

# Sponsorship Agreement

## PARTIES

**WESTERN AUSTRALIAN TOURISM COMMISSION** a body corporate under the *Western Australian Tourism Commission Act 1983 (WA)* of Level 10, 1 William Street, Perth, Western Australia (**Tourism WA**)

and

**NAME** (ABN 123456789) of [insert address] (**Event Holder**)

## RECITALS

- A. Subject to anything expressed or implied to the contrary in this Sponsorship Agreement, this Sponsorship Agreement relates specifically to the Event as described in item 1 of Schedule One.
- B. The Event Holder is a deliverer and provider of events and event management services and is solely responsible for, and will manage, conduct and promote, the Event.
- C. Tourism WA is responsible for promoting Western Australia as an attractive holiday, event, convention and incentive travel destination to the intrastate, interstate and international markets to enhance the tourism industry, infrastructure and product base. Tourism WA does this through a range of strategies including Marketing Campaigns and Event sponsorship.
- D. The Event Holder is seeking sponsorship for the Event.
- E. Tourism WA has agreed to sponsor the Event and the Event Holder has agreed to accept the Sponsorship Amount, strictly on the terms of this Agreement.

## AGREEMENT

### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

**“Acknowledgement of Country”** means statement of acknowledgement and respect for Traditional Owners and the continuing connection of Aboriginal and Torres Strait Islander peoples to Country. An Acknowledgement of Country may be offered by any person and is given at the beginning of a meeting, speech or event;

**“Agreement”** or **“Sponsorship Agreement”** means the agreement and the cover letter provided with the agreement;

**“Auditor General”** means the Auditor General for the State including any authorised representative;

**“Best Endeavours”** means doing all things necessary, reasonable and lawful;

**“Branding”** means one or more of the following words, phrases or logos as specified by Tourism WA:

Logo:

- Government of Western Australia
- Department of Primary Industries & Regional Development

WA Brands:

- Western Australia
- Western Australia, Walking On A Dream
- Where Dream Events Happen
- westernaustralia.com
- Perth, Western Australia
- Perth
- Any other word, phrase or logo as may be specified by Tourism WA from time to time.

**“Budget Declaration”** means the financial statements for the Event which must be certified by the Event Holder's Chief Financial Officer or Accountable Officer confirming that the Sponsorship Amount was used for the Event as per this Sponsorship Agreement;

**“Business Day”** means any day when banks and State Government offices are open for business in Western Australia;

**“Commonwealth”** means Commonwealth of Australia;

**“Conditions Precedent”** means the conditions precedent set out in item 7 of Schedule One;

**“Confidential Information”** means information which is confidential and includes:

- (a) any information or records concerning the operations, dealings, organisation, business, financial transactions, books of account, contracts, agreements, arrangements, trade secrets or markets, or the commercial, industrial, financial or business affairs, of either Party;
- (b) any information pertaining to a Party which is or could reasonably be regarded as being of a sensitive nature; and
- (c) the Final Event Report,

unless, that information is already in the public domain, other than by reason of a Party having breached its duty of confidentiality (imposed under this Agreement or otherwise).

**“Department”** means the Department of Primary Industries and Regional Development, a department of the State;

**“Event”** means the event as described in item 1 of Schedule One, to be held on the date specified in item 4 of Schedule One;

**“Event Budget”** means the details of the proposed cash and in-kind income (confirmed and unconfirmed) and expenses for the Event;

**“Event Holder”** means the person or entity described as such in item 3 of Schedule One;

**“Final Event Report”** means the report prepared after the Event covering the administrative, legal, operations, risk management, marketing, sponsorship, media, economic impact, publicity, highlights of the Event and relevant attendance/participation figures for the Event and other matters Tourism WA considers relevant;

**“Force Majeure”** means:

- (a) inclement weather;
- (b) an act of God;
- (c) a war, riot, civil disturbance, insurrection, vandalism, sabotage or terrorism;
- (d) epidemic or pandemic, any shortages caused thereby or any government response to such epidemic, pandemic or shortages;
- (e) acts or omissions of the government or any instrumentality of the government, or other public or statutory authority (whether Commonwealth, State or local, legislative, executive or administrative) and inability or delay in obtaining an approval, permit or licence from any government or any instrumentality of the government, or other public or statutory authority (whether Commonwealth, State or local, legislative, executive or administrative);
- (f) emergencies, catastrophes or disasters (natural or otherwise) which pose a serious risk to life, safety or property, such as fires, chemical spills and explosions;
- (g) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general application;
- (h) a strike, lockout, ban, limitation or work or other industrial disturbance; or
- (i) any other event, circumstance, happening or thing;

which:

- (j) is unforeseeable and beyond the control of the affected Party; and
- (k) occurs without the fault, negligence or contractual breach of the affected Party and the adverse effects of which could not have been prevented or mitigated against by the affected Party by reasonable diligence or reasonable precautionary measures.

but does not include an act or omission of a subcontractor (except to the extent that act or omission is caused by an event of Force Majeure);

**“GST”** means a goods and services tax imposed under the GST Act, a consumption tax, value added tax, retail turnover tax or a tax of a similar nature;

**“Law”** (or **“Laws”**) means any applicable rule or requirement of a statute, regulation, by-law, ordinance or subordinate legislation, awards and proclamations in force from time to time, the common law or equity, and any standards or industry codes of conduct (including applicable advertising standards), and any certificates, administrative guideline, ruling, instruction, directives, licences, consents, permits, approvals and requirements of any government department or government authority.

