CITY OF SYDNEY

Charity participation agreement

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

For the [*insert name of event*]

Reference: [insert TRIM number]

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CHARITY PARTICIPATION AGREEMENT

THIS AGREEMENT is made on the date set out in Item 1.

PARTIES

(1) **THE COUNCIL OF THE CITY OF SYDNEY**, the details of which are set out in Item 2 ('City'), and

(2) **THE CHARITY**, the details of which are set out in Item 3 ('Charity')

BACKGROUND

A. The City will hold events in connection with the Event during the Term.

B. The City wishes to appoint the Charity as a non-exclusive charity partner for the Event.

C. The Charity is registered with the ACNC as a charity.

D. The Charity's appointment under this Agreement will offer a significant platform for the Charity to build awareness of its organisation and services by integrating the Charity's participation in the Event and through marketing and communications with respect to the Event.

E. The Charity's appointment under this Agreement will provide an opportunity for audiences at the Event to reflect on the broader needs of communities beyond the celebration and participation in the Event.

F. The City agrees to appoint the Charity, and the Charity agrees to participate in the Event, on the terms of this Agreement.

OPERATIVE PROVISIONS

1. INTRODUCTION

1.1 In this Agreement, unless the context otherwise requires:

ACNC means the Australian Charities and Not-for-profits Commission.

Agreement comprises the following documents:

(a) this document setting out the general terms and conditions;

(b) Schedule 1; and

(c) Annexures A and B.

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.

Charity's Mark means the trademarks set out in Item 8.

Charity's Representative means the person listed as the contact person in Item 3.

City's Marks means:

(a) the trade marks set out in Item 9;

(b) if applicable, the specific logos created for the Event, as notified by the City to the Charity; and

(c) any other trade mark notified by the City to the Charity.

Contract Manager means the person named in Item 6 who is appointed by the City as the City's key contact for the Event.

Confidential Information means:

(a) the terms of this Agreement;

(b) information that is comprised in or relates to the Intellectual Property Rights arising from the Event 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.

Consequential Loss means:

(a) loss of actual or anticipated revenue, income, profits or donations;

(b) lost financial opportunities (including opportunities to enter into or complete arrangements with third parties);

(c) loss of use or production;

(d) loss of any business or business opportunity;

(e) loss of goodwill;

(f) loss of business reputation;

(g) damage to credit rating; and

(h) direct or indirect financial costs.

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

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

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

(a) the *Protection of the Environment Operations Act 1997* (NSW); and

(b) the *Contaminated Land Management Act 1997* (NSW).

Event means the events described in Item 5.

Event Sites means all places and areas to be used by the Charity to carry out the activities set out in Annexure B for the participation of the Charity in the Event, including those locations and areas identified in Item 7.

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, state-wide or national strike or other state-wide wide or national industrial action (except where caused by the Charity).

Further Term means the period specified in Item 4(d), which commences on the day immediately following the End Date.

Government Agency means:

(a) a government or government department or other body;

(b) a governmental, semi-governmental or judicial person; or

(c) a person (whether autonomous or not) who is charged with the administration of a law.

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.

Intellectual Property Rights 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 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.

Item means an item in Schedule 1.

Laws means all applicable laws, orders, 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.

Performance Criteria means the requirements for performance of the Services set out in Item 11 of Schedule 1.

Personal Information has the meaning set out in the *Privacy and Personal Information Protection Act 1998* (NSW).

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

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.

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.

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

Term means the period commencing on the Start Date and ending on the End Date, being the period specified in Item 4(c) and includes any Further Term, unless terminated earlier in accordance with clause 14.

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.

1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

(i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) The words subsidiary, holding company and related body corporate have the same meanings as in the *Corporations Act 2001* (Cth).

(g) A reference to this document includes the agreement recorded by this document.

(h) 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.

1.3 In the event of any inconsistency or ambiguity between any document forming part of this Agreement, the documents take precedence in the order set out in the meaning of Agreement in clause 1.1.

2. RELATIONSHIP BETWEEN THE PARTIES

2.1 The parties acknowledge and agree that the Charity is strictly a participant in the Event.

2.2 The Charity must not represent itself, and must ensure that its Personnel do not represent themselves, as being partners, employees or agents of City.

