



**CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD**

Making progress possible. Together.

**EVENTS AGREEMENT
(Commercial Sponsorship Agreement)**

Made and entered into between:

CITY OF CAPE TOWN

and

**TORPEDO SWIMRUN PTY LTD
(REGISTRATION NUMBER: 2017/480096/07)**

Certain provisions in this agreement have been printed in **BOLD** text so as to specifically draw attention of the **RECIPIENT** hereto. These clauses are of specific importance because they affect the **RECIPIENT's** rights and obligations and **RECIPIENT** acknowledges that he/she/it has acquainted itself with these provisions in particular clauses 8.1.13, 8.2.2, 8.3.2, 8.4.1.6, 8.4.1.11, 8.4.2, 10.7, 14.1, 14.2, 14.3, 14.4, 14.5, 14.9, the entire clause 16, clause 20.3 and the entire clause 21, have specific importance for the **RECIPIENT**.

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ANNEXURES

A.	Rights Package
B	Resolution of the Recipient authorising Mr Richard McMartin, Director to sign the agreement on behalf of the Recipient.
C	Events Plan and/or Business Plan
D	Section 67 Declaration
E	Transfer Payment Checklist

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1. PARTIES

The Parties to this Agreement are:-

- 1.1 The **City of Cape Town**, (hereinafter referred to as "**the CITY**") a Metropolitan Municipality established in terms of the *Local Government: Municipal Structure Act, 1998*, (Act No. 117 of 1998) read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, (as amended), herein represented **Mr Richard Bosman** in his capacity as the **Executive Director: Safety and Security**; and
- 1.2 **Torpedo SwimRun Pty Ltd** is a company registered in terms of the laws of South Africa, Registration number: **2017/480096/07**, (hereinafter referred to "**the RECIPIENT**") herein represented by **Mr Richard McMartin** with Identity no: **8006195063085** in his capacity as **Director** of the Organisation and duly authorised hereto.

2. DEFINITIONS

- 2.1 In this Agreement, the following words and phrases have the meanings given to them below:-

2.1.1	"Bank Account" means: Name of Account Holder: Torpedo SwimRun Pty Ltd Name of Bank: First National Bank Type of Account: Business Account Number: 62732655149 Branch Number: 250655 Branch: Vineyard
2.1.2	"Business Day" means a day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
2.1.3	"City's Facilities" means any area or place owned by the CITY where an Event is hosted, that has seated or standing spectator capacity within a permanent or temporary structure. This area or place may be erected or demarcated by an enclosed or semi-enclosed temporary or permanent structure;

2.1.4	"City Services" means all services rendered by the CITY to events;
2.1.5	"CITY's Council" means the Council of the City of Cape Town, established by Provincial Notice 479 of 2000 issued in terms of section 12 of the Local Government: Municipal Structure Act, 1998 (Act No. 117 of 1998);
2.1.6	"Commencement Date" means the date of the Event irrespective of the Signature date;
2.1.7	"Commercial Sponsorship Agreement" means an agreement concluded between the City of Cape Town and an event organiser where a financial transfer is made by the City in return for a rights package;
2.1.8	"Completion Date" means the date that RECIPIENT fulfilled all its obligations as set out in terms of this Agreement and the Business Plan or 3 (three) months from the last day of the Event held during the 2020/21 Financial Year;
2.1.9	"Date of Signature" means the date of the last party signing this Agreement;
2.1.10	"Event" means Torpedo SwimRun Waterfront Knockout to be held at Battery Park, V&A Waterfront on 13 December 2020 ;
2.1.11	"Expenditure" means all the costs related to the services and/or facilities as provided by the City (where applicable) and the Funding mentioned in clause 5.1 herein;
2.1.12	"Event's Organiser" means the Party as described in clause 1.2 herein;
2.1.13	"Financial Year" means the financial year of the CITY commencing on 1 July 2020 and ending on 30 June 2021
2.1.14	"Notice" means a written notice;
2.1.15	"Parties" means the Parties to this Agreement referred to in clause 1 and "Party" shall mean either of them;
2.1.16	"Recipient" means the Event Organiser and beneficiary of the Cash Transfer

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	and/or City Services and/or Facilities (where applicable), as described in this Agreement;
2.1.17	"Rights Package" means a series of rights acquired by the CITY through supporting events. The package of rights is a commercial transaction where the CITY obtains rights to promote its brand through various event activities. The Rights Package applicable to this Event is attached hereto as Annexure "A" ;
2.1.18	"the Act" means the <i>Municipal Finance Management Act, 2003 (Act No: 56 of 2003)</i> ;
2.1.19	"this Agreement" means this Agreement, together with the Annexures hereto;
2.1.20	"the CITY" means the City of Cape Town a Metropolitan Municipality established in terms of the Local Government: Municipal Structure Act, 1998, (Act No. 117 of 1998) read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000, as amended;
2.1.21	"the City's Logos" means the City of Cape Town's logos, as amended from time to time by the City, due to any significant brand change by the City;
2.1.22	"the Policy" means the City of Cape Town's Events Policy (Policy Number 12329) as approved by Council: 29 May 2013, C26/05/13; and

2.2 If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a party, then notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision was a substantive provision in the body of the agreement.

2.3 Any reference in this Agreement to:

- i. **a clause** is, subject to any contrary indication, a reference to a clause of this Agreement;
- ii. **law** means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and

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 RM, ROM, G.O., and other illegible marks.

- iii. **person** means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust, club or partnership (whether or not having separate legal personality).
- 2.4 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.5 The headings do not govern or affect the interpretation of this Agreement.
- 2.6 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 2.7 Any number of days prescribed in this Agreement excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day.
- 2.8 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 2.9 The words "including" and "in particular" are without limitation.
- 2.10 Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 2.11 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 2.12 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 2.13 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 2.14 The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.
- 2.15 In the event of a conflict between the Annexures and this Agreement then the terms of the Agreement shall prevail over the Annexures.

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2.16 The provisions of this Agreement supersede the provisions of any previous Agreement entered into between the Parties relating to the same subject matter.

2.17 In the event of a conflict between the words and figures in this Agreement, the words shall prevail.

3. PREAMBLE

3.1 Torpedo Waterfront is a knockout format race over a short (1.5km) swimming and running course. Racing will be in and around the historic Battery Park canals. Athletes will dice it out over the action-packed SwimRun Circuit that features three sprint swims and four redline runs. To start, all athletes have a 2-hour window in which to set their fastest qualifying time. They encourage to race the lap multiple times and a cold tip is to go slow on your first lap for course familiarisation. To set your qualifying time, you simply tap in at the start and tap out at the finish. Times and positions will be posted in real-time with the top 16 in each age category then progressing to the Knockout Rounds at the conclusion of the 2-hour qualification window. Knockout Rounds - Time doesn't count here and its athlete vs athlete racing in the age category start groups of four. The top 2 progress and the bottom two are Knocked Out. In each age category final, they will see the final four battling it out for the top three podium positions. SwimRun is one of the fastest growing global adventure sports. Torpedo has launched the first SwimRun race in South Africa, in Cape Town. It is a very powerful showcase of the iconic Cape Town coastline and a great marketing advert for Cape Town.

3.2 The CITY supports events that assist the CITY in realising its goals and objectives as set out in the Integrated Development Plan ("IDP"), and specifically to this Agreement strategy to "Create an enabling environment to attract investment that generates economic growth and job creation".

