

Event Services Agreement

The Council of the City of Sydney ABN 22 636 550 790 and
[*vendor name*] ABN [*insert*]

For the Calling Country Creative Services for 2023 - 2024
Sydney New Year's Eve (with the option to extend to 2025)

Reference: [X]

Version 5, June 2021

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EVENT SERVICES AGREEMENT

THIS AGREEMENT is made on the date referred to in Item 1 of Schedule 1.

PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** the details of which are set out at Item 2 of Schedule 1 (City), and
- (2) **THE PARTY** set out in Item 3 of Schedule 1 (Service Provider)

BACKGROUND

- A. The City requires the provision of the Services.
- B. The Service Provider has offered to supply the Services to the City.
- C. The City has agreed to appoint the Service Provider to provide the Services on the terms of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1 INTRODUCTION

In this Agreement, unless the context otherwise requires:

Agreement means the agreement between the Parties in respective of the Event, and is comprised of the following documents:

- (a) this document;
- (b) the schedules;
- (c) all annexures; and
- (d) all attachments.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

Confidential Information means:

- (a) the terms of this Agreement;
- (b) information that is comprised in or relates to the Event Intellectual Property or is associated with or relates to the preparation, staging co-ordination, presentation and production of the Event.

- (c) information of a party (disclosing party) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (receiving party) or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; and
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Contract Manager means the person named in Item 5 of Schedule 1 who is appointed by the City to manage and supervise the performance of the Services.

Damages means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred or awarded against a party).

Date of Agreement means the date referred to in Item 1 of Schedule 1.

Deliverables means any documents, Materials or information (including notes, drawings, specifications, tools, methodologies, processes, sketches, templates, tables, reports and software programs) in any format, electronic or otherwise which the Service Provider is required to provide to the City under this Agreement or otherwise produces in connection with this Agreement.

End Date means the date specified in Item 4(b) of Schedule 1.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or occupational health and safety matters and includes the following:

- (a) the *Protection of the Environmental Operations Act 1997* (NSW);
- (b) the WHS Law; and
- (c) the *Contaminated Land Management Act 1997* (NSW).

Event means the event or events described in Item 6 of Schedule 1.

Event Site means all sites and areas to be used for:

- (a) the performance of the Services; and
- (b) staging and performance of the Event,

including those sites and areas identified in Item 7 of Schedule 1.

Fee has the meaning given in Item 8 of Schedule 1.

Force Majeure Event means in relation to a party an act, omission or circumstance which:

- (a) is beyond the reasonable control of that party; and
- (b) constitutes a fire, flood, earthquake, terrorism, riot, explosion or war, communicable disease for which the World Health Organisation or Department of Foreign Affairs and Trade have issued affected area or travel warnings, pandemic, state-wide or national strike or other state-wide wide or national industrial action (except where caused by the Service Provider).

Further Term means the period specified in Item 4(d) of Schedule 1, which commences on the day immediately following the End Date if exercised by the City in accordance with clause 24.

Government Agency means:

- (a) a government or government department or other body;
- (b) a government or government department or other body;
- (c) a governmental, semi-governmental or judicial person; or
- (d) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (c) the person being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction.

Indigenous Cultural and Intellectual Property (ICIP) Rights means the rights of Australian Aboriginal and Torres Strait Islander peoples to protect their traditional arts and culture and includes, but is not limited to, rights to protect traditional knowledge and sacred cultural material, ensure traditional laws and customary obligations are respected, full and proper attribution or naming of the community connected with the ICIP, and prevent insulting, offensive and misleading uses of ICIP.

Intellectual Property Rights means all present and future rights conferred in law in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world, but excluding any Moral Rights and excluding any ICIP Rights.

Key Dates means the dates set out in Item 9 of Schedule 1.

Key Personnel means the names and roles listed in Item 10 of Schedule 1.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws and WHS Law.

Material means material in any form (whether visible or not), including documents, advertisements (in print, electronic or recorded format), recordings on disc or any other form of storage, reports, products, equipment, information, data, software, software tools and software development methodologies, and includes all releases, updates and amendments to the original material.

Moral Rights means rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed, and rights of a similar nature conferred by statute anywhere in the world that may now exist or that may come to exist in relation to a work.

Payment Schedule has the meaning given in Item 11 of Schedule 1.

Performance Criteria means the requirements for performance of the Services set out in Item 12 of Schedule 1.

Personal Information means all personal information as defined under section 6 of the *Privacy Act 1988* (Cth) and section 4 of the *Privacy and Personal Information Protection Act 1998* (NSW) that is provided or obtained by the Service Provider or its Personnel in connection with the performance of its obligations under this Agreement.

Personnel means the officers, employees, agents, contractors or subcontractors of a party to this Agreement and includes Key Personnel.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Service Provider's Representative means the person listed as the contact person at Item 3 of Schedule 1.

Services means the services to be provided to the City set out in Part 1 of Schedule 2.

Start Date means the date specified in Item 4(a) of Schedule 1.

Supply Nation means Australian Indigenous Minority Supplier Office Limited trading as Supply Nation, ABN 50 134 720 362.

Term means the period commencing on the Start Date and ending on the End Date, unless this Agreement is terminated earlier in accordance with clause 16.

Third Party means any third party hirer or user of the Event Site in connection with the Event.

WHS Law means the *Work Health and Safety Act 2011* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.

WHS Returnable Documents means the WHS documentation listed in Item 13 of Schedule 1, including risk assessments and safe work method statements in relation to the Services.

