirements (draft copy required initially, agreement to be finalised before final acceptance and sign off)

NOTE: Your submission should be no more than 20 pages inclusive of all requirements of this RFT. Any pages beyond the first 20 will not be read or considered.

This page limit does not include the mandatory Vendor Security Assessment Questionnaire, IT Services – Procurement Questionnaire, Risk Analysis, and draft IT Support Service Level Agreement (for ongoing support and maintenance).

Part B – Statement of Requirements

B1. Requirement

Creative Australia requires the services and support of a website design and development agency to scope, build, and project manage the launch of a new corporate website for our organisation built on Wordpress, with ongoing development and maintenance support.

The contract is intended to be for a period of 12 months. It is anticipated that the website build and development will take six months, followed by ongoing development and maintenance support for approximately six months post-launch. Ongoing support beyond this contract would also be ideal. Applicants are encouraged to include options for ongoing support and maintenance beyond the initial 12-month contract term, if available.

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

Tenderers should provide examples of previous comparable works.

B2. Further Details

In 2023, the then Australia Council for the Arts embarked on a transformative journey under the Australian Government's National Cultural Policy: Revive, culminating in a comprehensive rebranding to 'Creative Australia.' This strategic evolution expanded our remit, integrating the functions of Creative Partnerships Australia and the Australian Cultural Fund, and spearheading initiatives such as Music Australia, Creative Workplaces, Writers Australia, and a pioneering First Nations-led Board, noting that these are sub-brands of Creative Australia.

Coinciding with our official transition in August 2023, the Australia Council for the Arts website underwent a preliminary rebranding to align with the Creative Australia identity. However, this update primarily focused on aesthetic enhancements and does not adequately address the evolving structural and functional requirements of the new organisation. The current digital platform, originally tailored to the Australia Council's previous organisational framework, falls short in effectively representing the diverse, multifaceted nature of Creative Australia and our expanding operations.

Further, the existing website architecture is introspectively designed, centred around internal business units rather than prioritising the user experience. At times, it lacks intuitive navigation and fails to facilitate logical user journeys, essential for our diverse range of stakeholders, including artists, arts workers, academics, government, philanthropic partners, researchers, media, and the public.

We are seeking a website design and development agency with a proven track record in creating dynamic, user-centric websites built on Wordpress. The agency should demonstrate expertise in:

- **Comprehensive Digital Research and Integration Analysis:** Applicants must excel in conducting thorough research to scope website needs, including a deep dive into existing Google Analytics data and an examination of other digital platforms. This analysis should inform the development of a cohesive digital strategy that seamlessly integrates with and enhances the overall user journey across all platforms.

- **Proactive Project Leadership and Collaboration:** Applicants should demonstrate exceptional project management skills, ensuring the project is meticulously managed from inception to launch. They should be capable of working in close collaboration with our internal team, effectively taking on a leadership role to guide the project, anticipate challenges, and ensure all milestones are met with the highest standard of quality and efficiency.
- **User Experience (UX) Design:** Developing an intuitive, seamless navigation structure that resonates with various user personas.
- **Content Management Systems (CMS):** Implementing a robust CMS that allows for flexible content updates and scalability.
- **Accessibility and Compliance:** Ensuring the website meets all relevant accessibility standards and complies with digital best practices, including WCAG 2.1.
- **Integration Capabilities:** Investigation and recommendations on integrating existing databases and other platforms (e.g. Salesforce, Fluxx, Microsoft BI, Marketing Cloud, social media) into the new website functionality.
- **Analytics and SEO Optimisation:** Employing advanced analytics tools for ongoing website performance monitoring and optimising the site for search engines.
- **Ongoing development support and maintenance post Go-Live**
- **Comprehensive Cyber Security Framework:** Applicants must demonstrate adherence of cyber security principles, guidelines and risk-based approach within their organisation and delivery frameworks.