2.3 The Charity 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.

3. CITY'S ACTIVITIES AND RESPONSIBILITIES

3.1 From the Start Date and without limiting any provision of this document, the responsibilities and activities with respect to the Event specified in Annexure A will apply to and will be carried out by the City.

4. CHARITY'S ACTIVITIES AND RESPONSIBILITIES

4.1 From the Start Date and without limiting any provision of this document, the responsibilities and activities with respect to the Event specified in Annexure B will apply to and will be carried out by the Charity.

4.2 The Charity must:

(a) observe and comply with all applicable laws and legislation, which includes Environmental Law and WHS Law, in relation to the Charity's involvement in the Event; and

(b) take all steps necessary to protect people and property in relation to the Charity's participation in the Event.

5. CHARITY'S ACKNOWLEDGMENTS

5.1 The Charity acknowledges and agrees that:

(a) its participation in the Event is integral to the Event itself;

(b) it must obtain the City's prior written approval before commencing any fundraising or activation activities in connection with the Event;

(c) if, after accepting the appointment under this Agreement, the Charity is unable to participate in the Event due to reasons beyond its control, the Charity must notify the City in writing as soon as practicable and if possible, at least one (1) month prior to the Start Date;

(d) the Charity acknowledges that the Event is a public event and that the Charity, its Personnel and representatives may be photographed or recorded by electronic means during the Event either by the City or third parties;

(e) by accepting the appointment under this Agreement, the Charity acknowledges that it consents for photographs and other electronic recordings to be taken of the Charity, its Personnel and representatives during the Event;

(f) any photographs or electronic recordings taken of the Charity, its Personnel and representatives during the Event will be owned by the City or third parties and that the City may use the photographs or recordings for promotional or other purposes consistent with its functions without the need to obtain the Charity's further consent; and

(g) the Charity consents to the City using the Charity's name, image and any recording of the activities of the Charity during the Term in any form of media, including but not limited to any broadcast in any media format, to promote the City, its business, events, partners and sponsors.

6. EVENT SITES

6.1 Grant of access

The City grants to the Charity access to and non-exclusive use of any relevant Event Site controlled by the City in connection with the Charity's participation in the Event.

6.2 Use of Event Sites

(a) The Charity's occupation and use of any Event Site will be at its own risk.

(b) The Charity must not use an Event Site for any purpose other than the purposes related to its participation in the Event.

(c) The Charity must:

(i) keep any Event Site (or that part of the Event Site to which the Charity 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 (if applicable);

(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 Charity or its 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 landowner or operator of the Event Site about the Event Site.

6.3 Arrangements

The Charity acknowledges and agrees that it has carried out its own enquiries about the adequacy and suitability for use of each Event Site for its participation in the Event.

7. INTELLECTUAL PROPERTY

7.1 Event and Services

(a) The City, on creation, owns all Intellectual Property Rights in, to and in connection to the Event unless the City expressly advises the Charity otherwise.

(b) Clause 7.1(a) does not apply with respect to any of the Material created by the Charity and its Personnel in connection with the participation of the Charity in the Event.

7.2 City's Marks

(a) The City grants to the Charity a non-exclusive, royalty free, revocable, non-transferable licence to use the City's Marks during the Term in accordance with this Agreement to the extent needed to perform its obligations under this document, but not to any greater extent or for any other purpose.

(b) The Charity must only use the City's Marks in Material if the City has given that Material to the Charity or the Charity has submitted representative Material including the City's Marks to the City and the City has approved its use in writing.

(c) The Charity acknowledges and agrees that:

(i) the City's Marks are extremely important and valuable to the City;

(ii) the City owns all right, title and interest in the City's Marks and the Charity has no right, title or interest in the City's Marks and, in particular, the powers conferred on authorised users by section 26 of the *Trade Marks Act 1995* (Cth) are expressly excluded;

(iii) any goodwill and any other right, title or interest from the Charity's use of the City's Marks accrues solely for the City's benefit;

(iv) the Charity will, at the City's request, immediately amend or withdraw any document or thing bearing the City's Marks;

(v) the Charity must only use the City's Marks in a manner which strictly accords with the terms of this Agreement and any directions or guidelines which the City provides to the Charity from time to time;

(vi) the City may request access to any Material bearing the City's Marks to ensure compliance with this agreement and any directions or guidelines for use of the City's Marks and, upon receipt of such a request, the Charity will provide the City with access to the relevant Material within 5 Business Days; and

(vii) the Charity will notify the City of any infringement, misuse of, unauthorised use of, challenge or claim to the City's Marks and the City may take such action in relation to such claim as its considers necessary in its sole and absolute discretion.