1.1 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) clause and subclause headings shall not be used in the interpretation of this Agreement;
- (b) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context;
- (c) words importing a gender include every gender;
- (d) a reference to \$ or dollars is to Australian dollars;
- (e) the words "including", "include" and "included" are deemed to be followed by the words "without limitation";
- (f) a reference to legislation or a provision of legislation is to that provision or legislation as amended, re-enacted or replaced from time to time;
- (g) a reference to a body which ceases to exist is a reference to a body that the parties agree to substitute for the named body or, failing agreement, to a body having substantially the same objects as the named body; and
- (h) where the Service Provider comprises of more than one person, each of the persons comprising the Consultant will be jointly and severally liable under this Contract.
- (i) Words defined in the GST Act have the same meaning in clauses in this Agreement about GST.
- (j) This Agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

1.2 Precedence of Documents

In the event of any inconsistency, ambiguity or discrepancy between any document forming this Agreement, the following order of precedence will apply to the extent of any inconsistency, ambiguity or discrepancy:

- (a) this document;
- (b) Schedule 2 (Services);
- (c) Schedule 1 (Reference Schedule);
- (d) any other schedules; and
- (e) any attachments to this document.

2 RELATIONSHIP BETWEEN THE PARTIES

2.1 The Service Provider is an independent contractor of the City. The Service Provider must not represent itself, and must ensure that its Personnel do not represent themselves, as being partners, employees or agents of City.

2.2 The Service Provider must not appoint any subcontractors without the prior written consent of the City, which may be given or withheld at the City's discretion.

If the Service Provider appoints a subcontractor under this Agreement, the Service Provider will remain responsible for all acts and omissions of the sub-contractor as if they were acts or omissions of the Service Provider.

2.3 The Service Provider must not make any representation, statement or warranty that it has authority to bind the City, whether by entering into contracts or otherwise, except with the prior written consent of the City.

2.4 The Service Provider warrants to the City that the Service Provider is an Aboriginal and/or Torres Strait Islander enterprise and one of the following apply:

- (a) the Service Provider is a registered or certified indigenous business maintained by Supply Nation or other similar indigenous registration or membership;
- (b) if a company, 50% or more of the shares in the Service Provider are owned by Aboriginal and/or Torres Strait Islander persons; or
- (c) the Service Provider (or the majority of employees of the Service Provider):
 - (i) is or are of Aboriginal and/or Torres Strait Islander descent;
 - (ii) identifies as being an Aboriginal and/or Torres Strait Islander person; or
 - (iii) is accepted by the Aboriginal and/or Torres Strait Islander community in which the Service Provider lives or formerly lived, as being an Aboriginal and/or Torres Strait Islander person.

3 SERVICES

3.1 From the Start Date the Service Provider will provide the Services in accordance with Schedule 2.

- 3.2 In performing its obligations under this Agreement, the Service Provider must ensure that:
- (a) it and its Personnel carry out all obligations in a highly professional and ethical manner and with the level of due care and skill which may be expected of a professional organisation and professional Personnel experienced in providing services of a similar size, scope, value and complexity as the Services;
 - (b) it will meet or exceed the Performance Criteria;
 - (c) it performs the Services in accordance with the Key Dates;
 - (d) it complies with, and ensures that its workers (as that term is defined by the WHS Law), Personnel, and any other person engaged, or caused to be engaged, by the Service Provider, and any person whose activities in carrying out the Services are influenced or directed by the Service Provider, comply with the WHS Law;
 - (e) the Deliverables are fit for the purposes for which deliverables of that type are commonly acquired and any other purposes which have been notified to the Service Provider by the City;
 - (f) it complies with:
 - (iv) the directions made or given by the Contract Manager; and
 - (v) all the City's applicable policies, procedures and codes of conduct which apply to the Services or are notified to the Service Provider by the City;
 - (g) the Services are provided in accordance with all Laws;
 - (h) it accurately completes and provides to the City the WHS Returnable Documents by the due dates set out in Item 13 of Schedule 1;
 - (i) except to the extent that this Agreement provides otherwise, it supplies everything (including equipment) necessary for the performance of the Services at no extra cost to the City;
 - (j) all equipment, parts and materials used in the performance of the Services are:
 - (i) in good working order and condition;
 - (ii) kept in good repair at all times; and
 - (iii) fit for their intended purpose;
 - (k) it obtains and keeps in full force, at its own cost, all licences and approvals which are necessary or desirable for the performance of the Services and, following a request by the City, promptly provide to the City copies of any licence or approval;
 - (l) it removes from Event Sites all rubbish created from performing the Services; and

- (m) it acts reasonably and co-operates with the City, relevant Government Agencies and other service providers engaged by the City in the preparation, staging, co-ordination, presentation and production of the Event.
- 3.3 To the extent that the Services, or any part of it, is a Construction Project (within the meaning of the WHS Law), the Service Provider is engaged as the Principal Contractor for the Services, or that part of the Services, and the City authorises the Service Provider to have management and control of the Event Site and to discharge the Service Provider's duties as a Principal Contractor under the WHS Law until the Services are complete.
- 3.4 The Service Provider acknowledges and agrees that:
- (a) the City may carry out periodic inspections of the Service Provider's compliance with the WHS Law and this contract (and the Service Provider agrees to provide the City with reasonable access to the Event Site and/or information to enable such monitoring to be carried out); and
 - (b) by exercising its right of access, or conducting any monitoring, under this subclause 3.4 or otherwise, the City is not assuming any management or control of the Event Site or the Services and is only accessing the Event Site or receiving information to monitor the Service Provider's compliance with its obligations under the contract and/or the WHS Law.

