



DEED OF VARIATION 2



Dated

13 / 3 2013

Parties

AUSTRALIAN CAPITAL TERRITORY

AND

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

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

CONTRACT NUMBER: 2012.19698.110

Prepared by

Chief Minister and Treasury Directorate
GPO Box 158
Canberra City ACT 2601
Ph: 02 6205 9630
Fax: 02 6207 0163
Ref: GJ: 2012/671

Version

Final at 27 February 2013

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

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 and the Contractor executed an agreement (**Agreement**) on or about 10 August 2012 in relation to Commission and Operation of Special Shape Balloon for the Centenary of Canberra.
 - B. **Item 12.7** provides for variations to the Agreement to be made only by the written agreement of the parties.
 - C. **Item 4(1) Schedule 3** provides for variations to the Agreement for the addition of marketing and operational components, and an increase in Contract Price to reflect the additional scope of work. **Item 4(1) Schedule 3** also provides for the Contractor party to be novated in accordance to changes within their operational structure.
 - D. A variation to the Agreement (First Variation) was executed on 21 September 2012 to amend Schedule 1 to allow for the fourth instalment of the contract price to be paid to the Contractor (directly or indirectly) by a philanthropic source obtained by the Territory.
 - E. The parties have agreed to a Second Variation to the Agreement in accordance with the terms of this Deed. The amendments to the Agreement included in the First Variation are incorporated into this Second Variation.
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IT IS AGREED by the parties as follows.

1. Interpretation and Governing Law

- (1) Unless the context requires or it is otherwise specified in this Deed, any words used in this Deed that are defined in the Agreement have the same meaning for the purpose of this Deed.

- (2) This Deed 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.

2. Effective Date

The variations to the Agreement described in this Deed, take effect on the date of this Deed.

3. Variation

- (1) Item 2 Schedule 1 is deleted and replaced with the following.

Item 2. Term From 10 August 2012 until 31 December 2013.

- (2) Item 3 Schedule 1 is deleted and replaced with the following.

Item Contract (1) Contract Price: \$338,600.00
3. Price Australian Dollars (GST exclusive).
See clause 4

- (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.
\$50,000*	On receipt and acceptance of the Territory of a copy of the executed agreement between the Contractor and Cameron Balloons Pty Ltd.
\$50,000*	To be paid by a philanthropist identified by the Territory, or an interested party acting as an intermediary between the Contractor and the philanthropist, on or before 1 December 2012. (Date and details of payment to be advised).
\$22,000*	On or before 8 March 2013 to conclude payments to balloon manufacturer and

Deed of Variation 2 for Commission and Operation of Special Shape Balloon for the Centenary of Canberra – 2012.19698.110

	secure export certificate of airworthiness.
\$20,000	On execution of this Deed of Variation 2, and completion, with the Territory's approval, of the Discover, Distill and Develop (part 1) stages of the communications strategy
\$50,000	On delivery of hot air balloon envelope in Australia.
\$25,000	On 1 April 2013, on completion, with the Territory's approval, of the Develop (part 2) and Deliver (part 1) stages of the communications strategy, including the launch of the project 'digital hub' and provision to the Territory of images and footage of the test and launch flights
\$35,000	On completion of the launch flight weekend in Canberra on May 11 and 12 2013
\$21,600	On completion of the first interstate Balloon flight following the launch of the Balloon in May.
\$5,000	On 18 November 2013, on completion, with the Territory's agreement, of the Deliver (part 2) stage of the communications strategy, being the ongoing maintenance of the digital hub and communications in connection with flights subsequent to the May launch flights.
\$10,000	On receipt and acceptance by the Territory of final project reporting from the Contractor.

*Indicative of payments made prior to this variation.

