

**LICENCE AGREEMENT BETWEEN:**

**THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790)** of Town Hall House, 456 Kent Street, Sydney, New South Wales 2000 ("**City**")

and

**[INSERT NAME OF MARKET OPERATOR, ABN and address](Operator)**

**RECITALS**

- A. The City is the Crown Land Manager of the Land pursuant to the *Crown Land Management Act 2016* (NSW) (the Act).
- B. The City has the authority to grant leases and licences over the Land in accordance with the Act.
- C. The City has agreed to grant to the Operator and the Operator has agreed to accept a licence to use the Licensed Area for the Permitted Use in accordance with the terms of this Licence.

**SCHEDULE 1**

<b>1. Name of Market</b>	
<b>2. Licensed Area</b>	
<b>3. Permitted Use</b>	
<b>4. Commencement Date</b>	
<b>5. Expiry Date</b>	
<b>6. Term</b>	
<b>7. Frequency of Market</b>	
<b>8. Market Hours</b>	
<b>9. Bump in Time</b>	
<b>10. Bump out Time</b>	
<b>11. Market Fee</b>	
<b>12. Security Bond</b>	
<b>13. Operator's Onsite Contact</b>	
<b>14. City Representative</b>	
<b>15. Operator's Contact Details</b>	
<b>16. Summary of Market Infrastructure</b>	
<b>17. Further Term(s)</b>	
<b>18. Site Maintenance Fee</b>	

**1. Definitions and interpretation**

**1.1 Definitions**

In this Licence:

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any authority having jurisdiction in connection with the activities contemplated by this Consent.

**Authority** means any government, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Business Day** means any day that is not a Saturday, Sunday or a public holiday in New South Wales.

**Commencement Date** means the date in Item 4 of Schedule 1.

**Development Consent** means the development consent [insert DA number].

**Expiry Date** means the date in Item 5 of Schedule 1.

**Fees and Charges** means the fees and charges approved annually by Council forming part of the City's revenue policy, available at [cityofsydney.nsw.gov.au/policies/revenue-policy-fees-charges](http://cityofsydney.nsw.gov.au/policies/revenue-policy-fees-charges).

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

- (a) is beyond the reasonable control of that party; or
- (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 Service Provider).

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

**Key Performance Indicators** mean the criteria against which the Operator's performance will be measured, set out at Schedule 2 of the Licence.

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

**Licensed Area** means that part of the public reserve on which the market is to be held, as specified in Item 2 of Schedule 1 and shown on the plan at Annexure A.

**Market** means the Market described in Item 1 of Schedule 1.

**Market Fee** means the fee payable by the Operator to the City in respect of the market calculated in accordance with Item 11 of Schedule 1 as updated in accordance with the City's Fees and Charges.

**Market Infrastructure** means any structures required for the market including but not limited to stalls (including Stallholder's stalls), portaloos, tables, chairs, generators, refrigeration, signage and any other infrastructure necessary for the operation of the market.

**Market Operator of Conduct** means the Market Operator Code of Conduct provided to the Operator outlining the minimum obligations of the Market Operator attached at Annexure B as updated from time to time by the City.

**Markets Policy** means the City of Sydney's Markets Policy available for download from <https://www.cityofsydney.nsw.gov.au/business-permits-approvals-tenders/apply-to-set-up-local-market>.

**Market Schedule** means the approved Market Schedule set out at Annexure D.

**Operator's Property** means all Stalls, plant, equipment, fixtures, fittings, furnishings and other property on or installed in the Licensed Area, by or on behalf of the Operator, owned or leased by the Operator in the Licensed Area.

**Security Bond** means either a security deposit or an unconditional undertaking issued by a qualifying financial institution for the amount stated in Item 12 of Schedule 1.

**Persons Under the Operator's Control** means each of the Operator's servants, agents, workmen, visitors, invitees, and any other person on or about the Licensed Area (with or

without invitation) or under the control or discretion of the Operator, including Stallholders

**Site Maintenance Fee** means a fee payable from the Operator to the City for any services provided by the City to enable the Operator to use the Licensed Area for the Permitted Use for example power, cleansing and waste, site supervision or security as set out in Item 18 of Schedule 1.

