

## **GENERAL CONTRACT TERMS**

## 1. Definitions:

'City' means the Council of the City of Sydney ABN 22 636 550 790. 'City Contact' means the person identified by the City in Schedule 2 6. as amended from time to time.

'Contract' means (in order of priority) these Contract Terms ("Terms"), schedules and any attachments thereto.

'Deliverables' means any documents, materials or information (including, but not limited to any notes, drawings, methodologies, reports or templates) in any format (whether electronic or otherwise) which the Supplier is required to provide to the City under this Contract specified in Schedule 2.

'Documentation' means documentation specified in the Schedules or otherwise required to enable the City to make full use of the Products. 'GST' means any goods and services tax, value added tax or sales 7. tax imposed on the sale or supply of goods, services and rights including but not limited to a tax imposed by the GST Law.

'GST Law' means the A New Tax System (Goods and Services Tax) Act 1999 (C'th) and the related imposition Acts of the Commonwealth. 'IPR' means all present and future rights conferred in law in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and information supplied in accordance with clause 20, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights.

'Moral Rights' means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by 8. statute anywhere in the world.

'Personnel' of a party means the officers, employees, agents and contractors (including their employees and contractors) of that party. 'Premises' means any place or thing used by the City in the course of conducting its business.

'Products' unless otherwise specified, means any goods and/or 9. Services supplied by or on behalf of the Supplier under this Contract. 'Services' means all services provided under this Contract.

'Site' means Premises or any other workplace controlled by the City. 'Specifications' means (in order of priority) (a) any description of or representation about the Products provided to the City or referred to in the Schedules, and (b) the Supplier's published specifications for 10. IPR: The parties agree that: the Products.

'WHS Legislative Requirements' means all applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards as amended from time to time.

'WHS Obligations' has the meaning given to it in this Contract.

Any other term that starts with a capital letter and used in these Terms has the meaning given to it in the Schedules.

- 2. Contract Formation: This Contract may be sent electronically to the Supplier. The binding Contract between the City and the Supplier will come into existence on the earlier of the date the 11. Supplier confirms acceptance of the Contract (including but not limited to signing these Terms), or the date the Supplier commences delivery of any of the Products.
- 3. Delivery: The Supplier must deliver the Products to the Delivery Address on the Delivery Date and in accordance with the Supplier Instructions (if any) and the Schedules.
- 4. Acceptance: If the Products do not comply with the 12. Warranty: The Supplier warrants: Specifications, the City may terminate this Contract or require the Supplier to promptly modify the Products so that they comply with the Specifications. Execution of a delivery document or payment by the City does not constitute acceptance by the City.
- 5. Price: The Prices are fixed and include all levies, duties, taxes (except GST, unless expressly stated to be inclusive of GST),

insurance packaging and delivery costs. The total amount payable by the City under this Contract will not exceed the Total Price.

- Payment: Unless stated in the Schedules or otherwise agreed, the Supplier may invoice the City following delivery of the Products or otherwise as permitted by law. Each invoice must itemise the GST and other indirect taxes included in the Prices, state the City's purchase order and be addressed to the City Contact at the address for invoices specified in the Schedules. The City will pay correctly rendered invoices (less any amounts due to the City from the Supplier) within 30 days of the date that invoice is received. Method of payment will be Electronic Funds Transfer ('EFT'), with payments made to the Supplier ...
- Goods and Services Tax: Unless expressly stated to be inclusive of GST, the consideration for the supply of goods, services or other things under this Contract has been calculated exclusive of GST. If GST is imposed on a supply made pursuant to this Contract, the recipient of that supply must pay, in addition to the GST-exclusive consideration, an amount equal to the GST payable by the supplier in respect of the supply. The Supplier must ensure that any invoice or other request or demand for payment for supplies provided by it to the City constitutes a tax invoice that will, where applicable, enable the City to claim any tax credits for the GST in respect of supplies to which the invoice relates. No amount will be due and payable by the City in respect of a supply under this Contract unless the City has received from the party making the supply an invoice which complies with the GST Law.
- Risk and Title: Risk in the Products will pass to the City when the Products are delivered to the Delivery Address. Title in the Products (other than Product licensed under the clause 10) will pass to the City on the earlier of acceptance of, or payment for, the Products by the City.
- Cancellation: The City may cancel or reduce the quantity of any Products by notifying the Supplier before the relevant Delivery Date or if the Supplier fails to supply a Product on the Delivery Date. The City will not be liable for any amounts or expenses for cancelled Products.

