



SERVICES AGREEMENT

Date

10/8 2012

Parties

AUSTRALIAN CAPITAL TERRITORY

**GLOBAL BALLOONING PTY LTD
ACN 073 095 726**

**COMMISSION AND OPERATION OF
SPECIAL SHAPE BALLOON FOR THE
CENTENARY OF CANBERRA**

CONTRACT NUMBER 2012.19698.110

Prepared by

Chief Minister and Cabinet Directorate
GPO Box 158
Canberra City ACT 2601
Ph: 02 6205 9630
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Ref: GJ: 2012/671

Version

FINAL - 10 August 2012

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PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) (**Territory**) represented by the Chief Minister and Cabinet Directorate, Centenary of Canberra Unit.

GLOBAL BALLOONING PTY LTD ACN 073 095 726 of First Floor - 173/175 Swan Street, Richmond in the State of VICTORIA 3121 (Contractor).

BACKGROUND

- A. The Territory has undertaken a procurement process and has selected the Contractor to provide the Services.
- B. The Territory has agreed to purchase and the Contractor has agreed to provide the Services in accordance with the provisions of this Agreement.

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

Confidential Text means any text of this Agreement that, for the purposes of the Procurement Act, either party proposes should not be published and which is specified in **Item 7 Schedule 1**.

Contract Material means all material created, written or otherwise brought into existence as part of, or for the purpose of performing the Services including all reports (whether in draft or final form), documents, information and data stored by any means.

Contract Officers means, in relation to each party, the representatives whose names and contact details are specified in **Item 1 Schedule 1**, or as notified from time to time by one party to the other.

Contract Price means the amounts specified in, or calculated in accordance with, **Item 3 Schedule 1**.

Contractor means all material owned by the Contractor and used

- Material** for the purpose of providing the Services, including documents information and data stored by any means.
- GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Insurance Determination** means any relevant statutory instrument relating to public liability insurance made under the *Financial Management Act 1996* (ACT).
- Invoice** means an invoice that:
- (1) if GST is payable in respect of the provision of the Services, is a valid tax invoice for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (2) clearly sets out details of the Services provided and of the amount that is due for payment, is correctly calculated and is in respect of Services that have been performed in accordance with this Agreement;
 - (3) is accompanied by any other details or reports required under this Agreement; and
 - (4) is rendered at the times specified in **Item 3 Schedule 1** (if any) and addressed to the Territory's Contract Officer.
- Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- Prescribed Insurer** means, in relation to:
- (1) public liability insurance, an insurer that is:
 - (a) accepted by the Australian Capital Territory Insurance Authority (ACTIA) for the purposes of the Insurance Determination,
 - (b) authorised by the Australian Prudential Regulation Authority (APRA) to conduct new and renewal insurance business in Australia, or

- (c) if not authorised by APRA to conduct new or renewal insurance business in Australia, rated at A- or better by a ratings agency acceptable to ACTIA,

or any other insurer prescribed under the Insurance Determination from time to time; and

- (2) other insurance, an insurer having a Standard and Poor's or Best's Rating A- or better.

Procurement Act means the *Government Procurement Act 2001* (ACT).

Services means the services described in **Schedule 2**.

Special Condition means any provision set out in **Schedule 3**.

Specified Personnel means any person named in **Item 4 Schedule 1**, or any other employee or agent of the Contractor, who is approved by the Territory from time to time for the purpose of **clause 6**.

Term means the term specified in **Item 2 Schedule 1**, and if extended, the initial term and the extended term.

Territory means:

- (1) when used in a geographical sense, the Australian Capital Territory; and
- (2) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

Territory Information means the kind of information that:

- (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of the Territory which are by their nature confidential;
- (2) is notified (whether in writing or not) by the Territory to the Contractor as being confidential;
- (3) is specified in **Item 6 Schedule 1**; or

(4) is Personal Information,

but does not include information that:

(5) is or becomes public knowledge other than by breach of this Agreement;

(6) has been independently developed or acquired by the Contractor; or

(7) has been notified by the Territory to the Contractor as not being confidential.

Territory Material means any material provided by the Territory to the Contractor for the purposes of this Agreement including documents, equipment, information and data stored by any means.

a. General

In this Agreement, unless a contrary intention is expressed:

- (1) references to "Contractor" include any employees, agents or subcontractors of the Contractor; and
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation.

2. Services

The Contractor must perform the Services in accordance with the provisions of this Agreement and to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Contractor is engaged.

3. Term

This Agreement is for the Term unless terminated under the provisions of this Agreement.