4 PERSONNEL

- 4.1 The Service Provider must ensure that:
- (a) the Personnel comply with any specific dress code and other requirements notified in writing by the City from time to time, including any requirement to display identification (such as name tags or badges) and accreditation issued by the City;
 - (b) it and its Personnel do not engage in any conduct that:
 - (i) will, or is likely to, harm the City or its name, reputation or services; or
 - (ii) may bring the Service Provider, the City or the Event into disrepute, scandal or ridicule.
- 4.2 Regarding Key Personnel:
- (a) unless otherwise directed by the City, the Service Provider must ensure that no person other than the Key Personnel perform the functions or roles designated for those individuals;
 - (b) the Service Provider must notify the City in writing immediately upon any Key Personnel being unable to carry out the designated function or role or ceasing to be employed or engaged by the Service Provider;
 - (c) the Service Provider must promptly engage or employ an individual or individuals with equivalent skill and expertise to replace the Key Personnel; and
 - (d) if, in the City's reasonable opinion, the replacement individual or individuals do not have sufficient skill and expertise to replace the Key Personnel, the provisions of clause 16.3 will apply.

- 4.3 The City may, in its discretion during the Term, give notice requiring the Service Provider to remove Personnel from work relating to the Services, in which case the Service Provider must promptly arrange for the removal of such Personnel and ensure that any replacement Personnel are acceptable to the City.

5 EVENT SITES

5.1 Grant of access

- (a) The Service Provider must, at its cost, obtain any authorisations or approvals to enable access to and non-exclusive use of the Event Site which is not controlled by the City in connection with the performance of the Services.

5.2 Use of Event Site

- (a) The Service Provider's occupation and use of the Event Site will be at its own risk.
- (b) The Service Provider must not use the Event Site for any purpose other than the purposes related to the performance of the Services.
- (c) The Service Provider must:
- (i) keep the Event Site (or that part of the Event Site to which the Service Provider has access) clean and tidy for so long as it has access to and use of it;
 - (ii) not modify or damage any part of the Event Site, including puncturing any holes in the walls of any Event Site, without the prior written consent of the City and any landowner;
 - (iii) not bring onto any Event Site any object that may result in overloading or straining any floor, wall or other structure forming part of the Event Site;
 - (iv) make good to the standard required by the City or any relevant Government Agency any damage to the Event Site caused by the Service Provider or the Service Provider's Personnel;
 - (v) keep the Event Site free from rubbish and in good order and condition; and
 - (vi) comply with any direction given by the City or an authorised representative of the operator of the Event Site about the Event Site

5.3 Arrangements

- (a) The Service Provider acknowledges that it has carried out its own enquiries about the adequacy and suitability for use of each Event Site for the performance of the Services.
- (b) Subject to clause 5.2 and to the Service Provider supplying details of relevant Personnel and vehicles that require Event accreditation by the relevant Key Date set out in Schedule 2, the City will provide Event accreditation passes for applicable areas as required for the purposes of providing the Services. The Event accreditation passes must be displayed at all times while providing the Services.
- (c) The Service Provider is responsible for establishing and enforcing a legally compliant COVID Safe Plan for the delivery of the Services for each Event

which must be updated from time to time in order to meet legislative and other compliance requirements.

6 PAYMENT OF FEE

- 6.1 The City will pay the Fee set out in Schedule 3 to the Service Provider in accordance with the Payment Schedule and within 30 days of receipt of a valid tax invoice from the Service Provider in respect of each instalment.
- 6.2 The Fee is inclusive of all costs, expenses, disbursements, levies and taxes incurred by the Service Provider in providing the Services, including any costs incurred by the Service Provider in procuring any equipment for use in connection with the Services.
- 6.3 The City may set off money due to the City under this Agreement (or any other Agreement with the Service Provider) against any amount payable to the Service Provider by the City.
- 6.4 The City may withhold payment of the Fee if the Service Provider fails to comply with clauses 3.2(b) or 3.2(c).

7 GST

- 7.1 Amounts referred to in this Agreement are exclusive of GST.
- 7.2 If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.
- 7.3 Subject to first receiving a tax invoice or adjustment note as appropriate, the Receiving Party must pay the GST Amount when it is liable to provide the consideration.
- 7.4 If one party must indemnify or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 7.2 if the payment is consideration for a taxable supply.
- 7.5 If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 7.2 will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

8 INTELLECTUAL PROPERTY

8.1 Event and Services

The City acknowledges that:

- (a) the title and Intellectual Property Rights in the Deliverables remain the Service Provider's property at all times; and
- (b) without limiting clause 8.3, nothing in this Agreement, or in the use of the Services, or Deliverables under or in relation to this Agreement, affects the ownership of the ICIP and ICIP Rights in the Services or any Deliverables.

- 8.2 The Service Provider grants to the City an irrevocable, royalty free and non-exclusive license to use and reproduce the Deliverables including:
- (a) the right to retain a digital copy for archival purposes; and
 - (b) the right to reproduce, publish, or communicate to the public, or engage a third party to reproduce, publish, or communicate to the public in annual or other City reports, in any print media, social media or other promotional publications.
- 8.3 The City will:
- (a) respect any ICIP and ICIP Rights in the Deliverables; and
 - (b) not use the Deliverables in a materially different context, or edit, enhance, distort or alter the Deliverables in a way that would objectively adversely affect the ICIP or owners of the ICIP Rights.
- 8.4 The Service Provider warrants that:
- (a) the Deliverables will not infringe any Intellectual Property Right of any person; and
 - (b) where the Deliverables contain third party material the Service Provider has obtained:
 - i) all consents and licenses necessary to permit the lawful inclusion of such third party material in the Deliverables; and
 - ii) all consents and licenses necessary to grant the City the licence in clause 8.2.
- 8.5 The Service Provider indemnifies and holds the City harmless from any loss, damage, expense or liability incurring from a claim that the City's use of the Deliverables infringes the Intellectual Property Rights of any person.
- 8.6 Moral Rights
- (a) Without limiting clause 8.4, the Service Provider must ensure that each person involved in creating all or any part of the Deliverables, and each person whose performance is recorded in the Deliverables, irrevocably waives any and all Moral Rights they have in each copyright work or such other subject matter comprised in the Deliverables and consents to the City doing or failing to do any act in relation to those works that may, except for this clause, infringe their Moral Rights in the Deliverables including:
 - (vii) exercising any of the rights in the Deliverables without identifying such person;
 - (viii) exercising any of the rights in the Deliverables in a manner which incorrectly attributes any work created by such person or their performance to someone else; and
 - (ix) editing, deleting from or otherwise altering the Deliverables in any manner determined by the City or required or requested by any broadcaster as contemplated by this Agreement.

