

# Request for Tender

## Creative Workplaces Sector-Wide Survey

### RFT 2024-25 01

Creative Australia is the Australian Government's principal arts investment and advisory body. Creative Workplaces is a new division of Creative Australia established to promote fair, safe and respectful workplaces.

We are currently seeking the services of a specialist survey and data analytics contractor to undertake a sector-wide survey about workplace relations issues in the arts and culture sector on behalf of Creative Workplaces as set out in this Request for Tender (RFT).

We do not engage one on one with prospective Applicants at this stage of the procurement to ensure the process remains fair and transparent. Shortlisted Tenderers may be invited to present their submissions to the Tender Evaluation Committee (TEC) and discuss in further detail, but not before.

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

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Issue Date: 4 September 2024

Tender Closing Time: 30 September 2024 2:00pm AEST

Lodgement Address: [tenders@creative.gov.au](mailto:tenders@creative.gov.au)

## Lodgement of Tenders

Applications should be sent by secure email and received **by 2pm AEST on 30 September 2024**.

The application should be endorsed with the above reference number. Your email subject line should read: **[Creative Workplaces Sector-Wide Survey RFT 2024-25 01]**.

Applications should be limited to 10 pages, plus any additional documentation required as outlined in section A15 of this RFT.

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:

Patrick McCarthy

Manager Strategic Initiatives and Engagement, Creative Workplaces

Creative Australia

Email: [tenders@creative.gov.au](mailto: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. This condition for participation does not affect the ownership of any intellectual property rights in a Tenderer's submission.

### 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 at Part C. 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.

<b>Date</b>	<b>Activity</b>
4/09/2024	Request for Tender published
30/09/2024	Request for Tender closes
Week commencing 30/09/2024	Submitted Tenders acknowledged Eligibility checked

Date	Activity
Week commencing 7/10/2024	Tenders evaluated by the Tender Evaluation Committee (TEC)
Week commencing 14/10/24	Shortlisted Tenderers may potentially be invited to an interview/meeting/demonstration.
Week commencing 14/10/24	Successful Tenderer notified and contract issued Contract executed by both parties
Week commencing 14/10/24	Unsuccessful Tenderers notified
Week commencing 21/10/24	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 services, with detailed costing identifying the items or services proposed, including and noting GST where applicable.
- If travel will be involved this should also be itemised and costed.
- Company or organisation information such as corporate status, registered place of business, size, and copies of financial statements demonstrating financial viability and insurance policies.
- Supporting information concerning the proposing organisation, its management structures, quality assurance procedures and demonstrated experience in the subject area of this RFT and related areas.
- Qualifications of the staff to be designated to the project.
- A risk analysis, setting out perceived potential risks, the level of potential impact of such risks and the contingencies to mitigate any potential damage resulting from such risks.
- Two referees to whom 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.

## Part B – Statement of Requirements

### B1. Requirement

Creative Australia requires the services of a specialist survey and data analytics consultant (the Consultant) to undertake a sector-wide survey about workplace issues in the arts and culture sector on behalf of Creative Workplaces as outlined in the Scope of Works and Deliverables.

The contract is intended to run for a set period as outlined in the project timeframes below.

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

### B2. Further Details

#### About Creative Workplaces

Creative Workplaces was established as a new division of Creative Australia under the *Creative Australia Act 2023* (Cth) to promote and enable fair, safe and respectful workplaces for artists, workers and organisations in the arts and culture sector. Creative Workplaces performs this function by:

- Providing information, advice and referral information through the provision of web-based information resources
- Through online and in-person engagement activities, such as attendance at industry events and conferences, and
- Delivering webinars and workshops.

For more information on Creative Workplaces visit: [Creative Workplaces](#)

#### Why this sector-wide survey now?

Critical to the delivery of Creative Workplaces' functions will be gaining a deep understanding of issues relating to fair pay, working conditions, safety and wellbeing as they relate to artists and arts workers in the sector. Creative Workplaces also seeks to establish a baseline against which it can measure and evaluate the impact of its work.

Several high-profile reviews and reports have drawn attention to these issues in the arts and culture sector but have been limited to examinations of specific artforms, occupations or issues. For example:

- Creative Australia's [Artists as Workers](#) research report (covers a range of employment issues for practicing artists, but does not include other arts workers)
- The National Music Industry Review Report '[Raising Their Voices](#)'
- The Australian Cinematographers '[A Wider Lens](#)' Report, and
- Support Act's [Mental Health and Wellbeing](#) survey.