3.3 The CITY agreed to make certain funding, resources and/or facilities available to RECIPIENT and as consideration for the funding, resources and facilities made available to it by the CITY, RECIPIENT agreed to grant the CITY the Rights Package.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

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4. PURPOSE AND GUIDING PRINCIPLES OF THE AGREEMENT

The monitoring and evaluation principles as set out in section 67 of the Act:

- 4.1 The funds will be monitored and evaluated according to the principles set out in Section 67 of the Act.
- 4.2 In terms of Section 67(1)(a), before transferring funds of the municipality to an organisation or body outside a sphere of government otherwise than in compliance with a commercial or other business transaction, the accounting officer must be satisfied that the organisation has the capacity and has agreed to comply with the agreement with the municipality, has complied with all reporting, financial management and auditing requirements as may be stipulated in the agreement, reports at least monthly to the accounting officer on actual expenditure against the transfer and submits its audited financial statements for its financial year to the accounting officer.
- 4.3 In terms of Section 67(1)(b) and (c) before transferring funds of the CITY to an organisation or body outside any sphere of government otherwise than in compliance with a commercial or other business transaction, the CITY is obliged to satisfy itself that the organisation or body implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and mismanagement and has in respect of previous similar transfers complied with all the requirements of this section.
- 4.4 The Parties hereby commit to ensuring that the funds stipulated in clause 5 of the Agreement are managed, monitored and evaluated in terms of the principles as set out in section 67 of the Act.

In terms of the Events Policy ('the Policy'):

- 4.5 The Policy was approved by Council on 29 May 2013.
- 4.6 The strategic focus areas of the CITY are enshrined in the CITY's integrated Development Plan ("IDP") and are categorised into five pillars: The Opportunity City, the Well-run city, the Safe City, the Caring City and the Inclusive City. Events create platforms that have the ability to support all five pillars. The Policy particularly focusses on supporting the Opportunity City, the Safe City and the Inclusive City.

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- 4.7 The Policy aims to create mutually beneficial outcomes for Cape Town residents, businesses and visitors by using the platforms created by events to contribute to Cape Town's growth, development and inclusivity and to assist and guide the CITY in managing event related activities in an efficient and effective manner thereby providing clarity to all role players and stakeholders, The Policy aims to create an enabling mechanism for new approaches to event initiatives.
- 4.8 This Event falls within the scope of application of the Policy.
- 4.9 The utilisation of public funds and the principles of transparency and good governance requires that the monitoring and reporting principles as set out in the Act and the Events Policy be applied to this Agreement.

5. CASH TRANSFER

For the event to be hosted on **13 December 2020**.

- 5.1 The CITY shall transfer payment of **R100 000 (Hundred Thousand Rand Only) (15 % VAT where applicable)** during the 2020/2021 financial year from the Events budget;
- 5.2 The Cash Transfer as mentioned in 5.1 above is acknowledged by RECIPIENT as a once off payment for the applicable CITY's Financial Year with the RECIPIENT having no expectation of a sponsorship for succeeding financial years;
- 5.3 The utilisation of the Cash Transfer shall be for support of the Event held on the **13th of December 2020** as described in this Agreement and the Events and/or Business Plan (**Annexure "C"**).
- 5.4 The CITY shall transfer the Funding referred to in clause 5.1 above into RECIPIENT Bank Account within 30 (thirty) days from the date of signature hereof. This is subject to the City obtaining all the required documentation as stipulated in **Annexure "E"**.
- 5.5 Notwithstanding the fact that any costs of whatsoever nature may increase between the conclusion of this Agreement and the date of the Event or there be any other additional costs, RECIPIENT agrees that the CITY's financial contribution shall, for the purposes of this Agreement, be limited to the amounts mentioned in 5.1 above.

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- 5.6 For avoidance of doubt the CITY accepts no liability or financial responsibility of whatsoever nature for the staging of Event other than those set out in this clause.

6. DURATION OF THE AGREEMENT

- 6.1 This Agreement commences on the Commencement Date and terminates on the Completion Date.

7. VARIATIONS TO THE AGREEMENT

- 7.1 Variations to this Agreement including the Cash Transfer referred to herein, may only be made by consultation and agreement between the Parties, reduced to writing and signed by both Parties.

8. OBLIGATIONS OF THE RECIPIENT

RECIPIENT confirms that:

8.1 In respect of financial reporting

- 8.1.1 It is able, willing and has the capacity to meet its obligations as recorded in this Agreement and to achieve its targets and outputs as recorded in **Annexure "C"** and this Agreement.
- 8.1.2 It will implement effective, efficient and transparent financial management and internal control systems, to guard against fraud, theft and financial mismanagement and to ensure that funding is utilised in accordance with clause 5 above.
- 8.1.3 In respect of previous similar transactions with government, has complied with all the requirements of any applicable legislation.
- 8.1.4 It will deposit the transferred funds into an interest bearing account until it can be utilised.
- 8.1.5 Interest accrued from the account shall only be utilised for the purposes set out in this Agreement.
- 8.1.6 The Funds will be utilised in accordance with the purpose of the Event.

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- 8.1.7 Expenditure vouchers, including cashed cheques, indicating the project number shall be retained for audit purposes.
- 8.1.8 Surplus funds and surplus interest accrued from the Cash Transfer shall be paid back to the CITY after the fulfilment of its obligations in terms of this Agreement.
- 8.1.9 RECIPIENT shall keep a separate ledge account in which must be recorded all funds allocated to it by the CITY and reflect all transactions incidental to this Agreement, and must upon request by the CITY provide the CITY with all details of the account.
- 8.1.10 The CITY, its representative and/or the Auditor-General upon the written request of the City, be entitled to inspect all financial records of the Event as outlined in this Agreement referred to including the separate ledger account referred to in 8.1.9 above and may take copies or extracts thereof.
- 8.1.11 RECIPIENT shall cooperate fully with any financial audit procedure of the CITY, its representative or the Auditor-General and shall furnish any document, record, book of account or bank statement on written request.
- 8.1.12 RECIPIENT will:
- 8.1.12.1 Pay all authorised expenses that it is liable for in terms of this Agreement;
 - 8.1.12.2 ensure the proper records of expenditure are maintained to support all financial transactions made in the execution of this Agreement;
 - 8.1.12.3 ensure that no individual in its employ has exclusive access to funds transferred by the CITY; and
 - 8.1.12.4 ensure that where a petty cash system is operated, it is adequately controlled and transactions are properly recorded.
- 8.1.13 **Non-compliance with this clause 8.1 shall entitle the CITY to invoke the remedies envisaged in terms of clause 15 hereof, and/ or depending on the severity and impact of such breach the CITY shall be entitled to immediately reclaim the unspent portion of the Cash Transfer from RECIPIENT. RECIPIENT shall reimburse such Cash Transfer within 7 (seven) days from the date of the written demand from the CITY to do so.**

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8.2 In respect of reporting in terms of the policy

8.2.1 RECIPIENT furnish the CITY within 3 (three) months after the last day of the Event with a full report of the Event. The CITY shall RECIPIENT in writing as to the information to be included in this report.

8.2.2 **Non-compliance with this clause 8.2 shall entitle the CITY to invoke the remedies envisaged in terms of clause 15 hereof, and/ or depending on the severity and impact of such breach the CITY shall be entitled to immediately reclaim the unspent portion of the Cash Transfer from RECIPIENT. RECIPIENT shall reimburse such Cash Transfer within 7 (seven) days from the date of the written demand from the CITY to do so.**

8.3 Compliance:

8.3.1 RECIPIENT must for the duration of this Agreement adhere to the City's approval processes, all legislation, by-laws, policies, regulations and all legislation applicable to this Agreement as well its own Memorandum of Incorporation and ensure that any and all of RECIPIENT suppliers and service providers appointed in terms of 8.4.1.5 are similarly compliant.