(d) The Charity must not:

(i) use the City's Marks as part of its trade name, corporate name or domain name or as part of any trade mark, logo or get up;

(ii) use the City's Marks in a manner which, in the City's reasonable opinion, may be prejudicial to the City or the City's Marks;

(iii) apply to register any trade mark, business name, company name or domain name which includes the City's Marks, or which is substantially identical or deceptively similar to the City's Marks; or

(iv) challenge the City's Marks or the City's ownership of the City's Marks or assist a third party to do these things.

(e) If in the City's opinion the Charity's use of the City's Marks does not comply with the terms of this Agreement or a direction or guideline for use of the City's Marks, the Charity must, at the City's discretion and at the Charity's expense, correct that use to the City's reasonable satisfaction.

(f) The Charity acknowledges and agrees that nothing in this Agreement confers any right, title or interest in the Charity in relation to the City's Marks, other than as licensee on the terms of this Agreement.

7.3 Charity's Mark

The Charity grants to the City a non-exclusive, royalty free, revocable, non-transferable licence to use the Charity's Mark during the Term.

7.4 Third Party Licences and Moral Rights

The Charity must obtain, at its own cost, all necessary licences and consents from any person relating to each copyright work or other subject matter which are necessary to enable the parties to do all things contemplated by this Agreement without infringing any laws or the rights (including the Intellectual Property Rights) of any person.

8. INDEMNITY

8.1 The Charity must indemnify the City for any personal injury, illness or death or damage to the City's property caused by the actions or omissions of the Charity or its Personnel.

8.2 The indemnity required under clause 8.1 shall be reduced proportionally to the extent that any acts, errors or omissions by the City or its Personnel caused or contributed to such injury, illness, death or damage.

8.3 The Charity must take out and maintain during the Term public liability insurance of not less than the amount in Item 10 with an insurer licensed by the Australian Prudential Authority to operate as an insurer in Australia or with an investment grade security rating from an industry recognised rating agency such as Moodies, Standard & Poors or Bests.

8.4 Prior to the Event Start Date, the Charity must provide the City with a certificate of currency for the public liability insurance required by clause 8.1(a).

8.5 The Charity is responsible for all risk of damage or theft in respect of any equipment or property used by the Charity and its Personnel in connection with the Event.

8.6 The Charity releases the City from all liability in respect of any claim, damage or loss suffered or incurred by the Charity and its Personnel in connection with the damage or theft of the equipment and property of the Charity and its Personnel in connection with the Event.

9. RISK AND INSURANCE

9.1 The Charity must:

(a) provide and maintain during the Term:

(i) public liability insurance on an occurrence basis of not less than the amount specified in Item 10 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, volunteers or guests for workers compensation under applicable workers compensation legislation and volunteer accident insurance under applicable legislation or obligations imposed under common law; and

(iii) if requested, provide the City with copies of these insurance policies (including the certificates of currency).

9.2 Notwithstanding anything to the contrary in this Agreement, neither party shall have any liability to the other in respect of any Consequential Loss sustained or incurred by a party as a result of any act or omission by a party (whether negligent or otherwise) or as a result of any breach of this Agreement by a party.

10. WARRANTY BY CHARITY

10.1 The Charity warrants to the City that:

(a) it has the right and power to grant to the City any 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;

(b) it has obtained all Authorisations and insurances required under any Law to carry out its obligations under this Agreement;

(c) the Charity will not:

(i) prejudice or compromise the City's reputation; or

(ii) breach any Law;

(d) all Personnel will be appropriately trained and experienced.

11. CONFIDENTIALITY, MEDIA RELEASES AND PROMOTION

11.1 The Charity agrees to keep confidential all Confidential Information, except where the information is or becomes generally available to the public or is required by law to be disclosed.

11.2 The Charity must not issue any media release concerning the Event without the prior written consent of the City.

11.3 The Charity acknowledges that the City has the exclusive right to enter into arrangements with third parties in relation to broadcast or transmission in any media, of any kind, of the Event and in relation to sponsorship of the Event.