**“Marketing and Communications Plan”** means the plan prepared by the Event Holder for the Event which demonstrates the marketing activities undertaken for the Event including target audience, objectives, schedule of the marketing activities and the communications plan outlining public relations, website and other forms of communication relating to the Event;

**“Marketing Campaign”** means Tourism WA’s tourism marketing campaign of any name developed and effected by Tourism WA to promote the State;

**“Milestone”** means each milestone set out in the table in Schedule Two;

**“Ministers”** means the Minister for Tourism in and for the State and/or the Minister for Regional Development in and for the State;

**“Notice”** means a request, direction, advice, consent, notification or communication, made or given under or in relation to this Agreement;

**“Obligations”** mean obligations under this Agreement;

**“Official Program”** means the official program of the Event;

**“Party”** means each of Tourism WA or Event Holder as the context requires, and Parties means both of them.

**“Region”** is the region of the State as set out in item 6 of Schedule One;

**“Royalties for Regions”** means the fund established under the *Royalties for Regions Act 2009* which is administered by the Department on behalf of the Minister for Regional Development;

**“Sponsorship Amount”** means the amount set out in item 5 of Schedule One;

**“State”** or **“State Government”** means the State of Western Australia;

**“Talent”** means an individual who is participating in the Event by providing their image, voice, performance, or likeness, which may be recorded or used for promotional or commercial purposes related to the Event;

**“Venue”** means the Venue(s) for the Event which are set out in Schedule One; and

**“Welcome to Country”** means a cultural welcoming provided by local Aboriginal custodians/Elders which is given at the beginning of a meeting, speech or event.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other gender;
- (c) references to persons include corporations;
- (d) references to a person include the legal personal representatives, successors and assigns of that person;
- (e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

- (f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;
- (g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include facsimile transmissions;
- (h) an obligation of two or more persons binds them jointly and severally and an obligation incurred in favour of two or more persons is enforceable by them jointly and severally;
- (i) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) references to this Agreement includes its recitals, schedules and annexures (if any);
- (k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;
- (l) references to time are to local time in Perth, Western Australia;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;
- (n) no rule of construction applies to the disadvantage of a Party on the basis that that Party put forward this Agreement or any part of this Agreement;
- (o) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually, but nothing herein shall mean or be taken to mean that performance of part (or part performance) of an obligation constitutes performance of that obligation;
- (p) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (q) a reference to a contractor means a contractor or subcontractor at any tier; and
- (r) a reference to \$ or dollar or currency is to Australian currency.

## **2. Obligations**

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- (a) The Event Holder must competently, diligently, ethically and lawfully hold and manage the Event in accordance with this Agreement (including Schedule One and Schedule Two).
- (b) The Event Holder must also use its Best Endeavours to promote tourism in the Region and attract as many intrastate, interstate and international participants and supporters as possible to the Event.
- (c) The activities expressed as Milestones must be performed by the Event Holder in accordance with the time periods and other terms set out in Schedule Two.

- (d) The Event Holder must allow Tourism WA or an authorised representative to have access to and examine the Event Holder's records and information concerning this Sponsorship Agreement, the Event, or the Sponsorship Amount.
- (e) The Auditor General may have access to and examine records and information (in the possession or control of the Event Holder) concerning this Event or this Sponsorship Agreement.
- (f) The Event Holder must keep:
  - (i) proper, accurate and detailed records relating to its carrying out of the Event (including how the Sponsorship Amount is used) and its performance of its other obligations under this Agreement; and
  - (ii) proper and adequate financial records in accordance with generally accepted accounting principles and practices.
- (g) The Event Holder must promptly provide Tourism WA with information, documentation or access to documentation sought by Tourism WA. All such information and documentation so provided must be true and correct, up to date and complete, and in no way misleading or deceptive.
- (h) The Event Holder must comply with local, State and Commonwealth Laws applicable to and in connection with the Event and this Agreement.
- (i) The Event Holder must seek, secure, and comply with all relevant permissions and approvals, including rights and licenses from any third parties required to manage, conduct and/or promote the Event.
- (j) The Event Holder must carry out the Event in a safe and professional manner and:
  - (i) ensure the safety of persons and property in compliance with all applicable Laws related to health and safety; and
  - (ii) ensure that any officers, servants, employees, contractors or agents engaged by the Event Holder in connection with the Event are:
    - (A) appropriately inducted, trained and supervised in accordance with such Laws and any procedures or policies required to manage any health and safety risks; and
    - (B) suitably qualified or accredited and competent and fit to perform the work expected from them.
- (k) Neither Tourism WA nor the State will be held responsible for the success or failure of the Event for which the Sponsorship Amount is applied or for any losses or additional costs incurred that are associated with the Event.
- (l) The Event Holder must use the Sponsorship Amount solely for its Event-related obligations hereunder.
- (m) The Event Holder must pay all debts, relating to the Event, which it owes to its creditors, as and when those debts fall due for payment.

- (n) The Event Holder acknowledges and agrees that if it has any requirements for the Event involving police, security, transport (including public transport), traffic regulation, utilities, or any other services not expressly stipulated in this Agreement as having to be met or provided by Tourism WA or the State, the Event Holder must itself arrange, procure and pay for the same.
- (o) The Event Holder must use Best Endeavours to ensure that, in respect to the Event, it facilitates the desired access and inclusion outcomes expressly or impliedly set out in the Disability Access and Inclusion Plan (2022-2027) of Tourism WA. (This Plan is available on the Tourism WA Corporate Website – [Tourism.wa.gov.au](http://Tourism.wa.gov.au)). Specifically, the Event Holder must do all things reasonable to ensure that there are sufficient facilities at the Venue for persons with disabilities to attend and maximize their enjoyment of the Event.
- (p) The Event Holder must not, nor permit any of its officers, servants, employees, contractors or agents to engage in any conduct or activity which:
  - (i) is offensive, corrupt or disreputable;
  - (ii) prejudices or brings into disrepute, the State, either of the Ministers, Tourism WA or any of their respective officers, servants and agents, or the Event;
  - (iii) is or could be detrimental to the goodwill, name or reputation of the State, either of the Ministers; or
  - (iv) would otherwise give rise to adverse publicity on the part of either the State, either of the Ministers, or Tourism WA,and Tourism WA will be the sole arbiter in relation to the matters set out above.

