

1. Definitions:

‘Child Safety Law’ means the *Child Protection (Working with Children) Act 2012* (NSW), the *Child Protection (Working with Children) Regulation 2013* (NSW), *Children’s Guardian Act 2019* (NSW) and any other child protection law that may apply to the Supplier in connection with the Services or Deliverables to be supplied under this Contract.

‘City’ means the Council of the City of Sydney ABN 22 636 550 790.

‘City Contact’ means the person identified by the City in Schedule 1.

‘Contract’ means (in order of priority) these Contract Terms (**‘Terms’**), schedules and any attachments.

‘Contract Period’ means the period commencing on the Contract Date in Schedule 1 and ending on the Expiry Date in Schedule 1, unless terminated earlier in accordance with clause 18 or extended pursuant to clause 19.

‘Deliverables’ means any goods, documents, materials or information (including, but not limited to any notes, drawings, methodologies, reports or templates) in any format (whether electronic or otherwise) which the Supplier is required to provide to the City under this Contract specified in Schedule 2, and includes any such items supplied by the Supplier in connection with the Services.

‘GST’ means any goods and services tax, value added tax or sales tax imposed on the sale or supply of goods, services and rights including but not limited to a tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

‘IPR’ means all present and future rights conferred in law in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and information supplied in accordance with clause 223, 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.

‘Laws’ means all applicable laws, regulations, orders, industry codes and standards, including all WHS Legislative Requirements.

‘Moral Rights’ means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute anywhere in the world.

‘Personnel’ of a party means the officers, employees, agents and contractors (including their employees and contractors) of that party.

‘Services’ means all services supplied by or on behalf of the Supplier under this Contract, including the Administrative Requirements, specified in Schedule 2.

‘Site’ means any place or thing used by the City in the course of conducting its business, or any other premises owned or controlled by the City.

‘Specifications’ means (in order of priority) (a) the specifications for the Services and Deliverables set out in Schedule 2, and (b) any description of the Services and Deliverables referred to in any attachments to this Contract.

‘WHS Legislative Requirements’ means all applicable work health and safety legislation, regulations, rules, Codes of Practice and Australian Standards as amended from time to time.

Any other term that starts with a capital letter and used in these Terms has the meaning given to it in the Schedules.

2. Delivery: The Supplier must deliver the Services and Deliverables to the Delivery Address in accordance with the Key Dates and the Specifications.

3. Acceptance: If the Services or Deliverables do not comply with the Specifications, the City may terminate this Contract or require the Supplier to promptly modify the Services or Deliverables so that they comply with the Specifications. Execution of a delivery document or payment by the City does not constitute acceptance by the City.

4. Price: The prices are as set out in Schedule 3 and include all levies, duties, taxes (except GST, unless expressly stated to be

inclusive of GST), insurance packaging and delivery costs. The prices for those elements of the Services and Deliverables payable on a lump sum basis are set out in Part A Schedule 3. The prices for those elements of the Services and Deliverables payable on a schedule of rates basis (if applicable) are set out in Part B Schedule 3.

5. Quantities: The Supplier acknowledges that the quantity of Services and Deliverables required by the City may vary over the Contract Period and the City is under no obligation to order any specific quantities. The City will confirm the quantities of Services and Deliverables required under this Contract by issuing one or more purchase orders.

6. Payment: The Supplier may invoice the City in accordance with the invoice frequency in Schedule 1. Each invoice must itemise the GST included in the Prices, state the City’s purchase order number, and be submitted to the address for invoices in Schedule 1. The City will pay correctly rendered invoices for Services and Deliverables accepted by the City (less any amounts due to the City from the Supplier) in accordance with the payment terms in Schedule 1.

7. Goods and Services Tax: If GST is imposed on a supply made pursuant to this Contract, the recipient of that supply must pay the GST payable by the supplier in respect of the supply. The Supplier must ensure that any invoice provided by it to the City constitutes a tax invoice that will, where applicable, enable the City to claim any tax credits for the GST in respect of supplies to which the invoice relates.

8. Risk and Title: Risk in the Deliverables will pass to the City when the Deliverables are received by the City at the Delivery Address. Title in the Deliverables (other than Deliverables licensed under clause 10) will pass to the City on the earlier of acceptance of, or payment for, the Deliverables by the City.