4. Contract Price

4.1 Invoice

The Territory must pay the Contractor the Contract Price following its receipt of an Invoice and otherwise in accordance with Item 3 Schedule 1.

4.2 Incorrect payments

If, after payment, an invoice is found to have been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available remedies, may be offset against any amount subsequently due by the Territory to the Contractor under this Agreement.

5. Ownership and use of material

5.1 Ownership of material

Ownership of:

- (1) all Contract Material, including any intellectual property rights, vests on its creation in the Territory;
- (2) all Territory Material, including any intellectual property rights, remains with the Territory; and
- (3) all Contractor Material, including any intellectual property rights, remains with the Contractor.

5.2 Licence of material

- (1) The Territory grants to the Contractor a royalty-free, limited licence to use the Contract Material and Territory Material for the Term.
- (2) The Contractor grants to the Territory a royalty-free, perpetual, limited licence to use the Contractor Material.
- (3) For the purpose of this clause, "use" includes:
 - (a) such uses as are reasonably necessary for the Territory to obtain the full benefit of the Services, including use of the Contract Material, and
 - (b) such uses as are reasonably necessary for the Contractor to undertake the Services or as otherwise agreed by the Territory,

and may include supply, reproduce, publish, perform, communicate, broadcast, adapt and copy as the context requires.

5.3 Third party rights

The Contractor must ensure:

- (1) the use of any Contract Material will not infringe the intellectual property rights of any third party; and

- (2) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Territory's (or its agents') use of any Contract Material.

5.4 Moral rights

The Contractor must, in relation to the authors of any work that comprises or forms part of the Contract Material:

- (1) use its best endeavours to include in the Contract Material an attribution of those authors; and
- (2) procure from those authors their genuine written consent for the Territory to:
 - (a) attribute the authorship of the work to the Territory or a third party where that attribution was inadvertent,
 - (b) not attribute the authorship of the author when using the work (including exhibiting or performing the work in or to the public), and
 - (c) materially alter the work in any way.

5.5 Safekeeping and preservation of material

The Contractor must ensure the safe-keeping and proper preservation of Contract Material and Territory Material in its possession or control and deliver to the Territory all Contract Material and Territory Material on the expiration or termination of this Agreement (other than copies of material that the Territory has authorised the Contractor to retain).

6. Contractor's personnel

The Contractor must:

- (1) in performing the Services, engage only persons who have the skills, training and expertise appropriate for the Services;
- (2) comply with all reasonable requirements notified by the Territory regarding the suitability and fitness of persons engaged by the Contractor for the performance of Services;
- (3) ensure the services are performed by Specified Personnel (if any) and provide replacement personnel acceptable to the Territory at no additional charge and at the earliest opportunity if the Specified Personnel are unable to perform any of the Services; and

- (4) if the Territory requires, ensure that each person engaged in the performance of the Services executes a deed of confidentiality in a form acceptable to the Territory, and provide those executed deeds to the Territory in accordance with any requirements that the Territory notifies.

7. Non-disclosure of Territory Information

7.1 Contractor's use of Territory Information

The Contractor must:

- (1) use Territory Information held in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (2) comply with the "Information Privacy Principles" set out in the *Privacy Act 1988* (Cth) as if they were provisions of this Agreement and the Contractor was a collector and/or record-keeper of the Personal Information as defined in the Act;
- (3) not transfer Territory Information held in connection with this Agreement outside the Territory, or allow any person (other than its authorised personnel) outside the Territory to have access to it, without the prior approval of the Territory; and
- (4) notify the Territory immediately if the Contractor becomes aware that a disclosure of Territory Information is required by law, or an unauthorised disclosure of Territory Information has occurred.

7.2 Contractor to protect Territory Information

- (1) Except as provided in this Agreement, the Contractor must not disclose Territory Information to any person without the prior written consent of the Territory except to the extent that the Territory Information is:
 - (a) required or authorised to be disclosed by law,
 - (b) disclosed to the Contractor's solicitors, auditors, insurers or advisers,
 - (c) generally available to the public, or
 - (d) in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Territory.
- (2) The Contractor must take all reasonable measures to ensure that Territory Information accessed or held by it in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable

procedures for that purpose and that only its authorised personnel have access to Territory Information.

- (3) The Contractor must do all things necessary to ensure that Territory Information accessible to the Contractor and the Contractor's personnel by virtue of the performance of this Agreement is not accessed, published or communicated in any way, including imposing upon the Contractor's personnel obligations of confidentiality with respect to Territory Information.