12. PRIVACY

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

13. SUBCONTRACTING

13.1 This Agreement is personal to the Charity and cannot be assigned, transferred or subcontracted to another person without the prior express written consent of the City.

13.2 Where the City approves the use of subcontractors by the Charity, that approval may be subject to conditions provided by the City.

13.3 Approval to subcontract will not relieve the Charity from any liability or obligation under this Agreement.

14. CANCELLATION OF EVENT

14.1 The City may cancel the Event at its sole convenience. In such case, the City will give the Charity written notice of its intention to cancel the Event as soon as practicable, and if possible, at least two (2) weeks before the Event Start Date.

14.2 If this Agreement is terminated under clause 14.1, the City shall not be liable to the Charity for any Damages or Consequential Loss.

14.3 The City may cancel the Event if events occur beyond its control (including but not limited to any act of God, act of terrorism or inclement weather). In such case, the City may either:

(a) cancel the Event in its entirety; or

(b) reschedule the Event to another date or time.

14.4 If the City reschedules the Event under clause 14.3 the City will consult with the Charity about the availability of the Charity for the proposed new date or time. The City will endeavour to take into account the availability of the Charity in setting the new date or time.

14.5 If the City reschedules the Event under clause 14.3 and the Charity is available on the rescheduled date, all other details of this Agreement continue to remain in force.

14.6 If the City reschedules the Event under clause 14.3 and the Charity is unavailable on the rescheduled date or time, the City may engage another charity to participate in the Event.

This Agreement will terminate automatically if the City engages a new participant with respect to the Event under this clause 14.6.

15. FORCE MAJURE EVENT

15.1 If a party is affected, or is likely to be affected, by a Force Majeure Event, that party must immediately give the other part prompt notice of that fact, including:

(a) full particulars of the Force Majeure Event;

(b) an estimate of the likely duration;

(c) the obligations affected by it and the extent of its effect on those obligations; and

(d) the steps taken to rectify it.

15.2 The obligations 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.

15.3 If a Force Majeure Event continues for more than 10 Business Days, either party may terminate this Agreement by giving at least one (1) Business Day's written notice to the other party.

15.4 Neither party is liable to the other for any Damages suffered by the other in connection with a Force Majeure Event.

16. TERM

16.1 Term

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

(a) cancellation under clause14; and

(b) the End Date,

unless the parties agree in writing to extend the Term.

16.2 The City may, by notice in writing to the Charity in the six (6) months before the End Date, extend the Term for the Further Term. The participation of the Charity during the Further Term will be on the same terms as this Agreement subject to the following changes:

(a) the start date of the Further Term will be the day after the End Date; and

(b) the end date of the Further Term will be the date specified in Item 4(e);

16.3 If this Agreement is cancelled in accordance with clause 14:

(a) clause 1 (Interpretation), 8 (Indemnity), 9 (Risk and Insurance), 11 (Confidentiality, Media Releases and Promotion), 12 (Privacy), 18 (Disputes), 19 (Notices), 21 (Modern Slavery) and 19 (General) survive cancellation or expiry of this Agreement; and

(b) the Charity must:

(i) cease any activities with respect to its participation in the Event; and

(ii) take all steps reasonably necessary to minimise any loss the City may suffer as a result of the expiry or cancellation of the Event.

17. TERMINATION

17.1 If the Charity:

(i) fails to comply with clauses 4, 5.1(b), 5.1(c), 6.2, 7.2(c), 7.2(d), 9 or 11 of this Agreement;

(ii) a Modern Slavery Breach (as defined in clause 21.2(c) is not capable of being remedied, or is otherwise not remedied within a reasonable timeframe as agreed by the parties; or

(iii) is affected by an Insolvency Event,

the City may immediately terminate this Agreement by notice in writing.

17.2 If the Charity fails to comply with any other clause of this Agreement, the City may give the Charity notice specifying the failure and requiring the Charity to fix the failure within 14 days or another time specified by the City in it absolute discretion.

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

18. DISPUTES

18.1 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.

18.2 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.

19. NOTICES

19.1 A notice or demand under this Agreement must be in writing and emailed, posted or delivered to the address of the recipient shown in this Agreement.