B3. Scope of Works and Deliverables

The key Deliverables for this project are:

1. Strategy and Research

- In-depth analysis of current digital assets, including website, email and social media platforms.
- Review of existing Google Analytics data to understand user behaviour and traffic patterns.
- In collaboration with Creative Australia, identify priorities for UI, UX, and IA, and provide recommendations on design and functionality to meet those needs

2. UX and IA design

- Creation of user personas and journey maps to guide the website's structural design.
- Wireframing and prototyping for all key web pages, focusing on intuitive navigation and user engagement.

3. Visual and Interactive Design

- Design of a visually appealing interface that reflects the Creative Australia brand.
- Integration of interactive elements to enhance user engagement and accessibility.

4. CMS customisation and implementation (Wordpress)

- Deployment of a robust, scalable, organised, and logical CMS tailored to Creative Australia's content needs.
- Training for Creative Australia staff on CMS usage for ongoing content management.

5. SEO and analytics integration

- Implementation of SEO best practices to enhance online visibility.
- Integration and customisation of advanced analytics tools (GA4 or other) for real-time performance monitoring.
- Create a post-launch SEO strategy or guidelines to be followed by Creative Australia staff.

6. Accessibility and Compliance

- Ensuring the website meets all relevant accessibility standards and legal compliance requirements.
- Ensuring the highest standards of security and privacy, considering and allowing for future needs and development.
- The website should meet the WCAG 2.1 AA Standard (and AAA if, and wherever, possible).

7. Cross-platform Compatibility and Responsive Design

- Ensuring the website is optimised for a seamless experience across various devices and browsers.

8. Project Management and Collaboration

- Detailed project plan outlining milestones, timelines, and resource allocation.
- Regular collaboration and communication with the Creative Australia team, ensuring alignment and transparency throughout the project lifecycle.

9. Testing and Quality Assurance

- Comprehensive testing across different stages of development, including UAT, to ensure functionality, performance, and a logical UX.
- Load and Penetration Testing

10. Launch and Post-Launch Support

- Coordinated launch strategy to ensure a smooth transition to the new platform, including working with our hosting provider.
- Provision of ongoing support and maintenance post-launch.

- Applicants need to provide platform requirements, if any, and model the support to work with our current vendors in various phases of delivery until Go-live and Post Go-Live (Go-Hosting, CT (Service Desk/ MSP) and Internal CA teams).

11. Documentation and Training

- Comprehensive documentation on website architecture, design, and functionalities, including a CMS user guide.
- Training sessions for Creative Australia staff to manage and update the website effectively.

B4. Performance Standards Required

The successful Tenderer will be expected to achieve a high-performance standard by their:

Quality of Work: Deliverables should be of the highest quality, reflecting modern web design principles, technical accuracy, and user-centric functionality. The final website must be visually appealing, intuitively navigable, and technically robust, allowing room for further development and modification as our organisation grows and expands in remit.

Adherence to Timelines: The agency must endeavour to meet the agreed-upon timelines, with all milestones and deliverables completed on or before the specified dates, notwithstanding unavoidable delays. The agency should demonstrate effective time management skills and the ability to mitigate delays proactively.

Effective Communication: Regular and clear communication is vital. The agency must provide timely updates, be responsive to feedback, and maintain open lines of communication with our internal team throughout the project lifecycle.

Compliance with Standards: The website must comply with all relevant web standards, including accessibility (WCAG 2.1 AA Standard), security protocols, and SEO best practices, ensuring a high-performing and compliant digital platform.

Post-Launch Support and Maintenance: After the launch, the agency must be able to provide effective support and maintenance to address any issues promptly and ensure the website's optimal performance. Ongoing maintenance and development support needs to be provided for a minimum of 6 months from the Go-Live date.

Reporting and Analytics: During the ongoing maintenance and development support period the agency will be required to provide comprehensive monthly reports on the website's performance, including user engagement metrics, SEO effectiveness, and other relevant analytics, to assist in training the Creative Australia team to effectively carry on this work on a regular basis.

Innovation and Creativity: We expect the agency to bring innovative solutions and creative ideas to the project, enhancing the user experience and setting our website apart in the digital landscape.

Collaboration and Leadership: The agency is expected to work collaboratively with our team, taking a leadership role in the project management to ensure seamless execution and alignment with our objectives.