### **3. Sponsorship Amount**

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- (a) Subject always to the Event Holder complying with its Obligations under this Agreement to the satisfaction of Tourism WA, Tourism WA will pay to the Event Holder the Sponsorship Amount within 30 Business Days after both:
  - (i) the relevant Milestone being achieved;
  - (ii) Tourism WA being notified in writing by the Event Holder that the Milestone has been achieved by the Event Holder (together with all relevant documentary evidence); and
  - (iii) provision of a valid invoice to Tourism WA.
- (b) Despite anything expressed or implied to the contrary in this Agreement, whilst the Event Holder is in breach of this Agreement, Tourism WA may suspend the performance of its Obligations under this Agreement.
- (c) Payment of any amount of the Sponsorship Amount is not an admission by Tourism WA that the Event Holder has met its Obligations under this Agreement to Tourism WA's reasonable satisfaction.

- (d) Without limiting any other right or remedy available to Tourism WA under this Agreement or at Law, if the Event Holder has not demonstrated, by providing documentary records or otherwise as requested by Tourism WA, to the reasonable satisfaction of Tourism WA that it has achieved a Milestone, Tourism WA will be entitled to defer payment of the instalment of the Sponsorship Amount until Tourism WA is so satisfied.
- (e) The Event Holder acknowledges that the Sponsorship Payments are the maximum amount payable by Tourism WA under this Agreement. Tourism WA is not responsible for any additional amount required by the Event Holder to carry out the Event, unless Tourism WA agrees in writing.

#### **4. Changes**

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The Event Holder must not make a significant change to the Event or this Agreement (including but not limited to scope, location and/or timing) without consulting with Tourism WA and receiving Tourism WA's prior written approval at least three months prior to the commencement of the Event. A change may only be approved if the proposed change is consistent with the original sponsorship request and will deliver comparable benefits to the Event and the Region. If the proposed change is deemed significant, this Agreement may be terminated by Tourism WA. If Tourism WA is not consulted about a significant change then any or all of the Sponsorship Amount may be withheld or, if already paid, the Event Holder must return to Tourism WA what was paid to it forthwith on demand.

#### **5. Signage**

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- (a) Tourism WA will provide the signage (banners and signs) incorporating the Branding to be used at the Event. The Event Holder must ensure that the signage supplied is placed in positions and locations that maximise the State Government's and Tourism WA's exposure. The Event Holder must ensure that the State Government's and Tourism WA's banners are not obstructed by any object regardless of the cause of the obstruction.
- (b) The Event Holder must ensure that all banners are returned to Tourism WA, no later than 30 days the end of the Event and as far as possible, in the same condition as they were prior to the Event, fair wear and tear excepted.
- (c) The Event Holder will be responsible for any costs to repair damaged banners or Tourism WA will arrange the repairs and effect reimbursement from the Event Holder.

#### **6. Acknowledgements, Logo and Marketing**

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- (a) The Event Holder must provide proper acknowledgement of the State Government in all publicity, speeches, websites and advertising materials.
- (b) All media releases must acknowledge that the Event is supported by the State Government through Tourism WA and Royalties for Regions.



- (c) The Branding advised to the Event Holder by Tourism WA must appear on all publicity, advertising, websites, posters, brochures and programming, including the official program and the official brochure, relating to the Event.
- (d) In the instance that a change to the Branding is required by Tourism WA, the Event Holder will use Best Endeavours to undertake the change within 10 Business Days and must inform Tourism WA once of the completion of the change.
- (e) The Event Holder must submit all materials (posters, brochures, programs, letterhead, advertisements, public announcements and all other forms of publicity or advertising) to Tourism WA for approval, or otherwise, before using the same.
- (f) Tourism WA shall have the opportunity to place an advertisement (in colour) in the Event's official program (if applicable) at no cost. This must be a minimum of one full page of the official program produced by the Event Holder.
- (g) Any changes to program advertisements and logo will be advised to the Event Holder by Tourism WA.
- (h) [EVENTS OVER \$15,000 PER YEAR: The Event Holder will produce a Marketing and Communications Plan for the Event, no less than **60 days** before the commencement of the Event.]

## 7. **Invitations**

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- (a) The Event Holder will provide a total of two (2) operational passes to Tourism WA to be used by its operational staff to access all relevant areas of the Event (other than the field of play or the competitors' area). The operational passes will be issued by Tourism WA to its nominated staff whose names will be or have been provided to the Event Holder.
- (b) Tourism WA shall be provided with up to 10 complimentary tickets to the Event for the purposes of corporate hospitality. These are only to be released by the Event Holder to Tourism WA on the specific request of a Tourism WA representative.
- (c) Invitations to attend key official functions of the Event (including the Event itself) must be sent **out at least 45 days before the Event** to the following:
  - (i) Local Members of Parliament;
  - (ii) Member of Parliament for the region;
  - (iii) Chair and/or Chief Executive Officer of the relevant local Regional Development Commission;
  - (iv) Mayor/President and/or Chief Executive Officer of the relevant Local Government; and
  - (v) Chair and/or Chief Executive Officer of the relevant Regional Tourism Organisation (Destination Perth; Australia's North West, Australia's Golden Outback, Australia's Coral Coast, Australia's South West).

