

Request for Proposals

Business Case for the
establishment of a
Digital Arts and Cultural
Agency for Aotearoa

Final deadline for Questions: 4PM 2 July 2021

Deadline for Proposals: 4PM 9 July 2021

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SECTION 1: Introduction



1.1 Context

- a. This Request for Proposal (RFP) is an invitation to suitably qualified suppliers to submit a Proposal to develop a Business Case that will inform decisions on the possible establishment of a Digital Arts and Cultural Agency for Aotearoa.
 - b. This is a single stage RFP procurement process.
 - c. Words and phrases that have a special meaning are shown by the use of capitals e.g., Respondent, which means ‘*a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents, and representatives. The term Respondent differs from a supplier, which is any other business in the marketplace that does not submit a Proposal.*’. Definitions are at the end of [Section 6](#).
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1.2 Our timeline

- a. Here is our timeline for this RFP.

Steps in RFP process:	Date:
Deadline for initial Questions from suppliers:	18 06 21
Deadline for the Buyer to answer suppliers’ initial questions:	22 06 21
Deadline for further/final Questions from suppliers:	02 07 21
Deadline for the Buyer to answer suppliers’ final questions	06 07 21
Deadline for Proposals:	4pm Friday 09 07 21
Contract award and commences	06 08 21
Unsuccessful Respondents notified of award of Contract:	09 08 21
Respondents debriefs	11/12 08 21

- b. All dates and times are dates and times in New Zealand.
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1.3 How to contact us

- a. All enquiries must be directed to our Point of Contact. We will manage all external communications through this Point of Contact.

- b. **Our Point of Contact**

Name: Philip Crampton

Title/role: Project Manager, Digital Capability Initiative

Email address: philip.crampton@creativenz.govt.nz



1.4 Developing and submitting your Proposal

- a. This is a competitive process. The RFP sets out the step-by-step process and conditions that apply.
 - b. Take time to read and understand the RFP. In particular:
 - i. develop a strong understanding of our Requirements detailed in [Section 2](#).
 - ii. in structuring your Proposal consider how it will be evaluated. [Section 3](#) describes our Evaluation Approach.
 - c. For resources on tendering visit www.procurement.govt.nz/suppliers.
 - d. If anything is unclear or you have a question, ask us to explain. Please do so before the Deadline for Questions. Email our [Point of Contact](#).
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- e. In submitting your Proposal, you must use the Response Form provided. This is a Microsoft Word document that you can download.
 - f. You must also complete and sign the declaration at the end of the Response Form.
 - g. Check you have provided all information requested, and in the format and order asked for.
 - h. Submit your Proposal to us before the Deadline for Proposals.
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1.5 Address for submitting your Proposal.

Proposals must be submitted by email to the following address:

capability@creativenz.govt.nz



1.6 Our RFP Process, Terms and Conditions

- a. **Offer Validity Period:** In submitting a Proposal the Respondent agrees that their offer will remain open for acceptance by the Buyer for three calendar months from the Deadline for Proposals.
 - b. The RFP is subject to the RFP Process, Terms and Conditions (shortened to RFP-Terms) described in [Section 6](#).
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1.7 Later changes to the RFP or RFP process

- a. If, after publishing the RFP, we need to change anything about the RFP, or RFP process, or want to provide suppliers with additional information we will let all suppliers know by placing a notice on the Government Electronic Tenders Service (GETS) at www.gets.govt.nz
 - b. [If you downloaded the RFP from GETS you will automatically be sent notifications of any changes through GETS by email.]
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SECTION 2: About us

Creative New Zealand is Aotearoa's national arts development agency. We encourage, promote and support the arts for the benefit of all New Zealanders. Our vision is dynamic and resilient New Zealand arts valued in Aotearoa and internationally.

Creative New Zealand was established under legislation (2014) that required it to:

- recognise the cultural diversity of the people of New Zealand; and
- recognise in the arts the role of Māori as tangata whenua; and
- recognise the arts of the Pacific Island peoples of New Zealand.

For more about us see: <https://www.creativenz.govt.nz/>

SECTION 3: Opportunity for an Agency

Background

Digital technology impacts all aspects of our arts and cultural sector and is rapidly evolving and developing.

The recent COVID – 19 pandemic has highlighted the need for the sector to respond effectively to the challenges of the current environment and take advantage of the opportunities presented by technology, so that our artists and arts organisations can be more dynamic and resilient.

In October 2020, the Council of Creative New Zealand adopted a Digital Framework. The overarching objective for CNZ in relation to digital technologies is:

To ensure the arts sector is positioned to maximise the opportunities associated with digital technologies, for the benefit of the sector and all New Zealanders, in a way that recognises Aotearoa New Zealand's unique cultural context.

The areas of focus under the Digital Framework are:

- Digital **creation**
- Digital **distribution**
- Digital **access**
- Digital **resilience**.

Appendix 1 to the Draft Digital Framework is attached to this RFP.

The Draft Digital Framework is linked to CNZ's strategic outcomes and the features set out in the [Investment Strategy Te Ara Whakamua 2018–2023](#). It is also strongly aligned with existing and planned work under [Te Hā o ngā Toi—Māori Arts Strategy 2019–2024](#) and the [Pacific Arts Strategy 2018–2023](#).

The updated [Te Hā o ngā Toi—Māori Arts Strategy Implementation Plan](#) includes, under the *Advance ngā Toi Māori practice development* focus area, an action to **support digital skills development**.

The [Pacific Arts Strategy Phase 2 Response Plan](#) includes carrying forward the **#DigitalMoana Initiative** (a direct response to COVID-19) and nine actions delivering to the Strategy's *Va pou (An innovative and networked Pacific arts environment exists, so that Pacific arts are strengthened for future success)*.

The CNZ Statement of Intent 2019–2029 identifies four perspectives by which the public value generated by CNZ may be enhanced. Establishment of the Digital Agency will utilise CNZ resources (**Creative New Zealand perspective**) to engage with stakeholders in the arts sector on how sector resilience may be improved, and its potential more fully realised by taking full advantage of opportunities offered by the digital world (**Sector Perspective**). A Digital Agency focussing on these opportunities will delivery tangible outputs and increase the value we create (**Outcomes and value perspective**). In turn this will enhance our standing in the external environment (**Mana and support perspective**).

Subsequent to approving the Draft Digital Framework the Council agreed that management should proceed with the development of a Business Case to support the establishment of a new Digital Arts and Cultural Agency.

The Agency – concept

The Agency will be a Treaty honouring organisation guided by Māori values. Cultural and creative practices from Aotearoa and the wider Pacific, including an understanding of mātauranga, whakapapa, connection with communities and mana tuku iho (identity and belonging), are valued and acknowledged for the contribution they make to our wellbeing (social, cultural, environmental and economic).