9. Cancellation: The City may cancel or reduce the quantity of Services or Deliverables by notifying the Supplier before the relevant Key Date, or if the Supplier fails to supply the Services or Deliverables by the relevant Key Date. The City will not be liable for any amounts or expenses for cancelled Services or Deliverables.

10. IPR: The parties agree that:
 (a) subject to clauses 10(b) and 10(c), the Supplier grants the City (and its Personnel) an irrevocable, non-exclusive, royalty free, perpetual licence to use and copy the Deliverables so that the City (and its Personnel) can make full use of them anywhere in the world for any purpose;
 (b) the City owns the IPR in any modifications made by the City to the Deliverables; and
 (c) the Supplier assigns (now and in the future) all IPR to the City in any Deliverables or other material created by the Supplier under or in connection with this Contract.

11. Moral Rights: The Supplier must obtain from its Personnel all necessary written unconditional and irrevocable consents and waivers permitted by applicable law to any act or omission that would otherwise infringe any of their Moral Rights in the Deliverables whether occurring before or after a consent or waiver is given for the benefit of the City, its licensees, successors in title, and anyone authorised by any of them to do any acts comprised in the copyright in any Deliverables.

12. Warranty: The Supplier warrants:
 (a) that all Deliverables: (i) are new and in good condition; (ii) comply with all relevant Australian standards and industry codes; (iii) are free from defects in design, materials and workmanship; (iv) are of good and merchantable quality and fit for their intended purposes, including the purpose expressly stated in Schedule 2; and (v) comply with the Specifications;
 (b) for Services, that the Supplier will: (i) provide the Services with

the degree of skill, care and diligence that would be expected of a skilled professional experienced in providing the same or similar services; (ii) ensure that the Services are fit for the purposes expressly stated in Schedule 2; (iii) comply with the Specifications; (iv) comply with all reasonable directions of the City Contact; and (v) comply with all City conduct policies (as notified to the Supplier by the City from time to time), relevant Australian standards and industry codes; and

(c) that the Services and Deliverables and their use and supply will not breach any obligation of confidence or infringe the IPR of any person.

13. Breach of Warranty: If the City notifies the Supplier, that a Service or Deliverable fails to comply with the warranties given under this Contract, the Supplier must, without prejudice to any other rights of the City:

- (a) in the case of the warranties provided under clause 12(a), during the warranty period specified in Schedule 1, fix any non-conformity; and
- (b) in the case of any other warranty provided under this Contract, promptly (at the City's option) (i) remedy that failure (including by replacing the Deliverable or resupplying any Services if necessary), (ii) provide to the City a full refund of the price paid for the relevant Deliverable or Service, or (iii) deduct in accordance with the City's directions the price paid for the relevant Deliverable or Service from any amounts owing to the Supplier.

14. Indemnity: Without limiting the City's other rights under this Contract or otherwise at law, the Supplier must indemnify the City on demand against any claim, damage, expense, loss, cost (including reasonable legal costs) or liability (including liabilities of the City 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 IPR or Moral Rights; and
- (d) injury to, or disease or illness (including mental illness) or death of, persons,

to the extent that, and in proportion to which, such claim, damage, expense, loss, cost or liability arises from any negligent act or omission of the Supplier or its Personnel. The City does not need to incur any expense, loss or cost in order to claim against the indemnity claimed under this clause.

15. Limit of Liability: (a) Subject to clause 15(b), the Supplier's aggregate liability to the City, whether in contract, tort (including negligence) or otherwise at law, in relation to this Contract or in respect of the Services is limited to the amount in Schedule 1.

(b) The limitation in clause 15(a) will not apply to limit the Supplier's liability to the City in relation to:

- (i) fraudulent or criminal conduct by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables;
- (ii) a wilfully wrongful act or omission by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables;
- (iii) injury to, or disease or illness (including mental illness) or death of, persons, or damage to property of third parties;
- (iv) breach of confidentiality or privacy by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables;
- (v) infringement by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables of an intellectual property right or moral rights; or
- (vi) conduct by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables which in the City's view exhibits reckless disregard for the consequences.

