

Request For Tender (RFT)

Increasing Private Sector Support for the Arts

**TENDERS MUST BE DELIVERED BY
CLOSING TIME AND DATE:**

5 pm Monday 10 May 2010

This document is available until the closing date.

Further information regarding this Request For Tender may be obtained from:

Kim Acland
Creative New Zealand
P O Box 3806
WELLINGTON
DD. +64-4-498-0704
E-mail: kim.acland@creativenz.govt.nz

Disclaimer

Although certain and relevant information is contained in this Request for Tender (RFT), tenderers must make their own independent assessment and investigations in respect of the subject matter contained herein. Neither Creative New Zealand nor any of their members, employees, consultants, agents:

- makes any representations or warranties as to the accuracy, reliability or completeness of the information; nor
- has any liability under the law, or otherwise, arising from the information, the RFT and selection process, or any associated activity or activities.

PART 1: PROJECT OVERVIEW AND BACKGROUND INFORMATION

1. Introduction and Context

- 1.1 Creative New Zealand is the national arts development agency advocating for, developing and investing in the arts.
- 1.2 Creative New Zealand is a Crown entity established under the Arts Council of New Zealand Toi Aotearoa Act 1994. Its funding comes from the Government through Vote Arts, Culture and Heritage and the New Zealand Lottery Grants Board.
- 1.3 Creative New Zealand provides recurrent funding to thirty-four professional arts organisations and invests in many more through contestable funding. Creative New Zealand is interested in assisting these organisations to improve their sustainability. In order to thrive artistically, Creative New Zealand acknowledges that these organisations must have adequate resources and that increases in public investment cannot be guaranteed.
- 1.4 Changes to the environment for charitable giving prompted Creative New Zealand to consider how it could assist arts organisations to maximise the opportunities presented by the changes and more generally to grow revenues from individuals and the private sector¹.
- 1.5 Both the recent tax changes and the establishment of a mechanism for payroll giving increase the incentives for charitable giving and present a significant opportunity for arts organisations.
- 1.6 Creative New Zealand identified two key actions to advance this area of work:
 - developing an online toolkit to assist arts organisations to understand and take advantage of changes in the environment for charitable giving, focusing on the tax changes
(http://www.creativenz.govt.nz/resources/donations_toolkit)
 - conducting research into private sector support in the arts and developing an action plan/recommendations for increasing support.

¹ Please note, the following working definitions apply:

- 'Private sector support' includes corporate and business sponsorship giving; and individual or philanthropic giving as well as trusts and foundations.
- 'Support' includes financial and in-kind giving, including the provision of expertise for capability building.

- 1.7 A number of other organisations were involved in the development of the toolkit and have an interest in this area. They include:
- Inland Revenue Department
 - Charities Commission New Zealand
 - Philanthropy New Zealand
 - Arts Foundation of New Zealand, and
 - arts organisations.
- 1.8 In addition, in September 2009, the Minister for Arts, Culture and Heritage, the Hon Christopher Finlayson, established a Cultural Philanthropy Taskforce to investigate ways to improve levels of philanthropic giving in New Zealand.
- 1.9 Creative New Zealand is planning to work with the Ministry for Culture and Heritage and the Minister's Philanthropy Taskforce on this project and maintain contact with the organisations above.
- 1.10 Creative New Zealand's Planning, Performance and Stakeholder Relations and Arts Infrastructure Services teams will lead the research and commission this external research project.

2. Aims and Objectives

- 2.1 Conduct **research** into the environment, trends, and the barriers to, and opportunities for, increasing private sector support for the benefit of the arts.
- 2.2 Following the research phase, develop an **action plan/recommendations** identifying actions or initiatives that could be taken or developed by Creative New Zealand, arts organisations, and the Government to increase private sector support for the arts (including maximising the benefits arising from recent changes to the charitable giving environment).

3. Methodology/Approach

- 3.1 The **research** and **action plan/recommendations** will result in a single report.
- 3.2 The **research component** is expected to:
- (1) **briefly** describe the environment (including legislative, regulatory, economic) in which private sector support for the arts occurs, and in particular recent changes to the charitable giving environment, including tax changes and the advent of new legislation governing charities
 - (2) provide a **snap-shot** of the 'state of private sector support for the arts', including comparing how the arts sector performs relative to other parts of the not-for-profit/charitable sector, including sport, in attracting private sector support. This will draw on research undertaken by the Ministry for Culture and Heritage on *Giving and Sponsorship to Cultural Organisations* (to be released in 2010) as well as previous sponsorship surveys undertaken (1998, 2001, 2003, 2005)
 - (3) identify and assess the **major barriers** to increased private sector support for the arts

- (4) identify **key players and organisations**, and what initiatives and/or actions are being developed or taken to increase private sector support for the arts (within New Zealand)
- (5) **identify and assess** key initiatives or incentives adopted in comparable overseas jurisdictions that may of interest to, or have potential application in New Zealand including:
 - (a) the efficacy and viability of establishing a facility such as the **Australian Business Arts Foundation (AbaF)** or **Artsupport Australia** in New Zealand, or whether an existing entity might take on some of the roles of AbaF or Artsupport Australia
 - (b) similar schemes in operation in the United Kingdom (**Arts & Business**).
- (6) **identify and assess** areas where **opportunities** might exist to increase private sector support for the arts, including the potential for the arts sector to take advantage of recent changes to the environment for charitable giving including consideration of the potential of payroll giving.