- (d) The Event Holder must use its Best Endeavours to serve, at its Event-related corporate functions, Western Australian beverages (wine and beer), food and condiments.

## 8. Ministerial Involvement

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- (a) The Minister for Tourism and the Minister for Regional Development, or their representatives, will each be invited to attend key official functions, announcements or ceremonies. The Event Holder must issue an invitation direct to the Ministers' offices to seek Ministerial attendance with a **minimum of 90 days' notice for such events/occasions**. Such invitations must clearly indicate the event(s); location; time/date; audience; Ministers' role; speech duration (if applicable), etc. The invitation must specify if the Event Holder would like the Minister or their representative to speak at the Event or if it is an invitation to attend only. The Event Holder must, if requested by Tourism WA, provide an opportunity for the Minister or their representative to speak at the Event. Should the Minister for Tourism and Minister for Regional Development wish to attend the Event, complimentary tickets for each Minister and their guest must be provided.
- (b) Requests for the Minister for Tourism and Minister for Regional Development attendance must be sent to the email addresses advised by Tourism WA. Tourism WA's email address, [regionalevents@westernaustralia.com](mailto:regionalevents@westernaustralia.com), must be cc'd in any such requests.
- (c) Both Ministers shall each be given the opportunity to provide a joint foreword for the Event's official program (if applicable). Requests for forewords must be directed to Tourism WA **at least 90 days before the program printing deadline**.
- (d) To align with State government policy or other State government requirements (including but not limited to Parliamentary sitting dates and caretaker conventions), Tourism WA may notify the Event Holder of changes to the day by which an invite or forward must be submitted in accordance with this clause 8 and provided Tourism WA has provided reasonable notice of the change, the Event Holder must comply with any changed timeframes. The Event Holder must also reasonably accommodate delays in responses that occur as a consequence of State government policy or other government requirements.
- (e) Notwithstanding the obligation on the Event Holder to provide invitations and opportunities under this clause 8, neither Minister is under any obligation to accept or use any such invitation or opportunity.

## 9. World Wide Web

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- (a) The Event Holder must use its Best Endeavours to develop and maintain a freely accessible website for the promotion and dissemination of up to date and accurate information regarding the Event before the Event's commencement.
- (b) The Event Holder must have the Branding advised by Tourism WA appear on the home page and any relevant sponsorship pages on the Event Holder's website at **75 days before** the commencement of the Event. This Branding must maintain a hyperlink to Tourism WA's website (<https://www.westernaustralia.com>).

- (c) The Event Holder must register their event listing with the Australian Tourism Data Warehouse (<https://www.atdw.com.au/>).

## 10. Risk Management

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- (a) The Event Holder must provide a risk management plan in respect of the Event ("**Risk Management Plan**") to Tourism WA **at least 90 days** (and/or any lesser number of days as notified by Tourism WA to the Event Holder in writing) **before the commencement of the Event** which has been prepared in a manner consistent with the Australian Standard on Risk Management AS ISO 31000:2018 (and any subsequent revisions). The Risk Management Plan shall address foreseeable and realistic risks, including events, circumstances, happenings and other things listed in the definition of "Force Majeure" at clause 1.1.
- (b) Tourism WA, or its authorised representative, may request the Event Holder to consider additional matters in the Risk Management Plan and the Event Holder must promptly give proper consideration to any such request, in a manner consistent with the Australian Standard on Risk Management AS ISO 31000:2018 (and any subsequent revision), and prior to the commencement of the Event.
- (c) The Event Holder must provide to Tourism WA at least 45 days (and/or any lesser number of days as notified by Tourism WA to the Event Holder in writing) prior to the commencement of the Event written confirmation to Tourism WA that it has provided a copy of the Risk Management Plan:
  - (i) the Western Australian Police;
  - (ii) the relevant local government(s) for the location/s where the Event is to occur;
  - (iii) Department of Fire & Emergency Services; and
  - (iv) all other relevant authorities.
- (d) The Event Holder acknowledges and agrees that the provision of the Risk Management Plan to Tourism WA pursuant to this clause 10 is for information purposes only and does not constitute approval or endorsement by the State or Tourism WA of the Event Holder's Risk Management Plan in any manner or form arising out of this Agreement or in respect of the Event.
- (e) The Event Holder acknowledges and agrees that the provision of the Risk Management Plan pursuant to this clause 10 does not alter or reduce the Event Holder's Obligations under the terms of this Agreement.
- (f) Even though Tourism WA will be provided with the Risk Management Plan, neither Tourism WA nor the State (including any officer, agent, instrumentality or emanation thereof) nor the relevant local government authority shall have any liability (in negligence or howsoever) in respect of or arising from any mishap, accident or misadventure in relation to the Event (attributable to a lack, deficiency, or failure of or in, safety or risk management or otherwise).

## 11. Event Budget

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- (a) The Event Holder must provide a Budget Declaration to Tourism WA no later than **90 days after the final day of the Event**. This Budget Declaration must be satisfactory in all respects to Tourism WA.

## 12. Final Event Report

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- (a) The Event Holder must provide a Final Event Report to Tourism WA no later than **90 days after the final day of the Event**. This Final Event Report must be satisfactory in all respects to Tourism WA.