16. Insurance: The Supplier must at its own expense effect and maintain the insurances listed in Schedule 1, and ensure any subcontractors involved in the supply of the Services or Deliverables effect and maintain equivalent insurances. Policies must be issued with an insurer licensed by the Australian Prudential Regulatory Authority in Australia or holding an investment grade rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests. The Supplier must provide to the City a certificate of currency for each of the insurance policies listed in Schedule 1 before signing this Contract, and on request from the City at any other time.

17. Assignment and Subcontracting: The Supplier must not novate or assign part or all of this Contract. The Supplier must not use any subcontractors for supply of the Services or Deliverables without the City's prior written consent. If the Supplier engages a subcontractor, the Supplier remains liable for the subcontractor's performance.

18. Termination: The City may terminate this Contract:

- (a) on at least 1 months' notice for any reason in its discretion (without liability);
- (b) immediately by giving notice to the Supplier if the Supplier (i) commits a breach of this Contract which is not remedied within 7 days of written notification by the City or (ii) becomes, threatens, resolves to become or is likely to become subject to any form of insolvency, administration, receivership, bankruptcy or liquidation; or (iii) enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up; or
- (c) in whole or in part immediately by giving notice to the Supplier if: (i) the Supplier fails to meet a Key Date; or (ii) the Supplier fails to remedy any breach of the WHS Obligations; or (iii) the Supplier breaches its WHS Obligations more than once; or (iv) a breach of the WHS Obligations by the Supplier results in the serious injury or illness or death of any person or a dangerous occurrence (as defined in the WHS Legislative Requirements) on a Site; or (v) other damage results from the Supplier's failure to comply with the WHS Obligations.

19. Further contract periods: The City may at its sole discretion by notice in writing to the Supplier in the six months before the Expiry Date, extend the Contract Period for the Further Contract Period. If the City so extends the Contract Period, the Supplier must supply the Services and/or Deliverables during the Further Contract Period on the same terms as the Terms subject to the following changes:

- (a) the start date of the Further Contract Period will be the date immediately after the Expiry Date;
- (b) the end date of the Further Contract Period will be the date specified in Schedule 1.

20. Entire Agreement: This Contract is the entire agreement between the City and the Supplier in relation to the Services and Deliverables and prevails over any other terms or conditions issued by either party, including any purchase order issued in respect of the Services or Deliverables.

21. Work Health and Safety:

21.1 WHS Obligations: Without limiting the Supplier's obligations under any provision of the Contract, the Supplier must comply, and must ensure that its workers (as that term is defined by the WHS Legislative Requirements), Personnel and any other person engaged or caused to be engaged by the Supplier, and any person whose activities in carrying out the Services are influenced or directed by the Supplier, comply with the WHS Legislative Requirements, including:

- (a) the WHS Requirements;
- (b) notifying the City Contact, immediately (and in any event within 12 hours of such matter arising) of all work health and safety matters arising out of, or in any way in connection with the Services; and

(c) any other directions to the Supplier regarding health, safety or the environment issued by the City from time to time, (together the **'WHS Obligations'**).

21.2 Monitoring

The Supplier:

- (a) acknowledges and agrees that the City may carry out periodic inspections of the Supplier's compliance with the WHS Legislative Requirements (and the Supplier agrees to provide the City with reasonable access to the Site and/or information to enable such monitoring to be carried out); and
- (b) acknowledges and agrees that, by exercising its right of access, or conducting any monitoring, under this subclause 21.2 or otherwise, the City is not assuming any management or control of the Site or the Services and is only accessing the Site or receiving information to monitor the Supplier's compliance with its obligations under the Contract and/or the WHS Legislative Requirements.

21.3 Breach:

- (a) If, at any time, the City Contact is of the opinion that the Supplier and/or a worker or a member of the Supplier's Personnel is in breach of the WHS Obligations, the Supplier must, if directed by the City Contact: (i) suspend, without payment, the provision of the Services in whole or in part; (ii) not resume providing any part or the whole of the Services until the Supplier fully satisfies the City Contact; (iii) immediately remedy any breach at its own expense; (iv) remove any member of the Supplier's Personnel from the Site and/or not allow that member of the Supplier's Personnel to be involved in providing any Services under this Contract.
- (b) If the Supplier fails to comply with its obligation under clause 20.3(a)(iii) to immediately remedy the breach, the City may, in addition to its other rights and remedies, have the obligation performed by others. The cost incurred in doing so will be a debt due and payable on demand by the Supplier to the City and may be set off by the City against any amount otherwise payable to the Supplier by the City.