7.3 Acknowledgement of effect of Crimes Act

The Contractor acknowledges that the publication or communication of any fact or document by a person which has come to its knowledge or into its possession or custody by virtue of the performance of this Agreement (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under section 153 of the *Crimes Act 1900* (ACT), the maximum penalty for which is 2 years imprisonment.

8. Confidential Text under Procurement Act

8.1 Territory may make Agreement publicly available

In giving effect to the principles of open and accountable government, the Territory may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Agreement may be a notifiable contract under the Procurement Act and, if so, the Territory will be required to make the text of this Agreement available to the public, including by publication on a public contracts register.

8.2 Confidential Text

If **Item 7 Schedule 1** states that this Agreement is a notifiable contract under the Procurement Act and specifies Confidential Text, the grounds on which the text is confidential are set out in **Item 8 Schedule 1**, and **clause 8.3** applies.

8.3 Territory must not disclose Confidential Text

Except as provided in this Agreement, the Territory must not disclose Confidential Text to any person without the prior written consent of the Contractor (which consent will not be unreasonably withheld) except to the extent that Confidential Text:

- (1) is required or authorised to be disclosed under law;
- (2) is reasonably necessary for the enforcement of the criminal law;
- (3) is disclosed to the Territory's solicitors, auditors, insurers or advisers;

- (4) is generally available to the public;
- (5) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from the Contractor;
- (6) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
- (7) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.

9. Insurance and indemnity

9.1 Contractor's Insurance

The Contractor must effect and maintain for the Term all insurance coverage required to be effected by it by law, public liability insurance and professional indemnity insurance in amounts not less than the amounts (if any) specified by Item 5 Schedule 1, and any other insurance specified in Item 5 Schedule 1 with a Prescribed Insurer.

9.2 Indemnity

The Contractor indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Contractor, in connection with the provision of the Services, except to the extent that the Territory caused the relevant loss, damage or injury.

9.3 Claims to be made good

The Contractor must, at its expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in clause 9.2 and the Territory may deduct the amount, or any part of it, from any moneys due or becoming due to the Contractor under this Agreement.

10. Termination

10.1 Default

The Territory may terminate this Agreement, at any time by notice to the Contractor, if the Contractor:

- (1) is or becomes bankrupt or insolvent, enters into voluntary administration or makes any arrangement with its creditors or takes advantage of any statute for the relief of insolvent debtors;
- (2) fails to commence timely provision of the Services or to meet any timeframes specified in this Agreement; or

- (3) is in breach of a provision of this Agreement, where that breach:
 - (a) if capable of being remedied, is not remedied within the period specified in a notice by the Territory, or
 - (b) is not capable of being remedied.

10.2 Termination for any reason or reduction of Services

The Territory may, at any time by notice to the Contractor, terminate this Agreement or reduce the Services for any reason, and in that event:

- (1) the Territory will be liable only for:
 - (a) payments under this Agreement for Services rendered before the date of termination, and
 - (b) subject to clauses 10.2(2) and 10.2(3), any reasonable costs incurred by the Contractor and directly attributable to the termination or reduction of Services, but not in respect of loss of prospective profits;
- (2) on receipt of a notice of termination or reduction, the Contractor must:
 - (a) stop work as specified in the notice,
 - (b) take all available steps to minimise loss resulting from that termination or reduction of Services, and
 - (c) continue to perform any part of the Services not affected by the notice; and
- (3) in the event of a reduction of the Services, the Territory's liability to pay the Contract Price will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

10.3 No prejudice

Nothing in this clause 10 prejudices any other rights or remedies of the Territory in respect of any breach of this Agreement.

11. Dispute resolution

- (1) If a difference or dispute (**Dispute**) arises in relation to this Agreement either party may give notice to the other that a Dispute exists, which specifies details of the Dispute, and the parties agree that they will endeavour to resolve the Dispute by negotiations, or, if the Dispute has not been resolved within 28 days of the issue of the notice, undertake mediation with an independent mediator, the cost to be shared by the parties unless otherwise agreed.

- (2) Nothing in this clause 11 will prejudice the rights of either party to institute proceedings to enforce the Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

12. General

12.1 General responsibilities of parties

Each party will:

- (1) fully cooperate with each other to ensure timely progress and fulfilment of the Agreement; and
- (2) act reasonably and in good faith with respect to matters that relate to the Agreement.

12.2 Conflict of interest

The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations under this Agreement and must, if a conflict or risk of conflict arises, notify the Territory and comply with any requirement of the Territory to eliminate or deal with that conflict or risk.

