

Standing Offer Deed for Photography Services Panel

Council of the City of Sydney
ABN 22 636 550 790

[#To be inserted following selection of successful Tenderer]
ABN [#To be inserted]

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KEY DETAILS

1. **Date of this Standing Offer Deed** The date on which this Deed is executed by the City, as set out on page 12

2. **Parties**

City Council of the City of Sydney
ABN 22 636 550 790
Address Town Hall House
456 Kent Street
SYDNEY NSW 2000

Supplier [#To be inserted following selection of Tenderer]
ABN [#To be inserted]
Address [#To be inserted following selection of Tenderer]

3. **City's Panel Representative:** [#To be inserted following selection of Tenderer]
(clauses 1.1 and 7.1(a)) Name:
Address:
E-mail:

4. **Supplier's Panel Representative:** [#To be inserted following selection of Tenderer]
(clauses 1.1 and 7.1(b)) Name:
Address:
E-mail:

5. **Levels of Insurance** (clause 1.1 and Schedule 1)

- Workers Compensation/ Accident Insurance
- Public Liability (Minimum required \$10M per incident)

6. **Service Category** [insert e.g. Civic photography, event photography, portrait photography]

BACKGROUND

- A The City wishes to establish a Photography Services Panel that will source and supply photography and videography services as required by the City.
- B The City has issued a request for quotation in relation to the Photography Services Panel from which it will call upon Pre-Qualified Suppliers to undertake the Services.
- C The Supplier has lodged a response to the request for quotation and the City has determined to appoint the Supplier to the City's list of Pre-Qualified Suppliers for the Services on the terms and conditions of this Standing Offer Deed.

TERMS

1 Interpretation

1.1 Definitions

The following words have the following meanings in this Standing Offer Deed, unless the context requires otherwise.

Business Day means a day other than:

- (a) a Saturday, Sunday or a public holiday in New South Wales; or
- (b) 27, 28, 29, 30 or 31 December.

City means the party named as such in Item 2 of the Key Details.

City's Panel Representative means the person named as such in Item 3 of the Key Details, or as otherwise notified by the City to the Supplier.

City's WHS Policy means the City's work, health and safety policy available through City's website at:

http://www.cityofsydney.nsw.gov.au/_data/assets/pdf_file/0003/114573/Policy-WHS-Policy.pdf

Contract means a contract formed between the City and the Supplier under clause 4 and comprising the documents set out in clause 4.1(a).

Date of this Standing Offer Deed means the date on which this Deed is executed by the City.

Insolvency Event means, in relation to the Supplier, where:

- (a) it informs the City in writing or its creditors that it is insolvent or is financially unable to proceed with this Deed;
- (b) it is unable to pay its debts as and when they fall due;
- (c) notice is given of a meeting of its creditors with a view to the corporation entering a deed of company arrangement;
- (d) it enters into a deed of company arrangement with its creditors;

- (e) a controller or administrator is appointed to it;
- (f) a winding-up order is made against it;
- (g) it resolves by special resolution that it should be wound up voluntarily; or
- (h) it suffers an event or circumstance analogous to an event or circumstance set out in paragraphs (a) to (g) above.

Key Details means the section of this document headed Key Details.

KPIs means the key performance indicators set out in Schedule 2.

Panel means the panel of Pre-Qualified Suppliers from which the City may procure the provision of the Services.

Personnel means the employees, contractors, or other persons provided by the Supplier to perform any of the Services.

Pre-Qualified Supplier means a supplier, including the Supplier, appointed to the Panel.

Privacy Laws means the *Privacy Act 1988* (Cth) and the *Privacy and Personal Information Protection Act 1998* (NSW) and any rules, regulations, guidelines or orders issued under them.

Pre-Qualified Services means the services described in Schedule 5 to the extent required by the City on an as-needed basis from time to time by the Supplier under this Standing Offer Deed.

Schedule means a schedule to this Standing Offer Deed.

Schedule of Rates has the meaning set out or referred to in Schedule 4.

Scope of Services means the document at Schedule 5 to this Standing Offer Deed.

Service Category means the type of photography services that the Supplier has been appointed to provide.

Services means the provision of photography and videography services in each Service Category as described in the Scope of Services at Schedule 5.

Standing Offer Deed means this deed for the provision of the Services.

Statement of Work means the document contained in Schedule 1.

Supplier means the party named as such in Item 2 of the Key Details.

