



Artwork Commissioning Agreement (Mural)

City of Parramatta Council

and

insert full legal name of Artist

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Artwork Commissioning Agreement

Parties

1. **City of Parramatta Council** (ABN 49 907 174 773) of 9 Wentworth Street, Parramatta NSW 2150 (**Council**); and
2. The Artist identified in Item 3 of the Schedule (**Artist**)

Background

- A. Council wishes to commission the Artist to design, produce, and deliver the Artwork.
- B. The Artist has agreed to design, produce, and deliver the Artwork to Council on the terms and conditions contained in this Agreement.

Operative Part

1. Definitions

In this Agreement unless expressed or implied to the contrary:

Agreement means this instrument and includes all schedules and annexures to it.

Artist Intellectual Property means all Intellectual Property Rights in the Artwork.

Artwork means the Artwork described in Item 4 of the Schedule.

Artwork Delivery Date means the date specified in Item 4 of the Schedule.

Business Day means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

Claim means any claim, allegation, debt, cause of action, demand, remedy, suit, injury, damage, loss, cost, charge, expense, liability, action, proceeding and right of action of any nature howsoever arising and whether present, future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Commencement Date means the commencement date specified in Item 6 of the Schedule.

Completion Date means the completion date specified in Item 7 of the Schedule.

Defects mean any errors, omissions, defects or other failures howsoever arising which is not in accordance with this Agreement or renders the Artwork unsuitable for Council's requirements.

Defects Liability Period means the period specified in Item 10 of the Schedule.

Electronic Communication has the same meaning as in the *Electronic Transactions Act 2000* (NSW).

Fee means the fee described in Item 8 of the Schedule.

Force Majeure Event means any of the following events or circumstances or combination of those events and circumstances which is beyond the control of the party affected:

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- (a) fire, explosion, mudslide, natural disaster, lightning, flood, earthquake, tsunami or other act of God;
- (b) riots, civil commotion, pandemic, epidemic, sabotage, terrorism, act of a public enemy, war (declared or undeclared), revolution, blockade or embargo;
- (c) shipwreck, train or plane crashes; or
- (d) radioactive contamination or toxic or dangerous chemical contamination,

which prevents the affected party from completing any of its obligations under the Agreement or allowing completion of the Artwork and, in the case of the Artist, subject to the Artist meeting all of the following requirements:

- (e) an experienced artist would not have foreseen or reasonably have made provision for the event, circumstance, default or delay; or
- (f) the event, circumstance, default or delay was not caused or contributed to by any act or omission or breach of the Agreement by the Artist; and
- (g) the event could not reasonably be prevented, overcome or remedied by the exercise of a standard of care and diligence consistent with that of a prudent and competent artist.

Indigenous Cultural and Intellectual Property refers to all aspects of Indigenous peoples' cultural heritage that is tangible and intangible, including but not limited to:

- (a) traditional knowledge (scientific, agricultural, technical and ecological knowledge, ritual knowledge);
- (b) traditional cultural expression (stories, designs and symbols, literature and language);
- (c) performances (ceremonies, dance and song);
- (d) cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices) human remains and tissues the secret and sacred material and information (including sacred/historically significant sites and burial grounds); and
- (e) documentation of Indigenous peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

Intellectual Property Rights means all patents, trademarks, designs, copyright, trade names, business names or other related rights whether created before, on, or after the date of this Agreement.

Maintenance Period means the period specified in Item 9 of the Schedule.

Moral Rights mean moral rights created by the *Copyright Act 1968* (Cth), which include the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, and any similar rights capable of protection under the laws of any other jurisdiction.

Notice of Completion means the notice of completion issued in accordance with clause 4.7.

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Payment Milestones means the payment milestones specified in Item 8 of the Schedule.

Program means the Artwork installation and delivery program specified in Annexure D or as otherwise agreed by the parties from time to time;

Schedule means the schedule set out in clause 18.

Site means the site specified in Item 5 of the Schedule.

Term means the period from the Commencement Date until all obligations under this Agreement have been completed by the parties.