Professional Standards

The Contractor will be required to adhere to rigorous ethical and professional standards.

Communications Standards

We are committed to communicating in 'plain English'. The successful Tenderer must ensure that all reports are written in plain, clear English, and are precise, clear and efficient.

Supplier Code of Conduct

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

B5. Specific risks and/or issues

Tenderers are expected to include a risk management strategy in response to this RFT including risks or issues involved or identified and how these will be managed.

B6. Timeframes

The work is expected to commence on this project on 26 February 2024 and the website should Go-Live by 1 August 2024 (negotiable).

B7. Governance

The Contractor will report to the Digital Manager, Creative Australia.

The Digital Manager reports to Director of Communications.

The Director of Communications reports to Head of Public Affairs.

Note: The Director of IT will also have oversight and input into this project.

B8. Quotation

Your quote should include a comprehensive pricing breakdown including and noting GST where applicable, and break down the design, development and launch costs separately from the ongoing development and support period.

Your quote should also include any other anticipated incidental costs including travel.

B9. Evaluation of Tenders

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



Criteria	Weighting
Demonstrated understanding, knowledge and experience of website scoping, design, building, and management	25%
Proposed methodology (or delivery plan) to achieve the outcomes required	25%
Demonstrated robust security posture and ability to comply with Creative Australia IT Security Policy	20%
A clear understanding of and experience in creating user-centric websites with a focus on UX, user journey and functionality and application of accessibility standards	20%
Value for money	10%
Non weighted essential criteria	
Inclusion of a plan and costs for providing ongoing maintenance, development and support	
Acceptance of the draft Terms and Conditions of Contract (see Part C)	
Evidence of all insurances required to perform the contract	
Analysis of the risks and how risks are proposed to be managed	

In evaluating your submission, as well as the above criteria, we may seek information and referee reports from other sources.

The preferred Tender will be based on the most efficient outcome for Creative Australia, and this also involves assessing value for money which may not necessarily be the lowest quote.

Part C – General Terms and Conditions of Contract

IT IS AGREED:

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 Services under this Contract including, but not limited to, all reports (whether in draft or final form), documents, equipment, information and data stored by any means.

“Contract Price” means the total contract price, including any GST component payable unless otherwise specified, but for the purposes of the Payment clause of the General Terms and 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.

“Creative Australia” means Creative Australia, ABN 38 392 626 187, a Commonwealth government body corporate established by the *Creative Australia Act 2023*.

“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 Contract, 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 and/or Services specified in the Statement of Work; and

- (b) all such incidental Goods and/or Services that are reasonably required to achieve the purposes of Creative Australia 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*.

“**Notifiable Data Breach**” means a data breach where it is likely to result in serious harm to any of the individuals to whom the information relates, under section 26WE of the *Privacy Act 1988* (Cth).

“**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.

“**Personal Information**” has the same meaning as section 6(1) of the *Privacy Act 1988* (Cth) and is information or an opinion about an identified individual, or an individual who is reasonably identifiable.

“**Services Agreement**” has the same meaning as a legally binding Contract.

“**Special Conditions**” means any additional conditions attached to or incorporated into this Contract as required by Creative Australia.

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

2. Provision of Services

- 2.1. The Contractor must provide the Services to Creative Australia on the date agreed and in accordance with any instructions for the delivery of the Services specified in writing.
- 2.2. The Contractor must promptly notify Creative Australia 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 Creative Australia as to when it will be able to do so.
- 2.3. Any Services must be provided to the standard that would be expected of an experienced and professional contractor of similar services.
- 2.4. 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

- 3.1. Creative Australia may accept or reject the relevant Services within 14 days after delivery of the Services or part thereof. If Creative Australia does not notify the Contractor of acceptance or rejection within the 14-day period, Creative Australia will be taken to have accepted the Services on the expiry of the 14-day period.
- 3.2. Creative Australia may reject the Services where the Services do not comply with the requirements of the Contract. If Creative Australia rejects the Services, Creative Australia may:
 - (a) require the Contractor to repair or amend the Services, within a period determined by Creative Australia, 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 Creative Australia; or
 - (c) terminate the Contract in accordance with the Termination clause of the General Conditions of Contract.
- 3.3. Replacement amended or modified Services are subject to acceptance under this clause.
- 3.4. The Contractor will refund all payments related to the rejected Services unless replacement, amended or modified Services are accepted by Creative Australia.