**Special Event** means any scheduled significant event and includes any additional or unforeseen events which may be notified to the Operator by the City from time to time.

**Stall** means a stall on the Licensed Area.

**Stallholder** means each person running a Stall.

**Stallholder's Code of Conduct** means the Stallholders Code of Conduct provided by the City to the Operator outlining the minimum obligations of the Stallholders attached at Annexure C as updated from time to time by the City.

**Temporary Road Closure Approval** means the approved closure of a trafficable roadway for the purpose of facilitating on road activities, infrastructure &/or to provide access to an adjacent site as approved by the appropriate Roads Authority for the roadway in question.

**Term** means the term specified in Item 6 of Schedule 1.

**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 1.2 Capitalised Terms

Any other term that starts with a capital letter used in this Licence has the meaning given to it in Schedule 1.

## 2. Terms of use

### 2.1 No interest in the Licensed Area

The Operator has a personal right of occupation on the terms and conditions contained in this Licence and has no interest in the Licensed Area. The legal right to possession of and control over the Licensed Area remains vested in the City at all times.

### 2.2 Crown Land Management Act

This Licence is subject to the provisions of the Crown Land Management Act 2016 (NSW), including but not limited to sections 2.2 and 3.43 of that Act.

## 3. Key Terms

The parties acknowledge that:

- a) The Operator has reviewed and agrees to comply with the Markets Policy;
- b) The availability of the Licensed Area to operate the Market is subject to the Operator:
  - (i) signing and returning this Licence in a timely manner;
  - (ii) submitting quarterly reports which will be used by the City to assess the Operator's performance against the Key Performance Indicators set out in Schedule 2 of this Licence, and any other reports or documentation reasonably requested by the City from time to time;
  - (iii) conducting the Market in accordance with the Market Schedule;

- (iv) paying the Market Fee;
  - (v) providing copies of any documentation/Approvals required by the City prior to the operation of the Market;
  - (vi) complying with the Market Operator Code of Conduct as updated from time to time;
  - (vii) complying with the instructions from the City in respect of meeting the performance criteria to a sufficient standard.
- c) The period of reporting will be agreed by the City and the Operator at the Commencement Date
  - d) The Operator is responsible for ensuring that all Stallholders comply with the terms of this Licence (where applicable).
  - e) If the Operator fails to meet the Key Performance Indicators or the requirements of this Licence the City may issue the Operator with a notice requesting that the Operator to remedy the failure (**Notice to Perform**).
  - f) If the Operator receives 3 Notices to Perform in a single Term, then the City, may terminate this Licence immediately by providing written notice to the Operator.

#### **4. Term**

##### **4.1 Term**

The City grants the Licence for the Term specified in Item 6 of Schedule 1.

##### **4.2 Hold Over**

- a) With the City's prior written consent the Operator may hold over after the expiry date of the Term. The Operator acknowledges that the Licensed Area may not be available for the Operator to occupy after the Expiry Date.
- b) The terms of this Licence will apply to any hold over period.
- c) Each party may end this monthly hold over arrangement by giving the other party at least one month's written notice.

##### **4.3 Further Terms**

- (a) The Operator may notify the City in writing not less than 6 months before the end of the Term that the Operator wishes to continue the operation of the Market for the Further Term. The City will notify the Operator in writing at least three months prior to the expiry of the Term as to whether the City will grant the Operator the Further Term.
- (b) The terms of this Licence will apply to the Further Term.

#### **5. Market Fee and other payments**

##### **5.1 Payment of Market Fee**

- a) The Operator must pay the Market Fee within 14 days of a valid invoice issued by the City.
- b) The Market Fee is calculated and reviewed annually in advance and payable monthly to the City in accordance with the Market Policy and the Fees and Charges.
- c) Where the standard market fee under the Fees and Charges is revised by Council in any year, the City will provide written notice to the Operator. The Licence will be varied to incorporate the new market fee which will become effective seven days from

the date of the City's notice, and the Operator will be required to pay the new market fee on the next due payment.