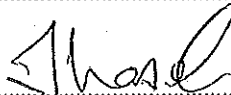
- (3) Except if otherwise stated in this Agreement, the Contract Price is:
- (a) payable within 30 days of receipt by the Territory of an Invoice;
 - (b) inclusive of GST and all other taxes, duties and charges; and

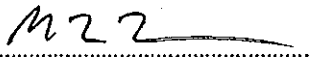
- (c) inclusive of all disbursements, including out-of-pocket expenses incurred by the Contractor.
- (4) Some of the Contract Price Instalments may be paid directly by a philanthropist identified by the Territory. The Territory will provide instructions to the Contractor to invoice the philanthropist for these Instalments. The Territory will cover all remaining Instalments not paid by the philanthropist.
- (3) **Schedule 2** is deleted and replaced with the attachment to this Deed titled "Schedule 2".
- (4) **Schedule 3** is deleted and replaced with the attachment to this Deed titled "Schedule 3".

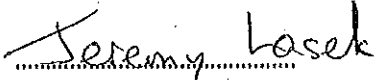
Deed of Variation 2 for Commission and Operation of Special Shape Balloon for the Centenary of Canberra - 2012.19698.110

SIGNED AS A DEED ON 13/3 2013

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

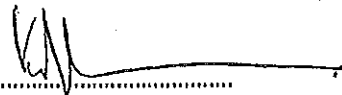

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Signature of Territory delegate

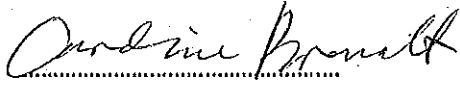

.....
Signature of witness



.....
Print name


.....
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


.....
Signature of witness


.....
Print name


.....
Print name

Note:

Date: Must be dated on the date the last party signs the Deed or, if signed counterparts of the Deed 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.

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

Exempt s41

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), still photography, broadcast quality video and audio material produced by the Contractor in relation to the Project. This material is Contract Material.
Project	means the commission and operation of a special shape hot air balloon created to celebrate the Centenary of Canberra, designed by artist Patricia Piccinini, and undertaking communications activity in connection with the operation of the balloon.
Territory Partner	means members of the Centenary of Canberra Partnership program who are supporting the Centenary of Canberra through a sponsorship or philanthropic relationship.
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.
Sub-Contractor	Blueboat Marketing Pty Ltd

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 **Schedule 2 Item 5 Schedule 2**. 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 **Schedule 1 Item 3 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.
- (5) The Contractor will sub-contract to Blueboat Marketing Pty Ltd the management of the communications strategy for the Project, according to **Schedule 2 Item 3 Specific Tasks, Attachment B – Sky Whale operations and communications proposal and Attachment D - Blueboat communications plan**.
- (6) The Contractor will operate the Balloon according to the Schedule of Services outlined in **Schedule 2 Item 3 Specific Tasks, Schedule 2 Item 5 Schedule of Services and Attachment B – Sky Whale operations and communications proposal**.
- (7) The Contractor will operate the Balloon and undertake the communications strategy for the Project within the Contract price and according to **Attachment C – Sky Whale Budget 4.1**.

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 times and locations identified and arranged in collaboration with the Centenary of Canberra Unit. At the time of the Second Variation, agreed appearances for the Balloon will be the launch of the Project in Canberra at the National Gallery of Australia on 11 and 12 May, at the Museum of Contemporary Art in Sydney (date tbc), at the Australian Centre for Contemporary Art in Melbourne (date tbc), at a place in the Murray Darling Basin (date tbc) and at a fifth time and place to be determined, but kept in reserve as a replacement Canberra flight until after 12 May;
- (c) After an initial invitation from the Centenary of Canberra Unit to an organisation (or individual) identified to participate in the presentation of the Balloon, lead negotiations with that organisation with respect to the presentation of the Balloon, ensuring agreement is sought from the Territory and the Artist with respect to the presentation;
- (d) Notwithstanding cooperation with participating organisations, maintain primary responsibility for the safe operation of the Balloon at all appearances;
- (e) Nominate a dedicated Project Manager to be the main point of contact with the Territory during the Project;
- (f) Oversee the fabrication of the Balloon in consultation with the Balloon artist, Patricia Piccinini, and the Balloon manufacturer, Cameron Balloons;
- (g) Oversee the delivery of the Balloon from the manufacturer, Cameron Balloons of Bristol, United Kingdom;