Supplier's Panel Representative means the person named as such in Item 4 of the Key Details, or as otherwise replaced by the Supplier in accordance with clause 7.1.

Term means the term of this Standing Offer Deed set out in clause 2.1 as may be extended in accordance with clause 2.2.

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.

1.2 Interpretation

In this Standing Offer Deed, except where the context otherwise requires:

- (a) clause and subclause headings shall not be used in the interpretation of this Standing Offer Deed;
- (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; and
- (g) where the Supplier comprises of more than one person, each of the persons comprising the Supplier will be jointly and severally liable under this Standing Offer Deed.

1.3 Contra proferentem

This Standing Offer Deed is not to be interpreted against the interests of a party merely because that party proposed this Standing Offer Deed or some provision in it.

2 Duration of this Standing Offer Deed

2.1 Term

This Standing Offer Deed commences on the Date of this Standing Offer Deed and will continue for a period of three (3) years unless:

- (a) terminated earlier under clause 8.1; or
- (b) extended under clause 2.2.

2.2 Extension of Term

- (a) The City may, by written notice to the Supplier given not less than 2 months prior to the expiry of the Term, extend the Term of this Standing Offer Deed for a further period of one (1) year.

- (b) The City is limited to issuing a maximum of two (2) notices of extension under clause 2.2(a).

3 Basis of panel

3.1 Composition of panel

- (a) The City has established a panel of Pre-Qualified Suppliers to supply the Services as may be requested from time to time by the City.
- (b) The Supplier acknowledges and agrees that at any time the City may engage other suppliers (whether or not on the Panel) to supply the Services.

3.2 Provision of Services

- (a) Subject to clause 3.2(b), if and when the City requires any Services, it will issue a Statement of Work which will be completed by the City with all relevant particulars in respect of the Services.
- (b) The City is not bound to engage the Supplier to provide any Services, nor does it promise any volume of Services will be procured under this Standing Offer Deed.
- (c) The Supplier acknowledges and agrees that the City may, in its absolute discretion, request one or more Pre-Qualified Suppliers to supply Services.
- (d) To the extent the City is entitled to do so by law, the City reserves the right in its absolute discretion at any time prior to the creation of a contract as contemplated in clause 4, to cease to proceed with the process outlined in this clause 3.2.
- (e) If the Supplier is able to undertake the Services, it must return to the City for acceptance the Statement of Work with all remaining particulars completed by the time specified in the Statement of Work.
- (f) Without limiting clause 3.2(d) or 3.2(e), the City may, when considering whether or not to engage the Supplier to provide the Services, do any one or more of the following:
 - (i) choose the Supplier to provide the Services, having regard to all the circumstances, including any evaluations the City has completed;
 - (ii) choose another Pre-Qualified Supplier or another supplier to provide the Services; or
 - (iii) decline to accept any response to a request or other selection procedure.
- (g) If the City selects the Supplier to provide the Services, the City will advise the Supplier in writing (in a manner the City determines) that the Supplier has been selected to provide the Services specified in the Statement of Work. For the avoidance of doubt, until the City confirms in writing that it has accepted the Supplier's completed Statement of Work, no contract is

formed or can be inferred in respect of the Services specified in the Statement of Work.

4 Statement of Work

4.1 Creation of individual Contracts

- (a) On each occasion that the City provides written confirmation to the Supplier that the City accepts a completed Statement of Work, a Contract will come into existence between the City and the Supplier comprising the following documents:
- (i) the Statement of Work;
 - (ii) clause 6 of this Standing Offer Deed; and
 - (iii) the form of contract as set out in Schedule 3.
- (b) If any other terms and conditions, such as purchase order terms and conditions, are issued by the City for each contract created in accordance with this clause 4, the Supplier and the City acknowledge and agree that those terms and conditions will not form part of the Contract, will not apply to each Contract and will be disregarded by both parties.

4.2 Date of formation of individual Contracts

The date on which a Contract for the provision of the Services set out in the Statement of Work is formed is the date on which the City provides written confirmation under clause 3.2(g).

4.3 Obligations

The City and the Supplier must carry out their respective obligations under each Contract from the date on which the Contract is formed.

4.4 Hierarchy

If there is any ambiguity or discrepancy between the documents comprising the Contract, the City's Panel Representative will direct the Supplier as to the interpretation to be followed, having regard to the order of priority specified at clause 4.1 of this Standing Offer Deed.

5 Not used.

6 Key Terms

6.1 Delivery of Services

The Supplier must comply with the Scope of Services when providing the Services.