12.3 No employment, partnership or agency relationship

Nothing in this Agreement constitutes the Contractor, or its employees, agents or subcontractors as employees, partners or agents of the Territory or creates any employment, partnership or agency for any purpose and the Contractor must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the Territory.

12.4 No assignment or subcontracting

- (1) The Contractor must not subcontract the performance of the Services or assign the whole or part of this Agreement without the prior written consent of the Territory. If the Territory gives its consent, the Territory may impose any conditions.
- (2) A change in the control of the Contractor or a company that controls the Contractor (except a company listed on an Australian stock exchange) is taken to be an assignment, the term "control" including the direct or indirect holding of more than 50% of the share capital of a corporation.
- (3) If the Contractor breaches clause 12.4(1), the Territory reserves its rights, including requiring the Contractor to provide information regarding the proposed subcontractor's or assignee's capability to

continue performing this Agreement or to provide security to ensure the proper performance of this Agreement.

12.5 Entire agreement

This Agreement comprises the entire agreement between the parties in relation to the Services and supersedes any prior representations, negotiations, writings, memoranda and agreements.

12.6 Severability

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

12.7 Variation

This Agreement may be varied or the Term extended only by the written agreement of the parties prior to the expiration of this Agreement.

12.8 No waiver

Failure or omission by the Territory at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the Territory may have in respect of that provision.

12.9 Governing law and compliance with the law

This Agreement is governed by and construed in accordance with the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory. The Contractor must comply with the laws from time to time in force in the Territory in performing the Services.

12.10 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or

- (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

12.11 Special Conditions

In the event of any inconsistency between any Special Condition and any other provision of this Agreement then, to the extent of any inconsistency, the Special Condition will prevail.

12.12 Survival of clauses

Clauses 7, 9.2 and 9.3 will survive the expiration or earlier termination of this Agreement.

SCHEDULE 1

CONTRACT DETAILS

Item 1. Contract Officers

See clauses 1.1 and 12.10

For the Territory:

Joanne Currey
Operations Manager
Centenary of Canberra
Chief Minister and Cabinet Directorate
GPO Box 158 Canberra ACT 2601
Phone: (02) 6205 0739
Fax: (02) 6207 0163
Email: joanne.currey@act.gov.au

For the Contractor:

Kiff Saunders
Director
First Floor - 173/175 Swan Street
Richmond Victoria 3121
Phone: (03) 9428 5703

Item 2. Term

See clause 3

From the date of this Agreement until 31 December 2013

Item 3. Contract Price

See clause 4

- (1) Contract Price for stage one \$172,000 Australian Dollars (GST is included).
- (2) The Contract Price is payable by instalments. Invoices may only be rendered in accordance with the following.

Instalment Price (GST is excluded).	When Invoice may be rendered
\$25,000	On signing of this agreement
\$25,000	On receipt and acceptance of the Territory of a copy of the proposed agreement between the Contractor and Cameron Balloons Pty Ltd.
\$100,000	On receipt and acceptance of the Territory of a copy of the executed agreement between the Contractor and Cameron Balloons Pty Ltd.
\$22,000	On receipt and acceptance of the Territory of copies of all relevant

	Australian certificates of registration and Aviation licences on or before 30 March 2013.
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- (3) Except if otherwise stated in this Agreement, the Contract Price is:
- (a) payable within 30 days of receipt by the Territory of an Invoice;
 - (b) inclusive of GST and all other taxes, duties and charges; and
 - (c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Contractor.
- (4) Some of the Contract Price Instalments may be paid directly by a philanthropist identified by the Territory. The Territory will provide instructions to the Contractor to invoice the philanthropist for these Instalments. The Territory will cover all remaining Instalments not paid by the philanthropist.

Item 4. Specified Personnel
See clause 6

Kiff Saunders, Director, Global Ballooning Pty Ltd

Nick Purvis, Sales Director, Cameron Balloons Pty Ltd

Sally-Ann Balharrie, Creative Director, Blue Boat

Item 5. Other amounts and insurance
See clause 9.1

- (1) Public liability insurance: \$20 million (in respect of each claim).
- (2) Comprehensive hull insurance for the replacement value of the Balloon.

Item 6. Territory Information
See clauses 1.1 and 7

Item 6 not used.

Item 7. Confidential Text
See clauses 1.1 and 8

This Agreement is a "notifiable contract" under the Procurement Act and the following is proposed as confidential text.