- (b) The Service Provider must ensure that the Deliverables do not use the image, likeness or name of any person or any property of any person, unless the Service Provider has ensured that such person or such property owner has given their written consent to such use in the Deliverables and the use of it as contemplated in this Agreement.

9 WARRANTIES

9.1 Mutual warranties

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration; and
- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

9.2 Service Provider warranties

The Service Provider warrants to the City that:

- (a) it is able to deliver the Services in accordance with the Performance Criteria and Key Dates;
- (b) it has the right and power to grant to the City the licences and assignments granted under this agreement and the grant to and exercise by the City of those licences and assignments will not breach any law or infringe the rights (including Intellectual Property Rights) whether under statute, common law or otherwise of any person;

- (c) it has obtained all Authorisations and insurances required under any Law to carry out its obligations under this agreement;
- (d) all work performed by the Service Provider and the Personnel under this agreement will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Service Provider's size and experience;
- (e) the Deliverables will be fit for purpose;
- (f) the Service Provider will not:
 - (i) prejudice or compromise the City's reputation; or
 - (ii) breach any Law;
- (g) all Services supplied under this Agreement will be in conformity with any specifications and requirements referred to in Schedule 2;
- (h) it has the expertise, experience and resources required to perform its obligations under this Agreement;
- (i) all Personnel will be appropriately trained and experienced; and
- (j) it is, and shall remain at all times during the provision of the Services, an Indigenous Business.

10 CONTRACT MANAGEMENT

10.1 The Service Provider must comply with all directions given by the Contract Manager.

10.2 The Service Provider must:

- (a) report to the Contract Manager about the performance of the Services regularly or otherwise as directed by the Contract Manager;
- (b) accept any notice or document issued by the City;
- (c) liaise with the Contract Manager in good faith, in particular in relation to complaints, comments or other communications received about the Services; and
- (d) provide any information requested by the Contract Manager to assist the City in assessing the performance of the Service Provider under this Agreement.

10.3 Replacement of representatives

Each party may at any time replace the Contract Manager or Service Provider's Representative by notifying the other party in writing of the new details of the representative and the date that the replacement will take effect.

10.4 Meetings

The Contract Manager and Service Provider's Representative must meet weekly, or at such other intervals reasonably required by the Contract Manager, at a time and place directed by the Contract Manager. At each meeting the Contract Manager and Service Provider's Representative must be up to date and informed about the

responsibilities of each party and the current status of the performance of the Services.

10.5 Reporting

The Service Provider must provide all reports required in accordance with Schedule 2.

11 CONFIDENTIALITY AND DISCLOSURES

11.1 Use and disclosure of Confidential Information

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 11.2 or 11.3.

11.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party must ensure that any person to whom Confidential Information is disclosed under paragraph (a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under paragraph (a).

11.3 Disclosures required by law

- (a) Subject to paragraph 11.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under paragraph (a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:

(A) only disclose Confidential Information to the extent necessary to comply; and

(B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

11.4 Receiving party's return or destruction of documents

On termination of this agreement the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

11.5 Security and control

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is secure from theft, loss, damage or unauthorised access or alteration.

12 PROMOTION AND SPONSORSHIP

12.1 The City has the exclusive right to enter into arrangements with third parties in relation to:

- (a) broadcast or transmission in any media of any kind for the Event and/or the provision of the Services on a live and delayed basis; and
- (b) obtaining sponsorship for the Event.

12.2 The Service Provider must not, and must ensure that no Personnel do or omit to do any act which may prejudice any broadcast rights or sponsorship for the Event.

12.3 The Service Provider must assist the City, co-operate with and provide assistance to broadcasters and sponsors of the Event.

12.4 The Service Provider must not issue any information, publication, document or article for publication in any media concerning the Services or the Event without the City's prior written consent.

13 PRIVACY

Each party must comply with all Privacy Laws in relation to Personal Information and must take all reasonable steps to ensure that its employees and agents comply with the Privacy Laws.

14 RISK AND INSURANCE

14.1 The Service Provider must:

- (a) provide and maintain during the Term and any Further Term:

- (i) public liability insurance on an occurrence basis of not less than the amount specified in Item 14 of Schedule 1 for each occurrence of bodily injury and property damage showing the City as an interested party on certificate of currency;
 - (ii) insurance for employees, contractors, invitees or guests for workers compensation under applicable workers compensation legislation or obligations imposed under common law; and
 - (iii) professional indemnity insurance of not less than the amount specified in Item 14 of Schedule 1 (or ensure the Key Personnel engaged to provide structural engineering services provides and maintains such insurance during the Term); and
 - (iv) property and motor vehicle insurance sufficient to cover property used by the Service Provider in association with providing the Services and motor vehicles used for transporting items to and from each Event.
- (b) if requested, provide the City with copies of these insurance policies (including the certificates of currency).

15 INDEMNITY

15.1 Without limiting the City's other rights under this Agreement or otherwise at law, the Service Provider must indemnify the City against any claim, damage, expense, loss, cost (including reasonable legal costs) or liability (including liabilities of the principal to third parties) arising out of or in connection with:

- (a) loss of, loss of use of, destruction or damage to real or personal property of the City or any third party, including existing property;
- (b) breach of confidentiality or privacy;
- (c) infringement of Intellectual Property Rights or Moral Rights; or
- (d) injury to, or disease or illness (including mental illness) or death of any persons,

to the extent that, and in proportion to which, such claim, damage, expense, loss, cost or liability arises from:

- (e) a breach by the Service Provider of this Agreement; or
- (f) any negligent act or omission of the Service Provider or its Personnel in the performance of the Services or otherwise in relation to this Agreement.