## **5.2 Review of Market Fee**

- a) The Operator may request in writing that the Market Fee is reviewed by the City where it reasonably believes that the Market Fee should differ from the agreed annual amount.
- b) The Operator must upon request make available to the City any documentation it relies on to substantiate its request under 4.2(a) for example audited reports or evidence of any payments received from Stallholders (for profit and not for profit).
- c) Within one month of receiving the original request the City must advise the Operator in writing whether its request has been successful and confirming the applicable fee.
- d) An adjustment will be made by the City and applied to future markets held by the Operator, unless no further markets are to be held in which case the City will provide a refund to the Operator's nominated bank account.

## **5.3 Other Payments**

- a) The Operator must pay the Site Maintenance Fee relating to the Operator's use of the Licensed Area within 14 days of a valid invoice.
- b) The Site Maintenance Fee is calculated and reviewed annually in advance and payable monthly to the City in accordance with the Market Policy and the Fees and Charges.
- c) The Operator is responsible for the payment of all fees and charges associated with the obtaining of any Approvals, including any road closure fees, and any other fees necessary to comply with the requirements of any other governmental and other like authorities.

## **5.4 Cancellation Fees**

- a) If the Operator is of the view that a scheduled market must be cancelled for safety reasons, inclement weather or other reasons outside of its control it must contact the City providing as much notice as possible advising of the proposed cancellation and reasons.
- b) If the City agrees that the market must be cancelled, the Operator will not be liable for the Market Fee for that scheduled market and a credit will be applied to the Operator for any fees already paid in respect of the cancelled market.
- c) If the Operator cancels a scheduled market without the prior agreement of the City then the Operator will be responsible for the Market Fee for that market.

## **6. Use and care of the Licensed Area**

### **6.1 Operator to obtain consents and comply with legal requirements and authorities**

The Operator must comply with:

- a) the Development Consent (if applicable);
- b) all Laws relevant to the use of the Licensed Area and the operation of the Market, and to ensure that all contractors, employees, agents, Stallholders and other persons associated with the market comply with the same;
- c) any requirements of all government, consent and other like authorities in its use and occupation of the Licensed Area (including any Approvals).

## **6.2 Operating Hours**

- a) The Operator must strictly comply with the Bump In and Bump Out times as stated in Schedule 1
- b) If the Operator wishes to propose changes to Market Schedule or Bump In or Bump Out times for a particular Market, it must seek the written approval of the City prior to making the change. The City may approve any such request at its absolute discretion.
- c) The City may direct the Operator to postpone or change the hours of operation of a scheduled market, including but not limited to Bump In and Bump Out times if the City requires use of the Licensed Area for community reasons, in connection with its duties as a local government authority, for safety reasons or on other grounds at its discretion (acting reasonably).
- d) The City may suspend the Operator's use of the Licensed Area at any time if the City considers it necessary to do so for safety reasons.

## **6.3 Signage**

- a) The Operator may erect signage on the Licensed Area provided that the City has approved the size and design of the sign, the method of its affixation and its proposed location.
- b) The Operator must pay all costs associated with the signage including the cost of making good the Licensed Area on its removal.

## **6.4 Works on the Licensed Area by the City and any relevant Authority**

- a) The Operator must permit the City and any relevant Authority to enter upon the Licensed Area with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency) to:
  - (i) inspect the state of repair or condition of any services or utilities located with or passing through, under or above the Licensed Area; and
  - (ii) carry out works (including repairs, additions, replacements or renovation) to any services or utilities located with or passing through, under or above the Licensed Area.
- b) The City may suspend the Operator's use of the Licensed Area at any time if the City considers it necessary to enable the City or any relevant Authority to carry out works in or around the Licensed Area.
- c) The Operator must not make any claim for compensation or abatement or any other demand in relation to the entry on to the Licensed Area or the carrying out of any works by the City or any relevant Authority or the suspension of use under clause 5.4 (b).

## **6.5 Condition and Variation of the Market Infrastructure**

- a) The Operator must ensure that Market Infrastructure, including any signage, is in and remains in good condition and repair over the Term, to the reasonable satisfaction of the City.
- b) Any material variation to the details of the Market Infrastructure provided by the Operator in the Operator's market plan approved by the City must be approved by the City prior to installation.