Schedule 2 – The Services

Schedule 3 – Special Conditions

Execution Page

Attachment A – Cameron Balloons Design and Manufacturing Feasibility Study

Item 8. Grounds for confidentiality of Confidential Text

See clause 8

In accordance with Section 35 (1) of the *Government Procurement Act* 2001, the Centenary of Canberra is satisfied that,

(a) *the disclosure of text would –*

(i) be an unreasonable disclosure of personal information about a person

(ii) disclose information (other than a trade secret) having a commercial value that would be, or could be reasonably expected to be destroyed or diminished if the information was disclosed; and

Section 14 of the *Government Procurement Regulation* (2007),

(b) *Information, that if disclosed, would unreasonably constrain the development or consideration of policy alternatives by government.*

SCHEDULE 2

THE SERVICES

For the purposes of the Insurance Determination, this Schedule 2 constitutes the Activity Schedule (as defined in the Insurance Determination).

The Contractor must provide the Services as follows within any specified timeframes.

Item 1. Definitions

Acceptable Quality means quality of goods that is:

- (1) fit for all the purposes for which goods of that kind are commonly supplied, and
- (2) acceptable in appearance and finish, and
- (3) free from defects, and
- (4) safe, and
- (5) durable,

as the Territory, acting reasonably and being fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as being acceptable having regard to the following matters:

- (6) the nature of the goods; and
- (7) the price of the goods (if relevant); and
- (8) any statements made about the goods on any packaging or label on the goods; and
- (9) any representation made about the goods by the Supplier; and

any other relevant circumstances relating to the supply of the goods.

Advertising and Publicity Material means any material in whatever form, prepared by the Contractor for the purpose of advertising, publicity or promotion of the Project. This material is Contract Material.

Artist means Patricia Piccinini

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Balloon means the Centenary of Canberra special shape hot air balloon designed by Patricia Piccinini and based on the

feasibility study completed by Cameron Balloons Pty Ltd. It excludes all of the other equipment required to constitute an aircraft, namely basket, burners, fuel tanks, instrumentation.

Cameron Balloons means Cameron Balloons Pty Ltd of St John Street, Bedminster, Bristol, BS3 4NH, UK.

Centenary of Canberra means the Centenary Of Canberra; Culture and Communications Division; Chief Minister and Cabinet Directorate.

Promotional Appearances means media interviews, press conferences or similar activities by the Contractor to promote and publicise the Project.

Promotional Material means the full biographies, colour and black and white digital images (scanned at 300dpi or more), broadcast quality video and audio material produced by the Contractor in relation to the Project. This material is Contract Material.

Project means

Territory Partner means members of the Centenary of Canberra Corporate Partnership program who are supporting the Centenary of Canberra through a sponsorship relationship.

The Project means the commissioning of the Balloon and operation of the Balloon at agreed Centenary of Canberra events in 2013.

The Work means any work created, which may be in the form of visual art, sculptures, digital media, literary or musical composition, schedules, plans and programs produced for the Event, the Project or the Centenary of Canberra.

Item 2. Description of Services

- (1) The Contractor will commission a special shape hot air balloon envelope from Cameron Balloons Pty Ltd of Acceptable Quality, based on the feasibility study and images at Attachment A. *(Noting that the Centenary of Canberra unit, working with the Artist, has already established a relationship with Cameron Balloons Pty Ltd and Cameron Balloons has completed a feasibility study.)*
- (2) The Contractor will coordinate the delivery of the Balloon from Cameron Balloons Pty Ltd for the Territory in accordance with Item 5 Schedule 2 – Schedule of Services. Any significant variations to the timeframe for arrival of the Balloon should be proposed to the Territory for approval in writing.
- (3) The Contractor will deliver the Balloon within the budget resources allocated by the Territory and in accordance with the Project Budget provided in Item 3 Schedule 1 – Contract Price which has been agreed between the Territory and the Contractor. Any significant Project Budget variations (in excess of 10% of the total income or expenditure) should be proposed to the Territory for approval in writing.
- (4) The Contractor will be the Balloon's Certificate of Registration holder and exclusive operator.

