

AGREEMENT FOR ARTISTIC SERVICES

THIS AGREEMENT is made the day of 200...

BETWEEN:

The School Council described in Item 1 of the Schedule ("the Council")

AND:

The person described in Item 2 of the Schedule ("the Artist")

RECITALS

- A. The Territory provides funding for an "Artists in Schools Program" by which practising professional artists are contracted to provide artistic services designed to present a series of connected experiences in the arts to teachers, students, parents and the wider community.
- B. Pursuant to the Artists in Schools Program, the Council has requested, and the Artist has agreed to provide, his or her services at the Site on the terms and conditions set out in this Agreement.

THE PARTIES AGREE as follows:

1. Definition and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Budget" means the budget of expenses for the provision of the Services agreed by the Council and the Artist and approved by the Committee and which is attached as Annexure A to this Agreement.

"Committee" means the Artists in Schools Program Committee.

"Confidential Information" means any information or data (including all extracts made of or from such information or data) whether or true or not and whether recorded in a material form or not concerning:

- (a) the operations, dealings, organisation, business, finance and affairs of the School; and
- (b) any individual who is associated with the School, including all staff members, employees and students of the School.

"Contract Price" means the sum specified in, or identified in accordance with the provisions of Item 6 of the Schedule.

"Intellectual Property Rights" includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade

secrets and know how) and all other rights resulting from intellectual activity in the scientific, literary or artistic fields.

"Payment Schedule" means the payment schedule contained in Item 7 of the Schedule.

"School" means the school at which the Artist has agreed to provide the Services pursuant to this Agreement.

"Services" means the services described in Item 3 of the Schedule.

"Schedule" means the Schedule to this Agreement.

"Site" means the site described in Item 5 of the Schedule.

"Term" means the period described in Item 4 of the Schedule during which the Services will be provided.

"Territory" means the Northern Territory of Australia c/- the Northern Territory Department of Employment Education and Training of 69 Smith Street, Darwin in the Northern Territory of Australia.

1.2 Interpretation

In this Agreement, unless contrary to the context:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words importing any gender shall include all other genders;
- (c) "person" includes a body corporate;
- (d) all references to statutes refers to statutes amending or re-enacting or replacing the statutes referred to and includes a reference to all Proclamations Orders in Council regulations rules by-laws ordinances and any other instruments and directions (if any) made under these statutes;
- (e) all covenants warranties undertakings and agreements in this Agreement, if entered into by more than one (1) person, are deemed to be joint and several;
- (f) headings and sub-headings have been included for ease of reference only and this Agreement is not to be construed or interpreted by reference to the headings or sub-headings;
- (g) the Schedule to this Agreement is to be read and construed as part of this Agreement.
- (h) otherwise than provided above, this Agreement is to be interpreted in accordance with the *Interpretation Act* of the Territory as if it were otherwise a document subject to interpretation in accordance with that Act.

2. Performance of Services

- (a) The Artist will provide the Services at the Site during the Term of this Agreement within the Budget, upon and subject to the terms and conditions set out in this Agreement.
- (b) The Artist will provide the Services as an independent contractor in accordance with his/her own methods and artistic abilities, the terms of this Agreement and applicable laws and regulations.
- (c) It is agreed that the Artist is not an employee of the Council, the Commissioner for Public Employment or the Territory.
- (d) The Artist will notify the Council and the Territory of his or her Australian Business Number in writing at the time of execution of this Agreement, if not done so earlier.

3. Warranty by Artist

The Artist warrants that all designs, artwork and materials created by the Artist in providing the Services will be original works and will not breach the Intellectual Property Rights of any person.

4. Contract Price

In consideration of the provision of the Services, and subject to Clause 9, the Council will pay the Artist the Contract Price in accordance with the Payment Schedule.

5. Intellectual Property Rights

- (a) Any Intellectual Property Rights in all material produced under or in accordance with the terms of this Agreement including, but in no way being limited to designs, photographs, drawings, and art works vests jointly in the Territory and the Artist and neither party will exploit those Intellectual Property Rights without the prior written consent of the other party **PROVIDED THAT** such consent will not be unreasonably withheld.
 - (b) Notices including the Artist's name will be publicly displayed in relation to the Services.
 - (c) All reproductions of any material produced under or in accordance with the terms of this Agreement, for publicity or otherwise, will attribute the role of the Artist.
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6. Indemnity and Exclusion of Liability

- (a) The Artist releases to the full extent permitted by law, the Territory, the Council and their respective employees, servants, agents, contractors, invitees and licensees from all responsibility or liability for loss of or damage to any property, or injury or death to any person arising out of any involvement of the Territory, the Council or their respective employees, servants, agents, contractors, invitees or licensees pursuant to this Agreement.
- (b) The Artist agrees to indemnify the Territory, the Council, their respective employees, servants, agents, contractors, invitees and licensees against all claims, losses (including economic loss), suits, actions, damages, costs and expenses which the Territory, the Council, their respective employees, servants, agents, contractors, invitees or licensees may sustain or incur or become liable for in respect of, either arising from, caused by, or contributed to (to the extent of such contribution), the provision of the Services and including, but without limiting the generality of the above:
 - (i) any act or omission (negligent or otherwise) of the Artist, its employees, agents or contractors;
 - (ii) any default or failure by the Artist to observe or perform any of the terms, conditions and covenants on the part of the Artist in this Agreement; or
 - (iii) any breach of any of the warranties given by the Artist.