8.3.2 **Non-compliance with this clause 8.3 shall entitle the CITY to invoke the remedies envisaged in terms of clause 15 hereof, and/ or depending on the severity and impact of such breach the CITY shall be entitled to immediately reclaim the unspent portion of the Cash Transfer from RECIPIENT. RECIPIENT shall reimburse such Cash Transfer within 7 (seven) days from the date of the written demand from the CITY to do so.**

8.4 Rights Package and Event

8.4.1 RECIPIENT shall:

8.4.1.1 In consideration of the CITY's support for the Event and Cash Transfer envisaged herein RECIPIENT shall provide the CITY with the rights as recorded in the Rights Package attached hereto as **Annexure "A"**;

8.4.1.2 ensure that the Event is organised and carried out to the best industry standards so that the Event is one that the CITY will be proud to be associated with;

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- 8.4.1.3 obtain the written approval of the CITY prior to the production of all marketing materials in which the name or trademarks of the City are to be used. The CITY shall respond to any such request within the time period stipulated in clause 19.2 below from the time the sample advertising material having been presented to the CITY for consideration;
- 8.4.1.4 obtain public liability insurance for the Event as stipulated in clause 14 herein;
- 8.4.1.5 make all payments as may be required in respect of the Event to suppliers and service providers as appointed by RECIPIENT, it being recorded that all obligations to make payments in respect of the Event shall be the sole responsibility of RECIPIENT.
- 8.4.1.6 employ, manage and be responsible for the employees, officials, representatives/agents and subcontractors who are part of and involved in the Event;**
- 8.4.1.7 not make any undertakings to third parties for and on behalf of the CITY without the CITY's prior written consent. Refer to clause 22 below;
- 8.4.1.8 at all times prior to the CITY's brand being used in the Event in whatever manner consult with the CITY to ensure that the CITY is satisfied with the use of its brand and has signed-off and consented to such use. Any use of the CITY's brand must be in accordance with the CITY's branding policy;
- 8.4.1.9 undertake to instruct their employees or representatives of their obligations as set forth in this Agreement;
- 8.4.1.10 designate the CITY as a Sponsor and official 'Host City' status with regard to the Event;
- 8.4.1.11 ensure that together with its employees, officials, representatives and subcontractors, exercise reasonable care and diligence in fulfilling its duties in respect of the Event;**
- 8.4.1.12 ensure that the CITY is kept informed about any and all planned activities, relevant to the CITY in connection with the Event;

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- 8.4.1.13 ensure that the CITY is informed of all important announcements, relevant to the CITY that will be made regarding the Event;
- 8.4.1.14 ensure that it obtains, at its cost, all consents, approvals permits, certificates and licences specifically relating to the Event and adhere to the requirement of Compliance as mentioned in clause 8.3 above;
- 8.4.1.15 immediately refunds to the City, the relevant sponsorship fees it has received for the Event if for any reason whatsoever, the Event does not take place;
- 8.4.1.16 undertake full responsibility for all aspects of the Event, including pre and post production and delivery standards;
- 8.4.1.17 arrange and procure medical facilities, all necessary equipment in connection therewith and personnel, for both participants and visitors at the venue where the Event is to be held;
- 8.4.1.18 establish procedures and protocols for emergency evacuation of seriously ill or injured persons; and
- 8.4.19 provide all necessary toilet and disabled facilities.
- 8.4.20 **Non-compliance with this clause 8.4 shall entitle the CITY to invoke the remedies envisaged in terms of clause 15 hereof, and/ or depending on the severity and impact of such breach the CITY shall be entitled to reclaim the unspent portion of the Cash Transfer from RECIPIENT. RECIPIENT reimburse such Cash Transfer within 7 (seven) days from the date of the written demand from the CITY to do so.**

9 OBLIGATIONS OF THE CITY

In regard to:

9.1 The Cash Transfer:

- 9.1.1 The CITY undertakes to transfer to RECIPIENT the Cash Transfer as reflected in clause 5.1 hereto, subject to the satisfactory fulfilment of the terms and conditions set out in this Agreement by RECIPIENT.

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9.2 Monitoring and Evaluation:

- 9.2.1 The CITY shall monitor and evaluate RECIPIENT performance (under this Agreement) in accordance with clause 10 herein.

10. MONITORING AND EVALUATION

- 10.1 The reporting, as outlined in this clause and clause 8 of this Agreement, constitutes the basis for the monitoring and evaluation of the fulfilment of the terms and conditions of this Agreement.
- 10.2 The reporting mentioned in clause 8 must be submitted to the **Executive Director: Safety and Security** in the CITY.
- 10.3 The CITY may, for the duration of this Agreement and until such time as obligations arising therefrom and thereafter for RECIPIENT, monitor RECIPIENT progress regularly through:
- 10.3.1 On-site visits during the validity of this Agreement;
 - 10.3.2 The interpretation of progress reports as contemplated in clause 8 hereof;
 - 10.3.3 The verification of non-financial data as contemplated in clause 8 hereof;
 - 10.3.4 The analysis of the impact of the Event based on an evaluation by the CITY or a reputable service provider;
 - 10.3.5 The analysis of all documentation and records supporting the statistics and non-financial data that RECIPIENT records and submits in its report to the CITY.
- 10.4 RECIPIENT specifically undertakes to assist the CITY with the verification and validation of statistics and non-financial data recorded and submitted in its reports by safe-guarding all relevant supporting documentation and by granting the CITY and/or the Auditor General access to such documentation when required.
- 10.5 RECIPIENT must grant officials of the CITY associated with services access to all relevant records of RECIPIENT that are relevant to the reports submitted in terms of this Agreement at all reasonable times in order for the CITY to do proper monitoring and evaluation of RECIPIENT.

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10.6 RECIPIENT furthermore agrees that all documents pertaining to this Agreement may be published and made available in accordance with provisions of the Promotion of Access to Information Act of 2000, (Act No. 2 of 2000).

10.7 Non-compliance with this clause 10 will entitle the CITY to invoke the remedies envisaged in terms of clause 15 hereof.

11. FORCE MAJEURE

11.1 Subject to clause 16 herein, should any Party (hereinafter referred to as the "Invoking Party") be prevented from fulfilling its obligations in terms of this Agreement as a result of any act of God, strike, war, riots, fire, flood, legislation, insurrection, sanctions, trade dispute or economic embargo or any similar cause beyond the reasonable control of such Invoking Party (any such event hereinafter called "*force majeure*") then:

- 11.1.1 the Invoking Party shall forthwith give written notice thereof to the other Party;
- 11.1.2 specifying the cause and anticipated duration of the *force majeure*; and
- 11.1.3 promptly upon termination of the *force majeure*, give written notice stating that such *force majeure* has terminated.

11.2 Performance of any such obligations shall be suspended from the date on which notice is given in terms of sub-clause 11.1.1 until the date on which notice is given in terms of 11.1.3.

11.3 The Invoking Party shall not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the *force majeure* during the period referred to in clause 11.1 provided that the Invoking Party uses and continues to use its best efforts and takes all reasonable steps to perform such obligation and provides the necessary notices as set out in clause 11.1.1 and 11.1.3.

11.4 If the *force majeure* continues for more than 30 (thirty) days, the other Party shall be entitled to cancel this Agreement on the expiry of such period with immediate effect on written notice, but shall not be entitled to claim damages against the Invoking Party as a result of the delay or failure in the performance of any obligations hereunder due to or resulting from the *force majeure*, except as otherwise provided in this Agreement.

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12. DISPUTE RESOLUTION

- 12.1 The Parties agree that, in the event of a dispute between them arising out of this Agreement, neither Party must interrupt or suspend the performance of its obligations in terms of this Agreement, pending resolution of the dispute.
- 12.2 Any dispute arising out of or in connection with this Agreement must, in the first instance, be referred for consideration and possible resolution to designated representatives as agreed on by the Parties.
- 12.3 Should the persons referred to in clause 12.2 fail to resolve the dispute within 7 (seven) days of it being referred to them (or within such alternative period as they may mutually decide) then they may by written agreement appoint a third party to act as mediator, and not as arbitrator, to mediate the resolution of the dispute. Should they not be able to agree on the mediator, then the mediator must be selected by the chairperson for the time being of the Arbitration Foundation of Southern Africa ("AFSA") or its successor. The cost of the mediator must be borne by the Parties to the dispute in equal shares.
- 12.4 Should the mediator referred to in clause 12.3 fail to resolve the dispute within 7 (seven) days (or within such alternative period as they may mutually decide), then any Party will have the right to require that the dispute be referred to arbitration in which event it must be submitted to and determined by arbitration in accordance with the rules of AFSA, or its successor, by an arbitrator appointed by AFSA. The arbitration must be held with a view to it being completed as soon as possible. The arbitrator's decision will be final and binding between the Parties.
- 12.5 Notwithstanding the above, nothing herein contained shall be deemed to prevent or prohibit a Party to the Agreement from access to an appropriate court of law for:
- 12.5.1 interim or urgent relief in form of an interdict mandamus or order for specific performance pending the outcome of an arbitration in terms of this clause or in respect of such arbitration;
- 12.5.2 any other form of relief on the basis of facts which are not disputed;
- 12.5.3 payment of any amount due in terms of this Agreement; or
- 12.5.4 an order for payment of a liquidated amount in money on the basis of facts which are not bona fide in dispute at the commencement of such proceedings.