Item 3. Specific Tasks

The Contractor will:

- (1) DEVELOPMENT AND OPERATIONS
 - (a) Assume all ownership responsibilities associated with the Balloon envelope, while recognising the moral rights of the Artist, at all times, for the full lifespan of the Balloon;
 - (b) During 2013, fly or tether the Balloon envelope at Centenary of Canberra, or other, events as requested by the Territory and in accordance with a flight schedule to be determined by the Territory in consultation with the Contractor;
 - (c) Nominate a dedicated Project Manager to be the main point of contact with the Territory during the Project;
 - (d) Oversee the fabrication of the Balloon in consultation with the Balloon artist, Patricia Piccinini, and the Balloon manufacturer, Cameron Balloons;
 - (e) Oversee the delivery of the Balloon from the manufacturer, Cameron Balloons of Bristol, United Kingdom;
 - (f) Ensure the Balloon corresponds with the specifications agreed by the Territory as detailed in Attachment A – Design and Manufacturing Feasibility Study;

- (g) Ensure the Balloon has been duly tested and has satisfactorily passed all certification and testing requirements and provide copies of the certifications to the Territory;
- (h) Maintain the Balloon in a safe operating and airworthy condition at all times, for the full flying life of the Balloon;
- (i) Not allow any replacement, alteration or addition to be made which could alter the visual appearance of the Balloon without prior written consent from the Artist (for the full flying life) and the Territory (during the Term);
- (j) Provide operating equipment and staff including, but not limited to, basket, burners, fuel and vehicles;
- (k) Hold at all times all authorities and certificates required under relevant Legislation specific to the operation of hot air balloons;
- (l) Provide suitably qualified, experienced and competent personnel for the Operational and Maintenance services;
- (m) Provide storage of the Balloon in a safe and secure premises (recognising the full lifespan of the Balloon) and immediately informing the Territory and the Artist of any loss, theft or damage occurring to the Balloon;
- (n) Provide all ancillary equipment required for the Balloon's safe operation, maintenance and storage;
- (o) Provide all tour logistics and management of the Balloon for Territory requested appearances, including but not limited to, travel and accommodation for staff, freight, vehicle costs and additional crew;
- (p) Keep full records of all flights and tethers made during the Term and supply copies of such records to the Territory or the Artist on request;
- (q) Negotiate with the Artist to ensure that after the Centenary of Canberra events, requested appearances, tour logistics and management of the Balloon are mutually agreed by all parties, recognising the residual intellectual property rights of the Artist;
- (r) In consultation with the Artist, appropriately dispose of the Balloon envelope when the full flying life of the Balloon has terminated, to ensure the residual intellectual property rights of the Artist are considered;
- (s) Provide to the Territory risk management and operations plans;
- (t) Broker and maintain highly productive and successful working relationships with all partner organizations and individuals involved in the program; and
- (u) Agree to mutually resolve conflicts as soon as practicable and to the satisfaction of both parties.

(2) FINANCIAL MANAGEMENT

- (a) Manage the Project budget, which will be determined and allocated by the Territory. The Contractor is responsible for ensuring that the approved Project budget allocation is not exceeded and is within the budget parameters defined in the Services Agreement; and
- (b) Recommend and support any funding, sponsorship opportunities and donations, including in-kind, to support the Project. The Contractor

should consult with the Territory prior to any agreements being put in place with potential other funding sources and all financial contributions to sponsorship and funding should be administered through the Centenary of Canberra unit.

(3) ADMINISTRATION, GOVERNANCE AND RISK MANAGEMENT

- (a) Grant to the Centenary of Canberra sole rights to the Balloon during 2013;
- (b) Negotiate with the Artist, to ensure that intellectual property rights are recognised to the mutual agreement of all parties to the Balloon, during its lifespan;
- (c) Be responsible for administration and record keeping, as detailed in Schedule 1 Section 5.7 Reporting;
- (d) Provide adequate insurances as agreed by the Territory, copies of which should be provided to the Territory and ensuring that any and all sub contractors participating in the development and execution of the Project have relevant insurances; and
- (e) Conduct a risk review and complete subsequent risk assessments for the Project in accordance with the requirements of the *Work Health and Safety Act 2011* and provide all risk documentation to the Centenary of Canberra for review.

(4) MARKETING

- (a) Liaise with the Territory regarding all marketing initiatives or suggestions to enhance the promotion of the Balloon; and
- (b) Provide at no cost to the Territory a copy of the promotional material for the Project and other material including where requested by the Territory, including:
 - (i) marketing copy describing the Contractor;
 - (ii) digital versions of biographies of the Contractor and designated staff (maximum 300 words for artists);
 - (iii) digital head and shoulder photographs of the Contractor and designated staff (jpeg file, minimum 30mm x 50mm scanned at 300dpi);
 - (iv) details of the Contractors websites.