19.2 A notice is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by pre-paid post, three (3) Business Days after the date of posting; and

(c) if sent by email, it is taken to be received on the same day the email was sent provided that the sender has not received a delivery failure notice (or similar) and unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day

20. PUBLIC HEALTH ORDERS

20.1 This clause 20 takes priority over all other clauses in this Agreement. To the extent of any inconsistency between this clause and any other clause of this Agreement, this clause prevails.

20.2 The Charity must:

(a) at all times, comply with any Public Health Order issued that is applicable to the holding 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.

20.4 The City may end this Agreement by notice in writing to the Charity at any time, if as a result of a Public Health Order, the City elects not to proceed with the Event.

20.4 To the fullest extent permitted by law, the Charity 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 Charity as a result of:

(a) the Charity's compliance with this clause 20; and

(b) the exercise of the City's rights under this clause 20 (including if the City elects not to proceed with the Event in accordance with clause 20.4).

21. MODERN SLAVERY

21.1 Definitions:

Engaged Entities means any first tier (direct) suppliers, subcontractors, consultants and contractors engaged by a party in connection with this Agreement.

Modern Slavery has the meaning given in section 4 of the *Modern Slavery Act.*

Modern Slavery Act means the *Modern Slavery Act 2018* (Cth).

Modern Slavery Laws means all applicable modern slavery laws, statutes, regulations and codes from time to time in force which prohibit the exploitation of workers, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services or similar, including but not limited to the Modern Slavery Act and the *Modern Slavery Act 2018* (NSW).

Reasonable Steps includes:

(A) obtaining an awareness of what constitutes Modern Slavery and the Modern Slavery Laws in Australia;

(B) undertaking activities to identify and address Modern Slavery risks in the Charity's operations and supply chain (including adherence to Australian labour laws, conducting a Modern Slavery risk assessment and implementing a Modern Slavery policy);

(C) consulting with the Charity's Engaged Entities to identify and mitigate Modern Slavery risks in its supply chain and labour force, including by implementing policies and procedures that reject the exploitation of migrant workers.

21.2 Modern Slavery

(a) The Charity must:

(i) not cause or contribute to Modern Slavery or engage in any activity, practice or conduct that constitutes an offence under Modern Slavery Laws or that would constitute an offence if such activity, practice or conduct were carried out in Australia;

(ii) take Reasonable Steps (having regard to the size, nature and industry of the Charity's business) to identify, assess and address Modern Slavery risks within its operations and supply chains;

(iii) comply with any request from the City to provide any information necessary to enable the City to comply with its obligations under the Modern Slavery Laws and undertake any due diligence on the Charity's supply chains as required;

(iv) ensure that it and its Engaged Entities pay its Personnel at least the minimum wage and other entitlements as required by Law;

(v) cooperate in good faith with the City in investigating the circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws; and

(vi) include in its contracts with any Engaged Entities, Modern Slavery provisions that are at least as onerous as those set out in this clause 21.

(b) In the event of any potential, suspected or actual instances of Modern Slavery within its operations or supply chain, the Charity must:

(i) notify the City in writing as soon as practicable with adequate particulars to enable the City to understand the potential, suspected or actual instances of Modern Slavery;

(ii) within 10 Business Days (or such other timeframe as agreed by the parties), prepare a suitable remediation plan that:

(A) outlines the steps that the Service Provider intends to take to remedy the issue along with an explanation as to how the proposed steps will resolve the issue;

(B) provides a timeframe for implementation and completion of these steps; and

(C) explains the quantitative/qualitative indicators that will determine when the issue has been resolved

(**Remediation Plan**) for the City to review;

(iii) amend the Remediation Plan to reflect reasonable additional direction provided by the City in relation to any feedback it gives on the Remediation Plan following its review;

(iv) take all reasonable steps to ensure that the Remediation Plan is completed within the period determined by clause 21.2(b)(ii).

(c) The parties agree that a breach of clause 21.2(a) or 21.2(c),or failing to use best endeavours to implement a Remediation Plan will be a material breach of this Agreement (**Modern Slavery Material Breach**).

(d) Where a Modern Slavery Material Breach is not capable of being remedied, or is otherwise not remedied within a reasonable timeframe as agreed by the parties, the City may terminate this Agreement in accordance with the provisions set out in clause 17.1.