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12.6 This provision will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

12.7 Should either Party consult its attorneys, or institute action against the other Party, in order to enforce any terms of this Agreement, then without prejudice to any other right which that Party may have, it shall be entitled to recover from the other Party all legal costs reasonably incurred by it, including but not limited to its attorney's fees as between attorney and own client.

13. DOMICILIUM CITANDI ET EXECUTANDI

The Parties hereby choose as their *domicilium citandi et executandi* for the purposes of this Agreement, the following addresses: -

13.1 The CITY: -

Attention: Mr Richard Bosman
City of Cape Town
Executive Director: Safety and Security
Executive Suite, 5th Floor Podium Block, Cape Town
Civic Centre, 12 Hertzog Boulevard, Cape Town, 8000
Telephone 021 400 3355
Fax: 021 400 5923
E-mail: RichardGavin.Bosman@capetown.gov.za

13.2 RECIPIENT: -

Attention: Mr Richard McMartin
Torpedo SwimRun Pty Ltd
13 Alfred Road,
Newlands
7700
Tel: 0832583736
Email: richard@torpedoswimrun.com

13.3 The *domicilium citandi et executandi* (other than e-mail) is chosen for the purpose of giving notice, the payment of any sum, the service of any process and for any other purpose arising from this Agreement.

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14. INDEMNITY AND INSURANCE

- 14.1** RECIPIENT hereby indemnifies the CITY against any claims, which may be made against RECIPIENT and/or the CITY, for any claim that may arise as a result of any loss suffered by any third party, as a result of any intentional or negligent act or omission committed by RECIPIENT (its employees, officials and representatives/agents) and/or its subcontractors, in the course of this Agreement.
- 14.2** RECIPIENT specifically agrees to indemnify and hold harmless the CITY against any claim that may arise as a result of any liability, loss or damages suffered by RECIPIENT its employees, officials, representatives and/or subcontractors as a result of any act or omission by RECIPIENT or the CITY, in the course of this Agreement, unless such liability, loss, or damage is caused by the misconduct or negligence of the CITY.
- 14.3** The CITY will not, in any event be liable for indirect, special or consequential damages arising from the performance of its obligations in terms of this Agreement, unless such loss or damage is caused by the willful misconduct or gross negligence of the CITY.
- 14.4** The Parties agree to notify each other in writing, within 48 (forty – eight) hours from the date of the indemnity becoming enforceable, by registered or certified mail of any claim made against the Party and the obligation indemnified against.
- 14.5** Indemnity under this Agreement shall commence on the Commencement Date and continues until the risk created by this relationship ceases to exist.
- 14.6** RECIPIENT shall:
- 14.6.1** obtain appropriate insurances, to the satisfaction of the CITY, against risks that are of a nature usually insured against by persons engaged in activities that are similar to the Event, including but not limited to public liability insurance, in the minimum amount of **R20 million (twenty-million)**, or as approved by the CITY in writing from time to time;

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- 14.6.2 furnish the CITY with a description of and proof of obtaining of the insurances envisaged in clause 14.6.1, as well as prompt written notice of any premium renewals in respect of such insurances; and
- 14.6.3 ensure that the counterparties to the documents and agreements concluded by RECIPIENT in relation to the Event, all have adequate professional indemnity insurance and insurance against risk associated with the activities conducted by such counterparty, including but not limited to public liability insurance, to the satisfaction of the City.
- 14.7 RECIPIENT shall further ensure that it has the necessary Employers liability insurance in respect of its employees/agents and in the event that RECIPIENT recruits workers based in South Africa, that they have acquired the necessary employer's liability insurances in line with the provisions of COIDA and have complied with all other applicable legislation.
- 14.8 RECIPIENT shall further ensure that it has procured the necessary motor vehicle insurance in respect of its own vehicles.
- 14.9 **RECIPIENT further confirms that in the event of RECIPIENT being under insured or its insurers repudiating its claim for whatsoever reason, there will be no recourse against the CITY, either by RECIPIENT or any third parties and RECIPIENT remains liable and indemnifies the CITY in full in this regard.**
15. **BREACH CLAUSE**
- 15.1 If RECIPIENT breaches the terms and conditions of this Agreement, the CITY after becoming aware of the alleged breach must notify RECIPIENT in writing to remedy the breach and RECIPIENT must remedy the said breach within 7 (seven) days from receipt of the demand;
- 15.2 In the event of RECIPIENT failing or being unable to remedy the breach the CITY may, without prejudice to any other rights it may have in law, exercise all or any of the following rights:
- 15.2.1 Cancel the Agreement and claim any damages, together with interest; or
- 15.2.2 Demand the immediate repayment by the RECIPIENT of the unspent portion of the Cash Transfer in respect of this Agreement and to recover the spent portion of this Agreement with interest, from the RECIPIENT; or

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- 15.2.3 Demand Specific Performance together with a claim for any damages and applicable interest.
- 15.3 For the purpose of this Agreement, but not exclusively limited thereto, breach may include the following actions and/or omissions:
- 15.3.1 The terms and conditions of this Agreement are not complied with by RECIPIENT;
- 15.3.2 The Cash Transfer being mismanaged by RECIPIENT;
- 15.3.3 The Event was ceased by RECIPIENT unilaterally before the expiry of the contract period without the prior consent of the CITY;
- 15.3.4 RECIPIENT utilised or is utilising the Cash Transfer in a dishonest and/or fraudulent manner or is mismanaging the funds; or
- 15.3.5 RECIPIENT contravenes any provisions of any applicable legislation, by-laws, policies and/or regulations.
- 15.4 Notwithstanding anything to the contrary contained herein, the CITY shall be entitled to cancel this Agreement immediately if the other Party:-
- 15.4.1 Takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory or under judicial management in either case whether provisionally or finally; or
- 15.4.3 takes steps to deregister itself or it is deregistered for some other reason; or
- 15.4.4 fails to satisfy a judgment in excess of the amount of the Cash Transfer contemplated in clause 5.1 entered against itself within 21 (twenty one) days after it becomes aware of the judgment, except if it provides evidence on an ongoing basis to the reasonable satisfaction of the CITY that steps have been initiated within the 21 (twenty one) days to appeal, review or rescind a judgment and to procure suspension of execution of the judgment and that such steps are being expeditiously pursued; the period of 21 (twenty one) days shall run from the date on which the judgment becomes final, or the date on which the attempt to procure the suspension of the execution fails.
- 15.5 If the CITY breaches the terms and conditions of this Agreement, RECIPIENT must notify the CITY in writing to remedy the breach within 7 (seven) days after becoming aware of the alleged breach;
- 15.6 In the event of the CITY failing or being unable to remedy the breach RECIPIENT may, without prejudice to any other rights it may have in law, exercise all or any of the following rights:

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- 15.6.1 Cancel the Agreement and claim any damages together with interest applicable; or
- 15.6.2 Demand Specific Performance together with a claim for any damages and any interest applicable.

15.7 Cancellation or termination of this Agreement will not relieve a Party of obligations imposed upon such Party by statute or regulation or by this Agreement prior to its termination.