## 13. Force Majeure

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- (a) If a party's performance of an obligation under this Agreement (except an obligation to pay money), is delayed by Force Majeure ('**Delayed Obligation**'), the time in which a Party had to perform the Delayed Obligation will be extended by the period of the delay, up to a maximum of 20 Business Days after Notice referred to in **clause 13(c)** has been provided to the other Party.
- (b) If the Delayed Obligation cannot be performed within the 20 Business Days referred to in **clause 13(a)** then either Party may terminate this Agreement.
- (c) A Party must, immediately on an event occurring which causes a Delayed Obligation, give Notice to the other Party of the:
  - (i) matter(s) alleged to constitute Force Majeure;
  - (ii) nature of the Delayed Obligation;
  - (iii) likely duration and consequences of the Delayed Obligation; and
  - (iv) likely cessation of the Delayed Obligation.
- (d) The Party responsible for the performance of the Delayed Obligation must use its reasonable endeavours to remove, and minimise the effects of, the Force Majeure and must continue to perform all unaffected Obligations in accordance with this Agreement.
- (e) Subject to a Party complying with **clauses 13(c)** and **13(d)**, and subject to clause **13(f)**, a Party will not be liable in damages to the other, nor will any action, claim or demand be taken or made against a Party, by reason solely of the Delayed Obligation due to Force Majeure.
- (f) If this Agreement is terminated under this clause 13, the Event Holder must promptly remit to Tourism WA that part of the Sponsorship Amount that has, at the time of such termination been paid by Tourism WA to the Event Holder, but has not been spent or committed by the Event Holder for the purposes of, and in accordance with, this Agreement. The Event Holder must bear the onus of proving to Tourism WA what has been lawfully spent or committed on the Event by producing supporting evidence such as receipts and invoices which Tourism WA

will review and, at its discretion, approve the final Sponsorship Amount it deems can be kept by the Event Holder in relation to the terminated Event.

- (g) If and when this Agreement is terminated under this clause 13, regardless of whether or not a Milestone (in respect to which the Event Holder has not been paid) has been achieved or fulfilled by the Event Holder, the Event Holder is not entitled to any payment in respect to that Milestone.

## **14. Indemnity and Liability**

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### **14.1 Indemnity**

- (a) The Event Holder releases, discharges and must at all times indemnify Tourism WA, the State and the Minister and each of their respective officers, employees and agents ("**the Indemnified Persons**") from and against any and all claims, actions, demands, liabilities, losses, damages, costs or expenses (including legal costs and expenses) ("**Loss**") suffered or incurred by any of the Indemnified Persons in connection with this Agreement resulting from or arising out of:
- (i) any negligence or other wrongful act or omission of the Event Holder, its employees, officers, agents or contractors;
  - (ii) any breach of this Agreement by the Event Holder;
  - (iii) any loss, damage, injury or death to any property or person arising out of or in connection with the performance or non-performance of the Event Holder's Obligations under this Agreement;
  - (iv) any contravention of any Laws by the Event Holder, its employees, officers, agents or contractors; or
  - (v) the infringement by the Event Holder, its officers, employees, agents or contractors of any intellectual property of any third party,
- except to the extent that the Loss is due to the negligent or unlawful act or omission of the Indemnified Persons.
- (b) The indemnity granted in clause 14.1(a) is in addition to and not exclusive of any remedies Tourism WA may have against the Event Holder at law.
- (c) It is not necessary for Tourism WA to incur expense or to make a payment before enforcing a right of indemnity conferred by this Agreement.

### **14.2 Liability**

- (a) The Ministers, the State or Tourism WA shall not be liable at any time under this Agreement for any Loss incurred or suffered by the Event Holder or its related bodies corporate (or any of their employees, officers, agents and subcontractors) in connection with the Event or as a result of, or arising out of the performance of the Event Holder's responsibilities under this Agreement.
- (b) Without limiting clause 14.2(a), Tourism WA's sole obligation under this Agreement is to pay the Event Holder the Sponsorship Amount in accordance with

the terms of this Agreement and Tourism WA excludes all other liability to the Event Holder arising out of or in connection with this Agreement. Where any liability arising out of or in connection with this Agreement cannot be excluded by law, Tourism WA's liability to the Event Holder is limited to the Sponsorship Amount.

- (c) The Event Holder conducts the Event and all activities and obligations the subject of the Event and the Agreement at its own risk.

## **15. Insurances**

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- (a) The Event Holder must effect and maintain insurance policies for:
  - (i) General liability cover of \$20,000,000 for any one occurrence and unlimited in the aggregate.
  - (ii) Workers compensation/employers indemnity insurance in accordance with the provisions of the *Workers Compensation and Injury Management Act 2023* (WA), including cover for common law liability for an amount not less than \$50,000,000 for any one event in respect of workers of the Event Holder.
  - (iii) Personal accident insurance for persons engaged by the Event Holder on a voluntary basis.
- (b) These insurances must be with an:
  - (i) Australian Prudential Regulatory Authority approved insurer; or
  - (ii) overseas insurer with a Standard and Poor's, or any other internationally recognised financial rating Agency, credit rating of at least A minus (A-); or
  - (iii) insurance arrangement established in accordance with Commonwealth or State law.
- (c) Unless otherwise agreed in writing, the policies referred to in the preceding provisions of this clause 15 ("insurance policies") must be in place at the execution of this Agreement by the Parties and remain current until 30 days after the end of the Event.
- (d) The Event Holder must, upon execution of this Agreement by the Parties, provide or have provided to Tourism WA certificates of currency for the insurance policies required by this Agreement and requested by Tourism WA also provide:
  - (i) a declaration in a form satisfactory to Tourism WA from the Event Holder's insurer confirming that the insurance requirements under this Agreement have been met; and
  - (ii) true copies of any of the insurance policies required to be taken out under this Agreement on request by Tourism WA.
- (e) The Event Holder must ensure that all of its contractors, commercial licensees, agents, suppliers, stall holders and exhibitors involved in the Event are adequately

insured given the nature of services or work to be performed by them or their involvement in the Event generally.