16 TERM AND TERMINATION

16.1 Term

The rights and obligations under this document begin on the Start Date and end on the earlier of:

- (a) termination under clause 16; and
- (b) the End Date,

unless the parties agree in writing to extend the Term.

16.2 Termination for convenience

- (a) The City may at any time terminate this Agreement by giving the Service Provider written notice.
- (b) The parties acknowledge and agree that if the City terminates this Agreement for convenience, the Service Provider is entitled to retain any portion of the Fee it has received for the provision of the Services prior to the date of termination.
- (c) The City is not required to pay the Service Provider any portion of the Fee that remains unpaid at the date of termination, except for work in relation to the provision of the Services which the Service Provider has been directed in writing to undertake by the City prior to the date of termination.
- (d) The Service Provider is not entitled to any other payment or compensation in connection with the termination, including for any indirect or consequential loss (including any loss of opportunity, profit, anticipated profit, business, business opportunities, revenue or loss of reputation) or damages.

16.3 Termination

- (a) In addition to the rights of the City under clause 16.2:
 - (i) if the Service Provider fails to comply with clauses 3.2(b), 3.2(e), 3.2(g), 4.1(b), 4.2(d), 8.2(b), 12.4, 13, or 14;
 - (ii) if the Service Provider is, subject to Parts 5.1, 5.2 and 5.3A of the *Corporations Act 2001* (Cth) and to any regulations or Ministerial declarations made thereunder, affected by an Insolvency Event; or
 - (iii) if the City elects not to proceed with the Event pursuant to clause 22.5,

the City may immediately terminate this Agreement by notice in writing.
- (b) If the Service Provider fails to comply with any other clause of this Agreement, the City may give the Service Provider notice specifying the failure and requiring the Service Provider to fix the failure within 14 days or another time specified by the City in its absolute discretion.

16.4 If the Service Provider does not remedy the failure within the specified time, the City may immediately terminate this Agreement by notice in writing.

16.5 If this Agreement is terminated in accordance with this clause 16:

- (a) The following clauses survive termination or expiry of this agreement 1 (Interpretation), 11 (Confidentiality and Disclosures), 14 (Risk and Insurance), 15 (Indemnity), 16.5 (Effect of Termination), 19 (Disputes), 20 (Notices) and 21 (General);
- (b) the Service Provider must refund to the City any proportion of the Fee paid in advance in respect of which Services have not yet been provided as at the date of termination; and
- (c) the Service Provider must:
 - (i) cease providing the Services;
 - (ii) take all steps reasonably necessary to minimise any loss the City may suffer as a result of the expiry of termination of this agreement;

- (iii) cease to use and any Confidential Information;
- (iv) deliver to the City at a place specified by the City, without retaining any copies (in hard copy or electronically), all Confidential Information in the possession custody or power of the Service Provider; and
- (v) within 5 business days after the date of termination, and if directed by the City to do so, assign or novate in favour of the City any warranties, subcontracts or rights under any subcontracts entered into or obtained by the Service Provider in connection with the carrying out of the Services.

17 VARIATION

- 17.1 The City may give the Service Provider a written notice directing the Service Provider to vary the scope of the Services to be provided under this Agreement.
- 17.2 Within 10 Business Days of a notice under clause 17.1 the Service Provider must provide the City with a written notice specifying the cost of the variation of the Services, subject to clause 17.4.
- 17.3 Within 10 Business Days of receipt of the notice referred to in clause 17.2 the City will respond in writing either accepting or rejecting the cost stated in the notice. If the City rejects the notice the scope of the Services will not be varied.
- 17.4 The City may at any time give the Service Provider notice, in writing or orally, directing the Service Provider to immediately vary the scope of the Services. Upon issue of such a notice this Agreement will automatically be varied to include the new scope. The parties must act promptly and reasonably in negotiating any variation to the Fee required as a result of a notice by the City given pursuant to this clause.

18 FORCE MAJEURE

18.1 Notice and suspension of obligations

If a party to this document is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other party prompt notice of that fact including:
 - (i) full particulars of the Force Majeure Event;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it; and
- (b) the obligations under this document of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

18.2 Effort to overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial dispute in any way that it considers inappropriate.

18.3 Alternative supply

During any period in which the Service Provider is not performing obligations because of a claimed Force Majeure Event, the City may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the Service Provider is not performing without incurring any liability to the Service Provider.

18.4 Extended Force Majeure Event

- (a) If a Force Majeure Event continues for more than 10 Business Days, or for any period of time that will prevent the Event from proceeding, either party may terminate this document by giving at least one Business Day's written notice to the other party.
- (b) Neither party is liable to the other for any Damages suffered by the other in connection with a Force Majeure Event.

19 DISPUTES

19.1 If a dispute arises between the parties about this Agreement then the parties will endeavour to resolve the dispute by negotiation within 10 business days.

19.2 If the dispute between parties is not resolved by negotiation within that 10 business days then both parties must refer the dispute to senior representatives for further negotiation for a period of 10 business days.

20 NOTICES

20.1 A notice, consent or other communication under this Agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email.

20.2 A notice, consent or other communication that complies with this clause 21 is regarded as given and received:

- (a) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
- (b) if it is sent by mail, 5 Business Days after it is posted; or
- (c) if sent by email, at the time sent (provided this is a Business Day), unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

21 GENERAL

21.1 This Agreement contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Agreement are of no effect.

21.2 A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.
- 21.3 A party may only assign, encumber, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.
- 21.4 Nothing in this Agreement in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 21.5 In accordance with s121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Service Provider agrees to allow the City immediate access to the following information contained in records held by the Service Provider:
 - (a) information that relates directly to the performance of the services by the Service Provider;
 - (b) information collected by the Service Provider from members of the public to whom the Service Provider provides, or offers to provide, services on behalf of the City; and
 - (c) information received by the Service Provider from the City to enable the Service Provider to provide services to the public.
- 21.6 The invalidity, illegality or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provisions.
- 21.7 This Agreement may only be varied in writing by the agreement of the parties.
- 21.8 This Agreement is governed by and construed in accordance with the law of the State of New South Wales.
- 21.9 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Agreement.
- 21.10 The parties acknowledge and agree to this Agreement being executed electronically, and in counterparts, in accordance with the Electronic Transactions Act 2000 (NSW).