16. NO FAULT TERMINATION

16.1 The Parties hereby agree that should the Event not proceed for whatsoever reason, and the Cash Transfer has already been effected, then this Cash Transfer, shall be repaid to the CITY by RECIPIENT within 5 (five) days of RECIPIENT receiving a written request from the CITY to do so and the CITY may discontinue the CITY Services (where applicable) on written notice to RECIPIENT.

17. GENERAL

17.1 This document and the Annexures thereto constitute the entire record of this Agreement between the Parties.

17.2 No Party is bound by any expressed or implied term, representation, warranty, promise or the like not recorded herein.

17.3 No relaxation, indulgence or act of leniency which one Party may show the other will in any way prejudice the Party or be deemed to be a waiver of any of its rights under this Agreement.

17.4 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable and the remaining clauses remain of full force and effect. If any invalid term is incapable of amendment to render it valid, the Parties agree to negotiate an amendment to remove the invalidity.

18. CESSION AND ASSIGNMENT

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18.1 No Party shall cede or assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld.

18.2 Any cession or assignment agreed to by a Party will not relieve the other Party of any obligations with respect to any covenant, condition, or obligation required to be performed by that Party under this Agreement.

19. INTELLECTUAL PROPERTY

19.1 All Intellectual Property rights of whatsoever nature belonging to the CITY, including, without limitation, the CITY's logo, emblem or any other form of corporate identity, shall remain vested at all times in the CITY.

19.2 RECIPIENT shall not, under any circumstances whatsoever reproduce, copy or use the CITY's corporate identity or permit the use of CITY's Intellectual Property by any third party, except as otherwise provided for herein and with CITY's prior written consent. The CITY shall appoint a designated person to ensure that the CITY has responded to any request from RECIPIENT in terms of this clause within a period of 48 (forty-eight) hours, or such reasonable period, after receiving same from RECIPIENT.

19.3 RECIPIENT (including its representatives, agents and employees) will not at any time, or in any manner, lower the dignity, standing and reputation of the CITY or in any way contest the validity of, or prejudice, any of the CITY's Intellectual Property rights, including its corporate identity, emblem or logo.

19.4 Insofar as RECIPIENT is considered in law to be the original owner of the Copyright in any document, drawing, material or record developed or acquired by the RECIPIENT in the course of discharging its obligations under this Agreement, it hereby grants the CITY the right to copy such document, drawing, material or record, for internal and external reporting and any other reasonable purpose.

20. CONFIDENTIALITY

20.1 Except as otherwise provided in this clause, the terms and conditions of this Agreement, all data, reports, records and other information of any kind whatsoever developed or acquired by any Party in connection with this Agreement ("the

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confidential information") shall be treated by the Parties as confidential. Neither Party shall reveal or otherwise disclose such confidential information to any third party without the prior written consent of the other Party and shall take all reasonable steps and precautions to ensure that such information remains strictly confidential and that any third party does not obtain access thereto or knowledge thereof. The foregoing restrictions shall not apply to the disclosure of necessary confidential information to employees, agents or contractors of the Parties. Any third party that may become privy to such information shall first undertake in writing to protect the confidential nature thereof.

20.2 The confidentiality undertaking in this clause shall not apply in respect of confidential information within the public domain, within a Party's knowledge at the commencement of this Agreement, to disclosures required to satisfy an order of court, or which is necessary to comply with the provisions of any law or regulation in force from time to time.

20.3 **RECIPIENT** shall not at any time during the term of this Agreement, release any statement to the press, or make any other public statement of any nature which could reasonably be expected to be published in any media regarding the relationship between the Parties or the subject matter of this Agreement, without the prior written consent of the CITY. The CITY will appoint a designated person to ensure all communications and press releases are approved by the CITY within a period of 48 (forty-eight) hours, or such reasonable period, after receiving them from **RECIPIENT**.

21. **LIMITATION OF LIABILITY**

21.1 The CITY shall not be liable to **RECIPIENT** for any indirect or consequential loss or damage, including without limitation, loss of profit revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract.

21.2 Notwithstanding anything contained in this Agreement, the CITY's maximum liability shall be limited, whether for a single or multiple events, to the extent of its sponsorship herein.

22. **NATURE OF RELATIONSHIP**

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22.1 This Agreement does not create an employment relationship, partnership, joint venture or agency between the Parties and neither Party shall be liable for the debts of the other Party, howsoever incurred.

22.2 RECIPIENT no authority or right to bind the CITY to any third party and it shall be personally liable for any act purporting to so bind the CITY.

23. IMPLEMENTATION AND GOOD FAITH

23.1 The Parties undertake to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or conducive to the giving of effect to the terms, conditions and import of this Agreement.

23.2 The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement.

24. JURISDICTION

The Parties hereby consent to the jurisdiction of the Western Cape High Court, Cape Town for all actions or proceedings and/or to settle any dispute which may arise out of or in connections with this Agreement.

25. COSTS

Each Party shall bear its own costs attendant on the negotiation and/or conclusion of this Agreement.

26. SIGNATURE

26.1 This agreement is signed by the Parties on a date and at the places recorded herein.

26.2 The persons signing this agreement on behalf of the Parties in a representative capacity warrant their authority to do so and further warrant that the proper resolutions (where applicable) have been passed by the Parties authorising them to do so.

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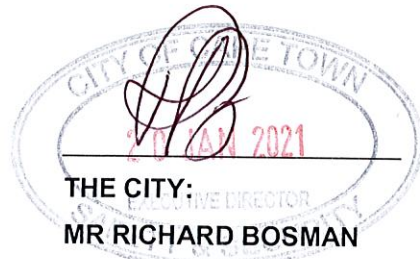
26.3 This contract may only be signed upon the necessary authority being obtained by the Parties;

26.4 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

SIGNED at Cape Town on this 20th day of January 2020. *RB*

AS WITNESSES

1. *[Signature]*
2. *J. Anand*



THE CITY:
MR RICHARD BOSMAN
EXECUTIVE DIRECTOR:
SAFETY AND SECURITY
(WHO WARRANTS HIS
AUTHORITY HERETO)

SIGNED at Cape Town on this 14 day of January 2020. *[Signature]*

AS WITNESSES

1. *[Signature]*
2. *RM Martin*

[Signature]
TORPEDO SWIMRUN PTY LTD
MR RICHARD McMARTIN
DIRECTOR
(WHO WARRANTS HIS
AUTHORITY HERETO)

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RM ROM*

ANNEXURE "A"

(RIGHTS PACKAGE)

City of Cape Town logo on all marketing collateral including social, print and on the website.
City of Cape Town branding at the start and finish.
Speaking opportunity for City of Cape Town representative.
Complimentary entries to the race.

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ANNEXURE "B"

MEMBERS RESOLUTION

(TO BE SIGNED BY ALL MEMBERS)

IT IS RESOLVED-

- 1 THAT **Torpedo SwimRun Waterfront Pty Ltd** (hereinafter referred to as "**the RECIPIENT**") be and is hereby authorised to enter into the attached draft Sponsorship Agreement with the City of Cape Town ("**the CITY**"), in terms of which the CITY agreed to make certain resources and facilities available to the RECIPIENT and as consideration for the resources and facilities made available to it by the CITY, the RECIPIENT agreed to grant the CITY the Rights Package, subject to the terms and conditions set out in the draft Sponsorship Agreement, which was available for inspection;
1. THAT **Mr Richard McMartin** in his capacity as **Director of Torpedo SwimRun Waterfront Pty Ltd**, is authorised to sign this Sponsorship Agreement on behalf of the RECIPIENT and to sign all other documents and perform all other acts on behalf of the RECIPIENT required for implementing the transaction set out in the aforementioned Agreement.