(5) REPORTING

- (a) Provide to the Territory reports detailing the project, flights and tethers, hours of operation, maintenance schedule and financial tracking according to Schedule of Services in Item 7;
- (b) Report regularly to the Centenary of Canberra unit according Schedule of Services in Item 6;
- (c) Provide to the Territory a final written report detailing the outcomes of the Project by 1 December 2013. This report should include:
 - (i) achievements for the Contractor in the context of the Project, including input from other parties involved in the Project;
 - (ii) whether the Project was delivered as originally planned according to

- the Project Budget and Project Schedule and reasoning for any variations;
- (iii) a description of how the Project will be developed in future years;
 - (iv) any other achievements for the Contractor; and
- (d) Provide to the Territory a final statistical report detailing the outcomes of the Project by 1 December 2013. This report should include:
- (i) The number, duration and passengers for flights;
 - (ii) The number, duration and passengers for tethers;
- (e) Provide to the Territory a detailed financial report for the Project by 1 December 2013 including an explanation of any differences between the proposed budget and the actual expenditure.

Item 4. Territory Responsibilities

The Territory will:

(1) FINANCIAL MANAGEMENT

- (a) Provide financial resources for the manufacture, registration, operation, management and promotion of the Balloon for the Centenary of Canberra in 2013;
- (b) Seek funding, sponsorship and donations from other sources, including in-kind, to support the Project. The Territory may consult with the Contractor prior to any agreements being put in place with potential other funding sources.

(2) MARKETING, ADMINISTRATION AND GOVERNANCE

- (a) Reserve the right to advertise and promote the Project by any means that it deems appropriate, including by way of; promotion of the Project in any official program guides (print and web) produced by the Territory for the Centenary of Canberra; and any other suitable marketing and promotions collateral produced by the Territory for the Centenary of Canberra;
- (b) Market and promote the Project including the development, implementation and evaluation of a comprehensive marketing strategy for the Project which increases public awareness and promotes the program of events.
- (c) Grant to the Contractor a royalty free, non-exclusive and limited licence, to use the Territory logos for the Project, for the purposes of complying with the requirements of Item 5.8 (d) and (e).

Item 5. Schedule of Services

The Project should involve the following stages:

Requirement	Reporting requirements	Timeframe
Stage 1 – Balloon Fabrication		
1. Commission Cameron Balloons Pty Ltd of Bristol United Kingdom, to construct, deliver and commission the special shape balloon as identified in Attachment A.	Provide to the Territory a copy of the proposed agreement between the Contractor and the manufacturer prior to execution and a copy of the executed agreement.	On or before 1 September 2012
2. Ensure the Balloon corresponds and meets as a minimum requirement, if not exceeds, the specifications agreed by the manufacturers, artist and the Territory and complies with Australian air worthiness requirements.	Provide to the Territory a copy of all relevant Australian certificates of registration and Aviation licences.	On or before 30 March 2013.
Stage 2 – Balloon Operation, Maintenance and Promotion		
3. Undertake scheduled operations, maintenance and promotion services as agreed by the balloon manufacturer, Territory and artist.	Provide to the Territory monthly Project status reports detailing the operations, maintenance, and promotions undertaken on the Balloon in the previous month.	On or before the last Friday of every month until 29 November 2013.
Stage 3 - Reporting		
4. Reporting on the Project according to contractual requirements.	Provide to the Territory reports as detailed in Schedule 2, Item 3, Section 5.	On or before 1 December 2013

SCHEDULE 3

SPECIAL CONDITIONS

See clause 12.11

Item 1. Acknowledgement

The Contractor will:

- (1) Recognise the Territory's investment in the Project post 2013;
- (2) Recognise the Territory's investment in the Project by acknowledging the Centenary of Canberra in any events, talks or presentations referencing the Project;
- (3) Verbally acknowledge Territory partners at promotional appearances/events for the Project;
- (4) Prominently display Territory logos and Territory partner logos (including ACT Government and Centenary of Canberra), on all Advertising and Publicity Material initiated by the Contractor or caused to be produced by the Contractor for the Work which may include:
 - (a) posters;
 - (b) flyers;
 - (c) television commercials;
 - (d) newspaper advertisements;
 - (e) website;
 - (f) signage;
 - (g) merchandise;
 - (h) media releases;
 - (i) invitations; and
 - (j) the official program.
- (5) Prominently display Territory logos and Territory partner logos for the Project (including ACT Government and Centenary of Canberra) on any websites created by the Contractor in relation to the Project or on the Contractor's professional website where dedicated promotion of the Project is included, provided that the Territory approves the nominated website (and that approval may not be unreasonably withheld);
- (6) Seek approval for the size and positioning of the Territory logos from the Territory's marketing and communications representative, as notified by the Territory to the Contractor, at least 5 days prior to the production of such materials;
- (7) Not use Territory logos for purposes other than purposes outlined in (d), (e) and (f), without the Territory's express authority;
- (8) For the purpose of Schedule 3, Item 1 (d), (e) and (f), the Territory grants to the Contractor a royalty free, non-exclusive and limited licence, to use the Territory logos for the purposes of complying with this Agreement.
- (9) Not publicly announce the Project by any means until after the launch of the Project by the Centenary Canberra; and
- (10) Ensure that the Artist is appropriately acknowledged, at all times.