7. Insurance

- (a) The Artist must effect and keep in force a policy of insurance for public risk including personal injury and death and property damage arising out of, in connection with or in relation to the performance by the Artist of the Services and compliance by the Artist with the terms, conditions and covenants of this Agreement expressly including all warranties, indemnities and releases given by the Artist in this Agreement for a minimum of **FIVE MILLION DOLLARS (\$5,000,000.00)** in relation to any single event.
- (b) Insurances required under this clause must:
 - (i) be effected with an insurer reasonably approved by the Council; and
 - (ii) note the interests of the Territory and the Council.
- (c) The Artist must provide the Territory and the Council, at the commencement of this Agreement, with a copy of the policies referred to in this clause 7 certified by the insurer as being true and correct, and when reasonably required by the Council or the Territory, evidence of the currency of the insurances required under this clause.
- (d) The Artist acknowledges that he or she is not a "worker" for the purposes of the *Work Health Act* and may elect to effect and keep in force a policy of insurance for personal accident.

8. Acknowledgment

The Artist acknowledges that:

- (a) the Council has entered into this Agreement relying on the Artist complying with his or her obligations under clauses 5, 6 and 7;
- (b) the obligations contained in clauses 6 and 7 are for the several benefit of the Council and the Territory;
- (c) clause 5 is for the sole benefit of the Territory;
- (d) the Council is authorised on behalf of the Territory to accept the benefit of clauses 5, 6 and 7; and
- (e) execution of this Agreement by the Council constitutes acceptance on behalf of the Territory of the benefit of clauses 5, 6 and 7.

9. Termination

- (a) The Council may terminate this Agreement immediately, by serving notice in writing on the Artist, if the Artist commits any serious breach or persistent breach of the express or implied terms or conditions contained in this Agreement in relation to provision of the Services, or is considered by the Council on reasonable grounds to no longer be a fit and proper person to provide the Services in close proximity to school students or other persons likely to be present at the Site.
- (b) If the Council gives notice in accordance with clause 9(a) then this Agreement terminates immediately with effect from the date of service of the notice.

- (c) The Council or the Artist may terminate this Agreement at any time by giving not less than ten (10) days notice in writing to the other in which case, the Agreement will terminate with effect from the expiry of the notice period.
 - (d) In the event that this Agreement is terminated by the Council pursuant to clause 9(a) or 9(c), the Council will pay the Artist, within thirty (30) days after the termination of the Agreement, the cost of the provision of the Services performed by the Artist prior to the date of termination.
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10. GST

10.1 GST Legislation

"GST legislation" means A new Tax System (Goods and Services Tax) Act 1999 and includes any applicable rulings issued by the Commissioner of Taxation. Where any term used in this Clause 10 is defined in the GST Legislation, it will have the meaning which it bears in the GST Legislation.

10.2 Taxable Supply

In the case of a Supply which is a taxable supply:

- (a) the consideration payable or otherwise provided to the Supplier under this Agreement shall be inclusive of any applicable GST; and
- (b) the applicable GST will be the GST payable on the Supply calculated in accordance with the GST Legislation.

10.3 Tax Invoice

The Supplier must provide the Recipient with tax invoices and adjustment notes in relation to the Supply, and do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any input tax credit available to the Recipient in respect of the Supply.

11. Confidentiality

The Artist represents and warrants that he or she will not either during the Term or at any time thereafter, except in the proper course of providing the Services under this Agreement or as required by law, use or disclose to any person any Confidential Information.

12. Governing Law

This Agreement is to be construed and interpreted in accordance with the law of the Northern Territory of Australia.

13. Special Conditions

The provisions of this Agreement are subject to the Special Conditions, if any, set out in Item 8 of the Schedule.

14. Notices

- (a) All notices, approvals, consents, demands or other communications required or permitted to be given under this Agreement to either the Council or the Artist must be in writing and be served personally, by pre-

paid certified post or facsimile transmission at the address or the facsimile number, in respect of the Council, as specified in Item 1 of the Schedule and, in respect of the Artist, as specified in Item 2 of the Schedule or at such other address or facsimile number as either party may have substituted for it by notice to the other party.

- (b) In the case of a notice sent by facsimile, (and a correct and complete transmission report for that transmission is obtained by the sender) it shall be deemed to be received upon transmission if transmission takes place on a business day before 4:00 pm in the place to which the communication is transmitted and in any other case at 9:00 am on the business day next following the day of transmission.
- (c) In the case of a notice sent by mail, it shall be deemed to have been received two business days from and including the date of posting.

SCHEDULE

ITEM 1 SCHOOL COUNCIL

[Name, ABN, address and facsimile number]

ITEM 2 ARTIST

[Name, ABN , address and facsimile number]

ITEM 3 SERVICES

[Description of anticipated workshops, finished artwork etc eg: mural of (), photography course]

ITEM 4 TERM

[starting and finishing dates]

ITEM 5 SITE

ITEM 6 CONTRACT PRICE

ITEM 7 PAYMENT SCHEDULE

ITEM 8 SPECIAL CONDITIONS

EXECUTED by the parties as an Agreement.

The **COMMON SEAL** of _____)
_____)
(School Council) was hereunto)
affixed in the presence of:)

.....
Witness

.....
Witness

SIGNED by _____)
in the presence of:)

.....
(Witness)

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ANNEXURE A
Budget for the Project

**The School Council described in Item 1 of the
Schedule**

("the Council")

AND:

The person described in Item 2 of the Schedule

("the Artist")

AGREEMENT FOR ARTISTIC SERVICES