4. Title and Risk

- 4.1. Title to the Services transfers to Creative Australia upon their acceptance by Creative Australia in accordance with clause 3 of the General Terms and Conditions of Contract.
- 4.2. The risk of any loss or damage to the Services remains with the Contractor until their delivery to Creative Australia.

5. Invoice

- 5.1. The Contractor must submit a correctly rendered invoice to Creative Australia. 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 Creative Australia in accordance with clause 3 of the General Terms and 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.

- 5.2. 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.
- 5.3. The Contractor must promptly provide to Creative Australia such supporting documentation and other evidence reasonably required by Creative Australia to substantiate performance of the Contract by the Contractor.

6. Payment

- 6.1. Creative Australia 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.
- 6.2. The last day of this period is referred to as the “due date”.

7. Price Basis

- 7.1. 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.
- 7.2. Creative Australia 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 Creative Australia in connection with the Contract, Creative Australia may set off that amount, or part of it, against its obligation to pay any correctly rendered invoice.

9. 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 Creative Australia with evidence the insurances remain in force.

10. Indemnity

- 10.1. The Contractor indemnifies Creative Australia, 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.

- 10.2. The Contractor's liability to indemnify Creative Australia under paragraph (a) is reduced to the extent that any willful default or unlawful or negligent act or omission by Creative Australia, its officers, employees or contractors is proven to have contributed to the liability, loss, damage, cost, compensation or expense.
- 10.3. Creative Australia holds the benefit of this indemnity on trust for its officers, employees and contractors.

11. Licenses, Approvals and Warranties

- 11.1. At no cost to Creative Australia, the Contractor must obtain and maintain all Intellectual Property Rights, licences or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.
- 11.2. The Contractor must provide Creative Australia with all relevant third-Party warranties in respect of Goods. If the Contractor is a manufacturer, the Contractor must provide Creative Australia with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.
- 11.3. To the extent permitted by laws and for the benefit of Creative Australia, the Contractor consents, and must use its best endeavours to ensure that each author of Material(s) consents in writing, to the use by Creative Australia of the Material(s), even if the use may otherwise be an infringement of their Intellectual Property Rights and/or Moral Rights.

12. Conflict of Interest

- 12.1. The Contractor warrants that no conflict of interest exists, or is anticipated, relevant to the performance of its obligations under the Contract.
- 12.2. If a conflict of that kind arises, the Contractor must notify Creative Australia immediately. Creative Australia 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.

13. Criminal Code Acknowledgement

- 13.1. The Contractor acknowledges that the giving of false or misleading information to Creative Australia is a serious offence under Section 137.1 of the schedule to the *Criminal Code Act 1995*.
- 13.2. The Contractor must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.

14. 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.

15. Variation

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

16. Security and Safety

- 16.1. When accessing any Creative Australia place, area or facility, the Contractor must comply with any security and safety requirements notified to the Contractor by Creative Australia 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.
- 16.2. The Contractor must ensure that any material and property (including security-related devices and clearances) provided by Creative Australia for the purposes of performing the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction and returned as directed by Creative Australia.

17. Conduct at Agency Premises

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

18. 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 Creative Australia, or as otherwise able to bind or represent Creative Australia. The Contract does not create a relationship of employment, agency or partnership between the Parties.

19. Privacy and Notifiable Data Breaches

- 19.1. In providing the Goods and/or Services, the Contractor must comply, and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth) and not do anything, which if done by Creative Australia would breach an Australian Privacy Principle as defined in that Act. The Contractor will notify Creative Australia if it becomes aware that it may be required to disclose Personal Information by law or to the Australian Information Commissioner.
- 19.2. If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been a Notifiable Data Breach in relation to any Personal Information held by the

Contractor as a result of this Contract or its provision of the Services, the Contractor agrees to:

- (a) notify Creative Australia in writing as soon as possible, which must be no later than within 3 days; and
- (b) unless otherwise directed by Creative Australia, carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).