3.3 The **action plan/recommendations component** would be expected to:

- (1) identify and assess the specific actions that might be taken to increase private sector support for the arts by:
 - Creative New Zealand
 - Government
 - arts organisations
- (2) focus on those actions for which there is the greatest potential to realise benefits for the arts sector in terms of increasing private sector support.

4. Anticipated Methods

4.1 It is expected that the **research and action plan/recommendations** will:

- (1) draw on recent research relevant to the topic
- (2) draw on existing information held by Creative New Zealand and other relevant organisations, including the Ministry for Culture and Heritage
- (3) incorporate information from, and the perspectives of, key stakeholders, including but not limited to those identified in paragraphs (1.7) and (1.8), and including Sport and Recreation New Zealand
- (4) include information gained through interviews and discussions with key individual givers or corporate/business sponsors/donors to the arts
- (5) include information gained through interviews and discussions with key arts organisations (both those within Creative New Zealand's portfolio of organisations as well as other leaders in this area).

5. Timeframe

Step	Activities	Output	Who is taking the lead?	Timing (by when)
One	Selection of Tender	Tender - agreed	Project Team	17 May
Two	Methodology/approach agreed Contract signed	Contract	Contractor/ Project Team	24 May
Three	Research undertaken	Desk Research, data gathering Interviews	Contractor	May - August
Four	Creative New Zealand receives draft research findings and proposed structure of action plan/ recommendations	Draft research findings received	Contractor	6 August
Five	Creative New Zealand feedback on draft research findings		Internal Reference Group	11 August
Six	Creative New Zealand receives draft action plan/ recommendations	Draft Research and Action Plan/ Recommendations received	Contractor	31 August
Seven	Review and feedback draft research and action plan/recommendations		Contractor/ Project Team	Early September
Eight	Review draft research and action plan/ recommendations		Creative New Zealand (Senior Management Team)	7 September
Nine	Review draft research report and action plan/ recommendations		External Reference Group	8 September
Ten	Comment on draft research report and action plan/ recommendations		External Reference Group	17 September
Eleven	Creative New Zealand feedback on action plan/ recommendations		Project Team/Contractor	22 September
	Final report received by Creative New Zealand	Final Report	Contractor	27 September
	Discuss findings with Philanthropy Taskforce		Contractor/ Creative New Zealand	September

6. Key internal stakeholders, roles and responsibilities

Stakeholder	Role/ Responsibility
Elizabeth Beale, Manager: Planning Performance and Stakeholder Relations	Project Leader and senior contact person
Helen Isbister Communications Manager	Project Team Member, day to day contact, with external reference group
Kim Acland, Organisations Advisor Arts Infrastructure Services	Project Team Member, day to day contact, with contractor to provide information to and facilitate any consultation with other stakeholders
Internal Reference Group <ul style="list-style-type: none"> • Manager, Planning Performance and Stakeholder Relations - Elizabeth Beale • Manager, Arts Infrastructure Services - Jane Clark • Manager, International - Carla van Zon • Communications Manager - Helen Isbister • Organisations Advisor Arts Infrastructure Services - Kim Acland, 	To provide feedback on the project. To be updated at milestones of the project. To discuss relevant strategies and policies informed by the findings of the research.
External Reference Group (TBC) <ul style="list-style-type: none"> • Inland Revenue Department - to be advised • Charities Commission New Zealand - to be advised • Philanthropy new Zealand - to be advised • Arts organisations (x 2) - to be advised • Arts Foundation of New Zealand - to be advised 	Review draft report Discuss implementation plan
Senior Management Team	Receive and review draft research and action plan/recommendations and provide comments
Arts Council and Boards of Creative New Zealand	Receive final research and action plan/recommendations Receive/endorse implementation plan

PART 2: STATEMENT OF REQUIREMENTS

1. Purpose of RFT (RFT)

- 1.1 In summary, the purpose of this RFT is to invite tenders from suitably qualified and experienced consultants to provide a research report and action plan/recommendations on *Increasing Private Sector Support for the Arts*. Suggestions regarding the format of the project should be outlined in tenders.

2. Outputs

- 2.1 Interested tenderers should outline how they will:

- undertake the research and apply the proposed methodology/approach;
- consult with internal and external stakeholders;
- consider existing written reports, reviews, research publications and case studies;
- consider secondary, benchmark research; and
- produce a comprehensive report in line with the project goals.

- 2.2 Tenderers will provide a draft written report and a final written report with executive summary.

- The final draft will be preceded by at least one draft copy for Creative New Zealand comment and amendment;
- the final report will meet the research objectives; and
- the contractor will seek Creative New Zealand approval for a draft report structure prior to drafting the report.

3. Budget

- 3.1 Prospective tenderers should note that the project must be undertaken within a \$45,000 budget excluding disbursements (GST exclusive). The respective budget will shape and influence the scope of this research project.

4. Reporting and payments:

- 4.1 At key stages of the research project, the contractor will update the Creative New Zealand Project Team on their progress. Creative New Zealand will work closely with the contractor to provide access to relevant data. As a minimum, the contractor will be required to report against the following milestones. Payment for services will be linked to achievement of these milestones:

- Consultancy commences, methodology reviewed and modified as necessary in consultation with Creative New Zealand
- Methodology and key questions confirmed in consultation with Creative New Zealand
- Provision of draft research findings and action plan/recommendations structure received by Creative New Zealand
- Draft report received by Creative New Zealand
- Final report received by Creative New Zealand.