6.2 No Employment / No Partnership

The Supplier agrees that the Supplier and the Personnel will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the City.

6.3 Insurance

The Supplier must effect and maintain the insurances listed in the Key Details. 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 & Poor's or AM Best. The Supplier must provide to the City a certificate of currency for each of the insurance policies listed in the Key Details promptly following a request by the City.

6.4 Compliance with Laws

The Supplier must comply with all applicable legislative requirements and the City's WHS Policy in performing the Services and must do all that is reasonably practicable to ensure that it complies with:

- (a) all applicable legislative requirements including without limitation the Privacy Laws and WHS Legislative Requirements; and
- (b) the City's WHS Policy and all other applicable codes and policies of the City of Sydney notified to the IT Personnel by or on behalf of the City from time to time.

7 Standing Offer Deed management

7.1 Panel representatives

- (a) The City must ensure that, at all times during the Term, there is a City's Panel Representative who may exercise all of the powers of the City under this Standing Offer Deed and may, by notice in writing to the Supplier, delegate any of the City's Panel Representative's powers, except the power to delegate.
- (b) The Supplier must ensure that at all times during the Term there is a Supplier's Panel Representative who may exercise all of the powers of the Supplier under this Standing Offer Deed and may, by notice in writing to the City, delegate any of its powers except the power to delegate.
- (c) Either party may name another person as its panel representative by notice in writing to the other party. The appointment of the person named in the notice as the panel representative will be effective from the date that notice is given to the other party in accordance with clause 10.5, provided however that the Supplier's proposed replacement Supplier's Panel Representative is acceptable to the City.

7.2 KPIs

- (a) The Supplier acknowledges that, without limiting the City's other rights under this Standing Offer Deed, the City may, at regular intervals, assess the performance of the Supplier by reference to the KPIs.
- (b) The Supplier acknowledges and agrees that its performance against the KPIs as assessed by the City may be taken into account by the City as a relevant consideration in determining whether the Supplier has the capacity to fulfil the requirements of any appointment.

8 Termination

8.1 Termination of this Standing Offer Deed

- (a) In addition to any other rights that it has under this Standing Offer Deed or at law, the City may terminate this Standing Offer Deed by giving notice in writing to the Supplier if:
- (i) the Supplier breaches any provision of this Standing Offer Deed and that failure or breach:
 - (A) is incapable of remedy; or
 - (B) if it is capable of remedy, continues for 10 Business Days after the date the City gives the Supplier a notice requiring the breach to be remedied;
 - (ii) subject to Parts 5.1, 5.2 and 5.3A of the *Corporations Act 2001* (Cth) and any regulations or Ministerial declarations made thereunder, an Insolvency Event occurs; or
 - (iii) the form of contract set out at Schedule 3 is terminated in accordance with its terms.
- (b) Without limiting or otherwise restricting clause 8.1(a), the City may at any time for its sole convenience, and without giving any reason, terminate this Standing Offer Deed by giving the Supplier not less than 10 Business Days' notice in writing. To the extent permitted by law, and without limiting or otherwise restricting clause 8.1(c), the City will not have any liability to the Supplier for any costs, claims or other amounts whatsoever arising out of or in respect of the termination of this Standing Offer Deed pursuant to this clause 8.1(b).
- (c) The City and the Supplier agree that if this Standing Offer Deed is terminated, any Contract formed in accordance with clause 4 of this Standing Offer Deed:
- (i) will not be affected; and
 - (ii) must be performed in accordance with its terms,
- unless the relevant Contract is terminated in accordance with its terms.

8.2 Termination of a Contract

The City and the Supplier agree that the termination of one or more Contracts formed in accordance with clause 4 will not affect the operation of this Standing Offer Deed or any other Contract formed in accordance with clause 4 of this Standing Offer Deed.

9 Confidentiality

- (a) Subject to clause 9(b):
 - (i) the Supplier must, and must ensure its personnel, agents, contractors and any subcontractors, keep confidential this Standing Offer Deed, any documents produced under this Standing Offer Deed and any information leading to the creation of this Standing Offer Deed; and
 - (ii) the City must keep confidential the Schedule of Rates.
- (b) Neither party is obliged to keep confidential the information in clause 9(a):
 - (i) the disclosure of which is:
 - (A) required by law or the rules of a recognised stock exchange;
 - (B) made to a court during proceedings to which the disclosing party is a party; or
 - (C) in respect of the City, for any legitimate purpose in connection with the exercise of its legislative functions; or
 - (ii) which is disclosed by the receiving party to its advisers or personnel in order to comply with, or exercise rights under this Standing Offer Deed provided that such persons are obliged to keep the information confidential.