19.3. Where the Contractor is aware that there are reasonable grounds to believe there has been, or where Creative Australia notifies the Contractor that there has been, a Notifiable Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor will:

- (a) take all reasonable action to mitigate the risk of the Notifiable Data Breach causing serious harm to any of the individuals to whom it relates;
- (b) unless otherwise directed by Creative Australia, take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
- (c) take any other action as reasonably directed by Creative Australia.

19.4. The Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the contract imposes on the subcontractor the same obligations regarding privacy and notifiable data breaches that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

19.5. The Contractor will notify Creative Australia as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in this clause.

20. 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 is processed under this Contract.

21. Confidential Information

21.1. For the purposes of this clause, 'Confidential Information' means all forms of information that:

- (a) is designated either specifically or generally in the Contract;
- (b) is designated by its owner as confidential and, if it is the Contractor's Confidential Information, meets all four (4) criteria of the Confidentiality Test published on the Department of Finance website and Creative Australia agrees in writing to treat the information as confidential; or
- (c) which the Contractor or Creative Australia, knows or ought to know is confidential.

21.2. Both Parties agree not to disclose any Confidential Information relating to the Contract or the Goods and/or Services, without prior written approval from the other Party. This obligation will not be breached where the relevant information is publicly available (other than through breach of confidentiality or non-disclosure obligation). This obligation will also not be breached where a Party is required by law, the Parliament or the Australian National Audit Office to disclose the relevant information, but any such request must be reported in writing to the other Party without delay and the text of the disclosure provided in writing to the Party as soon as practicable.

22. Record Keeping

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

22.2. 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.

23. Freedom of Information (FOI) Act 1982 requirements

Where Creative Australia 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 this Contract and is required to be provided under the FOI Act, the Contractor must promptly provide the document to Creative Australia, on request, at no cost.

24. Commonwealth Records and Archives Act 1983 Requirements

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

25. Anti-Bribery and Anti-Corruption

25.1. The Parties must at all times comply with all applicable laws relating to anti-bribery, anti-corruption and improper payments, including, but not limited to the *Criminal Code Act 1995* (Cth) and the *National Anti-Corruption Commission Act 2022* (Cth).

25.2. Any Party to the Contract, or any individual or entity acting on their behalf, shall not offer or give anything of value, or that may be perceived as valuable, to another Party or any individual or entity acting on their behalf, for the purpose of influencing or securing any improper advantage.

25.3. Under the *National Anti-Corruption Commission Act 2022* Creative Australia **must** refer any suspected corruption issue to the National Anti-Corruption Commissioner.

25.4. Any Party may terminate the Contract immediately if in good faith it has reason to believe that any other Party has breached this clause of the Contract.

26. Moral Rights

- 26.1. To the extent permitted by laws and for the benefit of Creative Australia, the Contractor consents, and must use its best endeavours to ensure that each author of any relevant Material consents in writing, to the use by Creative Australia of that Material, even if the use may otherwise be an infringement of their Moral Rights.
- 26.2. 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.

27. 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.

28. Specified Personnel

- 28.1. The Contractor must ensure that the Specified Personnel provide the Services and are not replaced without the prior consent of Creative Australia.
- 28.2. At Creative Australia's request, the Contractor, at no additional cost to Creative Australia, must promptly replace any Specified Personnel that Creative Australia reasonably considers should be replaced with personnel acceptable to Creative Australia.

29. Intellectual Property and copyright licences

- 29.1. Creative Australia 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 the Agreement Materials to us.
- 29.2. 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 Contract.

30. Assignment

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

31. Subcontracting

- 31.1. 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.
- 31.2. The Contractor must make available to Creative Australia the details of all subcontractors engaged to provide the Services under the Contract upon request. The Contractor acknowledges that Creative Australia is required to disclose such information.
- 31.3. 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).