22. Child Safety: The Supplier warrants that it will not be undertaking any child related work (as defined in the Child Safety Laws) in connection with this Contract. It is the responsibility of the Supplier to determine which Child Safety Laws it must comply with and ensure organisation-wide compliance.

23. Confidentiality: Any information supplied to a party to this Contract ('**Recipient**') by the other party to this Contract ('**Supplying Party**') relating to this Contract (whether in writing or otherwise) and treated by the Supplying Party as confidential will be the Supplying Party's confidential information unless it is:

- (a) public knowledge at the time of its supply to the Recipient; or
- (b) in the Recipient's lawful possession prior to its supply to the Recipient.

The Recipient must keep the Supplying Party's confidential information confidential, safe and secure, not disclose it to any person (except Personnel of the Recipient who have a need to know or if required to disclose the information by law) and return it when it has performed all of the work under this Contract or this Contract terminates or expires, whichever is the earlier. The Supplier may not make any public statement about this Contract unless it has first obtained written consent from the City.

24. Privacy: The Supplier must not, directly or indirectly collect, use or disclose any personal information under or in connection with this Contract except to the extent necessary to provide the Products. The Supplier must comply with the *Privacy Act 1988 (Cth)*, the *Privacy and Personal Information Protection Act 1998 (NSW)* and all other applicable privacy legislation and codes, and all reasonable directions of the City. On termination or expiry of this Contract, the Supplier must promptly return to the City or, if requested by the City, destroy all copies of any such personal information, in which case any right to collect, use or disclose that personal information ceases.

25. Variation: This Contract may only be varied by the agreement of

the parties in writing.

26. No fetter: Nothing in this Contract in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

27. Government information (public access): In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Supplier agrees to allow the City immediate access to the following information contained in records held by the Supplier:

- (a) information that relates directly to supply of the Services and/or Deliverables by the Supplier;
- (b) information collected by the Supplier from members of the public to whom the Supplier provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Supplier from the City to enable the Supplier to provide services to the public.

28. Compliance with Laws:

- (a) The Supplier must ensure that all Services and Deliverables comply with all applicable Laws.
- (b) Each party must comply with all applicable Laws in the performance of this Contract.

29. Applicable Law: The laws of New South Wales apply to this Contract and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

30. Public Health Orders:

- (a) 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.
- (b) COVID-19 Pandemic means the pandemic caused by the disease known as Novel Coronavirus (COVID-19) classified as a pandemic by the World Health Organisation on 11 March 2020.
- (c) To the extent of any inconsistency between this clause and any other clause of this Contract, this clause prevails.
- (d) The Supplier must:
 - (i) at all times comply with any Public Health Order issued that is applicable to the Services and Deliverables;
 - (ii) immediately comply with and follow any of the City's directions relating to the COVID-19 Pandemic; and
 - (iii) establish and enforce a legally compliant COVID-19 Safety Plan for the delivery of the Services and Deliverables where required in accordance with the Public Health Orders.
- (e) As the result of a Public Health Order or the COVID-19 Pandemic the City may:
 - (i) end the Contract by notice in writing to the Supplier at any time if the City elects not to proceed with the delivery of the Services and/or Deliverables;
 - (ii) return any unused Deliverables already supplied (postage costs to be met by the City);
 - (iii) postpone the delivery of the Services or Deliverables to a later date agreed by the parties;
 - (iv) request that the Supplier otherwise alter the delivery of the Services or Deliverables, with both parties to act reasonably in any negotiations resulting from the City's request.
- (f) To the fullest extent permitted by law, the Supplier 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 Supplier as a result of:
 - (i) the Supplier's compliance with this clause 30; or
 - (ii) the exercise of the City's rights under this clause 30.

31. Chain of responsibility:

31.1 For the purposes of 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 HNVL.
- (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.