4.2 Payments will be in three installments as follows:

- \$20,000 on commencement;
- \$10,000 on submission and acceptance of a satisfactory provision of draft research findings and action plan/recommendations structure;
- \$15,000 plus payment for agreed disbursements according to the *Standard Conditions of Contract* on submission and acceptance of a satisfactory final report.

The consultant will provide copies of all reports and other documentation in electronic form, this could include: HTML 4.0, Adobe Acrobat or Microsoft WORD 2000. The successful Tenderer needs to be able to produce the report in all three formats.

5. Terms

5.1 The successful tenderer will be required to enter into a Contract for Services with Creative New Zealand covering the work to be undertaken and accountability, including financial accountability for the use of public funds.

5.2 A copy of the *Standard Conditions of Contract* is attached to this RFT and includes the following terms:

- all intellectual property in the report will belong to Creative New Zealand;
- where specified personnel are unable to undertake work in respect of the consultancy services, the selected Tenderer must notify Creative New Zealand immediately. The selected Tenderer shall, if so requested by Creative New Zealand, provide replacement personnel acceptable to Creative New Zealand at no additional charge and at the earliest opportunity;
- Creative New Zealand may, at its absolute discretion, give notice, requiring the selected Tenderer to remove personnel (including specified personnel) from work in respect of the consultancy services. The selected Tenderer shall promptly arrange for the removal of such personnel from work in respect of the consultancy services and their replacement(s) with personnel acceptable to Creative New Zealand;
- if the Tenderer is unable to provide acceptable replacement personnel Creative New Zealand may terminate the contract;
- Creative New Zealand reserves the right to negotiate the final approach to undertaking this research.

PART 3: EVALUATION AND SELECTION

1. General

- 1.1 The objective of the evaluation and selection process is to identify the tender that best meets Creative New Zealand's requirements and represents value for money. Creative New Zealand and associated parties will act fairly and be consistent in its dealings with all tenderers.
- 1.2 Tenders will be evaluated to determine that the requirements set out in this RFT are satisfied. Those tenders that do not meet all requirements may be excluded from further consideration.
- 1.3 Creative New Zealand reserves the right to seek information from any source on any organisation submitting a tender.
- 1.4 Creative New Zealand may invite tenderers to give a short presentation or presentations to the selection panel to clarify and expand on Tender details.

2. Evaluation

- 2.1 In evaluating tenders, Creative New Zealand may consider elements such as the financial viability of a Tenderer, overall compliance with Creative New Zealand policies and the tender requirements in advance of other criteria.
- 2.2 In preparing their proposals, consultants shall address each of the criteria listed below. Each proposal will be assessed against criteria that includes, but are not necessarily limited to, the following points (which are not necessarily listed in order of importance):
 - the extent to which the proposal establishes that the research project's objectives will be met;
 - the degree of relevance and appropriateness of the expertise, qualifications and experience of the personnel proposed to undertake the assignment;
 - demonstrated capacity and ability to manage a complex research and reporting programme;
 - the ability to complete the assignment within the stated time frame;
 - the total cost and value for money;
 - overall compliance with the brief, tender conditions and any attachments; andCreative New Zealand reserves the right to attach weightings to criteria.

3 Specified personnel

3.1 Prospective tenderers must provide the names, expertise, qualifications, experience and proposed roles of all proposed personnel. In particular, the following details are to be provided about the specified personnel:

- knowledge of, and experience in research (both qualitative and quantitative) and evaluation;
- knowledge of the funding environment of the arts and wider not-for-profit sector in New Zealand;
- knowledge of and experience in public policy and government funding programmes; and
- knowledge of and experience in the arts and New Zealand's broader cultural sector.

3.2 Examples of previous comparable work should be provided with an outline of the methodology applied in its preparation.

4 Additional considerations

4.1 In assessing proposals, consideration will also be given to:

- (a) Referees' comments;
- (b) Potential for conflicts of interest;
- (c) Adherence to all standards of conduct as indicated by the relevant professional association (as applicable);
- (d) Overall compliance with the terms of this RFT;
- (e) Ability to comply with Creative New Zealand's '*Standard Contract for Services*'.

5 Timetable for tender selection

5.1 It is proposed that the following timetable for the selection of tender shall apply.

Stage	Task	Estimated completion date (2010)
1.	Invite tenders	20 April
2.	Lodgment deadline	10 May
3.	Acknowledge receipt of tenders	3 days after lodgment deadline (13 May)
4.	Select tender	17 May
5.	Methodology agreed and contract signed	24 May
6.	Notify unsuccessful tenderers	25 May

5.2 Creative New Zealand reserves the right to suspend or cancel the process at any stage.

6 Financial and business reports

- 6.1 In addition to the information provided in the tender submission, Creative New Zealand may obtain independent financial and business reports to determine the tenderers' business viability and capacity to perform/provide the required services. In responding to the RFT, tenderers are giving consent to Creative New Zealand to obtain such information.
- 6.2 Tenderers must ensure that full disclosure is made of all current and past financial and legal matters relating to the Tenderer and its personnel which may affect:
- an assessment of the Tenderer's business integrity; or
 - the Tenderer's financial viability; or
 - the Tenderer's ability to maintain services.
- 6.3 Creative New Zealand undertakes to treat all information obtained with respect to the financial viability of a Tenderer with the same degree of security and confidentiality as afforded to the tender information and documents.