(e) The Charity represents and warrants that:

(i) it has not, as of the date of this Agreement, engaged in Modern Slavery or breached any Modern Slavery Laws;

(ii) it has disclosed to the extent that it is aware, any actual or reasonably suspected Modern Slavery within its own operations or the supply chain of any of its Engaged Entities and any actions taken to remedy the disclosed event;

(iii) any information provided to the City with respect to Modern Slavery as part of the City's expression of interest process is accurate, complete and not misleading and/or deceptive in any way; and

(iv) it has taken reasonable steps to ensure that any Engaged Entities engaged in connection with this Agreement have complied and continue to comply with the obligations contained in this clause 21.

22. NOVATION

The City may novate this Agreement to a third party. The Charity 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.

23. GENERAL

23.1 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.

23.2 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.

23.3 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.

23.4 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.

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

(a) information that relates directly to the participation of the Charity in the Event; and

(b) information collected by the Charity from members of the public with respect to the participation of the Charity in the Event; and

(c) information received by the Charity from the City to enable the Charity to participate in the Event.

23.6 The invalidity, illegality or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provisions.

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

23.8 This Agreement is governed by and construed in accordance with the law of the State of New South Wales.

23.9 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.

23.10 The parties agree to this Agreement being executed electronically, and in counterparts in accordance with the Electronic Transactions Act 2000 (NSW).

Execution

Executed as a deed by:

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

Witness:	Signature:
Electronic signature of me Name (printed), affixed by me on _/___/__	Electronic signature of me Name (printed), affixed by me on _/___/__

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

Director:	Director/Secretary:
Electronic signature of me Name (printed), affixed by me on _/___/__	Electronic signature of me Name (printed), affixed by me on _/___/__

OR (where the Charity is a sole director company)

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

Sole Director/Secretary:
Electronic signature of me Name (printed), affixed by me on _/___/__

SCHEDULE 1
AGREEMENT PARTICULARS

Item	Name	Description
Item 1	**Date of Agreement**	The date this Agreement is signed by the City
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 award of the contract]*** Phone: [***to be inserted following award of the contract]*** Email: [***to be inserted following award of the contract]***
Item 3	**Charity**	Name: [***to be inserted following award of the contract]*** ABN: [***to be inserted following award of the contract]*** Address: [***to be inserted following award of the contract]*** Contact Person: [***to be inserted following award of the contract]*** Phone: [***to be inserted following award of the contract]*** Email: [***to be inserted following award of the contract]***
Item 4	**(a) Start Date** **(b) End Date** **(c) Event Term** **(d) Further Term** **(e) End date of Further Term**	On signing of the agreement, as per Schedule 1, Item 1 30 June 2028 Approximately 12 months 12 months 30 June 2029
Item 5	**Event**	[***to be inserted following award of the contract]***
Item 6	**Contract Manager**	[***to be inserted following award of the contract]***
Item 7	**Event Sites**	[***to be inserted following award of the contract]***
Item 8	**Charity's Marks**	[***to be inserted following award of the contract]***
Item 9	**City's Marks**	[***to be inserted following award of the contract]***

Item	Name	Description
Item 10	**Public liability insurance**	$20 million
Item 11	**Performance Criteria**	Refer to Annexure C

ANNEXURE A
CITY'S ACTIVITIES AND RESPONSIBLITIES

The following section, Annexure A City's Activities and Responsibilities, will be populated on award of contract

Any Event that is not applicable to the Successful Charity will be removed accordingly.

SYDNEY CHRISTMAS (November to December 2027)

The City will:

1. grant use of the following tag line, "The official charity partner of 2027 Sydney Christmas" for display on the Charity and the City's print and promotional collateral;

2. provide an opportunity for the Charity to conduct an online and / or face to face campaign as the official charity partner of the Event (activities and fundraising must be approved in writing by the City);

3. acknowledge the Charity in media release/s for the media launch and the Event (at the discretion of the City);

4. provide an opportunity for a Charity spokesperson to give a 1–2-minute speech at the Event media launch and Event Sites as detailed in Item 7, Schedule 1;

5. provide the Charity with an opportunity to sell charity partner merchandise at Santa's Sleigh Ride and Tree Lighting, Christmas concerts and street fair Event Sites as detailed in Item 7, Schedule 1;

6. Provide logo acknowledgement and promotional opportunities across the Sydney Christmas event marketing and communications to raise awareness of the partnership and the Charity's work (at the discretion of the City and subject to final confirmation).