- (a)subject to clauses 10(b)and 10(c), the Supplier grants the City (and its Personnel) an irrevocable, non-exclusive, royalty free, perpetual licence to use and copy the Products so that the City (and its Personnel) can make full use of them anywhere in the world for any purpose;
- (b)the City owns the IPR in any modifications made by the City to the Products; and
- (c)the Supplier assigns (now and in the future) all IPR to the City in any Products or other material created by the Supplier under or in connection with this Contract.
- Moral Rights: The Supplier must obtain from its Personnel all necessary written unconditional and irrevocable consents and waivers permitted by applicable law to any act or omission that would otherwise infringe any of their Moral Rights in the Products whether occurring before or after a consent or waiver is given for the benefit of the City, its licensees, successors in title, and anyone authorised by any of them to do any acts comprised in the copyright in any Products.

- (a)that all Products, excluding the Services: (i) are new and in good condition; (ii) comply with all relevant Australian standards and industry codes; (iii) are free from defects in design, materials and workmanship; (iv) are of good and merchantable quality and fit for their intended purposes; and (v) comply with the Specifications;
- (b) for Services, that the Supplier will: (i) provide the Services with



of a skilled professional experienced in providing the same or similar services; (ii) ensure that the Deliverables are fit for the purposes expressly stated in Schedule 2; (iii) comply with all reasonable directions of the City Contact; and (iv) comply with all City conduct policies (as notified to the Supplier by the City from time to time), relevant Australian standards and industry codes; and

- (c)that the Products and Services and their use and supply will not breach any obligation of confidence or infringe the IPR of any person.
- 13. Breach of Warranty: If the Supplier becomes aware, or the City 16. Assignment and Subcontracting: The Supplier must not novate notifies the Supplier, that a Product or Service fails to comply with the warranties given under this Contract, the Supplier must, without prejudice to any other rights of the City:
  - (a)in the case of the warranties provided under clause 12(a), during the Warranty Period (or if no Warranty Period is specified a period of 12 months from the acceptance of the Product) fix any non-conformity; and
  - (b)in the case of any other warranty provided under this Contract, promptly (at the City's option) (i) remedy that failure (including by replacing the Product or resupplying any Services if necessary), (ii) provide to the City a full refund of the price paid for the relevant Product or Service, or (iii) deduct in accordance with the City's directions the price paid for the relevant Product or Service from any amounts owing to the Supplier.

## 14. Indemnity:

- Without limiting the City's other rights under this Contract or otherwise at law, the Supplier must indemnify the City on demand against any claim, damage, expense, loss, cost (including reasonable legal costs) or liability (including liabilities of the City to third parties) arising out of or in connection with:
- (a) loss of, loss of use of, destruction or damage to real or personal property of the City or any third party, including existing property;
- (b) breach of confidentiality or privacy;
- (c) infringement of IPR or Moral Rights; and
- (d) injury to, or disease or illness (including mental illness) or death of, persons,

to the extent that, and in proportion to which, such claim, damage, expense, loss, cost or liability arises from any negligent act or omission of the Supplier or its Personnel.