It is envisaged that Agency will be a small, agile, independent, national organisation that:

- provides services to artists and arts organisations in Aotearoa, consistent with CNZ's Digital Framework and in line with current objectives to increase the arts sector's digital capability; and
- enables the work of our arts and cultural practitioners to be more accessible to wider local and international audiences, including engaging with people with disabilities.

The Agency could provide the following types of services consistent with the focus areas of **creation, distribution, access and resilience**:

- assist arts organisations and artists to engage new audiences and new platforms for digital content.
- commission digital content/art across multiple platforms and provide immersive or interactive experiences.
- provide training or skill development in terms of digital engagement including e-commerce platforms, digital rights, digital safety and IP, including preservation and protection of Mātauranga Māori.
- broker partnerships and networks across industries nationally and globally to develop or realise a project.
- ensure that digital content is available to the broadest range of New Zealanders to ensure content can be accessed by those with disabilities and reach communities of high users, for example young Pasifika artist/arts organisations

A precedent for such an Agency exists in the UK (see <https://www.thespace.org/who-we-are>).

SECTION 4: Our Requirements

What we require

We require an author to develop a Business Case that will enable our Council and other possible stakeholders to make very well-informed decision about investing in the establishment and operation of the Digital Arts and Cultural agency.

The Business Case is expected to include the following components:

- a) **Industry research and benchmarking** – a snapshot of the current digital capability needs of Aotearoa's arts organisations and audiences, analysis of current international and national services and models.
- b) **Strategic purpose and outcomes** – scope and mandate; target audiences and users; alignment with Creative New Zealand's public value model and strategies; proposed success measures and evaluation framework.
- c) **Service model** – segment, target and prioritise services based on needs analysis and current providers using the Digital Framework (eg, creation, distribution, access and resilience).
- d) **Operating model** – scalable options for governing and managing the service delivery including potential revenue streams and risk-share models.

- e) **Investment and partnership plan** – including the commitment from key stakeholder- investors that Creative New Zealand has secured (or may need to secure for viability/sustainability).
- f) **Feasibility of options** – risk and benefit analysis of costed options with a recommended option based on rationale. Note, options should include scale-ability to reflect the investment plan for example, a pilot/commissioning specific services where resources are limited.

In developing the Business Case we expect that the author will:

- engage with key industry organisations and practitioners, as agreed, within the creative industries sector and technological/digital sector.
- examine solutions to digital capability development in the arts and culture and other sectors nationally and globally.
- consider how current providers of similar services operate in a viable and sustainable way.
- acknowledge and give effect to Te Ao Māori and Kaupapa Pasifika.

Our Project Manager for the Digital Capability Initiative will actively guide and assist the selected Business Case author throughout the term of the contract.

We have budget approval for up to \$100,000 excl. GST for the development of this Business Case.

What we don't want

The following are out of scope for this procurement:

- procuring and appointing a party to operate an Agency.
- revising the Draft Digital Framework.

Why should you bid?

This is a unique opportunity to make a material contribution to the resilience of the arts communities of Aotearoa and thereby to contribute to the wider wellbeing of our society.

Questions

You may seek clarification to our requirement by submitting questions to capability@creativenz.govt.nz

The final date for submission of any questions is **2 July 2021**.

We will release answers to all questions we receive in two batches on 22 June and 6 July.

Contract term

We expect to the Contract will commence in July 2021 and end in December 2021.

Key deliverables

The key Contract actions and deliverables are:

Description	Expected date
1. Initiation meeting with successful Respondent	10 August
2. First meeting with Reference Group and Stakeholder reps	16 August
3. Deliverable: Test early findings with Reference Group, Stakeholder reps and Sponsoring Manager	10 September
4. Deliverable: First Draft Business Case presented to Reference Group, Stakeholder reps and Sponsoring Manager	24 September

5. Deliverable: Final Business Case submitted to CNZ	1 October
6. Deliverable: final power point presentation to CNZ	13 October
7. Presentation of Business Case to Council (to be confirmed)	20 October
8. Presentation of the Business Case to up to 4 other key stakeholder – investors (as required)	Oct to Dec

Other relevant documents

In addition to this RFP please refer to the following documents.

- a. Te Hā o ngā Toi (see [Te Hā o ngā Toi—Māori Arts Strategy 2019–2024](#))
- b. Pacific Arts Strategy 2018 to 2013 (see <https://www.creativenz.govt.nz/about-creative-new-zealand/corporate-documents/creative-new-zealand-pacific-arts-strategy-2018-2023>)
- c. Investment Strategy [Investment Strategy Te Ara Whakamua 2018–2023](#)

SECTION 5: Your Proposal

Proposal Template

Accompanying this RFP is a Proposal Template in MS Word format. You should develop and submit your Proposal using this template.

Re conditions

We wish to receive a small number of high-quality Proposals from suitable experienced Respondents.

For that reason, we will strictly apply the seven Pre-conditions set in Section 5a below.

If you are unable to meet all our pre-conditions, it is unlikely that you will benefit from submitting a Proposal.

Pricing information to be provided by Respondents.

We have budget approval for up to \$100,000 excl. GST for the development of the Business Case.

In submitting your price, please ensure that you:

- a. use the pricing table provided.
- b. document all assumptions and qualifications you make about the delivery of the Requirements, including in the financial pricing information. Any assumption that Creative New Zealand or a third party will incur any cost related to the delivery of the Requirements is to be stated, and the cost estimated if possible.
- c. consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in your Proposal and pricing information to enable you to manage such risks and contingencies.
- d. price in NZ\$.

Where you lodge a joint venture or consortium Proposal your pricing schedule must include all costs, fees, expenses and charges chargeable by all parties to your joint venture or consortium.

SECTION 5a: Evaluating your Proposal.

Evaluation model

Our evaluation and selection model will comprise the following steps.

1. Test against compliance with the Precondition as shown in below.
2. Evaluate the quality attributes of compliant Proposal as shown below.
3. Rank Proposals in order of weighted score for quality attributes
4. Select the Proposal with the highest ranked quality score that is affordable to Creative New Zealand as the Preferred Proposal/Respondent
5. Negotiate with the Preferred Respondent, with the intention of agreeing and signing a Contract.

Pre-conditions

We wish to receive a small number of high-quality proposals from suitable experienced Respondents. For that reason, we will apply the six Pre- conditions set out below.

If your proposals fail to meet one or more Pre- condition it will most likely be eliminated from further consideration.