 Richard McMartin	Date: 14 / 01/ 2021	Place: Cape Town
 Rob Wright	Date: 14 / 01/ 2021	Place: Cape Town

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ANNEXURE "C"

(THIS PAGE TO BE REPLACED WITH THE EVENTS OR BUSINESS PLAN)

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ANNEXURE "D"

DECLARATION

By
TORPEDO SWIMRUN PTY LTD
(Hereinafter referred to as "the RECIPIENT")

Written assurance confirming implementation of financial management and internal control systems in terms of section 67(1) of the *Municipal Finance Management Act*

I, **Richard McMartin**, in my capacity as, **Director** of the **RECIPIENT**, hereby confirm that the **RECIPIENT** has in place effective, efficient and transparent financial management and control systems for the management of the transfer payment from the Municipality as mentioned in clause 5 of this Agreement.

SIGNED at Cape Town on this 14 day

of January 2020.

AS WITNESSES

1. R. Wright
2. R. McMartin



MR RICHARD McMARTIN
DIRECTOR
THE RECIPIENT



ANNEXURE "E"

TRANSFER PAYMENT CHECKLIST

NAME OF EVENT:

ORGANISATION NAME:

VENDOR NO:

EMAIL ADDRESS:

TEL NO:

CASH PAYMENT:

PAYMENT DATE:

Required Documentation	YES	NO
Register on CSD		
Income & Expenditure Reports is required if the amount is less than R50 000, if the amount exceeds R50 000 the latest audited Financial statements is required		
Business Plans & Project Plan		
Registration certification		
Valid original Tax clearance certificate		
Proof of banking details (cancelled cheque or 3 months bank statements)		
Check Vendor status (SAP XK03) and print screen with vendor no & bank details		
Vendor Registration Form (if not a vendor) Certified copy required with all supporting documents listed in section 8 of the VRF plus: • declaration of interest (applicable for all vendors) • letter from bank with signatories • Proof of address		
If renting a copy of the lease agreement and the owner's municipal account to be forwarded. The municipal account must be up to date, if not the arrears to be paid in full or arrangements must be made to pay the arrears off and proof to be forwarded.		
Memorandum of agreement to be completed & with ID's of signatories		
Payment Request form to be completed		
A zero rated TAX invoice if beneficiary has a VAT number. Or an Invoice if beneficiary does not have a VAT number. Invoice to be addressed to accounts payable, Private Bag X6, Bellville 7530		
A copy of the MOA with annexures to be given to the beneficiary		

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Appendix "A"

CITY OF CAPE TOWN (the City) EVENTS Policy (the Policy)

PROJECT PLAN

Financial Year (the City's financial year): 1 July to 30 June

No.: DETAILS AND REQUIREMENTS

1. **ORGANISATION:** Torpedo SwimRun

2. **AIMS AND OBJECTIVES OF ORGANISATION:**

Show casing the iconic routes and venues of the Mother City, Cape Town..

Introducing a new sport to the world of sport called SwimRun... ..

3. **PROJECT OR PROGRAMME DETAILS:**

3.1 **Project or Programme Description** – What is the proposed project's focus, purpose or level of intervention?

To grow the new sport of SwimRun in Southern Africa as it is very established internationally. This specific race is a 1st of it's kind for SwimRun - A knockout format race over a short (1.5km) swimming and running course.

Multiple small batch warm-up lap and heats, followed by Quarter-Finals, Semi-Finals and Finals.

3.2 **Location/area** - Where will this project be carried out? I.e. What is the target area?
Target:

Battery Park, Waterfront

3.3 **Number of attendees and/or participants:** How many people attend the event?
Due to the current Covid situation, the venue only allowed 200

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3.4	Beneficiaries- Which community(the target community or group)will benefit from this project?..... Houtbay life saving club.
3.5	Sponsorship objectives: Which companies are sponsoring the event? Product sponsors: Red Bull, Bootlegger, Second Skins, Mobii, Outsurance.....
3.6	Swot Analysis: Strengths and Weaknesses: Strengths: Exclusive access to the route Great way to experience Cape Town... .. Weaknesses: Numbers can be restricted by Venue and circumstances..... Weather plays an important role
3.7	Opportunities: How will you grow your event: Grow sponsorship Social media Due to the unique knockout format we aim to attract competitive sports enthusiasts.
3.8	Threats: Any concerns about the event: Lockdown regulations..... Weather is unpredictable and can be a high risk.....
3.9	Marketing and Media: Brief information on the plans (challenges): Market across all social media platforms..... Work with all the sporting and triathlon clubs... .. Sponsoring pro athletes / swimmers Educating people about what this new sport entails.....
3.10	Economic Development and Tourism impact: As the race become well known, it will attract more tourist as we do marketing abroad and as lockdown regulations are lifted for tourists.....

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3.11	Legacy: To have a thriving community of swim runners with Cape Town as the city where it all started for Africa..... To take this sport to every province or major City in South Africa, thereafter to the rest of Africa

4. BUDGET (see attached)

4.1	Expenditure Budget - What is the anticipated expenditure to be incurred on this specific project or programme and what will the money be spent on? NOTE: - Transfer funding RECEIVED FROM THE CITY CANNOT BE USED TO FUND salaries and wages, municipal service accounts, telephone accounts, general administration expenses, etc. Any transfer funding that your organisation may receive from the City must only be used to fund expenditure directly related to the approved event ensuring that the target beneficiaries receive the full benefit of the transfer funding which will not happen if any funds are misused or are used to fund the types of expenditure mentioned. Your organisation must fund your own normal operating costs and any structures and other improvements made to your property and / or buildings. Your organisation must be properly registered, established and viable and provide the City with copies of your audited Annual Financial Statements where transfer funding received from the City is R50 000 or above or Income and Expenditure statement where transfer funding is less than R50 000.																																				
	<table border="1"> <thead> <tr> <th>No</th> <th>Details (What will be done or how will the income reflected be utilised?)</th> <th>Amount (R)</th> </tr> </thead> <tbody> <tr> <td>(i)</td> <td>Volunteers / casual hands</td> <td>R3,300</td> </tr> <tr> <td>(ii)</td> <td>Finish Line Branding</td> <td>R6,328</td> </tr> <tr> <td>(iii)</td> <td>Land Safety</td> <td>R3,401</td> </tr> <tr> <td>(iv)</td> <td>MC</td> <td>R3,800</td> </tr> <tr> <td>(v)</td> <td>Media</td> <td>R5,000</td> </tr> <tr> <td>(vi)</td> <td>Medical</td> <td>R7,247</td> </tr> <tr> <td>(vii)</td> <td>Event compliance</td> <td>R3,900</td> </tr> <tr> <td>(viii)</td> <td>Timing</td> <td>R8,017</td> </tr> <tr> <td>(ix)</td> <td>Water Safety</td> <td>R16,123</td> </tr> <tr> <td>(x)</td> <td>PR, Photographers and Content</td> <td>R45,000</td> </tr> <tr> <td colspan="2">TOTAL BUDGET - EXPENDITURE</td> <td>R102,116</td> </tr> </tbody> </table>	No	Details (What will be done or how will the income reflected be utilised?)	Amount (R)	(i)	Volunteers / casual hands	R3,300	(ii)	Finish Line Branding	R6,328	(iii)	Land Safety	R3,401	(iv)	MC	R3,800	(v)	Media	R5,000	(vi)	Medical	R7,247	(vii)	Event compliance	R3,900	(viii)	Timing	R8,017	(ix)	Water Safety	R16,123	(x)	PR, Photographers and Content	R45,000	TOTAL BUDGET - EXPENDITURE		R102,116
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TOTAL BUDGET - EXPENDITURE		R102,116																																			