2 Acceptance of offer/selection of successful tender

- 7.1 Creative New Zealand is not bound to accept the lowest or any bid.
- 7.2 Creative New Zealand reserves the right to select some, or none of the tenders at its sole discretion.
- 7.3 Creative New Zealand reserves the right to liaise or negotiate without restriction with tenderers or any other person at any time on any matter contained in a tender, without disclosing this to, or involving any other Tenderer or person.
- 7.4 No tender will be considered to have been successful unless and until a letter of offer has been dispatched and accepted in writing, following which a contract between Creative New Zealand and the Tenderer will be executed.
- 7.5 All tenderers will be informed in writing of the outcome at the conclusion of the tender process.
- 7.6 The *Standard Conditions of Contract* will be the basis for the final contract and the successful Tenderer, in accepting the offer of the assignment will be taken to have agreed with the terms and conditions of the Creative New Zealand's *Standard Conditions of Contract*. Creative New Zealand reserves the right to make changes to the draft conditions of contract. The contract will contain the entire agreement between the parties.
- 7.7 Nothing in this RFT shall oblige Creative New Zealand to discuss, justify or give reasons for any of its decisions or action relating to this RFT or any tender.
- 7.8 Creative New Zealand shall have no liability for any cost or loss to tenderer if they are unsuccessful, or this RFT is cancelled, suspended or changed.

3 Non-disclosure

8.1 If the Tenderer engages in misleading or deceptive conduct or omits to provide information to Creative New Zealand:

- (a) that is material to the performance of the contract; or
- (b) which may have affected Creative New Zealand's decision to enter into the contract, the terms and conditions on which Creative New Zealand entered into the contract, or an action taken by Creative New Zealand under the contract,

Creative New Zealand may reject a tenderer's submission or terminate the contract if one has been awarded.

PART 4: TENDERER'S PROPOSAL

1. The proposal

1.1 At a minimum, tenderers must provide the following information:

- (a) company details;
- (b) a contact for liaison and notices;
- (c) acceptance of or compliance with the RFT and the terms of the Conditions of Contract;
- (d) evidence of the financial viability of the Tenderer – if applicable;
- (e) a detailed budget or quotation of costs covering all outputs and fees;
- (f) a statement, for each output, of any anticipated travel and/or associated allowance required in producing the output;
- (g) an outline of the proposed approach to undertaking the assignment and achieving the assignment's objectives, including a clearly articulated methodology, detailed work-plan and timeline;
- (h) evidence of you or your company's capacity to undertake and deliver on the assignment, including a statement of past experience in providing similar services, particularly where those services were provided to government agencies, and including a list of three referees within previous client organisations whom Creative New Zealand may contact to assist in its evaluation of tenders received;
- (i) details of any nominated personnel with particular experience and/or expertise who will assist in undertaking the assignment as specified under 'Specified Personnel'; and
- (j) any relevant supplementary material.

2. Conflicts of Interest

2.1 Tenderers must disclose any potential or actual conflicts of interest that may arise in their responsibilities to Creative New Zealand and other parties in the course of delivering the contracted services.

2.2 Where a conflict of interest is identified, tenderers should specify how the conflict will be addressed and monitored, and how Creative New Zealand may be assured that the conflict of interest will not give rise to outcomes inconsistent with the project's desired outcomes.

3. Statement of Compliance

- 3.1 Where a Tenderer indicates that its response, in whole or in part, is not compliant with this RFT, including the *Standard Conditions of Contract*, the extent of non-compliance must be stated. Tenderers must also provide reasons and details of any element or part of the offer that 'significantly exceeds requirements' and of any alternative proposal, including the price differential between compliance and non-compliance.
- 3.2 The Tenderer must provide separately a summary list of paragraphs or clauses in respect of which there is non-compliance, or where the offer 'significantly exceeds requirements'.

4. Packaging and identification of tenders

- 4.1 Tender documents must be enclosed in a sealed envelope or other sealed container. The envelope or container must be clearly marked:

"Increasing Private Sector Support for the Arts: Research Tender"

and addressed to the 'Lodgment Location' (see details on page 19).

5. Supplementary material

- 5.1 Tenderers may attach additional or explanatory information as 'Supplementary Information' to their Tender, should they consider this necessary.
- 5.2 Supplementary material is material additional to the formal tender which elaborates or clarifies the formal tender but which does not alter it in any material aspect. Supplementary material that effectively alters the formal tender will not be admitted for evaluation.
- 5.3 Packages containing supplementary material must be clearly labeled 'Supplementary Material'.
- 5.4 Supplementary material must be provided by the deadline set for lodgment of tenders unless specifically requested by Creative New Zealand subsequent to that date.

6. Clarity of response

- 6.1 Creative New Zealand will not accept responsibility for any misunderstanding arising from the failure by a tender to comply with Part 4 of this document, or arising from any ambiguity contained in the Tenderer's response.

PART 5: GENERAL CONSIDERATIONS

1. Onus on Tenderer

1.1 Tenderers are responsible for ensuring that they have:

- examined this RFT and all documents referred to in this RFT;
- examined any information made available in writing by Creative New Zealand to tenderers for the purpose of tendering;
- examined all further information which is obtainable by making reasonable inquiries relevant to the risks, contingencies and other circumstances having an affect on their tenders; and
- satisfied themselves as to the correctness and sufficiency of their tenders including tendered prices.

1.2 Tenderers are responsible for all costs incurred in the preparation and lodgment of tenders and in respect of any discussions, negotiations, enquiries or any work undertaken by them after the tender has been submitted.

2. Amendments and clarifications

2.1 Creative New Zealand may amend or provide clarification of this RFT at its absolute discretion and without notice up until the deadline. However, Creative New Zealand will not amend this RFT on or after the deadline without extending that date.