Therefore, if you are unable to meet all our pre-conditions it is unlikely that you will benefit from submitting a Proposal.

#	Pre-condition
1.	The Proposal is received on or before the Deadline
2.	The Proposal is complete in all material respects
3.	The Respondent warrants that it has substantial recent experience in the arts and/or creative industries
4.	The Respondent warrants that it has substantial knowledge of Te Ao Māori and experience engaging with Māori as tangatawhenua
5.	The Respondent warrants that it has the capability to develop a Business Case that will reflect that the proposed Agency will be a Treaty - honouring organisation guided by Māori values
6.	The Respondent warrants that it has the capability to develop a Business Case that will reflect that the proposed Agency will recognise and give effect to Kaupapa Pasifika.
7.	The Respondent warrants that it has the capacity to deliver the Business Case within the available time

Evaluation criteria

Proposals which meet all pre-conditions will be evaluated on their merits according to the following evaluation criteria and weightings.

1.	Core Capabilities	(60%)
1.1.	Knowledge and experience in the Arts and/or Creative industries sectors	20
1.2.	Knowledge of Te Ao Māori and experience engaging with Māori as tangatawhenua	15
1.3.	Knowledge of Kaupapa Pasifika	5

1.4. Knowledge and experience of the public sector, in particular government agencies and Te Tiriti o Waitangi	10
1.5. Experience in the development of a relevant/comparable Business Case, including technical skills regarding organisational and business models	10
2. Approach and Methodology to Business Case Development	40%
2.1. Understanding of our Requirements	10
2.2. Understanding of Opportunities, Threats and Risks	10
2.3. Approach to Engagement	5
2.4. Approach to market research/environmental scan	10
2.5. Development Plan and Timeline	5
Total	100%

Scoring

We will use the following scoring scale in evaluating Proposals.

Scores by individual panel members will be superseded by a consensus score through a moderation process that will involve the whole of our evaluation panel.

Rating	Definition	Score
EXCELLENT significantly exceeds the criterion	Exceeds the criterion. Exceptional demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	9-10
GOOD exceeds the criterion in some aspects	Satisfies the criterion with minor additional benefits. Above average demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion. Proposal identifies factors that will offer potential added value, with supporting evidence.	7-8
ACCEPTABLE meets the criterion in full, but at a minimal level	Satisfies the criterion. Demonstration by the Respondent of the relevant ability, understanding, experience, skills, resource, and quality measures required to meet the criterion, with supporting evidence.	5-6
MINOR RESERVATIONS marginally deficient	Satisfies the criterion with minor reservations. Some minor reservations of the Respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	3-4
SERIOUS RESERVATIONS significant issues that need to be addressed	Satisfies the criterion with major reservations. Considerable reservations of the respondent's relevant ability, understanding, experience, skills, resource and quality measures required to meet the criterion, with little or no supporting evidence.	1-2
UNACCEPTABLE significant issues not capable of being resolved	Does not meet the criterion. Does not comply and/or insufficient information provided to demonstrate that the Respondent has the ability, understanding, experience, skills, resource and quality	0

measures required to meet the criterion, with little or no supporting evidence.

Price

We wish to obtain the best value-for-money over the whole-of-life of the Contract. This means achieving the right combination of fit for purpose, quality, on time delivery, quantity and price.

If a Respondent offers a price that is substantially lower than other Proposals (an abnormally low bid), the Buyer may seek to verify with the Respondent that the Respondent is capable of fully delivering all of the Requirements and meeting all of the conditions of the Proposed Contract for the price quoted.

Due diligence

In addition to the above, we will at our discretion undertake the following additional steps in relation to you/your Proposal.

- a. undertake reference check on your organisation and named personnel.
- b. interview you.
- c. request that you make a presentation.
- d. undertake other checks that we consider appropriate.

The findings will be taken into account in our evaluation process.

SECTION 5b: Our Proposed Contract

We will utilise GMC Form 2 non-Crown Services (3rd Edition) sourced from Procurement.govt to document our agreement with the successful Respondent.

A draft of that Proposed Contract is included as Attachment 2 to this RFP.

Note that under the terms of the Contract:

- a. We will make payments by the 20th of the month following delivery of the services.
- b. The amount and timing of each payment making up the total price will be nominated by you in your Proposal, subject to negotiation with us.
- c. All new Intellectual Property arising from the Contract will be the property of Creative New Zealand.

In submitting your Proposal, you must let us know if you wish to question and/or negotiate any of the terms or conditions in the Proposed Contract or wish to negotiate new terms and/or conditions.

Our Response Form contains a section for you to state your position.

If you do not state your position, you will be deemed to have accepted the terms and conditions in the Proposed Contract in full.

SECTION 6: RFP Process, Terms and Conditions

Note to suppliers and Respondents

1. In managing this procurement the Buyer will endeavour to act fairly and reasonably in all of its dealings with interested suppliers and Respondents, and to follow due process which is open and transparent.
2. This section contains the government's standard RFP Process, Terms and Conditions (shortened to RFP-Terms) which apply to this procurement. Any variation to the RFP-Terms will be recorded in Section 1, [paragraph 1.6](#). Check to see if any changes have been made for this RFP.
3. Words and phrases that have a special meaning are shown by the use of capitals e.g. Respondent, which means 'a person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.' [Definitions](#) are at the end of this section.
4. If you have any questions about the RFP-Terms please email our [Point of Contact](#).

Standard RFP process



Preparing and submitting a proposal

- **Preparing a Proposal**
 - a. Respondents are to use the Response Form provided and include all information requested by the Buyer in relation to the RFP.
 - b. By submitting a Proposal the Respondent accepts that it is bound by the RFP Process, Terms and Conditions (RFP-Terms) contained in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
 - c. Each Respondent will:
 - examine the RFP and any documents referenced in the RFP and any other information provided by the Buyer
 - consider all risks, contingencies and other circumstances relating to the delivery of the Requirements and include adequate provision in its Proposal to manage such risks and contingencies
 - document in its Proposal all assumptions and qualifications made about the delivery of the Requirements, including any assumption that the Buyer or a third party will deliver any aspect of the Requirements or incur any cost related to the delivery of the Requirements
 - ensure that pricing information is quoted in NZ\$ exclusive of GST
 - if appropriate, obtain independent advice before submitting a Proposal
 - satisfy itself as to the correctness and sufficiency of its Proposal, including the proposed pricing and the sustainability of the pricing.
 - d. There is no expectation or obligation for Respondents to submit Proposals in response to the RFP solely to remain on any prequalified or registered supplier list. Any Respondent on such a list will not be penalised for failure to submit a Proposal.