Engagement with workplace relations, human rights and safety regulators indicates very little utilisation of those services by the arts and culture sector, so there is no evidence or data available from these sources.

The proposed survey will address this gap in the evidence base and grow our understanding of the nature, drivers and extent of pay, safety and wellbeing issues across the arts and culture sector. The aim is to achieve participation from artists and arts workers across all states and territories, all artforms, and a broad range of demographic characteristics. The survey will need to be designed to be accessible to all intended participants.

It is intended that a survey of this nature will be repeated periodically in the future, providing evidence in relation to these issues, and providing insight into the impact of our work and the progress of the industry over time.

## Methodology

### *Approach*

Creative Australia is developing draft survey questions in collaboration with a small group of expert consultants (the Advisory Group). The Advisory Group will be available to consult with throughout the project. The draft survey questions will be split into three parts as follows:

- Part A: Demographic and artform/industry-related questions to support analysis of survey results by artform, state/territory and other demographic factors
- Part B: Questions relating to workplace safety and respect (including experiences of discrimination, harassment, bullying, and work health and safety issues)
- Part C: Questions relating to pay and working conditions in the arts and culture sector.

Demographic questions will be consistent with leading practice in the collection of diversity data.

The draft questions will need to be reviewed by the Consultant (in consultation with Creative Australia and the expert Advisory Group) before attaining ethics approval and building an online questionnaire to administer the survey. A test of the survey questions using cognitive testing methods with a small group of respondents will also need to be undertaken by the Consultant to assess how well the survey questions are understood.

Creative Australia will own all intellectual property rights in the survey questions.

The survey is expected to take participants 40-50 minutes to complete. There will be few, if any, open ended questions.

The survey will be administered using an online questionnaire. The questionnaire will need to be designed to be accessible. Given the length of the survey, participants will also need to be able to save their progress and return to complete the survey at a later time.

Whilst we anticipate most survey respondents will complete the survey online, other approaches to data collection may be used to facilitate involvement by participants who require assistance, including for accessibility needs. This assistance must be facilitated by the Consultant.



### *Sampling approach*

There is currently no single or dispersed database of all persons currently working in the arts and culture sector in Australia from which a targeted sample could be taken.

Creative Australia will promote participation in the survey to arts and culture workers from across all artforms, Australia-wide. Creative Australia will leverage its existing stakeholder networks (including employers, state and industry peaks, unions, professional bodies) to promote and encourage participation in the survey.

The survey will be open for an eight-week period, with the aim of reaching 5,000+ participants during that period.

### *Target Population*

The survey will be open to all individuals aged 18 years and over that self-identify as a worker in the arts and culture sector in Australia (regardless of their main source of income or the type of work in which they perform the majority of their working hours).

This will enable the survey to capture the widest range of creative practices, roles and careers, which contribute to the development and delivery of creative and cultural activity in Australia – including, artists, performers and others engaged in creative practice, as well as work that supports creative practice or production.

It is vital that the data obtained represents a cross section of the industry, including geographic and demographic diversity.

To support Creative Australia in achieving strong participation across all jurisdictions, artforms and demographic factors, the Consultant will be required to provide weekly updates to Creative Australia about survey participation while the survey is open. The weekly participation updates will need to include participation rates broken down across state/territory, artform, and other demographic factors as requested.

### *Data and analysis*

Creative Australia will own all intellectual property rights in the final survey data. The Consultant will provide Creative Australia with:

- Case record data in a de-identified format
- Data tables showing total sample results for each main question and breakdowns by agreed participant characteristics, likely to include state/territory, artform and other demographic factors
- A findings report based on analysis of the survey data, and including significant differences by the industry and geographic/demographic characteristics noted
- A slide deck of key insights.

For the findings report we are open to different ways to make this element engaging and useful, including integrating elements of the data tables requirement – for example, using an integrated dashboard structure with filters such as state/territory, artform, or demographic characteristics.

Written materials should adhere to the Creative Australia Style Guide and should allow for two (2) rounds of feedback from Creative Australia.