2. Interpretation

2.1 Persons

In this Agreement, a reference to:

2.1.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

2.1.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

2.1.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

2.2 Joint and Several

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

2.3 Clauses and Headings

In this Agreement:

2.3.1 a reference to this Agreement or other agreement includes this Agreement or the other agreement as varied or replaced regardless of any change in the identity of the parties;

2.3.2 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

2.3.3 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;

2.3.4 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

2.3.5 a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;

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2.3.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';

2.3.7 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Agreement is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing.

2.4 Severance

2.4.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

2.4.2 If it is not possible to read down a provision under clause 2.4.1, that provision is severable without affecting the validity or enforceability of the remainder of that provision or any other provisions of this Agreement.

2.5 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

3. Term

This Agreement will commence on the Commencement Date and will continue until all obligations under this Agreement have been completed unless otherwise varied or terminated in accordance with this Agreement.

4. Artwork

4.1 Artist's Responsibilities

The Artist must:

4.1.1 design, produce, deliver and install the Artwork by the Artwork Delivery Date in accordance with the terms of this Agreement;

4.1.2 supply all tools, materials and other resources necessary to produce, deliver and install the Artwork in accordance with the terms of this Agreement;

4.1.3 use high quality materials which are free from defects and suitable for the purpose of the Artwork;

4.1.4 carry out its own inquiries and inspections about the adequacy and suitability of the Site;

4.1.5 ensure that the Artwork (including the delivery of the Artwork) will not put the health and safety of any person, including the Artist, at risk;

4.1.6 ensure that the Artwork is not offensive or contain any inappropriate cultural appropriation;

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- 4.1.7 repair any damage caused by the Artist to the Site;
- 4.1.8 provide all information, reports and documents relating to the Artwork reasonably required by Council;
- 4.1.9 pay for all costs and expenses incurred in connection with the Artwork (unless otherwise specified in this Agreement);
- 4.1.10 comply with any direction given by Council or any other person authorised by Council in connection with the Artwork;
- 4.1.11 immediately comply with any direction given by Council concerning matters of health and safety;
- 4.1.12 attend any meetings reasonably required by Council;
- 4.1.13 obtain all necessary consents, approvals, licences associated with the Artwork; and
- 4.1.14 ensure that the Artist complies with all laws, including work health and safety.

4.2 Warranties

The Artist warrants that:

- 4.2.1 the Artist has the skill and ability to design, produce and deliver the Artwork in accordance with the requirements of this Agreement and acknowledges that Council has entered into this Agreement in reliance on this warranty;
- 4.2.2 the Artist has the authority to enter into and to perform the Artist's obligations under this Agreement;
- 4.2.3 the Artwork will be the Artist's original work and will not infringe any Intellectual Property Rights or Moral Rights of any person or corporate entity;
- 4.2.4 where the Artwork contains third party material, the Artist has obtained all consents and licences necessary to permit the lawful inclusion of the material in the Artwork;
- 4.2.5 the Artist will not licence any Intellectual Property Rights to the Artwork to a third party without Council's prior written consent;
- 4.2.6 the Artwork will correspond to the description in, and requirements of, this Agreement and conform to all samples, proposals, submissions and descriptions provided to Council by the Artist;
- 4.2.7 the Artwork will be fit for the purpose for which it is intended;
- 4.2.8 the Artwork is free of any lien or encumbrance; and
- 4.2.9 the Artwork is of the quality specified in this Agreement, or if no quality is specified, such quality expected of a professional competent artist experienced in providing similar artwork.

4.3 Program

- 4.3.1 The Artist must deliver the Artwork in accordance with the Program.

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- 4.3.2 Council may (acting reasonably) amend the Program by issuing a revised Program to the Artist.
- 4.3.3 The Artist will not be entitled to claim any additional costs incurred by it as a result of the issue of the revised Program.
- 4.3.4 The Artist must not commence any works at the Site until Council issued the Artist a written notice approving the final design of the Artwork. The parties will liaise in good faith in respect of the Artist's final development of the design of the Artwork.