○ **Offer Validity Period**

9. Proposals are to remain valid and open for acceptance by the Buyer for the Offer Validity Period.



○ **Respondents' Deadline for Questions**

- g) Each Respondent should satisfy itself as to the interpretation of the RFP. If there is any perceived ambiguity or uncertainty in the RFP document/s Respondents should seek clarification before the Deadline for Questions.
- h) All requests for clarification must be made by email to the Buyer's Point of Contact. The Buyer will endeavour to respond to requests in a timely manner, but not later than the deadline for the Buyer to answer Respondents' questions in Section 1, paragraph 1.2.a, if applicable.
- i) If the Buyer considers a request to be of sufficient importance to all Respondents it may provide details of the question and answer to other Respondents. In doing so the Buyer may summarise the Respondent's question and will not disclose the Respondent's identity. The question and answer may be posted on GETS and/or emailed to participating Respondents. A Respondent may withdraw a request at any time.
- j) In submitting a request for clarification a Respondent is to indicate, in its request, any information that is commercially sensitive. The Buyer will not publish such commercially sensitive information. However, the Buyer may modify a request to eliminate such commercially sensitive information, and publish this and the answer where the Buyer considers it of general significance to all Respondents. In this case, however, the Respondent will be given an opportunity to withdraw the request or remove the commercially sensitive information.



○ **Submitting a Proposal**

- 6 Each Respondent is responsible for ensuring that its Proposal is received by the Buyer at the correct address on or before the Deadline for Proposals. The Buyer will acknowledge receipt of each Proposal.
- 7 The Buyer intends to rely on the Respondent's Proposal and all information provided by the Respondent (e.g. correspondence and negotiations). In submitting a Proposal and communicating with the Buyer each Respondent should check that all information it provides to the Buyer is:
 - i. true, accurate and complete, and not misleading in any material respect
 - ii. does not contain Intellectual Property that will breach a third party's rights.
- 8 Where the Buyer requires the Proposal to be delivered in hard and soft copies, the Respondent is responsible for ensuring that both the hard and soft copies are identical.
- 9 Where the Buyer stipulates a two envelope RFP process the following applies:
 - each Respondent must ensure that all financial information and pricing components of its Proposal are provided separately from the remainder of its Proposal
 - financial information and pricing must be contained either in a separate sealed envelope or as a separate soft copy file (whichever option has been requested by the Buyer)
 - the pricing information must be clearly marked 'Financial and Pricing Information.' This is to ensure that the pricing information cannot be viewed when the package containing the other elements of the Proposal is opened.



Assessing Proposals



- **Evaluation panel**
 - a. The Buyer will convene an evaluation panel comprising members chosen for their relevant expertise and experience. In addition, the Buyer may invite independent advisors to evaluate any Proposal, or any aspect of any Proposal.

- **Third party information**
 - i. Each Respondent authorises the Buyer to collect additional information, except commercially sensitive pricing information, from any relevant third party (such as a referee or a previous or existing client) and to use that information as part of its evaluation of the Respondent's Proposal.
 - ii. Each Respondent is to ensure that all referees listed in support of its Proposal agree to provide a reference.
 - iii. To facilitate discussions between the Buyer and third parties each Respondent waives any confidentiality obligations that would otherwise apply to information held by a third party, with the exception of commercially sensitive pricing information.



- **Buyer's clarification**
 - i. The Buyer may, at any time, request from any Respondent clarification of its Proposal as well as additional information about any aspect of its Proposal. The Buyer is not required to request the same clarification or information from each Respondent.
 - ii. The Respondent must provide the clarification or additional information in the format requested. Respondents will endeavour to respond to requests in a timely manner. The Buyer may take such clarification or additional information into account in evaluating the Proposal.
 - iii. Where a Respondent fails to respond adequately or within a reasonable time to a request for clarification or additional information, the Buyer may cease evaluating the Respondent's Proposal and may eliminate the Proposal from the RFP process.

- **Evaluation and shortlisting**
 1. The Buyer will base its initial evaluation on the Proposals submitted in response to the RFP. The Buyer may adjust its evaluation of a Proposal following consideration of any clarification or additional information as described in paragraphs 6.6 and 6.7.
 2. In deciding which Respondent/s to shortlist the Buyer will take into account the results of the evaluations of each Proposal and the following additional information:
 3. each Respondent's understanding of the Requirements, capability to fully deliver the Requirements and willingness to meet the terms and conditions of the Proposed Contract
 4. except where the price is the only criterion, the best value-for-money over the whole-of-life of the goods or services.
 3. In deciding which Respondent/s, to shortlist the Buyer may take into account any of the following additional information:
 1. the results from reference checks, site visits, product testing and any other due diligence
 2. the ease of contracting with a Respondent based on that Respondent's feedback on the Proposed Contract (where these do not form part of the weighted criteria)
 3. any matter that materially impacts on the Buyer's trust and confidence in the Respondent
 4. any other relevant information that the Buyer may have in its possession.
 5. The Buyer will advise Respondents if they have been shortlisted or not. Being shortlisted does not constitute acceptance by the Buyer of the Respondent's Proposal, or imply or create any obligation on the Buyer to enter into negotiations with, or award a Contract for



delivery of the Requirements to any shortlisted Respondent/s. At this stage in the RFP process the Buyer will not make public the names of the shortlisted Respondents.

○ **Negotiations**

- i. The Buyer may invite a Respondent to enter into negotiations with a view to contract. Where the outcome is unsatisfactory the Buyer may discontinue negotiations with a Respondent and may then initiate negotiations with another Respondent.
- ii. The Buyer may initiate concurrent negotiations with more than one Respondent. In concurrent negotiations the Buyer will treat each Respondent fairly, and:
 - prepare a negotiation plan for each negotiation
 - advise each Respondent, that it wishes to negotiate with, that concurrent negotiations will be carried out
 - hold separate negotiation meetings with each Respondent.
- iii. Each Respondent agrees that any legally binding contract entered into between the Successful Respondent and the Buyer will be essentially in the form set out in Section 5, the Proposed Contract.



○ **Respondent's debrief**

- a. At any time after shortlisting Respondents the Buyer will offer all Respondents who have not been shortlisted a debrief. Each Respondent will have 30 Business Days, from the date of offer, to request a debrief. When a Respondent requests a debrief, the Buyer will provide the debrief within 30 Business Days of the date of the request, or of the date the Contract is signed, whichever is later.
- b. The debrief may be provided by letter, email, phone or at a meeting. The debrief will:
 1. provide the reasons why the Proposal was or was not successful
 2. explain how the Proposal performed against the pre-conditions (if applicable) and the evaluation criteria
 3. indicate the Proposal's relative strengths and weaknesses
 4. explain, in general terms, the relative advantage/s of the successful Proposal
 5. seek to address any concerns or questions from the Respondent
 6. seek feedback from the Respondent on the RFP and the RFP process.