31.2 The Supplier must in connection with any activity carried out under or in relation to this Agreement:

- (a) comply with all Chain of Responsibility legislation and 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 sub-contracted under this Agreement) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 31.2. 31.2

31.3 The Supplier must ensure that it has proper processes in place to manage its Chain of Responsibility obligations.

31.4 The Supplier 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).

32. Electronic signing: The parties acknowledge and agree to this Contract being executed electronically, and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW).

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:

Name of witness

Address of witness

Affixed by me on:

Date signed

Signature of authorised officer

Electronic signature of:

Name of authorised officer

Title of authorised officer

Affixed by me on:

Date signed

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 the Supplier in accordance with section 127 of the Corporations Act 2001:

Signature of sole company director/secretary

Electronic signature of:

Name

Affixed by me on:

Date signed

Signed by the Supplier:

Signature of witness

Electronic signature of:

Name of witness

Address of witness

Affixed by me on:

Date signed

Signature of Supplier

Electronic signature of:

Name of Supplier

Affixed by me on:

Date signed

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

SCHEDULE 1 CONTRACT DETAILS

| Item | Description | Details | |
|------|-------------------------|---|--------------------|
| 1. | Commencement Date | The date this Contract is signed by the City. | |
| 2. | Expiry Date | 31 January 2023 | |
| 3. | Further Contract Period | n/a | |
| 4. | Supplier | Name: #Insert ABN: #Insert | |
| 5. | Supplier Contact | Name: #Insert Title: #Insert Address: #Insert Phone: #Insert Email: #Insert | |
| 6. | City Contact | Name: James Adams Title: Marketing Communications Manager Address: 456 Kent Street, Sydney, NSW, 2000 Phone: 9246 7307 Email: jaadams@cityofsydney.nsw.gov.au | |
| 7. | Invoice frequency | #to be agreed with supplier | |
| 8. | Address for invoices | supplier.invoices@cityofsydney.nsw.gov.au | |
| 9. | Payment terms | 30 days from the date of receipt of the invoice by the City | |
| 10. | Insurances | Public liability – per occurrence | \$10 million |
| | | Professional indemnity | \$5 million |
| | | Statutory workers compensation | As required by law |
| 11. | Limit of Liability | \$5 million | |
| 12. | Warranty Period | 12 months | |

SCHEDULE 2 SPECIFICATIONS

| Item | Description | Details | |
|------|---|---|--|
| 1. | Services | Capture and supply still images of the 2022 Sydney New Year's Eve event. | |
| 2. | Deliverables | The Sydney New Year's Eve photography team will be responsible for capturing the Welcome to Country, the 9pm Calling Country fireworks display, pylon projections starting at 8pm, midnight fireworks display and the general atmosphere around the harbour which will include key vantage points/ | |
| 3. | Standards for Services and/or Deliverables | <p>Fast turnaround and supply of images is critical, with delivery of image selects required during and immediately on completion of the 9pm and midnight fireworks.</p> <p>Photographers will be supplied with a link to a file sharing platform to upload images for distribution.</p> <p>Image selects are shared and published no more than ten minutes after each show, with the full balance of images required no later than 2 January 2023.</p> | |
| 4. | Administrative Requirements | Selected photographers will be required to attend regular meetings with City staff in the lead up to the event and site visits where necessary. | |
| 5. | WHS Requirements | WHS requirements to be specified for each vantage point | |
| 6. | Purpose of the Services and/or Deliverables | To showcase the Sydney New Year's Eve to a national and international audience. | |
| 7. | Delivery Address | Photographers will be supplied with a link to a file sharing platform to upload images for distribution. | |
| 8. | Key Dates | Obligation / Deliverable | Due Date |
| | | Image capture | 31 December 2022 |
| | | Image delivery (selects) | Within 10 minutes of 9pm and midnight fireworks completion |
| | | Image delivery (full suite) | 2 January 2023 |

SCHEDULE 3 PRICES**PART A: LUMP SUM PRICES**

| Item | Service / Deliverable | Price ex GST | Price inc GST |
|------|-------------------------------------|--------------|---------------|
| 1 | Lead photographer | | |
| 2 | Postproduction / image distribution | | |
| 3 | Licencing | | |
| 4 | Support staff / assistants | | |
| | Total Lump Sum Price: | | |

ATTACHMENT A