4.4 Site

- 4.4.1 The Artist may use the Site for the purpose of installing, delivering and maintaining the Artwork during the Term.
- 4.4.2 The Artist must use the Site in accordance with Council's reasonable directions.
- 4.4.3 The Artist is responsible for inspecting and preparing the Site to ensure that it is safe and suitable for use.
- 4.4.4 The Artist must use best endeavours not to cause nuisance or disturbance to other users of the Site or land adjoining the Site.
- 4.4.5 Upon completion of the Artwork, the Artist must remove all of the Artist's property and leave the Site clean and free of rubbish.
- 4.4.6 Council may at any time direct the Artist to undertake any restoration of the Site which Council reasonably considers necessary. The Artist must comply with the direction within the time specified in the direction at its own cost.
- 4.4.7 The Artist must immediately notify Council of any damage to the Site. The Artist is responsible for any damage to the Site (or any other property) caused by the Artist.

4.5 Safety

- 4.5.1 In performing the Artist's obligations under this Agreement, the Artist must comply with all applicable law and codes of practice relating to the environment, work health and safety and all relevant Australian Standards.
- 4.5.2 The Artist must ensure that the Artwork (including the manner in which the Artwork is delivered) does not put the health and safety of any person at risk.
- 4.5.3 The Artist must comply promptly with all directions given by the Council concerning matters of health and safety, but for the avoidance of any doubt, the Artist is responsible for the safe performance of all works under this Agreement.
- 4.5.4 The Artist is responsible for all matters concerning the management of traffic to ensure that the health and safety of any person are not put at risk during the performance of any work under this Agreement.
- 4.5.5 The Artist acknowledges that the position of the Artwork is at heights and within proximity to electricity cables which may require the use of machinery to enable safe access to the Artwork. The Artist must:
 - (a) provide Council with, and comply with, a work health and safety plan and safe work method statement that must be approved by Council prior to the commencement of any work at the Site;

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- (b) comply with Council's directions in respect of matters of safety from time to time; and
- (c) provide Council with, and comply with, any further safety information or documents or approvals Council may require from time to time.

4.6 Maintenance

- 4.6.1 The Artist must maintain the Artwork during the Maintenance Period in accordance with Annexure C.
- 4.6.2 Prior to the completion of the Artwork, the Artist must provide Council with all relevant information in relation to the maintenance and repair of the Artwork including a detailed description of the materials used.
- 4.6.3 No additional fees are payable by Council, for the Artist maintaining the Artwork during the Maintenance Period.
- 4.6.4 Council is not required by this Agreement to maintain the Artwork to any particular standard. Council may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary lifespan.
- 4.6.5 If the Artwork suffers deterioration, Council shall have the sole discretion to determine whether to remove the Artwork from display as a result of deterioration or whether to maintain the Artwork on display despite its deteriorated condition.

4.7 Completion

- 4.7.1 When the Artist is of the opinion the Artwork is satisfactorily completed in accordance with this Agreement, the Artist must deliver to Council a written notice requesting Council to inspect the Artwork and the Site.
- 4.7.2 Following receipt of a notice under clause 4.7.1, Council will inspect the Artwork and the Site and if Council is satisfied that:
 - (a) the Artwork has been satisfactorily completed; and
 - (b) the Site has been restored to the satisfaction of Council,
 Council will issue a Notice of Completion to the Artist nominating the Completion Date. All title and risk in the Artwork will pass to Council on the Completion Date.
- 4.7.3 If Council disputes that the Artwork has been satisfactorily completed according to this Agreement or that the Site has been satisfactorily restored, Council must provide to the Artist within 14 days of the inspection a written notice stating the nature of the dispute and the required action by the Artist to achieve completion within a reasonable specified period.
- 4.7.4 If the Artist does not comply with a direction under clause 4.7.3:
 - (a) Council may engage a third party to carry out the work required to achieve completion of the Artwork;
 - (b) the Artist will be responsible for the reasonable costs of any work required to achieve completion of the Artwork; and
 - (c) the Artist must pay those costs on demand, and Council may offset those costs against any money Council owes the Artist.