10 General

10.1 Governing law

- (a) This Standing Offer Deed is governed by the law in force in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts in New South Wales, and any court that may hear appeals from those courts, for any proceedings in connection with this Standing Offer Deed.

10.2 Entire agreement

This Standing Offer Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or promise relating to that subject matter is replaced by this Standing Offer Deed and has no further effect.

10.3 Assignment

The Supplier must not assign, transfer or otherwise create an interest in any or all of its rights or benefits under this Standing Offer Deed without obtaining the prior written consent of the City.

10.4 **City acting as an authority**

- (a) Nothing in this Standing Offer Deed will fetter, limit or restrict in any way the discharge by the City of its obligations or rights under any legislative requirements or as an authority.
- (b) The Supplier will deal with the City as it would with any other authority with respect to obtaining any permits, approvals or licences.

10.5 **Notices**

- (a) A notice, consent or other communication under this Standing Offer Deed 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.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
 - (i) if it is delivered, when it has been received by a representative of the addressee at the addressee's address;
 - (ii) if it is sent by mail, 5 Business Days after it is posted; or
 - (iii) if it is sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- (c) For the purpose of this clause 10.5, the address and email address of the City and the address and email address of the Supplier are as set out at Item 3 and Item 4 of the Key Details respectively, or, in either case, another address or email address of which that party has given notice to the other party as its address for notices.

10.6 **Liability for expenses**

Each party must pay its own costs and expenses incurred in executing this Standing Offer Deed and any contract in accordance with clause 4 of this Standing Offer Deed.

10.7 **General representations and warranties**

Each party represents and warrants to the other party that:

- (a) it has full power to enter into and to comply with its obligations under this Standing Offer Deed;
- (b) it has taken all necessary action to authorise its entry into and to comply with its obligations under this Standing Offer Deed;
- (c) it has in full force and effect the authorisations necessary to enter into this Standing Offer Deed and to comply with its obligations under it and to allow it to be enforced; and

- (d) its obligations under this Standing Offer Deed constitute its binding obligations and are completely and lawfully enforceable against it in accordance with their terms subject to laws generally affecting creditors' rights and to principles of equity.

10.8 **Counterparts**

If this Standing Offer Deed is signed in counterparts, then each counterpart is deemed an original and together they constitute one document.

10.9 **Attorneys**

Each person who executes this Standing Offer Deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTION

Executed as a deed

Signed for and on behalf of the **Council of the City of Sydney** ABN 22 636 550 790 by its duly authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Print name

Print name

Date signed by authorised officer

Signed by **[#Supplier's name to be inserted]** ABN **[#To be inserted]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director/company secretary

Signature of director

Print name

Print name

OR

Signed for **[#Supplier's name to be inserted]** ABN **[#To be inserted]** under power of attorney in the presence of:

Signature of witness

Signature of attorney

Print name

Print name

Schedule 1 to the Standing Offer Deed – Statement of Work

STATEMENT OF WORK		
	Interpretation	<p>Words that are capitalised in this Statement of Work but are not defined have the meaning given to those words in the Standing Offer Deed between the City and the Supplier dated [insert].</p> <p>The parties acknowledge that by signing this Statement of Work a contract has come into existence between the City and the Supplier comprising the following documents:</p> <ul style="list-style-type: none"> (a) this Statement of Work; (b) clause 6 of the Standing Offer Deed; and (c) the contract set out at Schedule 3 of Standing Offer Deed.
2.	Date by which the Statement of Work must be signed and returned to the City	[insert the date that the Supplier is to return the signed Statement of Work to the City]
3.	Term	<p>This Statement of Work commences on the Statement of Work Start Date and expires on the Statement of Work End Date, unless terminated earlier in accordance with the Standing Offer Deed.</p>
	(a) Statement of Work Start Date:	Date on which the City confirms its acceptance of the completed Statement of Work.
	(b) Statement of Work End Date:	[insert date]
4.	Payment	<ul style="list-style-type: none"> (a) Method of payment: EFT (b) Payment of invoice required within this period after receipt by the City (if not standard terms): _____ (insert payment period) <i>If blank, 30 days applies unless legislation requires otherwise.</i>
5.	Administrative Requirements	Meetings: [insert frequency of briefing meetings with the City or 'Not Applicable']