22 PUBLIC HEALTH ORDERS

- 22.1 In this clause 22, "Public Health Order" means an order made by the Minister for Health and Medical Research under section 7 of the Public Health Act 2010 (NSW), as amended, updated, replaced or superseded.
- 22.2 COVID-19 Pandemic means the pandemic caused by the disease known as Novel Coronavirus (COVID-19) classified as a pandemic by the World Health Organization on 11 March 2020.
- 22.3 To the extent of any inconsistency between this clause and any other clause of this Agreement, this clause prevails.
- 22.4 The Service Provider must:
 - (a) at all times, comply with any Public Health Order issued that is applicable to the provision of the Event; and
 - (b) immediately comply with and follow any of the City's directions in order for the City to comply with any Public Health Order.

- 22.5 The City may end the Agreement by notice in writing to the Service Provider at any time if, as a result of the COVID-19 Pandemic, the City elects not to proceed with the Event.
- 22.6 As the result of a Public Health Order or the COVID-19 Pandemic, the City may:
- (a) postpone the delivery of the Services (and related Fee payments) to a later date agreed by the Parties; or
 - (b) request that the Service Provider otherwise alter the delivery of the Services, with both parties to act reasonably in any negotiations resulting from the City's request.
- 22.7 To the fullest extent permitted by law, the Service Provider agrees that the City is not liable for and releases the City from all claims, actions, demands, liabilities, costs, claims for compensation, rights of action, losses, forfeitures, proceedings (whether actual or potential), expenses or demands incurred by the Service Provider as a result of:
- (a) the Service Provider's compliance with this clause 22; and
 - (b) the exercise of the City's rights under this clause 22 (including if the City elects not to proceed with the Event in accordance with clause 22.5).

23 CHAIN OF RESPONSIBILITY

- 23.1 In this clause:
- (a) Chain of Responsibility means legislation that extends liability for Road Law offences to all parties whose actions, inactions or demands influence conduct on the road particularly in relation to speed, fatigue, vehicle standards, vehicle roadworthiness, load restraint, and mass and dimension.
 - (b) HVNL means the Heavy Vehicle National Law (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.
 - (c) Heavy Vehicle has the meaning given to it in the HVNL.
 - (d) Road Law means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the HVNL.
- 23.2 The Service Provider must in connection with any activity carried out under or in relation to this Agreement:
- (a) comply with all Chain of Responsibility legislation and must ensure that any activity relating to a Heavy Vehicle used in connection with this Agreement is undertaken in accordance with all applicable Chain of Responsibility obligations (including any fatigue, speed, mass, dimension or load restraint requirements);
 - (b) not ask, direct or require (directly or indirectly) the driver of a Heavy Vehicle or a party in the Chain of Responsibility to do or not do something the Service Provider knows, or ought reasonably to know, would have the effect of causing the driver to contravene their Chain of Responsibility obligations, including to breach any fatigue, speed, mass, dimension or load restraint requirements;

- (c) ensure that any subcontractors (where any Heavy Vehicle activities are subcontracted under this Agreement) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 23.2

23.3 The Service Provider will ensure that it has proper processes in place to manage its Chain of Responsibility obligations.

23.4 The Service Provider must provide the City, upon request, with all information and documentation reasonably required by the City to monitor or audit compliance with this clause (including permitting inspections of vehicles and business premises).

24 FURTHER TERM

24.1 The City may at its sole discretion by notice in writing to the Service Provider in the six months before the End Date, extend the Agreement for the Further Term. If the City so extends the Agreement, the Service Provider must supply the Services during the Further Term on the same terms as the Terms subject to the following changes:

- (a) the Further Term Start Date and End Date will be as listed in Schedule 1;
- (b) the Fees for the Further Term will be as specified in Schedule 3.

25 SUSTAINABILITY

25.1 In carrying out the Services, the Service Provider must:

- (a) ensure that, all relevant national and local environmental protection laws, regulations and standards are met;
- (b) prevent pollution, and ensure the safe storage, transportation and disposal of hazardous materials and avoid the use of toxic and persistent chemicals; and
- (c) minimise the negative environmental impacts of goods and services throughout their lifecycle by assessing and mitigating risks across operations, transport and supply chains.

26 NOVATION

The City may novate this Agreement to a third party. The Service Provider must do all things and execute all documents necessary to give effect to the novation, including executing and delivering to the City a deed of novation in the form required by the City.