### **B3. Scope of Works and Deliverables**

#### *Deliverables*

The scope of work and deliverables that must be performed by the Consultant are:

1. Review of draft survey questions provided by Creative Australia in consultation with Creative Australia and the expert Advisory Group (before seeking ethics approval and developing the online questionnaire).
2. Cognitive testing of the survey questions with a small sample of respondents prior to the main survey, to assess how well questions are understood by respondents.
3. Applying for and obtaining ethics approval for the survey from an appropriate university ethics committee or an equivalent alternative mechanism.
4. Development and testing of an online survey platform and questionnaire to administer the survey.
5. Administration of the survey and provision of accessibility support to those with access needs while the survey is open.
6. Weekly reporting on survey participation to Creative Australia while the survey is open, including breakdowns based on artform, geographic location or other characteristics as requested.
7. Complete and cleaned case data files in MS Excel and Q Research Software (with identifying information removed), which Creative Australia will own.
8. Data tables of question results and breakdowns by agreed characteristics.
9. Draft written findings report (allowing for two (2) rounds of written feedback).
10. Final written findings report.
11. A slide deck of key insights.

#### *Dashboards (optional):*

Applicants may also include costing to build interactive dashboards with functionality to display survey results filtered by state, artform and other key demographic data.

Applicants should outline their proposed approach to building data dashboard(s) in their submission and set out the additional costs related to the dashboard element separately.

For the avoidance of doubt, the Consultant will not be responsible for:

1. Creating the first draft of survey questions.
2. Promoting participation in the survey.

Creative Australia will provide the Consultant with draft survey questions and will be responsible for promoting participation in the survey.

## **B4. Performance Standards Required**

### **Professional Standards**

The successful tenderer will be expected to achieve a high-performance standard as would be expected from an experienced research provider, in accordance with ISO 20252 certification and align with the Australian Market and Social Research Society (AMSRS) code of professional conduct and privacy code. We also expect all research to adhere to rigorous ethical and professional standards such as those published by the Australian Institute of Aboriginal and Torres Strait Islander Studies and the National Health and Medical Research Council.

### **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 21 October 2024 and be completed by June 2025.

It is expected that the survey build will commence soon after the commencement of the contract, using draft questions that may be amended subject to ethics approval.

It is intended the survey will be open to the industry from early February to early April 2025 (exact dates to be confirmed), with data analysis, reports and dashboards all due to be delivered to Creative Australia by 31 May 2025.

Any dates as outlined above are subject to change at Creative Australia's discretion.

## **B7. Governance**

The Contractor will report to Manager Strategic Initiatives and Engagement.

The Manager Strategic Initiatives and Engagement reports to the Director Creative Workplaces.

The Director Creative Workplaces reports to CEO Creative Australia.

## B8. Quotation

Your quote should include a comprehensive pricing breakdown including and noting GST where applicable.

## 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 large scale quantitative social research	40%
Proposed methodology (or delivery plan) to achieve the outcomes required	25%
Demonstrated experience dealing with a diverse range of stakeholders	15%
Value for money and cost effectiveness	10%
Analysis of the risks and how risks are proposed to be managed	10%
Non weighted essential criteria	
Confirmation of the ability to commence the work in October 2024	
Acceptance of the draft Terms and Conditions of Contract (see Part C)	
Evidence of all insurances required to perform the contract	
Experience in research in the arts and culture sector	

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).

“**ICIP**” means Indigenous Cultural and Intellectual Property.

“**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. 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.

## 27. Specified Personnel

27.1. The Contractor must ensure that the Specified Personnel provide the Services and are not replaced without the prior consent of Creative Australia.

27.2. 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.

## 28. Moral Rights

28.1. 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.

28.2. 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.

## 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. Indigenous Cultural and Intellectual Property (ICIP)

If, during the performance of this contract, you will be working with First Nations individuals, communities, or subject matter you are required to adhere to Creative Australia's [First Nations Cultural and Intellectual Property Protocols](#). Any failure to provide relevant and appropriate confirmations or other information when requested by us will be considered a breach of this Agreement.

## 31. Assignment

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

## 32. Subcontracting

- 32.1. 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.
- 32.2. 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.
- 32.3. 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).

## 33. Notification of Significant Events

33.1. 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.

- 33.2. 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.
- 33.3. 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.
- 33.4. 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.
- 33.5. 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.

33.6. 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.

33.7. 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.

33.8. 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.

#### **34. Child Safety**

34.1. 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.

34.2. 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.

### 35. 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).

### 36. Termination or Reduction for Convenience

36.1. 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.

36.2. 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.

36.3. 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.

36.4. 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.

### 37. 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.

### 38. Dispute Resolution

38.1. 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.

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

38.3. 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.

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

### 39. 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.

### 40. 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.

#### **41. 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.

#### **42. Applicable Law**

The laws of New South Wales apply to the Contract.

#### **43. Survival**

Clauses 4, 10, 11, 18, 19, 21, 22, 23, 24, 28, 29 and 30 of the General Terms and Conditions of Contract survive termination or expiry of the Contract.

#### **44. 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.