- **14A. Limit of Liability:** (a) Subject to clause 14A(b), the Supplier's aggregate liability to the City, whether in contract, tort (including negligence) or otherwise at law, in relation to this Contract or in respect of the Services is limited to the amount set out in Schedule 2. (b) The limitation in clause 14A(a) will not apply to limit the Supplier's liability to the City in relation to:
  - (i) fraudulent or criminal conduct by the Supplier or a subcontractor engaged by the Supplier with respect to the Services:
  - (ii) a wilfully wrongful act or omission by the Supplier or a subcontractor engaged by the Supplier with respect to the Services;
  - (iii) injury to, or disease or illness (including mental illness) or 19.2 Work Health and Safety Plan: death of, persons, or damage to property of third parties;
  - (iv) breach of confidentiality or privacy by the Supplier or a subcontractor engaged by the Supplier with respect to the Services:
  - (v) infringement by Supplier or a subcontractor engaged by the Supplier with respect to the Services of an intellectual property right or moral rights; or
  - (vi) conduct by the Supplier or a subcontractor engaged by the Supplier with respect to the Services which in the City's view exhibits reckless disregard for the consequences.

the degree of skill, care and diligence that would be expected 15. Insurance: The Supplier must at its own expense effect and maintain the insurances listed in Schedule 2. Policies must be issued with an insurer licensed by the Australian Prudential Regulatory Authority in Australia or holding an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests. The Supplier must provide to the City a certificate of currency for each of the insurance policies listed in Schedule 2:

> (a)before signing this Contract or commencing delivery of any of the Products, whichever occurs first; and

(b)promptly following a request by the City at any other time.

or assign part or all of this Contract. The Supplier must not use any subcontractors for supply of the Products or Services without the City's prior written consent. If the Supplier uses a subcontractor, the Supplier remains liable for the subcontractor's performance.

## 17. Termination: The City may terminate this Contract:

- (a)on at least 1 months' notice for any reason in its discretion (without liability);
- (b)immediately by giving notice to the Supplier if the Supplier (i) commits a breach of this Contract which is not remedied within 7 days of written notification by the City or (ii) becomes, threatens, resolves to become or is likely to become subject to any form of insolvency, administration, receivership, bankruptcy or liquidation; or (iii) enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up; or
- (c)in whole or in part immediately by giving notice to the Supplier if: (i) the Supplier fails to meet a Delivery Date; or (ii) the Supplier fails to remedy any breach of the WHS Obligations; or (iii) the Supplier breaches its WHS Obligations more than once; or (iv) a breach of the WHS Obligations by the Supplier results in the serious injury or illness or death of any person or a dangerous occurrence (as defined in the WHS Legislative Requirements) on a Site; or (v) other damage results from the Supplier's failure to comply with the WHS Obligations.
- 18. Entire Agreement: This Contract is the entire agreement between the City and the Supplier in relation to the Products and prevails over any other terms or conditions issued by either party. No confirmation, shipment, delivery document or representation will vary this Contract.

## 19. Work Health and Safety:

- 19.1 WHS Obligations: In providing the Services at a Site under this Contract, the Supplier must comply, and must ensure that its Personnel comply, with:
  - (a)its obligations as set out in this clause 19:
  - (b)the WHS Legislative Requirements;
  - (c)the City's WHS Requirements; and
  - (d)any other directions to the Supplier regarding health, safety or the environment issued by the City from time to time, (together the 'WHS Obligations').
- - (a)The City may, at its discretion, require the Supplier to provide the City with a work health and safety plan in respect of the Supplier's provision of the Services under this Contract ('WHS Plan').
  - (b)The WHS Plan must address those matters specified by the City at the time of it requesting the WHS Plan.
- 19.3 Training: The Supplier must ensure that its Personnel undertake any training:
  - (a)required by the City from time to time; or
  - (b)required by law; or
  - (c)which is necessary to ensure the safe performance of the Supplier's obligations under this Contract.



19.4 Supervision: The Supplier must ensure that its Personnel are adequately supervised to ensure their health and safety and that of other persons on the Site at all times while involved in the 20. Confidentiality: Any information supplied to a party to this provision of the Services on a Site under this Contract.