2.2 Where, in the opinion of Creative New Zealand, further information provided to one tenderer should be provided to all tenderers, or any information, amendment or clarification of this RFT is required, such information will be given the same distribution as the original RFT.

3. Tenderer's information

3.1 All tender documents become the property of Creative New Zealand on submission.

3.2 Creative New Zealand may make confidential copies of the tender documents for any internal Creative New Zealand purpose related to this RFT.

3.3 All information provided in response to this RFT will be:

- retained by Creative New Zealand for the purposes of the tender process, and can be destroyed by it thereafter;
- available for use by Creative New Zealand and its advisers and consultants for any purpose connected with the tender process; and
- is not returnable to the tenderer.

3.4 Where a tenderer claims intellectual property rights in respect of any part of its response to this RFT and provided the claim is clearly made and the part in respect

of which it is made is clearly identified, Creative New Zealand will give effect to that claim.

3.5 Where a tenderer believes that information provided in response to this RFT:

- is, or should be, confidential; or
- disclosure of this information would unreasonably affect the tenderer's personal privacy; or
- disclosure of this information would unreasonably affect the tenderer's business affairs.

Then notice is to be given at the time of delivery by the tenderer of the information or documents by clearly marking such information 'confidential' or 'commercial-in-confidence'. Creative New Zealand will give effect to the tenderer's stated wishes in so far as its obligations under the law permit. Creative New Zealand cannot, however, guarantee that information marked as such can be protected if Creative New Zealand receives a request for disclosure under the Official Information Act. Creative New Zealand reserves the right to use any information provided in response to the RFT for the financial monitoring of successful organisations and for any reviews and/or investigations it may subsequently undertake.

4. Use of sub-contractors

4.1 Tenderers must indicate if they intend to use sub-contractors to perform the obligations of the contract and must provide the names and addresses of those sub-contractors. Creative New Zealand may require a tenderer to submit similar information (including, without limitation, the giving of similar undertakings, warranties and indemnities) to that required to be furnished by the tenderer under this RFT, in respect of any of the sub-contractors to whom the tenderer proposes to sub-contract.

4.2 Creative New Zealand's approval in writing is required before any changes are made to proposed sub-contracting arrangements. Creative New Zealand is not obliged to accept any changes to sub-contracting arrangements. Tenderers will take full responsibility for ensuring the suitability of the sub-contractor for the proposed work to be carried out and for ensuring that such work meets the requirements of the contract.

5. Language and measurement

5.1 All tenders and supporting material must be in English (although the use of Te Reo and Pacific languages may be appropriate in explaining relevant concepts and art form practices) and all measurements in New Zealand legal units of measurement.

6. Prices, Fees and Allowances

6.1 Tendered Prices: Tendered prices shall be in New Zealand Currency, must clearly identify all costs, fees, allowances and charges against each service that the tenderer offers Creative New Zealand. Tendered prices shall be firm for the period of the contract.

6.2 Travel and Accommodation

- 6.2.1 If travel forms part of the attached contract deliverables, or if the prospective tenderer believes that travel would form part of the execution of this contract, then all travel costs associated with the proposed costing should be clearly detailed as a separate item in the tender.
- 6.2.2 If circumstances arise, in which the selected tenderer considers that additional travel is necessary and for which costs were not included in the original bid, the selected tenderer must notify Creative New Zealand's contact person for this project and supply a written quote detailing the additional costs and reasons for travel. No travel is to be undertaken by the selected tenderer without prior approval of Creative New Zealand. Unapproved travel expenses will not be reimbursed. The details provided by the selected tenderer will enable a *Variation of Contract* to be drawn up by Creative New Zealand.
- 6.2.3 Any travel or accommodation expenses instigated by Creative New Zealand that are not included in the original bid, require the contractor to supply a written quotation on advice from Creative New Zealand's contact person for this project, detailing the additional amount to enable a *Variation of Contract* to be drawn up by Creative New Zealand.
- 6.2.4 Where approved, the selected tenderer will be reimbursed for travel costs to a maximum of economy class airfares, accommodation and meals at Creative New Zealand rates, and taxi-fares where supported by appropriate evidence and supporting documentation in accordance with the *Standard Conditions of Contract* and this section.

7. Goods and Services Tax (GST)

- 7.1 The selected tenderer must comply with the provisions in the *Standard Conditions of Contract* that pertain to GST and any other relevant requirements of the Inland Revenue Department.

8. Further information prior to the deadline

- 8.1 Tenderers' requests for further information about the RFT.
- 8.2 All requests for further information regarding this RFT must be directed to Creative New Zealand's nominated contact person for this project.
- 8.3 Where Creative New Zealand requires it, requests for further information must be put in writing and sent to the Creative New Zealand contact person.

9. Further information after the deadline

- 9.1 Answers to requests for further information may be given verbally or by written notice from Creative New Zealand, at its sole discretion. If considered necessary by Creative New Zealand, an interview may be arranged to discuss the inquiry.
- 9.2 Where, in the opinion of Creative New Zealand, further information provided to one tenderer should be provided to all tenderers, such information will be given the same distribution as the original RFT.

10. Requests from tenderers on the status of the evaluation process

10.1 Creative New Zealand will not accept or respond to tenderers' requests for information on the status and progress of the tender evaluation process.

10.2 All tenders will be informed in writing of the outcome of the tender process at its conclusion.

11. Requests from Creative New Zealand for further information from tenderers

11.1 Each tender shall nominate a person to answer queries that may arise during the evaluation of tenders. The name, title, address, telephone and facsimile numbers, and e-mail address of that person must be included in the tenderer's Response Section.