## 7. Operator's Obligations

### The Operator must:

- a) use all reasonable endeavours to at all times keep the Licensed Area clean, tidy and well illuminated;
- b) use all reasonable endeavours to keep the Licensed Area free of dirt, rubbish, pests and vermin;
- c) ensure no signs or other structures are attached to any trees;
- d) only use designated areas for depositing rubbish and trade waste;
- e) ensure that the Stallholders are aware of and comply with the Stallholders Rules and Code of Conduct which must be provided by the Operator to every Stallholder;
- f) ensure that the Operator and any Stallholder obtain an appropriate licence for any live music and or recorded music which is played on the Licensed Area (if that music is protected by copyright);
- g) ensure that any music that is played at the Market (or any Stallholder who authorises the playing or performance of music at their Stall) is does not infringe the intellectual property rights of any third party (Operators may confirm with the City as to whether music will be covered under the City's 'One Music' licence. The party playing the music is responsible for obtaining the appropriate licences from the Australasian Performing Right Association (APRA) and the Phonographic Performance Company of Australia (PPCA);
- h) use its best endeavours to ensure that Stallholders do not sell counterfeit, prohibited or illegal goods and immediately notify the City in the event that a Stallholder is found doing so;
- i) ensure that the Stallholders hold appropriate insurances as a precondition of operating at the Market;
- j) ensure that access to the Licensed Area is maintained for emergency vehicles;
- k) inform the City of any damage to the Licensed Area, immediately on becoming aware of the damage;
- l) ensure that noise from any activity or enterprise associated with the market, including but not limited to music (amplified or otherwise), or notification system used at the Market does not cause 'Offensive Noise' as defined in the protection of the Environment Operations Act or else a sound pressure level which exceeds the following levels exceed an LA<sub>max</sub> of 50dB(A) when measured at the boundary of the nearest affected residential or noise sensitive commercial building (the latter when in-use):
  - (i) LA<sub>eq</sub>, 15 minute 50 dB(A), or
  - (ii) LA<sub>eq</sub>, 15 minute less than or equal to LA<sub>80</sub> + 5 dB(A)measured and assessed as per the definitions and methodology prescribed by AustralianStandard AS1055 – Acoustics-Measurement and Description of Environmental Noise.
- m) ensure that if during the market legitimate complaints or breaches of noise conditions occur, it immediately arranges for the noise to be reduced to comply with the noise levels specified in paragraphs (k) and (l) above, or to a direction given by the City;
- n) ensure that the market noise and the Bump In and Bump Out of the Stallholders entering and leaving the Licensed Area is reduced as much as possible. Noise must not cause 'Offensive Noise' or exceed the levels specified in Table 1 of the City of Sydney Construction Hours Noise Code of Practice 1992 available from <https://www.cityofsydney.nsw.gov.au/development-guidelines-policies/code-practice->

construction-hours-noise-city;

- o) ensure that Temporary Food Vending Permits and Liquor Licences for all food and beverage stalls are obtained by Stallholders prior to allowing Stallholders to commence operation at the Market;
- p) ensure that the preparation and sale or provision of any food during the Market complies with the all legislative obligations relating to the supply, service and storage of food and beverages, including but not limited to the health and hygiene provisions of the Food Act 2003, Food (General) Regulations 2010, the Liquor Act 2007 and Regulations;
- q) ensure that the sale and or supply of alcohol does not occur unless the required liquor licence has been obtained in accordance with the provisions of the Liquor Act 2007 and Regulations and the prior written approval has been obtained from the City with respect to the provision of alcohol at the Licensed Area; and
- r) ensure management and control measures are undertaken to ensure alcohol is not removed or consumed beyond the approved liquor licensed area.

The Operator must, and must ensure Persons Under the Operator's Control do not:

- s) commit any nuisance or annoyance on the Licensed Area; or
- t) manufacture any dangerous substances on the Licensed Area; or
- u) bring any dangerous substances onto the Licensed Area;
- v) smoke or allow smoking anywhere on the Licensed Area; or
- w) breach any fire safety regulations; or
- x) do anything which would void the City's insurance or cause the City's premiums to be increased.