- (f) The insurance policies effected by a Party are primary and not secondary to the indemnities referred to in this Agreement provided that a Party is not obliged to make a claim or institute proceedings against any insurer under the insurances policies before enforcing any of its rights or remedies under the indemnities referred to in this Agreement, or generally.
- (g) The Parties acknowledge that, if a claim is made under an insurance policy by a Party, it is their intention that the insurer cannot require that Party to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.
- (h) The Parties acknowledge that, regardless of whether the insurance policies respond or not, and regardless of the reason why the insurance policies respond or fail to respond, a Party is not released (in whole or in part), from any of its obligations under the indemnities referred to in this Agreement or generally.

## **16. Official Photographs and Video**

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The Event Holder must provide Tourism WA with copies of photographs and video footage of the Event as well as any imagery created to promote the Event:

- (a) promptly (and in any event within 2 Business Days) following any request by Tourism WA before or during the Event; and
- (b) no later than **90 days after the final day of the Event**.

Tourism WA and the Department are hereby allowed to use such material to promote the Event and for publicity purposes. The Event Holder must ensure that its contracts, permissions, licences or other agreements with third parties (including Talent) include a provision that Tourism WA and the Department are authorised to use such material for these purposes.

## **17. Welcome to Country**

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- (a) The Event Holder must ensure a Welcome to Country is included at the opening of the Event.
- (b) Without limiting or reducing the obligation in clause 17(a), in the event a Welcome to Country is not included at the opening of the Event, the Event Holder must ensure there is an Acknowledgement of Country at the opening of the Event and provide Tourism WA with details of the reasons why the Welcome to Country could not be included.

## **18. Sustainability**

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- (a) The Parties acknowledge their common intention in the fulfilment of their Obligations under this Agreement to minimise the negative impact of the Event on the environment.
- (b) The Event Holder shall use its Best Endeavours to ensure sustainable practices throughout the development and delivery of the Event.
- (c) Without limiting clause 18(b), the Event Holder shall:
  - (i) encourage its contractors, Venues and other businesses participating in the Event to engage in sustainable practices; and
  - (ii) use its Best Endeavours to ensure the activities or services it organises in connection with the Event (including through contractors) are as sustainable as possible.
- (d) The Event Holder will include details of its sustainable practices and activities undertaken in connection with the Event in the Final Event Report.

## **19. Protection, Gathering and Sharing of Data**

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Tourism WA may request data as it relates to the provision of the activities listed under clause 19 (a) and (b) below.

- (a) The Parties agree to share, at their discretion, any relevant data as it relates to improving marketing efforts and measurement of the Event. This may include:
  - (i) The provision for the sharing of Facebook audiences via Facebook Business Manager, and for data sharing in the instance of joint competitions or other services that capture audience related information;
  - (ii) The sharing of personally identifiable information including Event participant names and email addresses; and
  - (iii) The provision for the sharing of anonymous cookie data with Tourism WA data via pixel into a data sharing technology such as, but not limited to, Adobe Audience Manager.
- (b) Each Party acknowledges that it is aware of and is in compliance with the requirements under all applicable data protection laws, including but not limited to the European General Data Protection Legislation and the California Consumer Privacy Act.

## **20. Access to Land**

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If the Event is held on land (whether freehold or Crown land) that is not owned, leased or managed by the Event Holder, the Event Holder must obtain and have in place for the duration of the Event an agreement, suitable authority or approval to hold the Event on that



land. In the case of Crown land, this may include a licence under section 91 of the *Land Administration Act 1997* where appropriate.

## **21. Competition or Conflicts of Interest**

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The Event Holder must not involve itself in the promotion of any tourism product or package which is contrary to the State's tourism interests nor may the Event Holder procure sponsorship or advertisements which may adversely affect the State or be in conflict with such interests.

## **22. Research**

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- (a) Tourism WA may, at its sole discretion, determine to undertake additional research (including, but not limited to, economic, social and/or market and media research) in connection with the Event. Where Tourism WA has determined to undertake such research:
  - (i) the Event Holder must allow Tourism WA, or an organisation appointed by Tourism WA, access to all persons, data and information relating to the Event including accessing the Venue, to enable Tourism WA, or an organisation appointed by Tourism WA, to carry out research on the Event; and
  - (ii) if a report is completed on the research, Tourism WA will supply a copy of the executive summary on the matters contained in the report to the Event Holder.
- (b) Whether or not Tourism WA has determined to undertake additional reporting, where the Event Holder has commissioned its own report on the economic, media or social impact of the Event it must provide a copy of the report to Tourism WA within 5 Business Days of completion of the report.
- (c) Without limiting clause 22(a), the Event Holder is to share any available requested data and information relating to the Event (including but not limited to market and media research, ticketing and attendance figures and similar) with Tourism WA or an organisation appointed by Tourism WA, to assist in the preparation of any research in connection with the Event or any other reporting on the economic, media or social impact of the Event.