11.2 If, in the opinion of Creative New Zealand, there are minor errors, omissions, or discrepancies in a tender, Creative New Zealand may request the tenderer to give a correction or clarification provided that:

- the tenderer does not make any material alteration or addition to its tender; and
- the tenderer must reply to any request from Creative New Zealand under this section within two (2) working days of that request.

11.3 Where such clarification materially alters the formal tender, Creative New Zealand may not admit it for evaluation. Evaluation will be based on the information provided in tenders where answers to specific queries are not provided within the specified time.

12. Suspension, termination or abandonment by Creative New Zealand

12.1 Creative New Zealand may suspend, terminate or abandon this RFT at any time if the services will not be required, or if the requirement for such services is significantly reduced or varied due to changes in policy, administration, or for any other reason. In that event, tenderers will be notified in writing by Creative New Zealand.

13. The contract

13.1 No Binding Agreement:

13.1.1 There is no binding agreement, express or implied, between Creative New Zealand and any tenderer for the provision of the services requested in this RFT unless and until a letter of offer of contract is provided by Creative New Zealand and its acceptance in writing by the tenderer is received by Creative New Zealand and a contract is duly executed by both Creative New Zealand and a tenderer.

13.2. Form of Contract:

- 13.2.1. Acceptance of the preferred tender will be subject to the execution of a contract between Creative New Zealand and the successful tenderer, which may be the subject of post-tender negotiations.
- 13.2.2. Although Creative New Zealand intends that the *Standard Conditions of Contract* will form the basis for the final contract, Creative New Zealand reserves the right to make changes to the contract before entering into a contract with the successful tenderer.
- 13.2.3. Tenderers are required to indicate their compliance or otherwise with the contractual conditions. A copy of the *Standard Conditions of Contract* is attached.

14. Instructions for completing the tenderer's Response

- 14.1 The tenderer's response is to be completed in the manner described in **PART 4**. Tenders that do not comply with these instructions may not be considered for evaluation. The decision of Creative New Zealand is final in that respect.

15. Copies of tender

- 15.1 Five (5) copies of the tender and five (5) copies of any supplementary material must be submitted so that they will be received at the lodgment location by the deadline. The original is to be marked 'Original' and remaining copies to be marked 'Copy No. 1' and so on respectively. In the event of any discrepancy between the copies and the original, the original will prevail.

PART 6: CONDITIONS OF TENDERING

1. Conditions of Lodgment

Location and deadline for of tenders

ALL TENDERS MUST BE ADDRESSED TO:

Kim Acland
Creative New Zealand
P O Box 3806
WELLINGTON 6140

or

Creative New Zealand
Level 2, Old Public Trust Building
131 - 135 Lambton Quay
WELLINGTON 6011

AND MUST BE MARKED:

Attention: **Increasing Private Sector Support for the Arts: Research Tender**

AND DELIVERED BY:

5pm 10 May 2010

Creative New Zealand accepts no responsibility for tenders not received by the deadline or addressed to the wrong location.

Tenders submitted by facsimile or email will not be accepted, nor will tenders mailed on but not received on the closing date. Any tender received at any location other than the place of lodgment or lodged after the deadline will be treated as a late tender.

Creative New Zealand will decide whether to admit a late tender application, but will do so only in exceptional circumstances considered to be beyond a tenderer's control.

2. Lodgment Form

(For Completion and Submission with Tender)

Attached

3. Standard Conditions of Contract

Attached

Please complete this form and submit with your Tender

Tenderer's Details

Company Name:

or

If Partnership, the Trading Name (if any) and full names of the Partners:

or

If Sole Trader, Trading name (if any) and the full name of the Trader:

or

Other, and the full name of the organisation:

Contact for Liaison and Notices:

Mr/Mrs/Ms/Dr

Postal Address:

Telephone:

Facsimile:

E-mail:

Standard Conditions of Contract - Independent Contractors

CREATIVE NEW ZEALAND

AND

XYZ

contract for services

AGREEMENT dated

PARTIES

THE ARTS COUNCIL OF NEW ZEALAND TOI AOTEAROA, (trading as Creative New Zealand) ("Creative New Zealand")

XYZ ("Contractor")

THE PARTIES AGREE THAT:

1. Term of Contract

1.1 This Contract will commence on [] and terminate on [], unless terminated earlier in accordance with this contract.

2. Contract for Services

2.1 The Contractor is engaged by Creative New Zealand under a contract for services and is an independent contractor. Notwithstanding any practice that may occur in the day-to-day dealings of the parties, nothing specified or implied in this Contract shall create or establish a relationship of employment, trust or partnership between the parties.

2.2 Except as required to perform the Services, the Contractor shall not hold themselves out as an agent of Creative New Zealand for any purpose whatsoever. The Contractor shall not commit staff or resources of Creative New Zealand, or incur any debt or obligation in the name of Creative New Zealand, without the prior written consent of Creative New Zealand.

2.3 The Contractor is responsible for paying all taxes, levies and payments relating to all payments made by Creative New Zealand to the Contractor for the Services.

2.4 The Contractor's employees are not Creative New Zealand employees and the Contractor is responsible for paying all taxes, levies and payments relating to those employees.