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4.8 Defects

- 4.8.1 The Artist represents and warrants that the Artwork is free of any Defects during the Term and Defects Liability Period.
- 4.8.2 Prior to the expiration of the Defects Liability Period, the Artist must do any one or more of the following upon receiving notification from Council:
 - (a) repair, modify or replace (at the Artist’s cost) any part of the Artwork that has Defects; and
 - (b) upon demand, reimburse Council for all costs and expenses incurred by Council as a result of the Defects.
- 4.8.3 The Artist must rectify any Defects within the time reasonably required by Council. If the Artist fails to rectify any Defects within the time required, Council may rectify the Defect itself or by using a third party and any costs incurred will be a debt due and payable by the Artist to Council.
- 4.8.4 This clause survives the expiry or termination of this Agreement.

4.9 Repair and Restoration

- 4.9.1 If any Artwork repair or restoration work is required after the Maintenance Period (**Repair Work**), Council may request the Artist to carry out the Repair Work. The cost of that Repair Work will be agreed by the parties in writing.
- 4.9.2 Nothing in this Agreement prevents Council or anyone authorised by it from carrying out the Repair Work without consultation with the Artist.

4.10 Removal

- 4.10.1 The Artist acknowledges and agrees that the Artwork is temporary in nature and Council has sole discretion to determine the lifespan of the Artwork. It is anticipated that the Artwork will have a lifespan of up to 8 years.
- 4.10.2 Council and any persons authorised by it may, without the consent of the Artist, remove or relocate the Artwork from the Site at any time for any reason.
- 4.10.3 The Artist will not be entitled to claim any cost, expense, loss or damage against Council arising out of or in connection with any removal of the Artwork from the Site.

5. Fee

5.1 Payment

- 5.1.1 Subject to:
 - (a) the satisfactory performance of the Artist’s obligations under this Agreement; and
 - (b) upon receipt of a valid tax invoice from the Artist,
 Council will pay the Artist the Fee in accordance with the Payment Milestones.

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5.2 GST

- 5.2.1 In this clause 5.2, words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.
- 5.2.2 Except as otherwise provided by this clause 5.2, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 5.2.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 5.2.4, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- 5.2.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 5.2

6. Intellectual Property

6.1 Artist Intellectual Property

- 6.1.1 The Artist will retain all Intellectual Property Rights in the Artwork.
- 6.1.2 The Artist grants to Council a perpetual, irrevocable, royalty-free and exclusive licence to use, reproduce, communicate, publish and cause to be seen or heard in public the Artist Intellectual Property for any marketing, promotional or Council purpose, including but not limited to:
 - (a) the right to retain a digital copy of the Artwork for archival purposes;
 - (b) the right to reproduce the Artwork in reports, on Council’s websites, print media or any other promotional publication; and
 - (c) the right to reproduce images of and materials about the Artwork for displays, documentaries and exhibitions.
- 6.1.3 The Artist acknowledges and agrees that Council may grant a sublicense of the rights in clause 6.1.2 to a third party to use and reproduce the Artist Intellectual Property for any Council-related purposes.
- 6.1.4 Other than as permitted by the *Copyright Act 1968* (Cth), the Artist must not duplicate or in any other way reproduce additional copies of the Artwork without Council’s prior written consent.
- 6.1.5 The Artist must indemnify Council against any Claim arising out of or in connection with any infringements of Intellectual Property Rights or Moral Rights of any third party.

6.2 Council Intellectual Property

- 6.2.1 The Artist must not use any Intellectual Property Rights of Council without Council’s prior written consent.

6.3 Moral Rights

- 6.3.1 Council acknowledges that the Artist may have Moral Rights in the Artwork.

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- 6.3.2 The Artist agrees that it will not sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of the Artist's Moral Rights by Council.
- 6.3.3 Without limiting clause 6.3.2, the Artist consents to Council:
- (a) failing to acknowledge, attribute or identify the Artist's authorship of the Artwork;
 - (b) falsely or incorrectly acknowledging, attributing, or identifying authorship of the Artwork; and
 - (c) making any modification, variation, alteration or amendment of the Artwork, whether or not:
 - (i) it results in a material distortion of, the destruction or mutilation of, or a material alteration to, the Artwork; or
 - (ii) it is prejudicial to the honour or reputation of the Artist.
 - (d) using the Artwork other than for the purpose for which it was intended at the time the Artwork was created;
 - (e) altering the Artwork by adding to, removing elements from, or rearranging elements of, the Artwork, including (without limitation) by combining elements of the Artwork with any other material; or
 - (f) changing, relocating, demolishing or destroying the Artwork.