## **8. Temporary Food Stall – Set Up and Operation**

- a) The Operator must submit details of all temporary food stalls participating in the Market on the Licensed Area to the City at least 28 days prior to the Commencement Date using the City of Sydney "Temporary Food Stall Register".
- b) All temporary food stalls must have a current City Temporary Food Premises permits from the City in accordance with the Markets Policy. Approval numbers for stalls must be submitted to the City in accordance with subclause 8(a) above.
- c) The set up and operation of any temporary food stall and associated equipment must comply with:
  - i. the City of Sydney fact sheet – "Requirements for the Operation of a Temporary Food Stall";
  - ii. all applicable Laws including but not limited to the *Food Act (NSW) 2003*; and
  - iii. Standard 3.2.2, Food Safety Practices and General Requirements of the Australia New Zealand Food Standards Code".
- d) The "Requirements for the Operation of a Temporary Food Stall, City of Sydney" and the Temporary Food Stalls Event Register" and "Details of Temporary Food Stall" forms can be obtained from the City of Sydney website <http://www.cityofsydney.nsw.gov.au/>. Completed forms may be returned to Council's Health and Building Unit by post or email to [council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au).



## 9. Temporary Market Structures

The Operator must ensure that:

- a) the ground surface on which the structure is to be erected are sufficiently firm to sustain the structure while it is being used
- b) the temporary structures must be erected and secured in accordance with the manufacturers / structural specifications to ensure they are structurally sound and can withstand likely wind in the locality and any likely live loadings.
- c) electrical services serving structures must meet all Australian standards requirements and are certified by a licensed electrical contractor prior to the commencement of use;
- d) applicable Laws are complied with at all times;
- e) all mechanical and electrical installations including generators, electrical cabling and any mobile structures are to be surrounded or covered by appropriate physical barriers so as to prevent unauthorised access by the public at all times, and to protect ground laid cabling from being trip hazards;
- f) all structures are suitably weighted and not "pegged";
- g) temporary structures do not obstruct access to services or services access pits;
- h) adequate hand held fire extinguishers must be available at all times. A schedule of supply must be provided to the inspecting officer prior to commencement of the Bump In;
- i) the structures and surrounds are to be maintained in a clean and tidy manner at all times, and that all waste and general rubbish is to be cleared on a regular basis.
- j) it obtains and manages any temporary barrier(s) or fences required to efficiently and safely manage the Licensed Area, and will comply with the directions of the City or any State Authority (such as NSW Police) to implement/change such infrastructure.

## 10. Waste Management, Traffic Management, Risk Management, Security Management and COVID-Safe Plans.

### 10.1 Waste Management Plan

- a) The Operator must provide a waste management plan, including details of waste minimisation, recycling and management of waste generated by the market and any other details requested by the City from time to time for the City's approval at least ten Business Days prior to occupation of the Licensed Area (**Waste Management Plan**).
- b) The Operator must comply with the Waste Management Plan as approved by the City at all times.
- c) The Operator must ensure that the Licensed Area and its surrounds are maintained in a clean and tidy condition throughout the operation of the Market, including the bump-in and bump-out phases and that the Licensed Area is returned in the same condition as it was in prior to the commencement of the Market. This includes the collection and removal of all litter including cigarette butts, bottle cap tops, and all other waste.
- d) The Operator agrees to pay any costs incurred by the City for cleansing and or repairs required to the Licensed Area as a result of the Market.
- e) The Operator must ensure that during Operating Hours adequate toilet facilities (including disabled facilities) are provided at or near the Licensed Area to cater for the maximum number of patrons attending the market at one time, which may be

either:

- (i) the provision of portable toilet facilities in the Licensed Area; and/or
- (ii) obtaining licences or consents from existing businesses or building owners for use of existing toilet facilities in the area in connection with the market, subject to the Operator providing evidence of those agreements to the City.