		[insert any additional qualifications required for the work]				
PART 2: SERVICES						
6.	Service Category	<input type="checkbox"/> Category 1: Civic photography <input type="checkbox"/> Category 2: Event photography <input type="checkbox"/> Category 3: Documentary, street and location photography <input type="checkbox"/> Category 4: Portrait Photography <input type="checkbox"/> Category 5: Aboriginal and Torres Strait Islander content <input type="checkbox"/> Category 6: Videography <input type="checkbox"/> Category 7: Special interest and other types of photography (Please specify): <hr/>				
7.	Services	[insert detailed description of the required services, including any specific deliverables, location and shoot details, timing, talent, any specific shots.]				
8.	Specifications	<p>The Supplier must provide the Services so that they meet the following functional and technical specifications:</p> <p>(a) [insert detailed description of the specification for this particular engagement, e.g. reference images.]</p>				
9.	KPI's	The Supplier must achieve the KPI's set out in the Standing Offer Deed.				
10.	Delivery Address	[insert method of delivery, including link to Dropbox or email of City representative contact, naming conventions, specifications for images, metadata conventions, editing and retouching requirements.]				
11.	Key Dates	<p>The Supplier must perform the Services in accordance with the timeframes set out in the following table:</p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%;">Milestone</th> <th style="width: 50%;">Performance Date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Milestone	Performance Date		
Milestone	Performance Date					

		[insert]	[insert]
		[insert]	[insert]

PART 3: FEE

12.	Fee	<p>The City will pay the Supplier the following Fee in accordance with the Schedule of Rates set out in the Standing Offer Deed:</p> <p>[Supplier to insert Fee for the Services.]</p>
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EXECUTION

Signed for and on behalf of the Supplier:

Signature:	<i>[Supplier to sign when providing Fee estimate for the Services.]</i>
Name of authorised signatory:	
Date:	

Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY:

Signature:	<i>[City to sign if Fee accepted and Services to proceed.]</i>
Name of authorised signatory:	
Date:	

Schedule 2 to the Standing Offer Deed - KPIs

The City will monitor the performance of the Supplier in providing the Services by reference to the KPIs set out below and in accordance with clause 7.2 of this Standing Offer Deed.

General Key Performance Indicator Score Rating Scale

The City will use the following general KPIs to evaluate performance of the Supplier.

Performance will be evaluated regularly, at least annually. Each assessment will form the basis of the performance review.

Should one or more of the KPIs be considered irrelevant or unworkable the parties must meet in good faith and agree on an alternative KPI(s) as may be required under the contract.

Score Rating	Description
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	
Key Objectives / Deliverables*						
Quality of work						
Time						
Communication						
WH&S compliance						

* The **Key Objectives / Deliverables** have been set out in the Statement of Work, clause 6 of the Standing Offer Deed and the contract set out at Schedule 3 of the Standing Offer Deed. These are the results that the Supplier is expected to deliver to meet the City's key contract requirements.

Schedule 3 to the Standing Offer Deed – Contract Terms

1 Definitions:

Words that are capitalised in this Contract but are not defined have the meaning given to those words in the Standing Offer Deed between the City and the Supplier dated [insert].

In this Contract, except where the context otherwise requires:

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’s Panel Representative means the person identified in Item 3 of the Key Details of the Standing Offer Deed, or as otherwise notified by the City to the Supplier.

Commencement Date means the date set out in the Statement of Work.

Contract has the meaning set out in the Standing Offer Deed.

Date of the Contract has the meaning set out in clause 4.2 of the Standing Offer Deed.

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.

Delivery Address means the delivery address set out in the Statement of Work.

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 24, 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.

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.

Key Dates means the key dates for the Services and Deliverables set out in the Statement of Work.

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, which are described in the Statement of Work, as may be varied by the parties.

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 the specifications for the Services and Deliverables set out in the Statement of Work.

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.

WHS Requirements means the WHS requirements set out in Schedule 5.

2 Independent contractor

- 2.1 The Supplier is engaged as an independent contractor and carries on its own business.
- 2.2 Nothing in this Contract renders the Supplier (nor its Personnel) an employee, worker, agent, partner or joint venturer of the City, and the Supplier must, and must procure that its Personnel, not hold itself out as an employee, agent, partner or joint venturer of the City.
- 2.3 Neither the Supplier nor its Personnel have the authority or power to bind the City or to contract in the name of or create liability against the City in any way or for any purpose.