- (h) Take all available steps to ensure the delivery of Balloon envelope in Australia before 31 March 2013. The Territory agrees that the Sub-Contractor requires the Contractor to have the Balloon available for a test and image capture flight not later than 12 April 2013 in order to satisfactorily complete the elements of the communications strategy which rely on the completion of that flight in time for the Balloon launch in Canberra on 11 and 12 May 2013;
- (i) Ensure the Balloon corresponds with the specifications agreed by the Territory as detailed in Attachment A – Design and Manufacturing Feasibility Study;
- (j) 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;
- (k) Maintain the Balloon in a safe operating and airworthy condition at all times, for the full flying life of the Balloon;
- (l) 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);
- (m) Provide operating equipment and staff including, but not limited to, basket, burners, fuel and vehicles;
- (n) Hold at all times all authorities and certificates required under relevant Legislation specific to the operation of hot air balloons;
- (o) Provide suitably qualified, experienced and competent personnel for the Operational and Maintenance services;
- (p) 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;
- (q) Provide all ancillary equipment required for the Balloon's safe operation, maintenance and storage;

- (r) 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;
- (s) Further to (q), secure, maintain and meet the cost of all licences, permits and permissions to operate the Balloon in each location from within the allocated Balloon operating budget;
- (t) 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;
- (u) 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;
- (v) 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;
- (w) Provide to the Territory risk management and operations plans;
- (x) Broker and maintain highly productive and successful working relationships with all partner organizations and individuals involved in the program; and
- (y) Agree to mutually resolve conflicts as soon as practicable and to the satisfaction of both parties.
- (z) Through the Sub-Contractor, undertake a communications (marketing and media) strategy to support the Project as described in **Attachment D - Blueboat communications plan**, which is further described in **Schedule 2 Item 4 Marketing**;
- (aa) In April 2013, on dates to be determined in agreement with the Artist and with a film making team engaged by the Australian Broadcasting Corporation who are making a documentary about the Project, undertake a test and image capture flight for the Balloon at Mungo National Park, as described in **Attachment B -- Sky Whale operations and communications proposal**.

- (bb) The Territory and the Contractor agree that changes to the flight schedule for the Project during the Term, including to the test and image capture flight, will be agreed in writing and not require further Variation to the Agreement

2. FINANCIAL MANAGEMENT

The Contractor will:

- (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 subsequent variations; 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;
- (c) Meet all costs associated with the presentation of the Balloon, at each of its appearances, ensuring each appearance and the total Project is kept within the Territory's budget allocation and the Contract Price for the Term as detailed in the Services Agreement and Attachment C – Sky Whale Budget 4.1. The Territory and the Contractor agree that:
 - (i) Each party will make every possible effort to eliminate or minimise any additional expenses incurred in respect of each appearance of the Balloon. These expenses are anticipated to be associated with agreements with land managers for permission to fly the Balloon. The Territory will stress to land managers the not-for-profit and artistic nature of the Project and request the waiving of such fees;
 - (ii) The Territory will request organisations participating in flights of the Balloon – being MCA and ACCA at the time of this agreement – meet or at least share in any additional expense associated the appearance of the Balloon at that organisation;

- (iii) Where additional expenses associated with a flight of the Balloon are in excess of \$500, the Territory and the Contractor will either agree that the expense can be deducted from the budget of a subsequent flight, or agree that an alternative location will be sought.

3. ADMINISTRATION, GOVERNANCE AND RISK MANAGEMENT

The Contractor will:

- (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;
- (f) The Territory and the Contractor agree that test and image capture flight requirements identified in **Attachment B – Sky Whale operations and communications proposal**, will be achieved, notwithstanding changes to location or timing of the flight, within the budget allocation identified in **Attachment C – Sky Whale Budget 4.1**. Contingency plans for alternative flights must be agreed and approved by the Territory in writing.