## **10.2 Traffic Management Plan**

- a) If requested by the City, the Operator must provide a Traffic Management Plan (which includes a Road Closure Plan and other details reasonably requested by the City from time to time) for the City's approval at least ten Business Days prior to occupation of the Licensed Area.
- b) The Operator must:
  - (i) comply with the Traffic Management Plan as approved by the City;
  - (ii) ensure that the Traffic Management Plan is kept up to date and renewed when required by the City;
  - (iii) comply with directions from the police and the City;
  - (iv) maintain and provide traffic controls and barricades as directed by the City in line with the requirement of the Roads Act 1993, and
  - (v) maintain a Temporary Road Closure Approval (where required), approved by the Sydney Traffic Committee.

## **10.3 Risk Management Plan**

- a) The Operator must provide a Risk Management Plan setting out details on procedures including but not limited to lost children, fire, electrical/wind/hail storms; collapse of structures; crowdpanic; bomb threats; assault; theft, public health & safety and evacuation plans for the City's approval at least ten Business Days prior to occupation of the Licensed Area (**Risk Management Plan**).
- b) The Operator must comply with the Risk Management Plan as approved by the City at all times.
- c) The Risk Management Plan may be reviewed by the City from time to time, and the City may request that the Operator amend the Risk Management Plan as it deems necessary.

## **10.4 Security Management Plan**

- a) The Operator must provide a security management plan for the City's approval at least ten Business Days prior to occupation of the Licensed Area.
- b) The Operator must comply with the security management plan as approved by the City at all times.
- c) The security plan may be reviewed by the City from time to time, and the City may request that the Operator amend the security plan as it deems necessary.

## **11. Operator's insurance and indemnities**

### **11.1 Required policies**

The Operator must maintain policies of insurance for:

- a) public and products liability covering illness or injury to person or damage to third party property arising out of the Operator's activities on the Licensed Area for an amount of not less than \$20,000,000 for any one single accident or event;
- b) damage to and loss of the Operator's fixtures, stock and merchandise on the Licensed Area or comprising part of the Licensed Area; and
- c) workers compensation if applicable under legislation or common law or appropriate personal accident insurance.

### **11.2 Insurance Requirements**

The Operator must:

- a) produce to the City for inspection at least two weeks prior to the first market and within two Business Days of demand a certificate of currency establishing the insurance policies required under clause 10.1(a) and (b);
- b) ensure the policies are taken out with an insurer approved by the City (acting reasonably); and
- c) note the City as an interested party on the public and products liability insurance policy.

### **11.3 Release and Indemnity**

- a) The Operator occupies and uses the Licensed Area at its own risk and releases the City from any action, demand, cost, liability or loss due to any damage, loss, injury, illness (including mental illness) or death occurring in the Licensed Area except to the extent that it is caused by the negligent act or omission of the City.
- b) The City is not responsible for any loss or damage to any infrastructure, equipment or any third party property associated with the Market or brought on to the Licensed Area. All infrastructure and equipment brought on to the Licensed Area is at the Operator's risk.
- c) The Operator indemnifies the City against any action, demand, cost, liability or loss due to any damage, loss, injury, illness (including mental illness) or death caused or contributed to by:
  - (i) the Operator's act, omission or negligence;
  - (ii) the Operator's use or occupation of the Licensed Area; or
  - (iii) the Operator's breach of this Licence;
  - (iv) the act, omission or negligence of any third party under the Operator's control, including Stallholders and the Operator's invitees.

except to the extent that it is caused by the City's negligent act or omission.

## **12. Expiry or Earlier termination of the Term**

### **12.1 Early termination by the City of Sydney**

- (a) The City may terminate this Licence at any time by giving the Operator at least one month's written notice..

- (b) The City may terminate this Licence immediately for the purpose of ensuring public safety.

## **12.2 Make good**

Before the last day of the Term or the earlier termination of this Licence, the Operator must at its own cost:

- a) ensure all Operator's Property and third party property is removed from the Licensed Area;
- b) make good the Licensed Area to an equivalent condition as at the Commencement Date.

Where the Operator has failed to comply with this clause, the Operator will be responsible for paying the City's expenses associated with performing the Operator's obligations and may draw down on the Security Bond for this purpose.