6.4 Indigenous Cultural and Intellectual Property

- 6.4.1 The parties acknowledge and agree:
- (a) there are ethical and moral considerations associated with the use of Indigenous cultural material in art and cultural projects; and
 - (b) Australia's unique Indigenous artistic and cultural expression is rooted in thousands of years of heritage and continuing practice.
- 6.4.2 Council supports the rights of Indigenous people to own and control their cultural heritage and supports Indigenous creative practice. Accordingly, the Artist must not incorporate any form of Indigenous Cultural and Intellectual Property in the Artwork without first complying with clause 6.4.
- 6.4.3 If the Artist proposes to incorporate any form of Indigenous Cultural and Intellectual Property in connection with the Artwork, the Artist must first:
- (a) consult and liaise in good faith with Council and any impacted Indigenous owners regarding any proposed Indigenous Cultural and Intellectual Property to be used in connection with the Artwork; and
 - (b) not incorporate the Indigenous Cultural and Intellectual Property in any part of the Artwork without Council's prior written consent.
- 6.4.4 Any consent provided by Council under clause 6.4.3 may be granted or withheld in Council's sole discretion and may be subject to the informed consent of relevant

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Indigenous owners being provided in respect of the use of any Indigenous Cultural and Intellectual Property in the Artwork.

6.5 Survival

6.5.1 This clause survives the expiry or termination of this Agreement.

7. Promotion

7.1 Publicity

7.1.1 The Artist acknowledges and agrees that Council may disclose information regarding the Artist and the Artwork to the public.

7.1.2 The Artist must provide appropriate publicity material to Council for promotional purposes.

7.1.3 The Artist must be available for media interviews reasonably required by Council for publicity and promotional purposes. No additional fees are payable by Council in connection with such media involvement.

7.1.4 The Artist must not disclose any information regarding the Artwork without Council's prior written consent.

7.1.5 The Artist consents to Council or any persons authorised by it to take photos or recordings of the Artwork, including the progressive production of the Artwork. Council may use any photo or recording of the Artwork in any media format to promote the Artwork. No additional fee is payable by Council for these rights.

7.1.6 The Artist must not issue press releases, announcements or statements relating to Council or the Artwork without Council's prior written consent.

7.2 Acknowledgement

7.2.1 Council may require the Artist to include an acknowledgement of sponsors, councillors and any other key community stakeholders in the Artwork. The Artist must comply with Council's directions in relation to such acknowledgement.

8. Confidentiality

8.1 Confidential Information

8.1.1 The Artist acknowledges and agrees that certain information disclosed to it under or in connection with this Agreement may be confidential.

8.1.2 The Artist must take all precautions necessary to maintain secrecy and confidentiality and prevent disclosure of Council's confidential information.

8.1.3 Unless compelled by law to disclose, the Artist must not disclose to a third party any confidential information of Council without Council's prior written consent.

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9. Insurance

- 9.1.1 Unless Council agrees expressly to the contrary, the Artist must hold and maintain the following insurances:
- (a) public liability insurance for the amount of \$20 million for any one occurrence and unlimited in the aggregate annually as to the number of occurrences;
 - (b) professional indemnity insurance for the amount of \$10 million, which must be maintained until 7 years after the Completion Date;
 - (c) insurance in respect of the Artwork for the value of the Artwork under this Agreement;
 - (d) worker's compensation insurance in accordance with any applicable laws; and
 - (e) such other insurances as are agreed between the parties in writing.
- 9.1.2 The insurances must be:
- (a) in terms satisfactory to Council;
 - (b) cover the Artist's rights, interests and liabilities to third parties, including the liability of the Artist to Council; and
 - (c) valid for the duration of the Term.
- 9.1.3 The Artist must provide Council with evidence of its insurances required under this Agreement in the form of certificates of currency prior to the Commencement Date and whenever requested by Council.