○ **Notification of outcome**

- i. At any point after conclusion of negotiations, but no later than 30 Business Days after the date the Contract is signed, the Buyer will inform all unsuccessful Respondents of the name of the Successful Respondent, if any. The Buyer may make public the name of the Successful Respondent and any unsuccessful Respondent. Where applicable, the Buyer will publish a Contract Award Notice on GETS.



○ **Issues and complaints**

- a. A Respondent may, in good faith, raise with the Buyer any issue or complaint about the RFP, or the RFP process at any time.
- b. The Buyer will consider and respond promptly and impartially to the Respondent's issue or complaint.
- c. Both the Buyer and Respondent agree to act in good faith and use their best endeavours to resolve any issue or complaint that may arise in relation to the RFP.
- d. The fact that a Respondent has raised an issue or complaint is not to be used by the Buyer to unfairly prejudice the Respondent's ongoing participation in the RFP process or future contract opportunities.



Standard RFP conditions



- **Buyer's Point of Contact**
 - a. All enquiries regarding the RFP must be directed by email to the Buyer's Point of Contact. Respondents must not directly or indirectly approach any representative of the Buyer, or any other person, to solicit information concerning any aspect of the RFP.
 - b. Only the Point of Contact, and any authorised person of the Buyer, are authorised to communicate with Respondents regarding any aspect of the RFP. The Buyer will not be bound by any statement made by any other person.
 - c. The Buyer may change the Point of Contact at any time. The Buyer will notify Respondents of any such change. This notification may be posted on GETS or sent by email.
 - d. Where a Respondent has an existing contract with the Buyer then business as usual communications, for the purpose of managing delivery of that contract, will continue using the usual contacts. Respondents must not use business as usual contacts to lobby the Buyer, solicit information or discuss aspects of the RFP.
- **Conflict of Interest**
 - a. Each Respondent must complete the Conflict of Interest declaration in the Response Form and must immediately inform the Buyer should a Conflict of Interest arise during the RFP process. A material Conflict of Interest may result in the Respondent being disqualified from participating further in the RFP.
- **Ethics**
 - d. Respondents must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Buyer in relation to the RFP.
 - e. A Respondent who attempts to do anything prohibited by paragraphs 6.13.a. and d. and 6.15.a. may be disqualified from participating further in the RFP process.
 - f. The Buyer reserves the right to require additional declarations, or other evidence from a Respondent, or any other person, throughout the RFP process to ensure probity of the RFP process.
- **Anti-collusion and bid rigging**
 - i. Respondents must not engage in collusive, deceptive or improper conduct in the preparation of their Proposals or other submissions or in any discussions or negotiations with the Buyer. Such behaviour will result in the Respondent being disqualified from participating further in the RFP process. In submitting a Proposal the Respondent warrants that its Proposal has not been prepared in collusion with a Competitor.
 - ii. The Buyer reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Respondents to the appropriate authority and to give that authority all relevant information including a Respondent's Proposal.
- **Confidential Information**
 - i. The Buyer and Respondent will each take reasonable steps to protect Confidential Information and, subject to paragraph 6.17.c. and without limiting any confidentiality undertaking agreed between them, will not disclose Confidential Information to a third party without the other's prior written consent.
 - ii. The Buyer and Respondent may each disclose Confidential Information to any person who is directly involved in the RFP process on its behalf, such as officers, employees, consultants, contractors, professional advisors, evaluation panel members, partners, principals or directors, but only for the purpose of participating in the RFP.
 - iii. Respondents acknowledge that the Buyer's obligations under paragraph 6.17.a. are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, parliamentary and constitutional convention and any other obligations imposed by law. The Buyer will not be in breach of its obligations if Confidential Information is disclosed by the Buyer to the appropriate authority because of suspected collusive or anti-



competitive tendering behaviour. Where the Buyer receives an OIA request that relates to a Respondent's Confidential Information the Buyer will consult with the Respondent and may ask the Respondent to explain why the information is considered by the Respondent to be confidential or commercially sensitive.

○ **Confidentiality of RFP information**

1. For the duration of the RFP, to the date of the announcement of the Successful Respondent, or the end of the RFP process, the Respondent agrees to keep the RFP strictly confidential and not make any public statement to any third party in relation to any aspect of the RFP, the RFP process or the award of any Contract without the Buyer's prior written consent.
2. A Respondent may disclose RFP information to any person described in paragraph 6.17.b. but only for the purpose of participating in the RFP. The Respondent must take reasonable steps to ensure that such recipients do not disclose Confidential Information to any other person or use Confidential Information for any purpose other than responding to the RFP.

○ **Costs of participating in the RFP process**

- iii. Each Respondent will meet its own costs associated with the preparation and presentation of its Proposal and any negotiations.

○ **Ownership of documents**

- i. The RFP and its contents remain the property of the Buyer. All Intellectual Property rights in the RFP remain the property of the Buyer or its licensors. The Buyer may request the immediate return or destruction of any or all RFP documents and any copies. Respondents must comply with any such request in a timely manner.
- ii. All documents forming the Proposal will, when delivered to the Buyer, become the property of the Buyer. Proposals will not be returned to Respondents at the end of the RFP process.
- iii. Ownership of Intellectual Property rights in the Proposal remain the property of the Respondent or its licensors. However, the Respondent grants to the Buyer a non-exclusive, non-transferable, perpetual licence to retain, use, copy and disclose information contained in the Proposal for any purpose related to the RFP process.

○ **No binding legal relations**

- a. Neither the RFP, nor the RFP process, creates a process contract or any legal relationship between the Buyer and any Respondent, except in respect of:
 - i. the Respondent's declaration in its Proposal
 - ii. the Offer Validity Period
 - iii. the Respondent's statements, representations and/or warranties in its Proposal and in its correspondence and negotiations with the Buyer
 - iv. the Evaluation Approach to be used by the Buyer to assess Proposals as set out in Section 3 and in the RFP-Terms (as varied by Section 1, paragraph 1.6, if applicable)
 - v. the standard RFP conditions set out in paragraphs 6.13 to 6.26
 - vi. any other matters expressly described as binding obligations in Section 1, paragraph 1.6.
- b. Each exception in paragraph 6.21.a. is subject only to the Buyer's reserved rights in paragraph 6.23.
- c. Except for the legal obligations set out in paragraph 6.21.a. no legal relationship is formed between the Buyer and any Respondent unless and until a Contract is entered into between those parties.