## **12.3 Disposal of Operator's property**

If, following the termination of this Licence, any of the Operator's Property is left at the Licensed Area, the City may deal with the Operator's Property as it sees fit. The Operator indemnifies the City against all costs incurred and damages sustained by the City due to its reasonable actions under this clause.

# **13. Default**

## **13.1 Events of default**

If the Operator:

- a) fails to pay the Market Fee or other monies by the due date and the failure continues for five Business Days following notice by the City to the Operator; or
- b) breaches any other obligation under the Licence or fails to perform any required act and the breach or failure is not capable of remedy, or if capable of remedy, is not remedied within the time specified by the City;

the City may

- a) terminate this Licence and take any action it considers necessary or desirable in order to give effect to its rights under this Licence;
- b) recover from the Operator an amount equal to the damages or loss it sustains; and
- c) apply any part or all of the Security Deposit towards recovering expenses incurred by the City in connection with the Operator's default.

## **13.2 Costs on default**

The Operator must pay on demand all costs incurred by the City due to default by the Operator or in enforcing its rights under this clause, including legal costs on a solicitor and own client basis.

## **13.3 No waiver**

Acceptance by the City of arrears of the Market Fee or other money or of any breach of this Licence by the Operator does not constitute a waiver of the City's rights.

## **13.4 Interest on overdue payments**

If the Operator fails to pay any money by the due date for payment the Operator may be charged interest calculated on a daily basis from the due date until the date of payment at the rate of interest which is 2% more than Westpac Banking Corporation's rate on overdraft accounts in excess of \$100,000 from time to time.

## **14. Security Bond**

### **14.1 Provision of Security Bond**

On or before the Commencement Date, the Operator must provide the City with the Security Bond .

### **14.2 City may apply Security Bond**

If the Operator defaults under this Licence, the City may call on the Security Bond without notice to the Licensee and apply the proceeds towards remedying the default.

### **14.3 Top up**

If all or any of the Security Bond is appropriated by the City pursuant to clause 13.2 the Operator must, within fourteen days of receipt of written notice from the City, provide a top up to the Security Deposit to the amount required under this Licence. The Operator must not conduct any activity on the Licensed Area until these requirements are satisfied.

## **15. Dispute Resolution**

**15.1** If either the City or the Operator believes that there is a dispute in respect of anything contained in this Licence (**Dispute**) then:

- a) that party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
- b) the Dispute Notice must outline:
  - (i) what the party believes the dispute to be;
  - (ii) what the party wants to achieve; and
  - (iii) what the party believes will settle the Dispute.

### **15.2 Consultation between the Representatives**

- a) Within fourteen (14) days of the date of the Dispute Notice being served in accordance with clause 14.1, both parties must meet in good faith to try and resolve the Dispute.
- b) If the Dispute is not resolved at the meeting referred to in subclause (a), then within a further fourteen (14) days each party must appoint a person from their senior management to meet in order to promptly resolve the issue.

## **16. Role as a governmental agency**

Nothing in this Licence Agreement in any way restricts or otherwise affects the unfettered discretion of the City in the exercise of its statutory powers as a governmental agency.

## **17. Assignment or other Dealings**

- a) The Operator must not assign, transfer, sub-licence, mortgage, charge or encumber its interest in this Licence or otherwise deal with its interest in this Licence.
- b) The Operator must not grant any sublicense for any part of the Licensed Area or otherwise part with possession of the whole or part of the Licensed Area without the City's prior consent.

## **18. Variation**

This Licence can only be varied in writing with the agreement of both the City and the Operator.

## **19. Force majeure**

### **19.1 Notice and suspension of obligations**

If either the City or the Operator is affected, or likely to be affected, by a Force Majeure Event:

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

### **19.2 Effort to overcome**

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

### **19.3 No liability**

Neither party will be liable for any claims for compensation from the other party as a result of any Force Majeure.

If a Force Majeure Event continues for more than 30 days in respect of the affected party, the other party may terminate this document by giving at least one Business Day's written notice to the affected party.

## **20. Electronic signing**

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

## SCHEDULE 2

The City will use the following General Key Performance Indicators to evaluate performance of the Operator.