10. Indemnity

- 10.1.1 The Artist carries out its obligations under this Agreement and uses the Site at its own risk.
- 10.1.2 The Artist must indemnify Council against all Claims made against Council arising out of or in connection with the Artwork or any breach of this Agreement.
- 10.1.3 The Artist's liability to indemnify Council under clause 10.1.1 will be reduced proportionately to the extent that Council's act or omission contributed to the Claim.
- 10.1.4 This clause survives the expiry or termination of this Agreement.

11. Force Majeure

- 11.1.1 If a party (**Affected Party**) is prevented or delayed in performing any of its obligations under this Agreement (other than a payment of money) because of a Force Majeure Event, the Affected Party must notify the other party as soon as reasonably practicable and:

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- (a) the Affected Party must use reasonable endeavours to overcome or avoid the Force Majeure Event;
- (b) the Affected Party must use reasonable endeavours to mitigate the effects of the Force Majeure Event;
- (c) the performance of the Affected Party's obligations under this Agreement will be suspended for the period of delay due to the Force Majeure Event; and
- (d) this Agreement will continue and remain in effect and the parties must continue to comply with all other obligations under this Agreement not affected by the Force Majeure Event.

11.1.2 If the Force Majeure Event continues or is likely to continue for more than 3 months, a party may give notice to terminate this Agreement and clause 12.3.3 will apply.

12. Termination

12.1 Termination by Council

12.1.1 Council may terminate this Agreement by notice given to the Artist (and such termination will operate from the date stated in the notice which must be not less than 3 Business Days after the date on which the notice is given to the Artist) if any one or more of the following occur:

- (a) the Artist becomes bankrupt or insolvent or a receiver or administrator is appointed to them;
- (b) the Artist commits a breach of this Agreement and does not remedy the breach within 5 Business Days upon Council's request; or
- (c) Council considers that the Artist is involved in any activity, event or controversy that may reflect adversely on Council.

12.2 Termination by Mutual Agreement

The parties may terminate this Agreement at any time by written agreement.

12.3 Effect of Termination

12.3.1 Termination of this Agreement does not affect any provision expressed to operate or have effect subsequent to termination and without prejudice to any accrued right or remedy of a party in relation to any antecedent default by a party.

12.3.2 If this Agreement is terminated pursuant to clause 12.1, the Artist must immediately repay all Fees to Council.

12.3.3 If this Agreement is terminated pursuant to any other clauses of this Agreement, Council is only liable for:

- (a) the cost of the Artist's time spent on the Artwork; and
- (b) the cost of materials reasonably ordered by the Artist for the Artwork, which the Artist is legally liable to accept but only if the materials become the property of Council upon payment.

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13. Dispute Resolution

13.1 Resolution by Negotiation

If a dispute between the parties arises out of or in connection with this Agreement, the parties will use reasonable endeavours to resolve any such dispute by negotiation within the period of 10 Business Days after the date on which either party gives a notice to the other party stating the matters in dispute and designating as its representative a person to negotiate the dispute.

13.2 Resolution Proceedings

If the dispute between the parties referred to clause 13.1 is not resolved by negotiation:

13.2.1 the parties may refer the dispute to mediation on such terms as they may agree; or

13.2.2 either party may commence legal proceedings.

13.3 Continue to Perform Obligations

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

14. Personal Engagement

14.1.1 This Agreement is personal to the Artist and cannot be assigned, transferred or subcontracted to another person without Council's prior written consent.

14.1.2 Any consent by Council to subcontract any part of the Artwork under this Agreement does not relieve the Artist from any of its liabilities or obligations under this Agreement and the Artist is liable for any act or omission, default or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default or negligence of the Artist.

15. Costs

15.1 Preparation Costs

Each party is responsible for the payment of their own costs and expenses in relation to the negotiation, preparation and execution of this Agreement.

16. Notices

16.1.1 A party giving notice or notifying under this Agreement must do so in English and in writing or by Electronic Communication:

(a) directed to the other parties' representative and contact details (as set out in the Schedule and as varied by any notice); and

(b) hand delivered or sent by prepaid post or Electronic Communication to that address.