## **23. Confidentiality**

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- (a) Each Party must keep confidential any Confidential Information acquired by it or by virtue of, or in connection with, this Agreement or the Event both during and after the Term.
- (b) Each Party must not:
  - (i) directly or indirectly make or allow, permit or suffer anybody else to make use of, other than for the purposes of this Agreement, the Confidential Information; and

- (ii) disclose to any other person the Confidential Information, other than those of its employees, officers, agents, auditors and legal and financial advisers who legitimately and reasonably require such Confidential Information in order to properly discharge the duties:
    - (A) they were employed or engaged to discharge; and
    - (B) which they would ordinarily and reasonably be expected to discharge on account of such employment or engagement.
- (c) **Clauses 23(a) and (b)** do not apply to a Party if:
  - (i) it is required to disclose the Confidential Information under a provision of a statute in operation in Australia;
  - (ii) in the case of Tourism WA, it is required to disclose the Confidential Information by virtue of an order or direction given to it by or on the part of either of the Ministers or the government of the State or the Parliament of the State or any committee or subcommittee of the Parliament; or
  - (iii) the Parties agree in writing to disclose the Confidential Information.
- (d) Each Party agrees that it will ensure that its officers, employees, agents, and auditors comply with the obligations of confidentiality specified in **clause 23(a)**.
- (e) Nothing in this clause affects either of the Ministers' powers, duties or discretions under the *Financial Management Act 2006* (WA) (including section 82) or any other legislation.

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**24. GST**

The Sponsorship Amount is exclusive of GST. If GST is payable, the Event Holder must increase the amount in its Tax invoice (to be submitted to Tourism WA) by that amount and Tourism WA will pay the Event Holder the Sponsorship Amount plus GST, where applicable.

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**25. Term**

The term of this Agreement is from the date of this Agreement to the date when the Event Holder has properly complied with all of its Obligations under this Sponsorship Agreement.

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**26. Termination**

- (a) Tourism WA may by Notice to the Event Holder terminate this Agreement:
  - (i) If the Event Holder breaches this Agreement and will not be able to or does not remedy the breach within 5 days after having received a Notice from Tourism WA calling upon the Event Holder to remedy the breach;
  - (ii) If the Event is cancelled or abandoned (other than on account of Force Majeure or having been caused by any wrong committed by Tourism WA);

- (iii) In the event of actual, deemed or likely insolvency (i.e. failure or inability to pay debts as and when they fall due or being placed under some form of external administration or control) of the Event Holder;
  - (iv) the Event Holder engages, or encourages or suffers anyone else to engage, in fraud, corruption or anything which would amount to a conflict of interest or breach of fiduciary duty or if Tourism WA becomes aware that any information the Event Holder has provided to Tourism WA in connection with the Event is false or misleading in any material respect; or
  - (v) the Event Holder or any officer employee, or representative of the Event Holder does or says, or suffers the doing or the saying of, anything that will or is likely to result in the Event Holder, the Event, Tourism WA, the State or the State's tourism industry being embarrassed, criticised or brought into disrepute.
- (b) If this Agreement is terminated under clause 26(a), or is otherwise terminated lawfully by Tourism WA (for any default on the part of the Event Holder) and if Tourism WA directs the Event Holder to, remit to Tourism WA an amount equal to or all or any part/s of the Sponsorship Amount paid to the Event Holder, the Event Holder must promptly comply.

## **27. Representations and Warranties**

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The Event Holder represents and warrants that:

- (a) it has the full power and authority to enter into and perform its Obligations under this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (c) the Event will be conducted, managed and promoted as defined in this Agreement and as represented to Tourism WA;
- (d) all representations and information provided to Tourism WA by or on its behalf in connection with this Agreement, the written application for sponsorship of the Event, the Event, the transactions contemplated by this Agreement, and its assets, business and affairs are true and correct in all material respects and are not, whether by omission or otherwise, misleading or deceptive; and
- (e) it has not withheld from Tourism WA any document, information or other fact material to the decision of Tourism WA to enter into this Agreement.

## **28. Assignment**

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- (a) The Event Holder must not, without the prior written consent of Tourism WA (which consent may be withheld at its sole discretion), sell, transfer, assign or otherwise dispose of, or part with, any of its rights, entitlements or Obligations under, or interest in, this Agreement.

- (b) In considering whether to provide consent, Tourism WA may require the Event Holder to produce to Tourism WA such information and documents in relation to the expertise, experience, creditworthiness and business standing of the proposed purchaser, transferee, assignee, or recipient of the Event Holder's rights, entitlements or Obligations under or interest in this Agreement (as the case may be) as it considers appropriate.

## **29. Jurisdiction**

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This Agreement will be governed by and construed in accordance with the Laws for the time being of the State. The Parties submit to the exclusive jurisdiction of the courts of the State and all courts having jurisdiction to hear and determine their appeals.

## **30. Conditions Precedent**

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Despite anything expressed or implied to the contrary in this Agreement:

- (a) this Agreement (excluding clauses 1, 11, 14, 15, 26, 27, 28, 29, 30 and 33 and item 7 of Schedule One) only comes into being once the Conditions Precedent have been satisfied, and Tourism WA has acknowledged such satisfaction in writing given to the Event Holder;
- (b) clauses 1, 11, 14, 15, 26, 27, 28, 29, 30 and 33 and item 7 of Schedule One of this Agreement come into being upon execution of this Agreement by the Parties; and
- (c) even once the Conditions Precedent have been satisfied, they still remain terms of this Agreement and enforceable accordingly.