3. The Services

3.1 The Contractor will provide and undertake the services detailed in the Schedule to this contract ("the Services").

3.2 The Contractor shall hold such meetings with Creative New Zealand personnel set out in the Schedule as required by Creative New Zealand to discuss any matters relating to the performance of the Services and/or this Contract and shall comply with all directions of Creative New Zealand given from time to time in relation to the Services, provided that nothing in this clause affects the right of the Contractor to exercise their own judgement and to utilise the skills considered by the Contractor to be appropriate to the provision of the Services.

3.3 The Contractor's employees specified in the Schedule will provide the Services. Where a specified employee is unable to perform the Services for any reason, the Contractor must immediately notify Creative New Zealand and replace the employee with a suitable replacement. The specified employee's inability to perform includes (without limitation) where Creative New Zealand notifies the Contractor that in Creative New Zealand's reasonable opinion the employee does not possess the requisite degree of skill, care and diligence required to provide the Services.

3.4 The Contractor will not subcontract or otherwise delegate the Services to any other person or organisation, without the prior written consent of Creative New Zealand. The Contractor will remain primarily liable for the performance of all of its obligations under this Contract.

3.5 In providing the Services, the Contractor shall:

- (a) Exercise the degree of skill, care and diligence reasonably expected of a suitably qualified and experienced contractor;
- (b) Comply with all laws and regulations and professional codes of conduct of practice that may be applicable to providing the Services;
- (c) Obtain all necessary licenses, authorities, consents and approvals required to provide the Services;
- (d) Comply with all conduct and security procedures of Creative New Zealand; and
- (e) Neither in action or in any other way injure the reputation and goodwill of Creative New Zealand.

4. Independence

The Contractor shall immediately inform Creative New Zealand if they becomes aware of any potential conflict of interest in respect of performing the Services, which may impinge on the Contractor's independence or impartiality.

5. Payment for Services

- 5.1 Creative New Zealand will pay the Contractor the fee at the rates specified in the Schedule.
- 5.2 The Contractor shall be entitled to only those payments or reimbursements specified in the Schedule.
- 5.3 The Contractor will be paid only for the Services as requested by Creative New Zealand. Without affecting the generality of this provision, the Contractor shall not be entitled to sick leave, penal rates, holiday pay, or redundancy compensation.

6. Claims for Payment

- 6.1 The Contractor shall accurately record all time spent and expenses incurred in providing the Services. The Contractor shall submit claims for payment and reimbursement to Creative New Zealand on completion of the Services specified in the Schedule. Receipts or other appropriate evidence must accompany all claims for reimbursement of expenses.
- 6.2 Payment for Services and reimbursement of expenses shall be made by Creative New Zealand within 15 working days of receiving accurate, complete and timely claims for payment. Any claims for payment which are received more than 20 working days after they have been incurred shall not be paid, unless the delay was due to circumstances outside the control of the Contractor.
- 6.3 Where Creative New Zealand disputes any amount in any invoice submitted by the Contractor, it shall advise the Contractor in writing of the nature of the dispute, and pay any undisputed amount of the invoice. The dispute resolution provisions of this Contract shall then apply in respect of resolving any disputed amount in any invoice.

7. Taxation

- 7.1 The Contractor shall register for GST with the Inland Revenue Department if required to do so under the GST Act.
- 7.2 If the Contractor is registered for GST, the Contractor must issue GST invoices to Creative New Zealand in submitting claims for payment.
- 7.3 If Creative New Zealand is required by law to make any taxation deduction, withholding or payment from any amount paid or payable by it to the Contractor under this Contract, Creative

New Zealand shall make such a taxation deduction, withholding or payment and the amount required to be paid by Creative New Zealand under clause 6.1 will be reduced accordingly. If Creative New Zealand wrongly fails to make a taxation deduction, it will be entitled to recover such amounts from the Contractor.

- 7.4 The Contractor shall comply with all statutory and regulatory requirements and directions of the Inland Revenue Department with regard to the filing of returns and payment of any tax.

8. Health and Safety

- 8.1 Creative New Zealand is responsible for ensuring that the requirements of the Health and Safety in Employment Act 1993 are met when the Contractor is working on Creative New Zealand premises. The Contractor shall comply with all health and safety procedures of Creative New Zealand.

- 8.2 The Contractor shall assist Creative New Zealand in taking all practical steps to ensure that the Contractor's place of work is safe and free of hazards. All hazards that are identified by the Contractor must be reported to Creative New Zealand so that appropriate action may be taken to eliminate, reduce or isolate such hazards.

9. Equipment

- 9.1 Where Creative New Zealand supplies the Contractor with any materials, or where materials come into the Contractor's possession because of providing the Services, those materials will remain the property of Creative New Zealand and must be immediately returned to Creative New Zealand upon the termination of this Contract.

10. Insurance

- 10.1 The Contractor shall take out and maintain at the Contractor's cost, adequate insurance in respect of any potential liability, loss or damage in respect of claims for personal injury or death, property damage and public liability relevant to the Services. This insurance shall be maintained until all potential liabilities in respect of the performance of this contract has ceased.

- 10.2 The Contractor shall provide evidence of this insurance policy to Creative New Zealand within five working days of this contract commencing, and again upon each renewal of the policy. The Contractor will upon request procure that Creative New Zealand be named as an additional insured party.

11. Liability and Indemnity

- 11.1 The Contractor is liable for and indemnifies Creative New Zealand against any actions and demands for payment, compensation or damages, in respect of any act or omission of the Contractor, their agents or employees, which occurs in connection with providing the Services under this Contract.