## 19.5 Monitoring:

- (a)The City may monitor the Supplier's compliance with its WHS Obligations including: (i) conducting audits of the Supplier's work health and safety performance; (ii) requiring the Supplier to provide it with whatever documents and other information the City requires regarding the Supplier or its Personnel in relation to: (A) certification of insurances; (B) licences of the Supplier's Personnel; (C) registration of any vehicles; and (D) any other matter which it considers appropriate.
- (b)The Supplier must cooperate with any monitoring undertaken by the City under this clause 19.5 and must provide any documents or information requested by the City from time to time.

## 19.6 Breach:

- (a)If, at any time, the City Contact is of the opinion that the Supplier is in breach of its WHS Obligations, the City Contact may notify the Supplier in writing of the alleged breach and the City Contact may direct the Supplier to suspend the provision of the Services in whole or in part.
- (b)If the Supplier has been notified by the City Contact of an alleged breach of its WHS Obligations, the Supplier must: (i) if directed to do so by the City Contact, immediately suspend the provision of the Services to the extent directed by the City Contact; (ii) not resume providing any part or whole of the Services which has been suspended at the direction of the City WHS Obligations will be fully complied with; and (iii) immediately remedy the breach at its own expense.
- (c)If the Supplier fails to comply with its obligation under clause addition to its other rights and remedies, have the obligation performed by others. The cost incurred in doing so will be a debt due and payable on demand by the Supplier to the City and may be set off by the City against any amount otherwise payable to the Supplier by the City.
- (d)Without limiting the foregoing, if the City Contact reasonably believes that a member of the Supplier's Personnel has breached the WHS Obligations or otherwise endangered the health or safety of any person on a Site, the City Contact may take any step it considers appropriate including directing the Supplier: (i) to remove that member of the Supplier's Personnel from the Site; and/or (ii) not to allow that member of the under this Contract.
- 19.7 Suspension of Services: The City will not be required to make 25. Applicable Law: The laws of New South Wales apply to this any payment to the Supplier in respect of the whole or part of the Services which the Supplier has been directed to suspend in

Contract (Recipient) by the other party to this Contract (Supplying Party) relating to this Contract (whether in writing or otherwise) and treated by the Supplying Party as confidential will be the Supplying Party's confidential information unless it is:

(a)public knowledge at the time of its supply to the Recipient; or (b)in the Recipient's lawful possession prior to its supply to the Recipient.

The Recipient must keep the Supplying Party's confidential information confidential, safe and secure, not disclose it to any person (except Personnel of the Recipient who have a need to know or if required to disclose the information by law) and return it when it has performed all of the work under this Contract or this Contract terminates or expires, whichever is the earlier. The Supplier may not make any public statement about this Contract unless it has first obtained written consent from the City.

- 21. Privacy: The Supplier must not, directly or indirectly collect, use or disclose any personal information under or in connection with this Contract except to the extent necessary to provide the Products. The Supplier must comply with the Privacy Act 1988 (Cth), the Privacy and Personal Information Protection Act 1998 (NSW) and all other applicable privacy legislation and codes, and all reasonable directions of the City. On termination or expiry of this Contract, the Supplier must promptly return to the City or, if requested by the City, destroy all copies of any such personal information, in which case any right to collect, use or disclose that personal information ceases.
- Contact until the Supplier fully satisfies the City Contact that its 22. No fetter: Nothing in this Contract in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 19.6(b)(iii) to immediately remedy the breach, the City may, in 23. Government information (public access): In accordance with section 121 of the Government Information (Public Access) Act 2009 (NSW), the Supplier agrees to allow the City immediate access to the following information contained in records held by the Supplier:
  - (a)information that relates directly to supply of the Product by the Supplier;
  - (b)information collected by the Supplier from members of the public to whom the Supplier provides, or offers to provide, services on behalf of the City; and
  - (c)information received by the Supplier from the City to enable the Supplier to provide services to the public.
- Supplier's Personnel to be involved in providing any Services 24. Compliance with Law: Each party must comply with all relevant legislation and regulations in the performance of this Contract.
  - Contract and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

Signed for and on behalf of the Council of the City of Sydney by its duly authorised officer in the presence of:

Signature of authorised representative	Signature of witness
Name of authorised representative	Name of witness
Title of authorised representative	Address of witness



Signed by the Supplier in accordance with section 127(1) of the Corporations Act 2001:

Director

Director/Secretary

Name (printed)

Name (printed)

Date of signing



# <u>SCHEDULE 1 PRODUCTS</u> (For the purposes of this Schedule, 'Products means unless otherwise specified, any goods and/or Services supplied by or on behalf of the Supplier under this Contract')

Products	Description	Base Price(A\$) Exclusive of GST	GST	Price (A\$)	Invoice Date	Delivery Date
Services						
1. Briefing and scope confirmation	<ul> <li>Briefing by City curatorium – to confirm project scope, outline the research requirements, communications, aims and projected outcomes</li> <li>Confirmation of schedule.</li> </ul>	10%				
<ol> <li>Research and consultation</li> <li>Exhibition development, and content and writing approval</li> </ol>	<ul> <li>Onsite research of civic and archives collections, including, but not limited to the Sydney Star Observer collection.</li> <li>Consultation with the artist/s and external collection/s</li> <li>Curatorial rationale and exhibition title devised in collaboration with City curatorium.</li> <li>Research phase complete and outcomes presented to the City.</li> <li>Exhibition developed according to the theme, with City and external/additional exhibition material identified.</li> <li>Ongoing consultation with contributors and City curatorium</li> <li>High-res image files identified and sourced</li> </ul>	50%				
4. Exhibition delivery	<ul> <li>Exhibition content selected; first draft copy prepared</li> <li>Content approved by the City</li> <li>Exhibition copy completed and approved by the City</li> <li>All exhibition content sourced</li> <li>Approved copy and high-res images handed over to designer (end September)</li> <li>Exhibition content prepared for print</li> <li>Production suppliers and installation contractors procured</li> <li>Exhibition material and design files sent to print</li> <li>Exhibition installed: supervised by Creative City exhibition coordinator, creative producer, and designer</li> </ul>	10%				
5. Public	Public engagement events	10%				
engagement	developed and delivered					

## SCHEDULE 2 CONTRACT DETAILS

Contract Date:	The date established in accordance with clause 2 of the Contract	
Supplier:		
Supplier Address: ABN:		
Delivery Address:		

## CITYOFSYDNEY 🕘 🔞

Purpose(s) for which the Deliverables will be fit for purpose	Working in collaboration with the City of Sydney, the creative producer will research, curate and deliver an exhibition for Sydney WorldPride, according to the Schedule and Project Specifications. The exhibition will be presented on the ground floor of Customs House, opening in February 2023 and closing June/July 2023. During the exhibition period two public engagement activities will be delivered.			
Deliverables	<ol> <li>In collaboration with the City, consult and devise the exhibition premise and title</li> <li>Research exhibition material within the City's civic and archives collections, and material from external collections/sources</li> <li>Consult with the exhibiting artist/s</li> <li>Regularly report to the City on the progress of the exhibition</li> <li>With the City, work with the graphic designer on the exhibition visual identity</li> <li>Write clear exhibition copy suitable for a general public, all ages audience</li> <li>Submit the exhibition content and text for City approval by the agreed dates</li> <li>Work with the City exhibition coordinator on all production elements</li> <li>Acquire publishing rights for the reproduction of images (if applicable). The City will pay any licence fees</li> <li>Liaise with the City marketing team re. promotion of the exhibition and public engagement activities</li> <li>Ensure all exhibition material is delivered to the City by the agreed deadlines</li> <li>Develop and deliver two public engagement events/activities, approved by the City</li> </ol>			
City Contact:	Title: Kate Major, Creative City Exhibition Coordinator Address: Level 3, Town Hall House Phone: 0459 868 759 Email: kmajor@cityofsydney.nsw.gov.au			
Supplier Contact:	Title: Address: Phone: Email:			
Invoices to be addressed to:	Email: supplier.invoices@cityofsydney.nsw.gov.a	u		
Conduct Policies:	1. Statement of business ethics (http://www.cityofsydney.nsw.gov.au/business/tenders/business-ethics-statement)			
Supplier Instructions:	Not used			
City's WHS Requirements:	uires the successful applicant employed by the slation, Australian Standards, relevant Codes of with:			
	<ul> <li>The legislative obligations placed upon all persons conducting a business or undertaking with respect to the Work, Health and Safety Act 2011 and Work, Health and Safety Regulation 2011.</li> <li>The City's WHS Policy available through City's website at http://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0003/114573/Policy-WHS-Policy.pdf</li> </ul>			
Insurance	Insurance type	Amount (AUD)		
	Public liability – per occurrence Professional indemnity	\$10 million \$2 million		
	Statutory workers compensation	As required		
Limit of Liability (Clause 14A)	\$5 million	· · ·		