Elimination

- The Buyer may exclude a Respondent from participating in the RFP if the Buyer has evidence of any of the following, and is considered by the Buyer to be material to the RFP:
 - the Respondent has failed to provide all information requested, or in the correct format, or materially breached a term or condition of the RFP
 - the Proposal contains a material error, omission or inaccuracy
 - the Respondent is in bankruptcy, receivership or liquidation
 - the Respondent has made a false declaration
 - there is a serious performance issue in a historic or current contract delivered by the Respondent
 - the Respondent has been convicted of a serious crime or offence
 - there is professional misconduct or an act or omission on the part of the Respondent which adversely reflects on the integrity of the Respondent
 - the Respondent has failed to pay taxes, duties or other levies
 - the Respondent represents a threat to national security or the confidentiality of sensitive government information
 - the Respondent is a person or organisation designated as a terrorist by New Zealand Police.

Buyer's additional rights

- a. Despite any other provision in the RFP the Buyer may, on giving due notice to Respondents:
 1. amend, suspend, cancel and/or re-issue the RFP, or any part of the RFP
 2. make any material change to the RFP (including any change to the timeline, Requirements or Evaluation Approach) on the condition that Respondents are given a reasonable time within which to respond to the change.
- b. Despite any other provision in the RFP the Buyer may:
 1. accept a late Proposal if it is the Buyer's fault that it is received late
 2. in exceptional circumstances, accept a late Proposal where it considers that there is no material prejudice to other Respondents. The Buyer will not accept a late Proposal if it considers that there is risk of collusion on the part of a Respondent, or the Respondent may have knowledge of the content of any other Proposal
 3. in exceptional circumstances, answer a question submitted after the Deadline for Questions, if applicable
 4. accept or reject any Proposal, or part of a Proposal
 5. accept or reject any non-compliant, non-conforming or alternative Proposal
 6. decide not to accept the lowest priced conforming Proposal unless this is stated as the Evaluation Approach
 7. decide not to enter into a Contract with any Respondent
 8. liaise or negotiate with any Respondent without disclosing this to, or doing the same with, any other Respondent
 9. provide or withhold from any Respondent information in relation to any question arising in relation to the RFP. Information will usually only be withheld if it is deemed unnecessary, is commercially sensitive to a Respondent, is inappropriate to supply at the time of the request or cannot be released for legal reasons
 10. amend the Proposed Contract at any time, including during negotiations with a shortlisted Respondent



11. waive irregularities or requirements in or during the RFP process where it considers it appropriate and reasonable to do so.
- c. The Buyer may request that a Respondent/s agrees to the Buyer:
12. selecting any individual element/s of the Requirements that is offered in a Proposal and capable of being delivered separately, unless the Proposal specifically states that the Proposal, or elements of the Proposal, are to be taken collectively
 13. selecting two or more Respondents to deliver the Requirements as a joint venture or consortium.
- **New Zealand law**
- i. The laws of New Zealand shall govern the RFP and each Respondent agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the RFP or the RFP process.
- **Disclaimer**
- c. The Buyer will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Respondent or any other person in respect of the RFP process.
 - d. Nothing contained or implied in the RFP, or RFP process, or any other communication by the Buyer to any Respondent shall be construed as legal, financial or other advice. The Buyer has endeavoured to ensure the integrity of such information. However, it has not been independently verified and may not be updated.
 - e. To the extent that liability cannot be excluded, the maximum aggregate liability of the Buyer, its agents and advisors is \$1.
- **Precedence**
1. Any conflict or inconsistency in the RFP shall be resolved by giving precedence in the following descending order:
 1. Section 1, paragraph 1.6
 2. Section 6 (RFP-Terms)
 3. all other Sections of this RFP document
 4. any additional information or document provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
 2. If there is any conflict or inconsistency between information or documents having the same level of precedence the later information or document will prevail.

Definitions

In relation to the RFP the following words and expressions have the meanings described below.

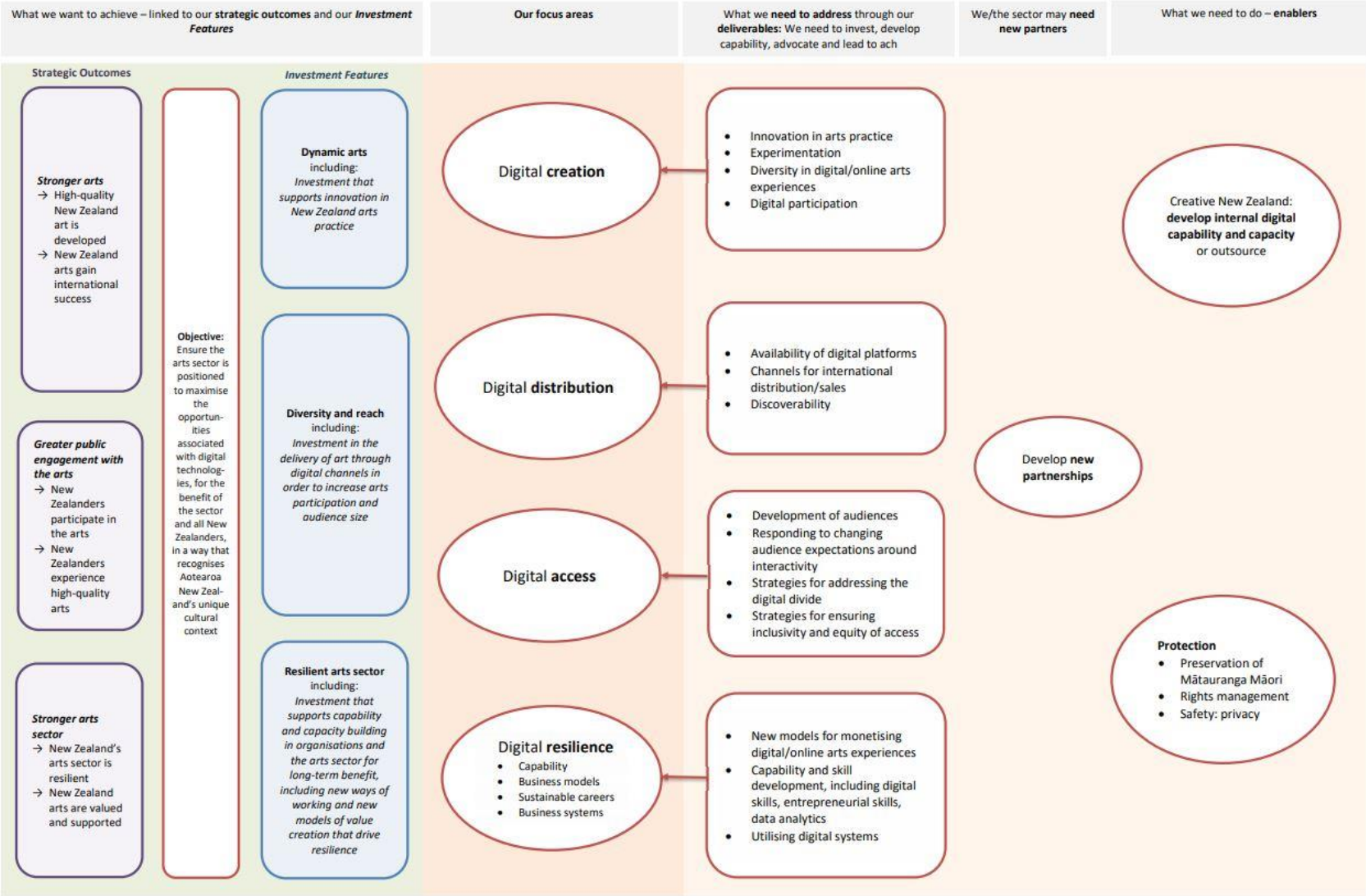
Advance Notice	A notice published by the buyer on GETS in advance of publishing the RFP. An Advance Notice alerts the market to a contract opportunity. Where used, an Advance Notice forms part of the RFP.
Business Day	Any week day in New Zealand, excluding Saturdays, Sundays, New Zealand (national) public holidays and all days from Boxing Day up to and including the day after New Year's Day.
Buyer	The Buyer is the government agency that has issued the RFP with the intent of purchasing the goods or services described in the Requirements. The term Buyer includes its officers, employees, contractors, consultants, agents and representatives.