4. MARKETING

The Contractor will:

- (a) Through the Sub-Contractor, deliver a communications strategy for the Project according to **Attachment C – Blueboat communications**

plan. Through the communications strategy the Sub-Contractor will:

- (i) Produce high quality moving and still Images of the Balloon during its test and image capture flight(s) in April 2013 and during its flying days in Canberra for its launch appearance on 11 and 12 May 2013. The contractor will manage the operation of the Balloon for any flights including the test and image capture flight;
- (ii) Provide still Images of the Canberra launch flights to the Territory on the same day as the tether or flight, and the footage of the launch flights within 48 hours of the flight;
- (iii) Provide still and moving Images of the test and image capture flight of the Balloon as soon as practicable after the completion of the test and image capture flight undertaking;
- (iv) Create a 'digital hub', being a website, that is the primary communication tool for the Project, ensuring it is of high quality with respect to its appearance and functionality;
- (v) Ensure that the 'digital hub' carries all appropriate acknowledgements of the Territory as described in **Schedule 3 Item 1 Acknowledgement**;
- (vi) Ensure that the 'digital hub' carries appropriate acknowledgement and recognition of the Artist, giving background on the previous life and work of the Artist and the creation of the Balloon, respecting the wishes of the Artist with regard to the description of her life and work;
- (vii) Ensure that the 'digital hub' reflects 'key messages' about the commissioning of the Balloon by the Centenary of Canberra, agreed with the Territory in the process of consulting over the content of the 'digital hub';
- (viii) Consult with the Territory and the Artist about the creation of all Promotional Material as described in Attachment C – Blueboat communications plan;
- (ix) Undertake media management required in connection with each appearance of the Balloon;
- (x) Undertake a 'covert' social media strategy following the test and image capture flight of the Balloon, but in advance of its launch flight in Canberra, such that would help to generate a groundswell of interest in its appearance;

- (xi) Never reveal the full design of the Balloon, or large enough parts of its design such as would suggest the full design of the Balloon, in advance of its launch flights in Canberra;
- (xii) Have the 'digital hub' ready to 'go live' on the morning of 11 May 2013;
- (xiii) Maintain the 'digital hub' throughout the Term to provide it with new material where possible, and refreshed with commentary about the work and social media content;
- (xiv) Provide still and moving image packages of the Balloon during its test and image capture flight to support the presentation made by the Artist at the National Gallery of Australia for its launch;
- (xv) Make Promotional Materials available to the Territory for use on the Centenary of Canberra and partner websites and social media sites, as required;
- (xvi) Make Promotional Materials for the Project available for use by Canberra Museum and Gallery in connection with its exhibition about the work of Patricia Piccinini that will coincide with the launch of the Balloon;
- (xvii) Make moving imagery available to the Australian Broadcasting Corporation from the test and image capture flight, and the launch flights in Canberra, for the purposes of its documentary on the Project, and subject to the proper crediting of the persons or companies responsible for the creation of that imagery;
- (xviii) Participate, where required, in the creation of the ABC documentary or other media identified for the Project;
- (xix) Generate and manage media interest in the Project (publicise the Project), taking all steps possible during the term to mitigate against the risk of a negative perception of the Project;
- (xx) Source, in collaboration with the Centenary of Canberra Unit, testimonials advocating the Artist and the Balloon from respected figures whose opinions can be utilised in the communications strategy for the Project;
- (xxi) Coordinate media and publicity efforts made in connection with any appearance of the Balloon with those undertaken by the Centenary of Canberra Unit separately;

- (xxii) In the event the test and image capture flight does not take place, propose and activate a contingency plan for providing imagery that can be used in connection with the Artist's presentation to the Sculpture: Space and Place Symposium and in the media in connection with the launch flight;
- (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); and
 - (iv) details of the Contractor's websites.

5. REPORTING

The Contractor will, in collaboration with the Sub-Contractor:

- (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 Schedule 2 Item 5;
- (b) Report regularly to the Centenary of Canberra unit regarding the communications strategy for the Project, as detailed in **Attachment D - Blueboat communications plan communications plan**, noting such reporting will be provided directly to the Territory by the Sub-Contractor;
- (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 and Sub-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;
- (d) Provide to the Territory a detailed report on the use, and success or otherwise of, the 'digital hub', being visits to the digital hub, the numbers of downloads of resources contained on the 'digital hub', the number, and samples of, contributions made to the 'digital hub' by users;
- (e) Provide to the Territory a media report including all print articles about on the Project, and as much externally generated online content as possible; and
- (f) 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, as at the Second Variation Attachment B – Sky Whale Budget 4.1, 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

The Territory will:

- (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) Publicise the Project by its own means, notwithstanding the publicity efforts to be undertaken by the Sub-Contractor.
- (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 Territory's requirements as described in **Schedule 3 Item 1 Acknowledgement**.
- (d) Make the first approach to organisations or individuals who are identified to participate in the Project by hosting an appearance of the Balloon.
- (e) Be prompt in providing material about the Territory or the Centenary of Canberra to the Contractor or Sub-Contractor as required for the purposes of developing content for the Project;

- (f) Attempt at all times to broker and maintain good relationships between the organisations and individuals involved in the Project;
- (g) Where possible, and in keeping with the Territory's policies and rights, provide to the Sub-Contractor any media contacts, distribution or mailing lists or other contacts and resources such as will contribute to the successful execution of the Sub-Contractor's communications strategy for the Project.

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.

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4. Undertake a test and image capture flight for the Balloon in Mungo National Park	Provide to the Territory moving and still images from the flights	Flight(s) completed by 30 April 2013
5. Launch flights for the Balloon in Canberra		11 and 12 May 2013
6. Launch 'digital hub' for the Project	Provision of moving and still imagery from Canberra launch flights	By 12 May 2013 (or 13 May in the case of bad weather on 11 May)
7. Tether or fly the Balloon in Sydney at/from the Museum of Contemporary Art	Report to Territory on the Sydney flight	Date TBC
8. Tether or fly the Balloon in Melbourne at/from the Australian Centre for Contemporary Art	Report to the Territory on the Melbourne flight	Date TBC
9. Tether or fly the Balloon at a location in the Murray Darling Basin in connection with the Centenary's One River project	Report to the Territory on the Murray Darling Basin flight	Date TBC in or around August 2013
10. Tether or fly the Balloon at a location to be determined, or in Canberra in the event that the Canberra launch flights are not possible	Report to the Territory on the fifth flight	Date TBC
Stage 3 - Reporting		
11. 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 and Sub-Contractor will:

- (1) Recognise the Territory's investment in the Project after the expiration of the Term (31 December 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) Acknowledge the Territory's investment in the Project by line credit on all Promotional Materials as follows, or as otherwise notified:

The Sky Whale hot air balloon commission is a Centenary of Canberra project, proudly supported by the ACT Government.

- (5) 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 Sub-Contractor or caused to be produced by the Contractor or Sub-Contractor for the Project which may include:
 - (a) posters;
 - (b) flyers;
 - (c) television commercials;
 - (d) newspaper advertisements;
 - (e) website;
 - (f) signage;
 - (g) merchandise;
 - (h) media releases;
 - (i) invitations.
- (6) 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 or Sub-Contractor in relation to the Project or on the Contractor or Sub-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);
- (7) 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 or Sub-Contractor, at least 5 days prior to the production of such materials;
 - (8) Not use Territory logos for purposes other than purposes outlined in **Schedule 3 Item 1 Acknowledgement**, without the Territory's express authority;
 - (9) For the purpose of **Schedule 3, Item 1 Acknowledgement**, 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.
 - (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 or social media sites on any websites or social media sites created by the Contractor or Sub-Contractor in relation to the Project or on the Contractor or Sub-Contractor's professional website(s) or social media site(s) 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) Images and footage taken of Contract Material (the Balloon) by the Contractor, in collaboration with the Sub-Contractor, is defined as Promotional Material;

- (7) The Territory grants to the Contractor and Sub-Contractor a royalty free, perpetual and limited licence to use the Promotional Material for purposes associated with the presentation of the Work for its flying life. The Promotional Material may be used by the Contractor and Sub-Contractor in those cases to promote the Work but not the Contractor or the Sub-Contractor, though the Contractor and Sub-Contractor may use the Promotional Material for professional purposes such as future proposals or submissions. All use of Promotional Material must respect the Intellectual property rights of the Artist in the Work. Promotional Material may not be used for commercial reproduction or sale;
- (8) 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.
- (9) 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 Promotional Material produced in connection with the flight or presentation:
- 'The Sky Whale hot air balloon commission is a Centenary of Canberra project, proudly supported by the ACT Government'.*
- (10) The Contractor agrees that it will not, during the Term, use any Contract Material other than in accordance with this Agreement, without the Territory's prior approval.

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.