12. Intellectual Property

- 12.1 The Contractor acknowledges that all intellectual property rights (including but not limited to) copyright, in any works (including without limitation reports, materials, designs, software and information) created by the Contractor in performing Services under this contract shall be the sole and exclusive property of Creative New Zealand. The skills, knowledge, expertise and methods used to produce these works remain the sole and exclusive property of the Contractor.

- 12.2 The Contractor will not develop, create or use in the course of providing the Services any products, work or material which infringes or is likely to infringe the intellectual property rights of any person.

- 12.3 The Contractor shall, upon the request of Creative New Zealand, execute all instruments as Creative New Zealand may require, to ensure that Creative New Zealand enjoys all rights, interests and title in any such works.

13. Confidentiality

- 13.1 The Contractor undertakes that at all times, both during the term of this contract and after its termination, the Contractor will not:
- (i) Disclose any confidential information to any person, except so far as may be reasonably necessary to fulfil the Contractor's obligations under this contract; and
 - (ii) Use any confidential information for the Contractor's own benefit or in any other manner which would or may harm the interests of Creative New Zealand.
- 13.2 In this clause confidential information includes (but is not limited to) information relating to:
- (i) The business or financial affairs of Creative New Zealand, its clients and suppliers; and
 - (ii) Personal information (as defined in the Privacy Act 1993) relating to any other employee or contractor to Creative New Zealand, its clients and suppliers; and
 - (iii) Know-how, ideas, concepts, data or specialised business knowledge or practices of Creative New Zealand.
- 13.3 On termination of this contract for any reason, the Contractor must return all confidential information to Creative New Zealand or destroy or erase all copies of any confidential information in the Contractor's possession or control. The Contractor will on request provide a certificate to Creative New Zealand certifying that the confidential information returned or destroyed comprises all of the confidential information.

14. Dispute Resolution

- 14.1 Both parties agree to use their best efforts to resolve any dispute or difference arising out of this contract, including its validity or termination, through negotiation.
- 14.2 The Contractor and relevant Creative New Zealand personnel will meet to discuss the dispute and attempt to resolve the dispute in the first instance and failing this, the dispute will be referred to the chief executives of the parties for resolution.
- 14.3 If the parties are still unable to resolve the dispute themselves, the dispute will first be referred to means other than litigation or arbitration for resolution, such as mediation, conciliation or independent expert appraisal.
- 14.4 Only if the dispute remains unresolved after reasonable attempts to resolve it have been made may either party commence any arbitration process in relation to the dispute.

15. Termination

- 15.1 Either party may terminate this Contract for any reason whatsoever, by providing the other party with one month's written notice.
- 15.2 Notwithstanding clause **Error! Reference source not found.** above, this Contract may be terminated or suspended without notice by Creative New Zealand if the Contractor:
- (i) is in breach of this contract;
 - (ii) divulges any confidential information in breach of the confidentiality provisions of this Contract;
 - (iii) fails to perform any obligation under this Contract, including the provision of Services, in a satisfactory manner; or

- (iv) in the reasonable opinion of the Creative New Zealand, brings or potentially brings Creative New Zealand into disrepute.
- 15.3 Where Creative New Zealand terminates this Contract under clause **Error! Reference source not found.**, the Contractor shall not be entitled to any compensation or damages, other than payment for work already performed and expenses already incurred.
- 15.4 Termination of this Contract will be without prejudice to any other rights available to the parties under this Contract.
- 15.5 Clauses 10 - 15 of this Contract shall survive termination, expiry or cancellation of this contract.
- 16. Entire Agreement**
- 16.1 This Contract constitutes the entire agreement between the parties and supersedes any and all prior agreements, representations and contracts between the parties.
- 16.2 Nothing in this Contract confers any rights or benefits on any person or organisation other than the parties.
- 17. General**
- 17.1 Notices may be given by either party to the other by letter, email or facsimile to the address of the other party specified in the Schedule. All notices will be deemed to have been given on the day of delivery, except in the case of posted notices, where delivery will be deemed to be two working days after the notice is posted.
- 17.2 This Contract shall be subject to and governed by New Zealand law.
- 17.3 No waiver of any breach of this Contract is effective unless the waiver is in writing and signed by the party granting it. No waiver will be deemed to be a waiver of any other or subsequent breach of this Contract.
- 17.4 Any variation to this Contract must be in writing and signed by both parties.
- 17.5 If any provision of this Contract is determined to be illegal, invalid or otherwise unenforceable, the legality and/or validity of the remainder of this Contract shall not be affected and will continue in full force and effect.

SIGNED ON BEHALF OF
**THE ARTS COUNCIL OF NEW ZEALAND TOI
AOTEAROA** by: ABC

Signature

SIGNED by XYZ

Signature

SCHEDULE

1. Services (clause 3.1)

To be specified

2. Creative New Zealand Personnel (clause 3.2)

Creative New Zealand team/personnel to whom Contractor will report

3. Contractors personnel (clause 3.3)

Specify Contractor's key personnel required to perform Services

4. Fee (clause 5)

Specify fee or rate of payment. This could include a fixed fee, a payment schedule with draw down dates or milestones or a rate per hour

Specify any expenses and disbursement Creative New Zealand has agreed to reimburse

5. Communications (clause 17)

<p>Address for Creative New Zealand:</p> <p>Creative New Zealand Old Public Trust Building 131-135 Lambton Quay PO Box 3806 Wellington 6140 Facsimile (04) 471-2865 Email: Attention</p>	<p>Address for Contractor</p> <p><i>[specify full postal and email addresses]</i></p>
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