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- 16.1.2 A notice given in accordance with clause 16.1.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
 - (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 2000* (NSW),
- but if the delivery, receipt or transmission is not on a Business Day or is after 4.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

17. General

17.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

17.2 Amendment

This Agreement may be varied by the agreement of the parties in writing.

17.3 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect

17.4 Waiver and Exercise of Rights

- 17.4.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 17.4.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

17.5 Counterparts

This Agreement may be signed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

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18. Schedule

Item	Name	Description
1	Date of Agreement	Insert date once executed by both parties – To align with date on execution page
2	Council	City of Parramatta Council ABN 49 907 174 773 9 Wentworth Street, Parramatta NSW 2150 Contact: Insert name Insert position Insert email address Insert phone number
3	Artist	Artist name, Address, Telephone Number, ABN Contact: Insert name Insert position Insert email address Insert phone number
4	Artwork	Description of Artwork: Insert Artwork Delivery Date: Insert
5	Site	Insert address and land title details, as shown in Annexure B
6	Commencement Date	Insert
7	Completion Date	As specified in the Notice of Completion. If no date is specified, the date of issue of the Notice of Completion
8	Fee	Amount: \$Insert Payment Milestones: On the Completion Date
9	Maintenance Period	12 months from the Completion Date
10	Defects Liability Period	12 months from the Completion Date

ANNEXURE A – ARTWORK SPECIFICATIONS

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ANNEXURE B – ARTWORK LOCATION

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ANNEXURE C – ARTWORK MAINTENANCE

The Artist shall provide Council with a plan for the Artwork, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement of any part of the Artwork and associated moving parts or equipment; and written instructions and specifications for reasonably foreseeable maintenance and preservation activities, relating to the Artwork (**General Maintenance Plan**). The General Maintenance Plan must be approved by Council.

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ANNEXURE D – PROGRAM

PROJECT STAGE	ITEM	DELIVERABLES	ARTIST COMPLETION DATE	COUNCIL APPROVAL DATE	NOTES
A	Signing of Agreement	Executed Agreement			Council requires three weeks to execute the Agreement after the Artist signed and returned the Agreement to Council.
HOLD POINT – Council Signoff – 3 weeks					
01	Community Engagement	<ul style="list-style-type: none"> • Consultation with City of Parramatta • Community consultation methodology report • Undertake community consultation • Community consultation outcomes report • Detailed mural design 			The Artist must not proceed with a new stage of work until written notice is provided by Council of the Artist's satisfactory completion of the prior Project Stage.
HOLD POINT – Council Signoff – 3 weeks					
02a	Mural installation	<ul style="list-style-type: none"> • Site preparation • Installation of Artwork 			The Artist must not proceed with a new stage of work until written notice is provided by Council of the Artist's satisfactory completion of the prior Project Stage.
HOLD POINT – Council Signoff – 2 weeks					
02b	Practical completion	<ul style="list-style-type: none"> • Maintenance Manual • Completion Certificate 			The Artist must not proceed with a new stage of work until written notice is provided by Council of the Artist's satisfactory completion of the prior Project Stage.
03	12 Months Defects Liability	<ul style="list-style-type: none"> • RFIs • Warranty • Remediation 			

Executed by the parties

DATED:

Signed for and on behalf of **CITY OF PARRAMATTA COUNCIL** by its authorised officer in the presence of:

Signature of witness

Name of witness

Address of witness

Signature of authorised officer

Name of authorised officer

Position of authorised officer

If the Artist is a company (delete if not applicable):

Signed by the **ARTIST** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director / secretary

Name of director / secretary

Signature of director

Name of director

If the Artist is a government agency (delete if not applicable):

Signed for and on behalf of the **ARTIST** by its authorised officer in the presence of:

Signature of witness

Name of witness

Address of witness

Signature of authorised officer

Name of authorised officer

Position of authorised officer

If the Artist is an individual (delete if not applicable):

Signed by the **ARTIST** in the presence of:

Signature of witness

Signature of Artist

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Name of witness

Name of Artist

Address of witness

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