## **31. Notices**

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- (a) Subject to **clause 31(b)**, any Notice that may or must be given under this Agreement, to be valid and effective, must be in writing and must be posted, delivered in person or electronic mail transmission addressed to the following specified officer at the respective address set out below (or such other specified officer or address or number as may be notified to the other Party in writing):

Name: Chief Executive Officer  
Tourism Western Australia

Address: Level 10, 1 William Street  
PERTH WA 6000  
GPO Box X2261  
PERTH WA 6847

Email address: [contractnotices@westernaustralia.com](mailto:contractnotices@westernaustralia.com)

Attention: Chief Executive Officer

Name: TITLE  
ORGANISATION  
Address: ADDRESS  
Email address: EMAIL  
Attention: NAME

- (b) Notices shall be deemed served:
- (i) if posted, on the second Business Day after posting;
  - (ii) if personally served, at the time such actual service is made on an officer or representative of the Party (including a Party's legal representative) on which the Notice is served;
  - (iii) if transmitted by electronic mail message, on receipt of the whole of the Notice in the "in-box" of the Party being served (provided the sender does not receive a delivery failure message).

### **32. Schedules**

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Each expressed or implied provision in any schedule hereto is a provision of this Agreement and must be complied with in accordance with its expressed or implied terms.

### **33. Trusts**

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If the Event Holder enters into this Agreement as trustee of a trust:

- (a) the Event Holder does so both for itself and as trustee of the trust, and in this Agreement, each reference to the Event Holder has effect as a reference in each capacity.
- (b) the Event Holder warrants to Tourism WA that:
  - (i) the Event Holder is the only trustee of the trust;
  - (ii) no action has been taken or proposed to remove the Event Holder as trustee of the trust;
  - (iii) the Event Holder has power under the trust deed to enter into this Agreement and the Event Holder has entered into this Agreement for the benefit of the beneficiaries of the trust;
  - (iv) the Event Holder has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under this Agreement;
  - (v) the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Event Holder has a right to be indemnified out of those assets;

- (vi) the Event Holder is not in default under the trust deed;
  - (vii) no action has been taken or is proposed to terminate the trust;
  - (viii) the Event Holder has complied with the Event Holder's obligations in connection with the trust; and
  - (ix) Tourism WA's rights under this Agreement rank in priority to the interests of the beneficiaries of the trust.
- (c) the Event Holder must:
- (i) at Tourism WA's request, exercise the Event Holder's right of indemnity from the assets of the trust and the beneficiaries of the trust in respect of obligations incurred by it under this Agreement;
  - (ii) comply with the Event Holder's obligations as trustee of the trust; and
  - (iii) not, without the consent of Tourism WA, do anything which:
    - (A) effects the retirement, removal or replacement of the Event Holder as trustee of the trust;
    - (B) could restrict the Event Holder's right of indemnity from the assets of the trust in respect of obligations incurred by the Event Holder under this Agreement;
    - (C) could restrict the ability of the Event Holder to comply with the Event Holder's obligations under this Agreement; and
    - (D) effects a variation of the trust deed, the termination of the trust or the resettlement of the trust.

## **Execution**

Executed as an agreement.

Signed for and on behalf of  
**WESTERN AUSTRALIAN  
TOURISM COMMISSION**  
by a duly authorised signatory

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date

Signed for and on behalf of  
**[Insert Event Holder name]**  
by a duly authorised signatory

\_\_\_\_\_  
Signature of Chairperson

\_\_\_\_\_  
Print name of Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Secretary

\_\_\_\_\_  
Print name of Secretary

\_\_\_\_\_  
Date

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## SCHEDULE ONE

1. **Event:** **Event name** – event description
  2. **Venue:** The event will be held at
  3. **Event Holder:**
  4. **Event Date:**
  5. **Sponsorship Amount:** \$
  6. **Region:**
  7. **Conditions Precedent:** The performance by the Event Holder of its obligations under clause 15(d).
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## SCHEDULE TWO

### Milestones

Sponsorship Amount (AUD)	Milestones
(a) \$xxx	On compliance with <b>Ministerial Involvement</b> [clause 8], <b>Risk Management</b> [clause 10], and <b>Insurance</b> [clause 15]; all requisite documents must be delivered to Tourism WA as per the timing outlined in each clause.
(b) \$xxx	On provision of both the <b>Marketing and Communications Plan</b> [clause 6 (h)] which shall be delivered to Tourism WA no less than <b>60 days before</b> the commencement of the Event.
(c) \$xxx	On returning of the sponsorship banners and <b>signage</b> no later than <b>30 days after</b> the final day of the Event [clause 5].  On delivery to Tourism WA's satisfaction of the <b>Budget Declaration</b> [clause 11 (a)], <b>Final Event Report</b> [clause 12], and <b>Official Photographs and Video</b> [clause 16] no later than <b>90 days after</b> the final day of the Event.
<b>\$xxx</b>	<b>TOTAL SPONSORSHIP AMOUNT</b>

1. Subject to this Agreement and:
  - a. Tourism WA being satisfied of:
    - i. the Event Holder meeting its Obligations; and
    - ii. achieving the relevant Milestone(s) above; and
  - b. compliance with clause 3(a) including provision of a correctly rendered and valid tax invoice,

Tourism WA will pay the milestone amount for the relevant Milestone, within 30 Business Days after the date of the relevant Milestone's achievement by direct credit to a bank account nominated by the Event Holder.
2. Despite item 1 above, payment of any Milestone may be withheld at Tourism WA's discretion until all prior Milestones (whether in respect of the current or relevant year, or in previous years) have been completed by the Event Holder to the satisfaction of Tourism WA.
3. Despite item 1 above, failure to meet any Milestone within 120 days after the last day of the event as outlined in Schedule One will render the Milestone void and Tourism WA will have no obligation to make this payment to the Event Holder.