Competitors	Any other business that is in competition with a Respondent either in relation to the goods or services sought under the RFP or in general.
Confidential Information	<p>Information that:</p> <ul style="list-style-type: none"> • is by its nature confidential • is marked by either the Buyer or a Respondent as ‘confidential’, ‘commercially sensitive’, ‘sensitive’, ‘in confidence’, ‘top secret’, ‘secret’, classified’ and/or ‘restricted’ • is provided by the Buyer, a Respondent, or a third party in confidence • the Buyer or a Respondent knows, or ought to know, is confidential. <p>Confidential information does not cover information that is in the public domain through no fault of either the Buyer or a Respondent.</p>
Conflict of Interest	<p>A Conflict of Interest arises if a Respondent’s personal or business interests or obligations do, could, or be perceived to, conflict with its obligations to the Buyer under the RFP or in the provision of the goods or services. It means that the Respondent’s independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:</p> <ol style="list-style-type: none"> actual: where the conflict currently exists potential: where the conflict is about to happen or could happen, or perceived: where other people may reasonably think that a person is compromised.
Contract	The written Contract/s entered into by the Buyer and Successful Respondent/s for the delivery of the Requirements.
Contract Award Notice	Government Rules of Sourcing, Rule 45 requires a Buyer to publish a Contract Award Notice on GETS when it has awarded a contract that is subject to the Rules.
Deadline for Proposals	The deadline that Proposals are to be delivered or submitted to the Buyer as stated in Section 1, paragraph 1.2.
Deadline for Questions	The deadline for suppliers to submit questions to the Buyer as stated in Section 1, paragraph 1.2, if applicable.
Evaluation Approach	The approach used by the Buyer to evaluate Proposals as described in Section 3 and in Section 6 (as varied by Section 1, paragraph 1.6, if applicable).
GETS	Government Electronic Tenders Service available at www.gets.govt.nz
GST	The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985.
Intellectual Property	All intellectual property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law.
Offer Validity Period	The period of time when a Proposal (offer) is held open by the Respondent for acceptance by the Buyer as stated in Section 1, paragraph 1.6.
Point of Contact	The Buyer and each Respondent are required to appoint a Point of Contact. This is the channel to be used for all communications during the RFP process. The Buyer’s Point of Contact is identified in Section 1, paragraph 1.3. The Respondent’s Point of Contact is identified in its Proposal.
Price	The total amount, including all costs, fees, expenses and charges, to be charged by the Successful Respondent for the full delivery of the Requirements. Each Respondent’s Proposal must include its Price.

Proposal	The response a Respondent submits in reply to the RFP. It comprises the Response Form, the Respondent's bid, financial and pricing information and all other information submitted by a Respondent.
Proposed Contract	The Contract terms and conditions proposed by the Buyer for the delivery of the Requirements as described in Section 5.
RFP	Means the Request for Proposal.
Registration of Interest	A formal request by a Buyer asking potential suppliers to register their interest in a procurement. It is the first step in a multi-step tender process.
Request for Proposal (RFP)	The RFP comprises the Advance Notice (where used), the Registration of Interest (where used), this RFP document (including the RFP-Terms) and any other schedule, appendix or document attached to this RFP, and any subsequent information provided by the Buyer to Respondents through the Buyer's Point of Contact or GETS.
RFP-Terms	Means the Request for Proposal - Process, Terms and Conditions as described in Section 6.
RFP Process, Terms and Conditions (shortened to RFP-Terms)	The government's standard process, terms and conditions that apply to RFPs as described in Section 6. These may be varied at the time of the release of the RFP by the Buyer in Section 1, paragraph 1.6. These may be varied subsequent to the release of the RFP by the Buyer on giving notice to Respondents.
Requirements	The goods and/or services described in Section 2 which the Buyer intends to purchase.
Respondent	A person, organisation, business or other entity that submits a Proposal in response to the RFP. The term Respondent includes its officers, employees, contractors, consultants, agents and representatives. The term Respondent differs from a supplier, which is any other business in the market place that does not submit a Proposal.
Response Form	The form and declaration prescribed by the Buyer and used by a Respondent to respond to the RFP, duly completed and submitted by a Respondent as part of the Proposal.
Successful Respondent	Following the evaluation of Proposals and successful negotiations, the Respondent/s who is awarded a Contract/s to deliver all or part of the Requirements.

Attachments

Attachment 1: Appendix to Creative New Zealand Digital Strategy



Draft Contract for Services

Contract Details

Business Case for the establishment of a Digital Arts and Cultural Agency for Aotearoa

The Parties

The Buyer:

Creative New Zealand
NZBN Insert the New Zealand Business Number of the Buyer
2-12 Allen St, WELLINGTON

And

The Supplier:

NZBN Insert New Zealand Business Number of the Supplier
Insert the legal name of the Supplier For a company, use the registered office. For others use physical address.