EXECUTION PAGE

Executed as an Agreement by:

**Signed for and on behalf of THE)
COUNCIL OF THE CITY OF SYDNEY** by its)
duly authorised officer in the presence of:)

Signature of Witness
Electronic signature of:

Signature of Authorised Officer
Electronic signature of:

Name of Witness

Name of Authorised Officer

Address of Witness
Affixed by me on:

Title of Authorised Officer
Affixed by me on:

Date signed

Date executed by Authorised Officer

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

SIGNED by [**Service Provider company name**], ACN [**insert ACN**], in accordance with Section 127 of the *Corporations Act 2001*(Cth);)

Signature of Director
Electronic signature of:

Signature of Director/Secretary
Electronic signature of:

Name of Director
Affixed by me on:

Name of Director/Secretary
Affixed by me on:

Date signed

Date signed

or, where the Service Provider is a sole director company:

SIGNED by [**Service Provider company name**], ACN [**insert ACN**], in accordance with Section 127 of the *Corporations Act 2001* (Cth):

Signature of Witness

Electronic signature of:

Name of Witness

Affixed by me on:

Date signed

Signature of Sole Director/Secretary

Electronic signature of:

Name of Sole Director/Secretary

Affixed by me on:

Date signed

**SCHEDULE 1
REFERENCE SCHEDULE**

Item	Name	Description
Item 1	Date of Agreement	The date on which the City executes this Agreement
Item 2	City	Name: The Council of the City of Sydney ABN:22 636 550 790 Address: Town Hall House, 456 Kent Street, Sydney NSW 2000 Contact Person: [to be inserted following selection of successful applicant] Phone: email:
Item 3	Service Provider	Name: [to be inserted following selection of successful applicant] ABN: Address: Contact Person: Phone: email:
Item 4	(a) Start Date (b) End Date (c) Term (d) Further Term	The Date of Agreement 30 June 2025 Two years Start date: 1 July 2025 End date: 30 June 2026
Item 5	Contract Manager	[to be inserted following selection of successful applicant]
Item 6	Event	- 2023 Sydney New Year's Eve - 2024 Sydney New Year's Eve If the Further Term is exercised: - 2025 Sydney New Year's Eve
Item 7	Event Site	Various locations within the City of Sydney as notified to the Service Provider by the City from time to time.
Item 8	Fee	[to be inserted following selection of successful applicant]
Item 9	Key Dates	Refer to Part 2 of Schedule 2

Item	Name	Description													
Item 10	Key Personnel	<table border="1"> <thead> <tr> <th>Name</th> <th>Role</th> </tr> </thead> <tbody> <tr> <td>[to be inserted following selection of successful applicant]</td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>		Name	Role	[to be inserted following selection of successful applicant]									
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Item 11	Payment Schedule	Refer to Schedule 3													
Item 12	Performance Criteria	Refer to Schedule 4.													
Item 13	WHS Returnable Documents	<table border="1"> <thead> <tr> <th>Document description</th> <th>Due date</th> </tr> </thead> <tbody> <tr> <td>Safe Work Method Statements (SWMS)</td> <td>1 December of each year</td> </tr> <tr> <td>Risk Assessments</td> <td>1 December of each year</td> </tr> <tr> <td>Fatigue Management Plan</td> <td>1 December of each year</td> </tr> <tr> <td>COVID-19 Safety Plan (if required)</td> <td>1 December of each year</td> </tr> <tr> <td>Safety Data Sheets</td> <td>1 December of each year</td> </tr> </tbody> </table>		Document description	Due date	Safe Work Method Statements (SWMS)	1 December of each year	Risk Assessments	1 December of each year	Fatigue Management Plan	1 December of each year	COVID-19 Safety Plan (if required)	1 December of each year	Safety Data Sheets	1 December of each year
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Public liability insurance	\$20 million per occurrence														
Professional Indemnity insurance	\$5 million														

SCHEDULE 2 SERVICES

SUMMARY

The Service Provider are responsible for the delivery of the following elements:

- **Pylon Projections** – the Service Provider must supply an overarching creative concept including sample imagery and/or curated original artworks. The City’s projection content supplier will turn the concept and imagery or artwork into projection animations in collaboration with the Service Provider.
- **Live performance** – The Service Provider is responsible for the activity onstage including any performers, musicians, instruments, and props, in addition to costumes, hair, and makeup. The City’s TV Broadcast Partner will supply the stage, stage management and production elements.
- **Message Stick** – The stage performance must include the presentation of a message stick to the Lord Mayor.
- **Fireworks Soundtrack** – The soundtrack must be an original commissioned work with rights assigned to the City in perpetuity including a) rights to any musical compositions used in the Calling Country performance (comprising of music and lyrics), sound recordings and live performance; b) the right to reproduce, publish, communicate to the public or engage a third party to reproduce, publish, or communicate to the public; and c) the right to use the material in City reports, print media, social media or other promotional publications.
- **Artist Management** - the Service Provider is responsible for engaging, contracting, and paying any performers or artists.

In order to assist the Service Provider in the carrying out of the Services, the City will:

- creatively lead, manage and produce the Event
- provide the intensity map for the purpose of choreographing the fireworks display and composing the fireworks soundtrack
- facilitate creative meetings with all key stakeholders
- contract and manage all other Event suppliers and partners that do not fall within the remit of the Service Provider (including Broadcast Partner, Pylon Projection Content Service Provider, Fireworks Service Provider and Lighting Service Provider)
- ensure that the City’s TV Broadcast Partner will supply the stage, stage management and production elements
- provide access to the rehearsal space at the City of Sydney Creative Studios for up to 6 days.

SCOPE OF WORK

The Service Provider must develop a Calling Country overarching creative concept, including sample imagery and/or curated original artworks, for the Sydney New Year’s Eve (the Event), commencing at 9.00pm on 31 December and concluding at 9.11pm on 31 December in each year.

The Service Provider must:

- work in collaboration with the City and the City’s Service Providers to provide the creative direction of the 11-minute Calling Country segment, scheduled to commence at 9pm. This includes 8 minutes of pylon projections and curated soundtrack followed by a 3-minute live performance, including the presentation of the message stick, as part of the TV broadcast of the event;
- be responsible for the engagement, contracting, payment and management of all artists and performers involved in the Calling Country segment including the live performance, the pylon projections, the fireworks soundtrack and any other elements delivered by the Service Provider under this agreement;
- deliver the Calling Country segment soundtrack which must be an original commissioned work with rights assigned to the in perpetuity including
 - a) rights to any musical compositions used in the Calling Country performance (comprising of music and lyrics), sound recordings and live performance;
 - b) the right to reproduce, publish, communicate to the public or engage a third party to reproduce, publish, or communicate to the public; and

- c) the right to use the material in City reports, print media, social media or other promotional publications;
- collaborate with the City and the Fireworks Service Provider, to ensure that the fireworks display supports the curatorial vision for the Calling Country segment;
- collaborate with the City and the Pylon Projections Content Service Provider, to develop and provide artworks and designs for the 11-minute animated sequence presentation to be projected onto the Sydney Harbour Bridge pylons for the Calling Country segment;
- collaborate with the City and the Lighting Services Provider & Designer to ensure the lighting display compliments all creative elements of the Calling Country segment; and
- for purposes of clarification, the Service Provider will develop a new creative concept for each year of the contracted agreement.