## **ATTACHMENTS**

## **Project Specification**

The Council of the City of Sydney (the City) requests the service of an independent creative producer, curator, cultural researcher, or historian to research and deliver an exhibition in collaboration with the City for Sydney for WorldPride 2023 (17 February – 5 March). The exhibition will be presented on the ground floor of Customs House, February – June 2023.

Sydney WorldPride 2023 is a significant opportunity for the City to celebrate and acknowledge the LGBTQIA+ community through an exhibition that reflects on the places and people of the Sydney LGA.

## Scope of Work

The scope of the project includes collaborating with the City's curators, historians and archivists (the curatorium) to research and deliver an exhibition for display on the ground floor of Customs House.

The exhibition will

- Use the research findings as the basis for the exhibition. Content may also be obtained from other collections.
- Align with the City's vision and priorities.
- Display content and text that is suitable for a diverse, all-age, general public audience.
- Display reproductions of works that already exist. There are no fees to commission new work.
- Use the Customs House exhibition fixtures and fittings.
- Consider the World Pride festival theme: *Gather, Dream, Amplify*
- Not include an exhibition launch event. Celebration and acknowledgement of the exhibition will be through Sydney WorldPride channels and public engagement programs.

The creative producer will

- Collaborate with the City curatorium to define the exhibition concept and exhibition title. They will regularly meet with and report to the curatorium on the progress of the exhibition. Max 10 meetings
- Undertake research that will include
  - The City Archives and the extensive Sydney Star Observer collection and C.Moore Hardy photographic collection
  - Consultation with artist/s, as required
  - Research other collections or content sources, as required
  - Sub-contracting a research assistant if required for the initial research phase (any subcontractors will be approved by the City)
- Select exhibition content for display that can include still and moving image formats.
- Write clear, professional exhibition copy <sup>[1]</sup> in plain English, accessible to a diverse audience and following the City's style guide. Copy is required for didactic wall panels (120 words each), labels for still images and content displayed on the six LCD screens (up to 50 words each label), a press release, text for the City's What's On listing and public program promotional copy. All copy will be reviewed by the City to ensure it is suitable and accessible to City audiences.
- Liaise with the Creative City exhibition coordinator regarding exhibition production and delivery, including scheduling, budget, image licensing, installation, and loan agreements.
- Acquire publishing rights for reproductions of images and material that is published within the exhibition. The City will pay associated fees.
- Submit the exhibition content and copy by the agreed deadlines for City approval.
- Meet with the City's marketing team to discuss promotional opportunities and be available for media opportunities.
- Work with a graphic designer and the curatorium on the exhibition visual identity. The City will procure the graphic designer. The creative producer can recommend graphic design companies for consideration.
- Develop and manage the delivery of two City-approved engagement activities and/or associated programs, for example panel discussion.

The City of Sydney will procure all contractors and suppliers associated with the production and delivery of the exhibition, including graphic design, installation, technical support, marketing support, and support of public engagement activities.

[1] Copyright of written material remains with the author; however, the City is granted a non-exclusive license to use the material in City publications and digital platforms during the exhibition and into the future.