Contract Management and Personnel

Start Date	9/07/2021	<i>Reference Schedule 2 clause 1</i>
End Date	24/12/2021	<i>Reference Schedule 2 clause 1</i>
Renewal	not applicable.	<i>Reference Schedule 2 clause 1</i>

Contract Managers

Reference Schedule 2 clause 4

	Buyer's Contract Manager	Supplier's Contract Manager
Name:	Philip Crampton	
Title / position:	Project Manager, Digital Agency	
Address:	2-12 Allen St, WELLINGTON	
Phone:	021 543 946	
Email:	philip.crampton@creativenz.govt.nz	

Addresses for Notices

Reference Schedule 2 clause 14

	Buyer's address	Supplier's address
For the attention of:	Belinda Jones	
c.c. Contract Manager	Philip Crampton	
Delivery address:	Creative New Zealand 2-12 Allen St, WELLINGTON	
Email:	belinda.jones@creativenz.govt.nz	

The Contract

Agreement

The Buyer appoints the Supplier to deliver the Services described in this Contract and the Supplier accepts that appointment. This Contract sets out the Parties' rights and obligations.

Parts of this Contract

The documents forming this Contract are:

3. **Contract Details:** This section
4. **Schedule 1:** Description of Services
5. **Schedule 2:** Standard Terms and Conditions GMC Form 2 SERVICES | Schedule 2 (3rd Edition) available at: www.procurement.govt.nz
6. Any other attachments described at Schedule 1.

How to read this Contract

- Together the above documents form the whole Contract
- Any Supplier terms and conditions do not apply
- Clause numbers refer to clauses in Schedule 2
- Words starting with capital letters have a special meaning. The special meaning is stated in the Definitions section at clause 17 (Schedule 2).

Acceptance

In signing this Contract each Party acknowledges that it has read and agrees to be bound by it.

Signed for and on behalf of the Buyer:

Signed for and on behalf of the Supplier:

(signature)

(signature)

Name: Insert name

Name: Insert name

Position: Insert position

Position: Insert position

Date: Select date

Date Select date

Schedule 1: The Services

3. Context

Digital technology impacts all aspects of our arts and cultural sector and is rapidly evolving and developing.

The recent COVID – 19 pandemic has highlighted the need for the sector to respond effectively to the challenges of the current environment and take advantage of the opportunities presented by technology, so that our artists and arts organisations can be more dynamic and resilient.

In October 2020, the Council of Creative New Zealand adopted a Digital Framework. The overarching objective for CNZ in relation to digital technologies is:

To ensure the arts sector is positioned to maximise the opportunities associated with digital technologies, for the benefit of the sector and all New Zealanders, in a way that recognises Aotearoa New Zealand's unique cultural context.

4. Description of Services

The Supplier will develop a Business Case that will enable the Council of Creative New Zealand and other possible stakeholders to make very well-informed decision about investing in the establishment and operation of a Digital Arts and Cultural Agency for Aotearoa.

The Agency could provide the following types of services consistent with the focus areas of **creation, distribution, access, and resilience**:

- assist arts organisations and artists to engage new audiences and new platforms for digital content.
- commission digital content/art across multiple platforms and provide immersive or interactive experiences.
- provide training or skill development in terms of digital engagement including e-commerce platforms, digital rights, digital safety, and IP, including preservation and protection of Mātauranga Māori.
- broker partnerships and networks across industries nationally and globally to develop or realise a project.
- ensure that digital content is available to the broadest range of New Zealanders to ensure content can be accessed by those with disabilities and reach communities of high users, for example young Pasifika artist/arts organisations

The Business Case is expected to include the following components:

- k) **Industry research and benchmarking** – a snapshot of the current digital capability needs of Aotearoa's arts organisations and audiences, analysis of current international and national services and models.
- l) **Strategic purpose and outcomes** – scope and mandate; target audiences and users; alignment with Creative New Zealand's public value model and strategies; proposed success measures and evaluation framework.
- m) **Service model** – segment, target and prioritise services based on needs analysis and current providers using the Digital Framework (eg, creation, distribution, access, and resilience).
- n) **Operating model** – scalable options for governing and managing the service delivery including potential revenue streams and risk-share models.
- o) **Investment and partnership plan** – including the commitment from key stakeholder- investors that Creative New Zealand has secured (or may need to secure for viability/sustainability).
- p) **Feasibility of options** – risk and benefit analysis of costed options with a recommended option based on rationale. Note, options should include scale-ability to reflect the investment plan for example, a pilot/commissioning specific services where resources are limited.

In developing the Business Case the Supplier will:

- engage with key industry organisations and practitioners, as agreed, within the creative industries sector and technological/digital sector.
- examine solutions to digital capability development in the arts and culture and other sectors nationally and globally.
- consider how current providers of similar services operate in a viable and sustainable way.
- Acknowledge and give effect to Te Ao Māori and Kaupapa Pasifika.

5. Deliverables and Milestones

Deliverable/Milestone	Performance Standards	Due date	Invoice date	Amount payable (exc GST)
tbc	tbc	tbc	tbc	tbc
tbc	tbc	tbc	tbc	tbc
Total (excl GST)				\$

6. Specific code of conduct / policies/ health & safety / protective security

[Attach a copy and/or provide web address where the document can be located.]

7. Supplier's Reporting Requirements

Reference Schedule 2 clause 5.2

Report to:	Description of report	Due date
Contract Manager	tbc	tbc
tbc	tbc	tbc

8. Price

Reference Schedule 2 clause 3

The Supplier's Price will be calculated as follows:

A fixed Price of \$ excluding GST, payable in the amounts and on the dates shown in Invoices below.

9. Expenses

No Expenses are payable.

10. Invoices

Reference Schedule 2 Subject to clauses 3 and 11.7

The Supplier must send the Buyer an invoice for the Charges On the following dates subject to completion of the relevant Deliverables/Milestones.

Deliverable/Milestone	Due date	Amount due (exc GST)
tbc	tbc	\$ tbc
tbc	tbc	
Total (exc GST)		\$

11. Address for invoices

Reference Schedule 2 clause 3

Buyer's address	
For the attention of:	Philip Crampton
Address:	philip.crampton@creativenz.govt.nz
Other instructions regarding invoicing	

12. Insurance

Reference Schedule 2 Clause 8.1

The Supplier must have Professional indemnity insurance of \$1 million per claim and \$2 million for all claims in the insurance policy period.

13. Changes to Schedule 2 and attachments

Schedule 2 of this Contract is amended as follows:

- All new Intellectual Property arising from the Contract will be exclusively the property of Creative New Zealand.

Attachments

Reference 'Contract documents' described at Page 1