The City represents and warrants to the Charity that it understands the Charity's position on endorsement and acknowledges that this Agreement by no means equates with the Charity endorsing the City's products or organisation and agrees to reflect this in all marketing and publicity in connection to the Event.

SYDNEY NEW YEAR'S EVE (December 2027)

The City will:

1. grant use of the following tag line, "The official charity partner of 2027 Sydney New Year's Eve" for display on the Charity and the City's print and promotional collateral;

2. provide an opportunity for the Charity to conduct an online and / or face to face campaign as the official charity partner of the Event (activities and fundraising must be approved in writing by the City);

3. acknowledge the Charity in media release/s for the media launch and the Event (at the discretion of the City);

4. provide an opportunity for a Charity spokesperson to give a 1-2 minute speech at the Event media launch to talk about the work of the Charity;

5. Provide logo acknowledgement and promotional opportunities across the Sydney New Year's Eve event marketing and communications to raise awareness of the partnership and the Charity's work (at the discretion of the City and subject to final confirmation).

The City represents and warrants to the Charity that it understands the Charity's position on endorsement and acknowledges that this Agreement by no means equates with the Charity endorsing the City's products or organisation and agrees to reflect this in all marketing and publicity in connection to the Event.

SYDNEY LUNAR FESTIVAL (February 2028)

The City will:

1. grant use of the following tag line, "The official charity partner of 2028 Sydney Lunar Festival" for display on the Charity and the City's print and promotional collateral;
2. provide an opportunity for the Charity to conduct an online and / or face to face campaign as the official charity partner of the Event (activities and fundraising must be approved in writing by the City);
3. acknowledge the Charity in media release/s for the media launch and the Event (at the discretion of the City);
4. provide an opportunity for a Charity spokesperson to give a 1 - 2-minute speech at the media launch to talk about the work of the Charity;
5. provide verbal acknowledgement of the Charity in the Lord Mayor (or Lord Mayor representative) speech at the Lord Mayor reception and Sydney Lunar Streets;
6. provide the Charity with up to ten (10) invitations to the Lord Mayor reception;
7. Provide logo acknowledgement and promotional opportunities across the Sydney Lunar Festival event marketing and communications to raise awareness of the partnership and the Charity's work (at the discretion of the City and subject to final confirmation);
8. acknowledge the Charity in a social media post and other digital content where appropriate, such as a City of Sydney News story (at the discretion of the City and subject to final confirmation).

The City represents and warrants to the Charity that it understands the Charity's position on endorsement and acknowledges that this Agreement by no means equates with the Charity endorsing the City's products or organisation and agrees to reflect this in all marketing and publicity in connection to the Event.

ANNEXURE B
CHARITY'S ACTIVITIES AND RESPONSIBLITIES

The following section, Annexure B Charity's Activities and Responsibilities, will be populated on award of contract

Any Event that is not applicable to the Successful Charity will be removed accordingly.

SYDNEY CHRISTMAS

The Charity agrees to the following:

1. All fundraising and / or activation activities associated with the Event must be approved by the City;

2. The Charity must obtain all approvals required for its fundraising and / or activation activities (other than those produced and programmed by the City), including any required landowner approvals on activities on Event Sites;

3. The Charity must manage and provide all staff and / or volunteers for activations at each Event Site as outlined in Schedule 1, Item 7. The Charity will work with the City to determine the number of volunteers and / or staff required to manage any activations.

4. The Charity must set up and manage all payment / donation mechanisms at each activation at each event. The City is not liable for the security or maintenance of this equipment.

5. The Charity must provide the City with a cash handling policy.

6. The Charity must provide a senior representative from the Charity to give a 1-2 minute speech at the Event media launch and Event Sites as detailed in Item 7, Schedule 1;

7. The Charity will provide event logo acknowledgement for the City on the Charity's website: ***url to be inserted following award of the contract*** and hyperlink to the official Event website: www.sydneychristmas.com ;

8. The Charity is to acknowledge the City in all marketing collateral distributed by the Charity in relation to the Event. All materials acknowledging the City must be approved by the City;

9. The Charity is to supply the City with a paragraph which succinctly describes the core purpose of the Charity to be inserted into the City's external print communications;

10. The Charity to supply the City with content for inclusion on the City's official Event website. This may include copy, images and URL links (at the discretion of the City);