3 Delivery

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

4 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.

5 Equipment and Sites

The Supplier is responsible for supplying all equipment, tools, materials, sites or data that may be necessary to enable the Services to be provided, unless otherwise supplied by the City. Any Site, facilities or equipment provided by the City may only be used by the Supplier for the purposes of providing the Services. The Supplier's occupation and use of any Site, facilities or equipment provided by the City will be at its own risk.

6 Price

The prices are as set out in the Schedule of Rates and are inclusive of all costs, expenses, levies, duties, taxes (except GST, unless expressly stated to be inclusive of GST), insurance, packaging and delivery for the Services, Deliverables and Supplier's obligations under this Contract.

7 Payment

The Supplier may invoice the City in accordance with the invoice frequency in the Statement of Work. 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 the Statement of Work. 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 the Statement of Work.

8 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.

9 Superannuation

- 9.1 Where the Supplier is a sole trader and superannuation contributions must be paid by the City pursuant to the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, the City will pay the superannuation contribution for the benefit of the Supplier in addition to the prices set out in the Schedule of Rates.
- 9.2 Any obligation on the City to pay superannuation contributions for the benefit of the Supplier under the *Superannuation Guarantee (Administration) Act 1992 (Cth)* does not render the Supplier an employee of the City at common law.

10 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 12) will pass to the City on the earlier of acceptance of, or payment for, the Deliverables by the City.

11 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.

12 IPR

- 12.1 The Supplier hereby assigns to the City all rights and interests in the Deliverables, including all IPR, at the time each Deliverable is created. The rights assigned hereunder include the perpetual, worldwide right of the City to edit, delete, subtitle, translate, record, publish, reproduce, use, license, print, distribute or otherwise exploit the Deliverables in whole or in part, in any manner and in any media whether now known or hereafter devised.
- 12.2 The Supplier must obtain all required rights, interests and consents from any of its Personnel and any third parties necessary to comply with clause 12.1.
- 12.3 The Supplier undertakes to do all acts and execute all documents necessary or desirable for perfecting the City's title, rights and interests to the Deliverables.
- 12.4 Where any of the Deliverables include any ICIP and ICIP Rights, and subject to the Supplier notifying the City of any such ICIP or ICIP Rights, the parties agree:
- (a) nothing in this Agreement affects the ownership of any ICIP and ICIP Rights;
 - (b) to use reasonable endeavours to respect any ICIP and ICIP Rights in the Deliverables;
 - (c) not to use the ICIP 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; and
 - (d) to use reasonable endeavours to ensure any attribution include full and proper attribution or naming of the community connected with the ICIP, subject to such information being provided by the Supplier.

13 Grant of Licences

Subject to clause 12, the City grants to the Supplier an irrevocable, non-exclusive, royalty free, non-transferable, perpetual licence to use the Deliverables, unless otherwise specified in the Statement of Work.

14 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.

15 Warranty

The Supplier warrants:

- (a) that all Deliverables: (i) are of good and merchantable quality and fit for their intended purposes; and (ii) 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 the Contract; (iii) comply with the Specifications; (iv) comply with all reasonable directions of the City's Panel Representative; 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.

16 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 15(a), during the Contract Period, 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.

17 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.

18 Limit of Liability

- 18.1 Subject to clause 18.2, 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 of \$5 million.
- 18.2 The limitation in clause 18.1 will not apply to limit the Supplier's liability to the City in relation to:
- (a) fraudulent or criminal conduct by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables;
 - (b) a wilfully wrongful act or omission by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables;
 - (c) injury to, or disease or illness (including mental illness) or death of, persons, or damage to property of third parties;
 - (d) breach of confidentiality or privacy by the Supplier or a subcontractor engaged by the Supplier with respect to the Services or Deliverables;
 - (e) 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
 - (f) 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.

19 Insurance

- 19.1 The Supplier must:
- (a) from the date the Supplier commences the Services until the Completion Date, hold and maintain the following insurances:
 - (i) public liability insurance on an occurrence basis of not less than \$10 million per occurrence;
 - (ii) workers compensation insurance as required by law; and
 - (b) ensure any subcontractors involved in the supply of the Services or Deliverables effect and maintain equivalent insurances.
- 19.2 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 clause 19.1 before signing this Contract, and on request from the City at any other time.

20 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.