32. Notification of Significant Events

32.1. For the purposes of this clause, 'Significant Event' means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

- 32.2. The Contractor must immediately issue Creative Australia a Notice on becoming aware of a Significant Event. The Notice issued must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Goods and/or Services were involved.
- 32.3. Creative Australia may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Contractor must issue a Notice under the above clause in relation to the event within three (3) Business Days of being notified by Creative Australia.
- 32.4. Where reasonably requested by Creative Australia, the Contractor must provide Creative Australia with any additional information regarding the Significant Event within three (3) Business Days of the request.
- 32.5. If requested by Creative Australia, the Contractor must prepare a draft remediation plan and submit that draft plan to Creative Australia's Contract Manager for approval within ten (10) Business Days of the request. A draft remediation plan prepared by the Contractor must include the following information:

- how the Contractor will address the Significant Event in the context of the Goods and/or Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Goods and/or Services or compliance by the Contractor with its other obligations under the Contract; and
- how the Contractor will ensure events similar to the Significant Event do not occur again; and
- any other matter reasonably requested by Creative Australia.

32.6. Creative Australia will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by Creative Australia and resubmit the draft remediation plan to Creative Australia for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by Creative Australia. This clause will apply to any resubmitted draft remediation plan.

32.7. Without limiting its other obligations under the Contract, the Contractor must comply with the remediation plan as approved by Creative Australia. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by Creative Australia.

32.8. A failure by the Contractor to comply with its obligations under this clause will be a material breach of the Contract. Creative Australia's rights under this clause are in addition to and do not otherwise limit any other rights Creative Australia may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to Creative Australia.

33. Child Safety

33.1. If any part of the Services involves the Contractor employing or engaging a person (whether as an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Contractor agrees:

- (a) to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
- (b) if requested, provide the Commonwealth at the Contractor's cost, with an annual statement of compliance with this clause, in such form as may be specified by the Commonwealth.

33.2. When Child Safety obligations may be relevant to a subcontract, the Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the Contract imposes on the subcontractor the same obligations regarding Child Safety that the Contractor has under the Contract. Each

subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.

34. Termination

Creative Australia 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 Creative Australia that it will be unable to deliver the Services by the relevant delivery date;
- (b) Creative Australia rejects any or all of the Services in accordance with the Acceptance clause of the General Terms and 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 Creative Australia 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

- 35.1. In addition to any other rights it has under the Contract, Creative Australia, 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. This may or may not be on the grounds of a material reduction in our parliamentary appropriation.
- 35.2. If Creative Australia issues such a notice, the Contractor must stop or reduce work in accordance with the notice; comply with any directions given by Creative Australia 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.
- 35.3. Where the Contract is terminated under this clause, Creative Australia will be liable for payments to the Contractor only for Services accepted in accordance with the Acceptance Clause in the General Terms and 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 Creative Australia.
- 35.4. 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 Contract, for any failure or delay in fulfilling or performing any term of this Contract (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. Dispute Resolution

37.1. For any dispute arising under the Contract:

- (a) the Parties will try to settle the dispute by direct negotiation as expeditiously as possible;
- (b) if unresolved, the Party claiming the dispute will give the other Party or Parties written 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, before commencing legal proceedings, the Parties must refer the dispute to the President of The Law Society of New South Wales who will appoint a mediator and determine the mediator's fees and determine the proportion of those fees to be paid by each Party (to be in equal shares unless otherwise agreed by the Parties);
- (f) Failing agreement in mediation, the Parties agree that the matter may be determined by binding arbitration.

37.2. Creative Australia and the Contractor will otherwise each bear its own costs for dispute resolution.

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

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

38. Modern slavery and the Supplier Code of Conduct

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

- (a) comply with Creative Australia'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.

39. Counterparts

This Contract may be executed in any number of counterparts, each of which:

- (a) may be executed electronically or in handwriting; and

- (b) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

40. 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.

41. Applicable Law

The laws of New South Wales apply to the Contract.

42. Survival

Clauses 4, 10, 11, 18, 19, 21, 22, 23, 24, 25, 26 and 29 of the General Terms and Conditions of Contract survive termination or expiry of the Contract.

43. Entire Agreement

This 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.