11. The Charity must provide copies of Working with Children Checks for all staff and volunteers performing any fundraising or activation activities at the Event;

12. The Charity must provide all Work Health and Safety (WHS) documents requested by the City in relation to any activities occurring on Event Sites;

13. Where the Charity engages a contractor to perform any activities on an Event Site or City land, the Charity must:

    a. obtain written approval by the City;

    b. ensure the contractor complies with all applicable laws;

    c. ensure the contractor provides WHS documents requested by the City; and

    d. ensure the contractor provides a copy of its insurance certificates of currency of the same type and value as required to be held by the Charity under clause 9.1;

14. The Charity must liaise with and follow instruction at all times from all Event staff relevant to the areas of operation in which the Charity is participating;

15. The Charity will provide the City with a written report on activities and issue a joint press release with the City following the successful conclusion of the Event.

SYDNEY NEW YEAR'S EVE

The Charity agrees to the following:

1. All fundraising and / or activation activities associated with the Event must be approved by the City;

2. The Charity must obtain all approvals required for its fundraising and / or activation activities (other than those produced and programmed by the City), including any required landowner approvals on activities on Event Sites;

3. The Charity will provide a senior representative from the Charity to give a 1-2 minute speech at the Event media launch;

4. Event logo acknowledgement for the City on the Charity's website: ***url to be inserted following award of the contract*** and hyperlink to the official Event website: www.sydneynewyearseve.com ;

5. The Charity is to acknowledge the City in all marketing collateral distributed by the Charity in relation to the Event. All materials acknowledging the City must be approved by the City;

6. The Charity is to supply the City with a paragraph which succinctly describes the core purpose of the Charity to be inserted into the City's external print communications;

7. The Charity is to supply the City with content for inclusion on the City's official Event website. This may include copy, images and URL links (at the discretion of the City);

8. The Charity must provide all Work Health and Safety (WHS) documents requested by the City in relation to any activities occurring on Event Sites;

9. The Charity will provide the City with a written report on activities and issue a joint press release with the City following the successful conclusion of the Event.

SYDNEY LUNAR FESTIVAL

The Charity agrees to the following:

1. All fundraising and / or activation activities associated with the Event must be approved by the City;

2. The Charity must obtain all approvals required for its fundraising and / or activation activities (other than those produced and programmed by the City), including any required landowner approvals on activities on Event Sites;

3. The Charity will provide a senior representative from the Charity to give a 1-2 minute speech at the Event media launch;

4. Event logo acknowledgement for the City on the Charity's website: ***url to be inserted following award of the contract*** and hyperlink to the official Event website: www.sydneylunarfestival.com ;

5. The Charity is to acknowledge the City in all marketing collateral distributed by the Charity in relation to the Event. All materials acknowledging the City must be approved by the City;

6. The Charity is to supply the City with a paragraph which succinctly describes the core purpose of the Charity to be inserted into the City's external print communications;

7. The Charity is to supply the City with content inclusion on the official Event website. This may include copy, images and URL links (at the discretion of the City);

8. The Charity must provide all Work Health and Safety (WHS) documents requested by the City in relation to any activities occurring on Event Sites;

9. The Charity will provide the City with a written report on activities and issue a joint press release with the City following the successful conclusion of the Event.

10. The Charity must provide copies of Working with Children Checks for all staff and volunteers performing any fundraising or activation activities at the Event;

11. Where the Charity engages a contractor to perform any activities on an Event Site or City land, the Charity must:

    (a) obtain written approval by the City;

    (b) ensure the contractor complies with all applicable laws;

    (c) ensure the contractor provides WHS documents requested by the City; and

    (d) ensure the contractor provides a copy of its insurance certificates of currency of the same type and value as required to be held by the Charity under clause 9.1;

12. The Charity must liaise with and follow instruction at all times from all Event staff relevant to the areas of operation in which the Charity is participating;

ANNEXURE C
PERFORMANCE CRITERIA

The City will use the following Performance Criteria (key performance indicators (KPIs) to evaluate performance of the Charity.

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

General Key Performance Indicator 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 objectives/deliverables*						
2	Quality of engagement						
3	Time						
4	Reporting						
5	Communication						
6	WH&S compliance						

* The key objectives/deliverables have been set out in Annexure B. These are the results that the Charity is expected to deliver to meet the City's key contract requirements.