- (11) Provide a link to the Centenary of Canberra and any Territory partner's nominated websites on any websites or social media sites created by the Contractor in relation to the Project or on the Contractor's professional website or social media site where dedicated promotion of the Project is included, provided that the Territory approves the nominated website or social media site (and that approval may not be unreasonably withheld);

Item 2. Intellectual Property

- (1) The Territory grants to the Contractor a royalty free, limited licence to use the Territory Material for the Term of this Agreement for the purpose of undertaking the Work or as otherwise agreed by the Territory.
- (2) Clause 5.1(1) in Ownership and use of Material is superseded, and all intellectual property vests with the Artist.
- (3) The Contractor grants to the Territory a royalty-free, perpetual, limited licence to use the Contract Material to the extent necessary for the Territory to obtain the full benefit of the Work, including use of the Contract Material.
- (4) Where the Territory proposes use of the Contract Material by the Territory for purposes other than for the Project, then the Territory will seek approval for such use from the Contractor, which will not unreasonably be withheld. Such use may require a separate licensing agreement between the Territory and the Contractor.
- (5) The licences under Schedule 3, Item 2, clause 2.3 and 2.4 do not include a right to reproduce any Contract Material for the purpose of offering copies by way of commercial sale.
- (6) After 2013 Centenary of Canberra Celebrations, all claims to intellectual property should be negotiated between the Contractor and the Artist. The Territory expects that an agreement between the Contractor and the Artist regarding flights of the Balloon will:
 - a) Require the Contractor to seek approval from the Artist for proposed flights of the Balloon, and that approval from the Artist will not be unreasonably withheld;
 - b) Allow the Artist, or any festival or organisation that reaches agreement with the Artist, to book the Balloon for appearances. Appearances at the request of the Artist should be given preference over other appearances, but should be at the expense of the Artist or the festival or organisation to which the Artist has granted rights for an appearance by the Balloon.
- (7) After 2013 Centenary of Canberra Celebrations there is an expectation that the Territory and the Artist will be acknowledged at any flight or presentation of the Balloon by the inclusion of the following acknowledgement on any collateral produced in connection with the flight or presentation:

'The Piccinini Hot Air Balloon is a Centenary of Canberra project, proudly supported by the ACT Government'.
- (8) The Contractor agrees that it will not, during the Term:
 - (a) use any Contract Material other than in accordance with this Agreement, without the Territory's prior approval; or
 - (b) announce or launch the Project prior to Territory announcement.

Item 3. Insurance and Indemnity

(1) Manufacturer's insurance

Without limiting clause 9.1 – **Contractors Insurance**, the Contractor must do all things reasonably necessary to ensure:

- (a) the manufacturer of the Balloon effects and maintains product liability insurance with coverage in the amount of not less than \$20 million in the aggregate; and
- (b) the Territory receives the benefit of any product liability insurance coverage effected by the manufacturer of the Balloon.

Item 4. Variation

(1) Schedule to Variation of this Agreement

Both parties agree that this Agreement will be varied in that the Schedule of Services will be expanded to include marketing and operational components and the Contract Price increased to reflect the additional scope of work, and the Contractor novated in accordance to advised upcoming changes within their operational structure. This variation is to be provided to both parties by written agreement of the parties prior to the expiration of this Agreement.

DATE OF THIS AGREEMENT 10 August 2012

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
in the presence of:

)
)
) Signature of Territory delegate

Shamil

Jeremy Hasek

Print name

.....
Signature of witness

Grant Jay
.....
Print name

SIGNED by or for and on behalf of
GLOBAL BALLOONING PTY LTD
ACN 073 095 726
in the presence of:

)
)
) Signature of director

K.P.

Print name

.....
Signature of witness

C.P. (KIFF) SAUNDER

DESPINA KARATZIAS
.....
Print name

Note:

Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.

Company: Must be signed in accordance with section 127 of the Corporations Act 2001 (Cth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Contractor's constitution.