General Requirements

The Service Provider must:

- Attend regular 'Sydney New Year's Eve' meetings with the City which include the pylon projection service provider, fireworks service provider, lighting service provider, and broadcast partner (approximately 15 meetings of 1.5 hours each);
- Consult with Metropolitan Local Aboriginal Land Council on the development of the Calling Country program and incorporate feedback as directed by the City;
- Submit any information and/or documentation as requested by the City within a timely manner;
- Comply with the City's program and any directions from City staff for the purposes of meeting compliance requirements e.g., noise management restrictions;
- Acknowledge that there may be operational constraints where the delivery of the Services may need to be adjusted in order to continue operation under respective constraints;
- Be responsible for payment of all fees for all artist collaborators, subcontractors and personnel involved in the delivery of the Services;
- Seek and assign all Intellectual Property Rights in any work created, produced or developed by the Service Provider in accordance with the Agreement;
- Submit a post event report outlining key successes and recommendations to improve the delivery of the scope of work in future;
- Have adequate capacity, systems and procedures to supply and manage the requested services during the Term; and
- Provide suitably experienced personnel who are able to successfully deliver the scope of work.

KEY DATES & DELIVERABLES

Milestones	Date	Deliverable
1	Week commencing 14 August 2023	First creative meeting (regular, weekly, meetings will be scheduled following this meeting).
2	Wednesday 23 August 2023	Creative concepts first draft presented. Confirmation of artists including soundtrack musician/composer, performers, visual artist(s)
3	Friday 1 September 2023	Creative concepts second draft presented. Soundtrack first draft due to City for feedback
4	Friday 8 September 2023	Creative concepts completed. Soundtrack second draft due to City for feedback Commence discussions with Pylon Projection Content Creation Supplier.
5	Monday 18 September 2023	Soundtrack third draft due to City for feedback. Pylon projection creative storyboard finalised.
6	Monday 25 September 2023	Final mastered soundtrack delivered to City.
7	Monday 9 October 2023	Present live performance content to the City for feedback.
8	Mid November 2023	Pylon projection colour testing night to review projections.

9	Monday 13 November 2023	Pylon projection creative animation finalised and delivered to City (NB: with Pylon Projection Content Creation Supplier).
10	1 December 2023	Submission of WHS documents, as required
11	Week commencing 4 December 2023	Media Launch (date and time to be confirmed by the City).
12	Week commencing 4 December 2023	Pre-recording of the ideas behind the creative concepts with the television broadcast partner.
13	Saturday 30 December 2023	Performance rehearsal on ABC Stage, Sydney Opera House
14	Sunday 31 December 2023	Event day/evening.
15	Week commencing 15 January 2024	Provision of a post event report.

- Dates are subject to change. Dates for future years will be provided by the City prior to the first creative meeting.

SCHEDULE 3 - PAYMENT SCHEDULE

Payment of the Fee will be in four instalments as set out below:

- a) First instalment: 10% paid on the completion of Milestone 1 noted in the Key Dates and the receipt of valid tax invoice;
- b) Second instalment: 35% paid on the completion of Milestones 2 to 6 (inclusive) noted in the Key Dates and the receipt of valid tax invoice;
- c) Third instalment: 35% paid on the completion of Milestone 7 to 9 (inclusive) noted in the Key Dates and the receipt of valid tax invoice, and;
- d) Fourth instalment: 20% (remainder of the fee) will be paid on the completion of Milestone 10 to 15 (inclusive) noted in the Key Dates and the receipt of a valid tax invoice.

Payment terms are in accordance with clause 6.1

**SCHEDULE 4
PERFORMANCE CRITERIA**

The City will use the following Performance Criteria to evaluate performance of the Service Provider.

Performance will be evaluated regularly, and upon completion of the contract. Each assessment will form the basis of the performance review.

General Performance Criteria Score Rating Scale:

- 1 unacceptable / deficient
- 2 limited / flawed
- 3 adequate / satisfactory / appropriate
- 4 competent / proficient
- 5 strong / superior / exceeds expectations

Key Performance Indicator		Rating					Comments
		1	2	3	4	5	
1	Key Milestone <ul style="list-style-type: none"> • Timely completion of the services as outlined in the Key Dates and Deliverables. 						
2	Quality of work						
3	Time <ul style="list-style-type: none"> • Comply with the timeline as per the Key Dates and Deliverables. • Promptly advising the City of any foreseeable time delays. 						
4	Reporting <ul style="list-style-type: none"> • Timely and constructive response to the post-event report. 						
5	Communication <ul style="list-style-type: none"> • Timely response to emails and phone calls. • Professional, courtesy and regular communication with the City and service providers. • Work collaboratively with the City and service providers. 						
6	WH&S compliance <ul style="list-style-type: none"> • The Contractor manages the project 						

	effectively, meets the City's WHS requirements and complies with the relevant WHS legislation to ensure that the Contractor, the City, nor their workers or others in the workplace are placed at risk of injury, illness or prosecution.						
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* The Milestones have been set out in Part 2 of Schedule 2. These are the results that the Service Provider is expected to deliver to meet the City's key contract requirements