Performance will be evaluated by the City regularly, at least annually, and always upon completion of the Licence. 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 work						
4	Reporting						
5	Communication						
6	WH&S compliance and Risk Management						

\* The Key Objectives / Deliverables have been set out in this Specification and are detailed in the table below. These are the results that the Market Operator is expected to deliver to meet the City's requirements.

### KEY PERFORMANCE INDICATOR (WITH REPEATING ACTIVITIES)

Name of KPI (With Repeating Activities)	0	1	2	3	4
Operate the market as an interesting and vibrant destination, focusing on creative and cultural excellence					
Operate a market that sells products and or services of good quality and represents value for money					
Maintains high standards of presentation and quality					
Ensure that the market's operation complements and adds value to the existing businesses in the area					
Professionally organise and manage the market					
Meet regularly with the City and submit performance reports as part of the ongoing review of the Market					
Ensure compliance with the requirements of the License, as well as any other applicable legislative or planning obligations.					
Appropriate stall space has been allocated for community use.					

***(These are important repeating activities that occur in delivering the services and which will be measured periodically to assist in assessing the quality of performance of the Operator)***

**KPI (With Repeating Activities) Score Rating Scale**

<b>0</b>	Achieved few or none of the specification requirements for the KPI
<b>1</b>	Achieved some of the specification requirements for the KPI
<b>2</b>	Achieved most of the specification requirements for the KPI
<b>3</b>	Achieved all of the specification requirements for the KPI
<b>4</b>	Achieved all and exceeded the specification requirements for the KPI

SAMPLE



**Signing page:**

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

\_\_\_\_\_  
Witness:  
Electronic Signature of:

\_\_\_\_\_  
Name (printed):  
456 Kent Street, Sydney

\_\_\_\_\_  
Address of witness  
Affixed by me on:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature:  
Electronic Signature of:

\_\_\_\_\_  
Name of Authorised Officer:

\_\_\_\_\_  
Title of Authorised Officer  
Affixed by me on:

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Director:  
Electronic Signature of:

\_\_\_\_\_  
Name (printed):  
Affixed by me on:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director/Secretary:  
Electronic Signature of:

\_\_\_\_\_  
Name (printed):  
Affixed by me on:

\_\_\_\_\_  
Date

SAMPLE

## **ANNEXURE B – MARKET OPERATOR OF CONDUCT**

The Operator must:

1. uphold standards of integrity, professionalism, safety and respect.
2. conduct itself in a manner that is not likely to bring the City of Sydney into disrepute. Specifically, the Operator must not act in a way that:
  - a) contravenes the Local Government Act 1993, associated regulations, City of Sydney's relevant administrative requirements and policies;
  - b) is improper or unethical
  - c) is an abuse of power or otherwise amounts to misconduct
  - d) causes, comprises or involves intimidation, harassment or verbal abuse
  - e) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment; or
  - f) causes, comprises or involves prejudice in the provision of a service to the community.
3. treat others with respect at all times.
4. not harass, discriminate against, or support others who harass and discriminate against any other person.
5. ensure that Stallholders receive a copy of and adhere to the Stallholder Code of Conduct
6. maintain the Licensed Area to be clean and safe;
7. refrain from and ensure others refrain from smoking within the Licensed Area
8. ensure that Stallholder products and services meet all legal and statutory requirements as well as compliance with identified prohibited trade items or services identified by the City to the Market Operator from time to time;
9. at all times be able to present this Licence for inspection.
10. follow the reasonable directions of the City of Sydney.

## **ANNEXURE C – STALLHOLDER CODE OF CONDUCT**

Stallholders must:

1. uphold standards of integrity, professionalism, safety and respect.
2. maintain a clean and safe stall site at all times.
3. refrain from smoking within the Licensed Area
4. ensure their products meet all legal, statutory and City requirements
5. follow all directions relating to the movement of vehicles within and around the site
6. dispose of all waste as directed by the rules of the market
7. at all times be able to present their authority to trade and any other relevant approvals.
8. not bring dogs or any other animals into the Licensed Area (other than service animals)
9. follow the reasonable directions of the Operator and/or the Council of the City of Sydney.

SAMPLE