21 Termination

The City may terminate this Contract:

- (a) at any time for convenience by giving the Supplier five Business Days written notice;
- (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.

22 Work Health and Safety

22.1 WHS Obligations

- (a) 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:
 - (i) the WHS Requirements;
 - (ii) notifying the City's Panel Representative, 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

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

22.2 **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 22.2 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.

22.3 **Breach**

- (a) If, at any time, the City's Panel Representative 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's Panel Representative: (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's Panel Representative; (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 22.3(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.

23 **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.

24 **Confidentiality**

- 24.1 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.

24.2 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.

25 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 Services. 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.

26 Variation

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

27 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.

28 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.

29 Compliance with Laws

29.1 The Supplier must ensure that all Services and Deliverables comply with all applicable Laws.

29.2 Each party must comply with all applicable Laws in the performance of this Contract.

30 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.

31 Public Health Orders

31.1 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.

31.2 COVID-19 Pandemic means the pandemic caused by the disease known as Novel Coronavirus (COVID-19) classified as a pandemic by the World Health Organisation on 11 March 2020.

31.3 To the extent of any inconsistency between this clause and any other clause of this Contract, this clause prevails.

31.4 The Supplier must:

- (a) at all times comply with any Public Health Order issued that is applicable to the Services and Deliverables;
- (b) immediately comply with and follow any of the City's directions relating to the COVID-19 Pandemic; and
- (c) 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.

31.5 As the result of a Public Health Order or the COVID-19 Pandemic the City may:

- (a) 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;
- (b) return any unused Deliverables already supplied (postage costs to be met by the City);
- (c) postpone the delivery of the Services or Deliverables to a later date agreed by the parties;

request that the Supplier otherwise alter the delivery of the Services or Deliverables, with both parties to act.

Schedule 4 to the Standing Offer Deed - Schedule of Rates

The rates contemplated by this schedule are the maximum rates that can be used to calculate the fees for any Statement of Work.

1. Rates

[#To be inserted following selection of Tenderer]

Note: The daily rate is the maximum amount that can be charged in respect of a person performing the Services in a day commencing at midnight and ending 24 hours later.

[#To be inserted following selection of Tenderer]

Price adjustment – rise and fall of the schedule of rates

[#To be inserted following selection of Tenderer]

Schedule 5 to the Standing Offer Deed – Scope of Services

General requirements

In providing the Services, the Supplier must:

- supply all equipment, tools, materials, sites or data that may be necessary to complete Services specified in the Statement of Work;
- provide their own transport to and from the shoot location;
- ensure the Deliverables are provided in accordance with the Specifications set out in the Statement of Work;
- deliver the Services within the agreed time frame;
- engage sub-contractors as required to meet deliverables and find a suitable replacement to deliver photographs and video footage of an equivalent quality and standard;
- ensure that completed image release forms (in the form set out in Attachment A) for all identifiable people in photographs or video footage are provided to the City (as set out below);
- maintain agreed metadata conventions in the submission of photos;
- maintain agreed file naming conventions in the submission of photos;
- submit photographs and video footage to the Digital Asset Management System in accordance with the Statement of Work;
- carry out the Services to the satisfaction of the City's Panel Representative in accordance with the KPIs;
- comply with all WHS requirements set out in the Contract; and
- ensure that the Supplier and its Personnel carry out the Services in a professional and workmanlike manner.

Image Release Forms

Where photographs or videos include images of an identifiable person or identifiable people, the Supplier must ensure that all identifiable persons in the image sign the Image Release form set out at Attachment A to this Standing Offer Deed. Any signed hard copies of the Image Release forms must be provided to the City within 3 days of the photograph or video being captured. Digital image release is preferred and can be found at www.city.sydney/releaseform.

Service Categories

The Supplier is a Pre-Qualified Supplier to provide photography and videography services to the City for the following Service Categories:

Category 1: Civic Photography

This may include documenting official duties of City of Sydney Lord Mayor and councillors. Civic photographers will attend events such as citizenship and flag raising ceremonies, press conferences and community events such as park openings.

Category 2: Event Photography

This may include attending major events and community celebrations on behalf of the City of Sydney. The Supplier will be required to capture events large and small, from Christmas concerts to our large-scale lecture series CityTalks.

Category 3: Documentary, street and location photography

Capture the city and its communities for images to be used in editorial and advertising content. Documentary and street photographers will cover a wide range of subjects to show our area, facilities and people in natural settings.