4.2	Income Budget: - What are the anticipated income sources for the specific event in order to fund the expenditure?												
	<table border="1"> <thead> <tr> <th>NO</th> <th>SOURCES</th> <th>AMOUNT (R)</th> </tr> </thead> <tbody> <tr> <td>4.2.1</td> <td>TRANSFER FUNDING AND/OR OTHER CITY SUPPORT REQUESTED FOR THIS PROJECT / PROGRAMME</td> <td>R100,000</td> </tr> <tr> <td>4.2.2</td> <td>OWN FUND RAISING BY YOUR ORGANISATION</td> <td>R100,000</td> </tr> <tr> <td>4.2.3</td> <td> OTHER SOURCES (SPECIFY BELOW) Please provide details and identify the source of the funds e.g. National Government, the Provincial Government: Western Cape, </td> <td>R0</td> </tr> </tbody> </table>	NO	SOURCES	AMOUNT (R)	4.2.1	TRANSFER FUNDING AND/OR OTHER CITY SUPPORT REQUESTED FOR THIS PROJECT / PROGRAMME	R100,000	4.2.2	OWN FUND RAISING BY YOUR ORGANISATION	R100,000	4.2.3	OTHER SOURCES (SPECIFY BELOW) Please provide details and identify the source of the funds e.g. National Government, the Provincial Government: Western Cape,	R0
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4.2.3	OTHER SOURCES (SPECIFY BELOW) Please provide details and identify the source of the funds e.g. National Government, the Provincial Government: Western Cape,	R0											

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	Private Donors and donor organisations etc. and including other sources of funding that your organisation may receive from the City	
(i)	TICKETING/ENTRY FEES	R14,245
(ii)	MERCHANDISING	R0
(iii)		
(iv)		
(v)		
(vi)		
TOTAL BUDGET - INCOME		R214,245

Duly authorised person of the organisation:

Full Name: Richard McMartin

RSA ID Number 8006195063085

Position Director



For Official Use Only

(To be completed by Project Manager when MAYCO has approved the SUPPORT and before the signing of the MOA – Attach this completed Annexure to the signed MOA)

(To be completed by Project manager when Spevco has approved the grant and before the signing of the MOA – Attach this completed project plan to the signed MOA)

Spevco on (date) approved the sponsorship funding of R Financial /City/Event Services to the organisation or body identified in Project Plan...

Line Department: - Events

Project Manager: - Babulwa Mafilika

Date: - 20.01.2021

Signature: - 

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UNDERWRITING MANAGERS (PTY) LTD

CONFIRMATION OF INSURANCE

LIABILITY AS PER EVENTS LIABILITY

28 October 2020

TO WHOM IT MAY CONCERN

INSURED:

GEST PRODUCTS T/A TORPEDO SWIMRUN CAPE TOWN

We hereby confirm that we, KEU Underwriting Managers, Underwriters on behalf of Centriq Insurance Company Limited are providing comprehensive cover for **GEST PRODUCTS T/A TORPEDO SWIMRUN CAPE TOWN** which include Liability Insurance

JURISDICTION:

Republic of South Africa

TERRITORIAL LIMITS:

Republic of South Africa

Event / Description of Business:

CAPE TOUR, SWIM AND RUN SPORT EVENTS.

LOCATION:

VARIOUS VENUES WITHIN THE REPUBLIC OF SOUTH AFRICA.

POLICY NUMBER:

KEU 28815

PERIOD OF INSURANCE:

FROM: 24 October 2020

TO: 23 October 2021

INTEREST:

To indemnify the insured in the event of a Loss as a result of an Insured Peril as stated in the agreed wording

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COVER PROVIDED

COVER

SUM INSURED

Events Liability

Employers Liability	R 20,000,000.00 (VAT Inclusive) in the aggregate for the period
Statutory Legal Defense Costs	R 5,000,000.00 (VAT Inclusive) in the aggregate for the period
Wrongful Arrest and Defamation	R 250,000.00 (VAT Inclusive) in the aggregate for the period
Emergency Medical Expenses	R 150,000.00 (VAT Inclusive) in the aggregate for the period
Spread of Fire	R 250,000.00 (VAT Inclusive) in the aggregate for the period
Food and Drink	R 5,000,000.00 (VAT Inclusive) in the aggregate for the period
Temporary Construction	R 5,000,000.00 (VAT Inclusive) in the aggregate for the period
Participants Whilst Participating	R 5,000,000.00 (VAT Inclusive) in the aggregate for the period
	R 10,000,000.00 (VAT Inclusive) in the aggregate for the period



CENTRIQ
INSURANCE



UNDERWRITING MANAGERS (PTY) LTD

Please Note:

The Annual Premium is a **Minimum and Deposit Premium** (least amount payable) - adjustable upwards at Renewal on Declaration of Actual Annual Turnover and/or Number of Events for the expired period.

Events Liability Conditions:

1. Cover does not extend to include Cancellation, Abandonment or Postponement of the Event.
2. Damages to the venue which is in the care custody and control of the insured, is not covered in terms of the policy. Should the insured wish to include damages to venue this will be subject to a pre- and post- survey.
3. The cover does extend to include liability arising from the Exhibitions / Stalls / Displays at the Event. Exhibitions involving any mechanical, high risk or self-propelled engines are excluded.
4. Physical damage or theft to the Exhibitions / Stalls / Displays and/or their contents are excluded
5. Physical damage or theft to all items in the Care, Custody and Control of the Insured (staging, lights, rentals, etc.) is specifically excluded.
6. No liability cover applicable following any incident involving Security Companies.
7. Sub-Contractors are excluded unless specifically requested to be included, at an additional premium.
8. All Safety Regulations in respect of the OHS Act No 85 of 1993 must be followed.
9. All food vendors must have a valid certificate of acceptance where required in terms of the Act.
10. Loss, injury, death or damages following the use of mechanically and self-propelled engines (including aircrafts, motor vehicles, drones, marine, etc) are excluded.
11. Passengers, Drivers, Riders, Pilots and Skippers are excluded in terms of this policy whilst operating any self-propelled engine.
12. Nuclear Energy Exclusion
13. War and Terrorism Exclusion
14. Asbestosis and Silicosis Exclusion
15. Standard Wording without any extensions, except where quoted to be included
16. Compliance with government legislation in respect of Risk Management of the event
17. Animal and related activities are excluded
18. Alcohol and related activities are excluded
19. Pyrotechnics/Fireworks and related activities are excluded
20. Co-Insureds and sponsors must be specifically requested to be included
21. Insured should obtain certificates of insurance from Sub-Contractors and the Venue owner
22. Advise or treatment of a professional nature excluded (other than first-aid treatment)
23. Territorial and Jurisdiction is exclusive of Republic of South Africa

Definition of sub Limits:

- **Employers Liability:** Covers all employees/casuals, but excludes sub-contractors' employees/crew
- **Statutory Legal Defence Costs:** This limit is payable for defence cost of a prosecution should the insured be in breach of an Insured Statutory Act(s) or amending legislation with similar intent.
- **Wrongful Arrest & Defamation:** This limit is used for which the Insured shall become legally liable to pay third parties caused by an Insured peril, however any fines and penalties are exclude
- **Emergency Medical Expenses:** This limit provides cover for any medical services required at the event, including transport to the nearest medical facility, however this limit excludes any in hospital cost. - No excess applicable to this extension
- **Food & Drink:** This limit provides cover for all service providers of food and drink at the event.
- **Spread of Fire:** This limit provide cover for spread of fire to property which is not in the insured's care custody and control.
- **Temporary Construction:** This limit will provide cover for injury or death as a result of the collapse of the temporary construction. Not limited to marquees, tents, stands, stages, exhibitions stands and the like.
- **Participants whilst Participating:** Cover limited to injury/loss/damage as a direct result of the Insured's negligence only. Participants are defined as people actively participating in a sporting event. This is not a Personal Accident Policy.
- **Damages to Venue:** Loss or damage to venue (which is in the care custody and control of the insured) following the negligence action or inaction of the insured. Cover available on request at an additional premium, subject to a pre- and post- inspection of the venue.
- **Sub-Contractors:** Means an independent contractor/service provider/outsourcer who takes responsibility for a portion of the



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UNDERWRITING MANAGERS (PTY) LTD

contract in organising the event, from the Insured.

- **Damage to Plant life (including Pitch or Field):** Not Covered – However, cover available on request at an additional premium: A pre and post inspection of the pitch or field is required for this cover and the cost for this will be for the insured's account.