Category 4: Portrait Photography

Create professional headshots and creative portraits in a studio or natural setting. This may take place in settings such as advisory panel meetings. Other shoots may require professional lighting and studio set-up.

Category 5: Aboriginal and Torres Strait Islander content

You are an Aboriginal and/or Torres Strait Islander person, and have experience working as a photographer or videographer creating images of Aboriginal and Torres Strait Islander people and events. You will attend Aboriginal and Torres Strait Islander events and community celebrations on behalf of the City of Sydney and create professional photography or videography in a culturally appropriate and sensitive way.

Category 6: Videography

The Supplier will capture video footage and edit video packages, including social media content in landscape and vertical video formats, event coverage and interviews. This may include shooting and editing of video in 4K 25 or 50fps.16:9, 4:5 and 9:16 (vertical) formats.

Category 7: Special interest

The Supplier will provide photography or videography in a category not listed in Category 1-6 above, as outlined in Item 8 of the Statement of Work.

WHS Requirements

The City will monitor the contract for its duration to ensure that the Supplier manages the project effectively, meets the City's WHS requirements and complies with the relevant WHS legislation to ensure that the Supplier, the City, nor their workers or others in the workplace are placed at risk of injury, illness or prosecution.

The Supplier must demonstrate their safe systems of work are sufficient for the process and maintain these arrangements for the duration of the agreement. This includes:

Injury and Incident Management	The Supplier must develop and maintain a reporting and corrective action system and register of all injuries and incidents that occur in relation to the delivery of services under this Contract.
Risk Assessments	A risk assessment of the services under the contract must be prepared by the Supplier and reviewed annually.
Induction and Training	The Supplier must develop and maintain a package of induction and training that is applicable to all staff working on the City's sites. A register of completed inductions and training must be kept by the Supplier for the duration of the Contract.

Staff inductions	Appropriate levels of WHS induction shall be provided to, or, carried out by the Supplier which will be documented and maintained throughout the Contract.
Record Management	The Supplier must maintain work health and safety records in an appropriate format.
Inspection, Testing and Maintenance	The Supplier must maintain and inspect plant and equipment as relevant to ensure it is in a safe condition and fit for purpose.

ATTACHMENT A – IMAGE RELEASE FORM

IMAGE RELEASE FORM

This form is for you to provide consent for the City of Sydney ('City') to use the images and recordings taken of you/your child.

Name of person appearing in photo/video	
Address	
Email address/phone number	
Are you signing as a parent or guardian on behalf of a minor? (please circle)	Yes No If yes, parent/guardian name

I acknowledge that image/s of me/my child have been taken during [insert].

I grant permission for the City, and persons authorised by the City, to collect, use and disclose the image/s in content produced by, for or about the City and its functions, services and programs. This includes but is not limited to:

- publishing, reproducing, or communicating the image/s to the public,
- cropping, editing, and adapting the image/s,
- combining the image/s with other images, video footage, audio recordings and text, and
- use of the image/s in all media (e.g. magazines, brochures, leaflets, advertisements, media releases, websites, social media, vodcasts, and inclusion in the City's archives).

I agree that the City can contact me to seek additional permissions to use the image/s beyond the scope of this release.

I agree that I/my child will not make or bring any claim against the City of Sydney, or persons authorised by the City, for any reason in relation to the image/s.

I acknowledge that I/my child will not receive any payment in relation to the City's use of the image/s and will not be able to inspect or approve any uses of the image/s.

I have read, and I understand and agree to, the terms of this Image Release.

Signature	
Date	

Privacy Protection Notice

This information is being collected for the purpose of using the image/s as outlined in this City of Sydney Image Release Form.

City of Sydney employees and third parties authorised by the City are the intended recipients.

The supply of this information is voluntary. If you are unwilling to provide this information the City of Sydney will be unable to use the image/s.

Please contact Customer Service on 02 9265 9333 or at council@cityofsydney.nsw.gov.au to access or correct your personal information.

The City Communications unit at the City of Sydney, located at 456 Kent Street, Sydney NSW 2000, is collecting this information and the City of Sydney will store it securely.

The City of Sydney will use your personal information for the purpose for which it was collected. For further details on how the City of Sydney manages personal information, please refer to our Privacy Management Plan (<https://www.cityofsydney.nsw.gov.au/policies/privacy-management-plan>).

Image details (photographer to complete)	
Date of shoot	
Name / description of shoot	
Description of person in image	