COMMUNICABLE DISEASE EXCLUSION - Apply to all sections of policy

1. Notwithstanding any provision to the contrary within this policy, this policy excludes any loss, damage, liability, claim, cost or expense of whatsoever nature, directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto.

2. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism, including but not limited to any form of Coronaviruses or Influenza viruses, where:

- The substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- The method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- The disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property, including but not limited to any tangible goods, livestock, bloodstock, or other.

3. If the Insurer alleges that by reason of this exclusion, any loss, damage, liability, cost or expense of whatsoever nature is not covered by this policy, the burden of proving the contrary shall fall upon the Insured.

CYBER EXCLUSION - Apply to all sections of policy

This Contract excludes any loss, damage, liability, claim, cost or expense directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with a Cyber Incident.

For the purposes of this exclusion clause, any loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data shall not be considered as physical loss or damage and shall therefore, if directly occasioned by a Cyber Incident, not be recoverable hereunder.

Definitions

a. "Cyber Incident" shall include:

- unauthorised or malicious acts regardless of time and place, or the threat or hoax thereof;
 - malware or Similar Mechanism;
 - programming or operator error whether by the insured or any other person or persons;
 - any unintentional or unplanned – wholly or partially – outage of the insured's Computer System not directly caused by physical loss or damage;
- affecting access to, processing of, use of or operation of any Computer System or any Electronic Data by any person or group(s) of persons.

b. "Computer System" means any computer, hardware, information technology and communications system or electronic device, including any similar system or any configuration of the aforementioned and including any associated input, output or Electronic Data storage device, networking equipment or back up facility.

c. "Electronic Data" means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

d. "Malware or Similar Mechanism" means any programme code, programming instruction or other set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programmes, data files or operations (whether involving self-replication or not), including but not limited to "Virus", "Trojan Horses", "Worms", "Logic Bombs" or "Denial of Service Attack".

Name of Event	Date of Event	Location	Expected Attendance	Description of Event
KEU Underwriting Managers (PTY) LTD Reg No 2013/209781/07 Authorised Financial Services Provider - 5076 This document is compliant with the Commissioner's direction in terms of section 20(7) or 21(5) (as the case may be) of the Value Added Tax Act No 89 of 1991				
		 CENTRIQ INSURANCE	Underwritten by Centriq Insurance Company Limited VAT No 4230187124 Authorised Financial Services Provider - 3417 Proof of payment of the premium (for example a bank statement) and the possession of this policy document will suffice as a valid tax invoice for the purposes of claiming an input tax	



UNDERWRITING MANAGERS (PTY) LTD

Torpedo # GetOut Cape Tour	25 October 2020	Cape Town	Max 500 pax	Cape Tour
Torpedo #GerWrecked Cape Experience	15 November 2020	TBC	Max 500 pax	Swim and run sport event
Torpedo #KnockOut	13 December 2020	TBC	Max 500 pax	Swim and run sport event
Torpedo Tour Val De Vie	30 January 2021	Val de Vie Estate	Max 500 pax	Swim and run sport event
Torpedo Kids Val De Vie	30 January 2021	Val de Vie Estate	Max 500 pax	Swim and run sport event
Torpedo SwimRun Val De Die	31 January 2021	Val de Vie Estate	Max 500 pax	Swim and run sport event
Torpedo SwimRun Moon	14 February 2021	Cradle Moon Lakeside Game Lodge	Max 500 pax	Swim and run sport event
Torpedo SwimRun Cape	11 April 2021	TBC	Max 500 pax	Swim and run sport event
Torpedo SwimRun Wild	24 & 25 September 2021	Llandudno, Oudekraal, Camps Bay and Clifton	Max 500 pax	Swim and run sport event
Torpedo SwimRun Flow	24 & 25 September 2021	South African National Parks Ebb and Flow Camp	Max 500 pax	Swim and run sport event

Iola Edmayer

AUTHORISED REPRESENTATIVE



CENTRIQ
 INSURANCE



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

CORPORATE SERVICES
LEGAL SERVICES
CORPORATE ADVISORY SERVICES

Themba Gwadiso
Legal Advisor

T: +27 21 400 5929 F: +27 21 400 5921
E: Themba.Gwadiso@capetown.gov.za

FINALISATION LETTER

DATE: 7 JANUARY 2021

TO: EXECUTIVE DIRECTOR: SAFETY AND SECURITY.

IN RE: TORPEDO SWIM RUN AGREEMENT

OUR REF: N/A

Dear Sirs

1. The finalised agreement in respect to the reference above was furnished to yourself.
2. Legal Services was requested to vet and finalise the above agreement. Client Department was provided with an opportunity to peruse the Agreement and comment on any changes or errors, prior to finalisation. This was accordingly adhered to.
3. Legal Services confirms that the Agreement may be signed by the **Executive Director: Safety and Security**.
4. Please ensure that every page of the Agreement and Annexures are initialled (including the witnesses).
5. Kindly fill in the place and date whereby which this Agreement was signed.
6. **Ensure that all correct Annexures (including the Rights Package) are attached to the Agreement, prior to signature and that the requisite authority has been obtained.**
7. Please provide me with a signed copy of this Agreement, at your earliest convenience.

Thank you for your assistance herein.

Yours faithfully

Themba Gwadiso

Legal advisor

SPECIAL EVENTS COMMITTEE

DECISIONS: 15 OCTOBER 2020

- R1 700 000 from the Events Budget for the 2021/22 financial year.
- c) The City **APPROVES** the event financially with an amount of R3 695 000 from the Events Budget for the 2022/23 financial year.

ACTION: R BOSMAN, L DESOUZA-ZILWA

SPEV 17/10/20

COMIC CON CAPE TOWN (CO-LOCATED WITH CAPE TOWN INTERNATIONAL ANIMATION FESTIVAL) ON 20 – 23 OCTOBER 2021 AND 21 – 23 OCTOBER 2022. ALT. DATE: 30 SEPTEMBER 2022 AND 2 OCTOBER 2022

It was **RESOLVED** that:

- a) The City **APPROVES** the event financially with an amount of R750 000 from the Events Budget for the 2021/22 financial year.
- b) The City **APPROVES** the event financially with an amount of R1 265 000 from the Events Budget for the 2022/23 financial year.

ACTION: R BOSMAN, L DESOUZA-ZILWA

LATE ITEMS

SPEV 18/10/20

DRIFT OUTLAWS ON 28 NOVEMBER 2020

It was **RESOLVED** that the City **APPROVES** the event financially with an amount of R400 000 from the Events Budget.

ACTION: R BOSMAN, L DESOUZA-ZILWA

SPEV 19/10/20

TORPEDO WATERFRONT KNOCKOUT ON 13 DECEMBER 2020

It was **RESOLVED** that the City **APPROVES** the event financially with an amount of R100 000 from the Events Budget subject to no date change.

ACTION: R BOSMAN, L DESOUZA-ZILWA

SPEV 20/10/20

BRICKLIVE EXHIBITION ON 17 – 23 JANUARY 2021 ALT. DATE: 24 – 31 JANUARY 2021

It was **RESOLVED** that the City **APPROVES** the event financially with an amount of R150 000 from the Events Budget Budget and waiver the venue costs for City-owned venues, excluding municipal entities, subject to availability and that the cost be absorbed by the applicable line department.

21783

Internal Contract Administration Form

Directorate:	Safety and Security
<i>This completed form must accompany all contracts requiring the signature of ED: Safety and Security. Each contract must be checked for compliance and the applicable DMT member must sign this form before submission to the ED's office.</i>	

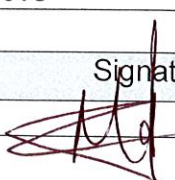
Agreement with:	Reason / Name of Event:
TORPEDO SWIMRUN PTY LTD	Torpedo SwimRun Waterfront Knockout

Department:	✓
Events	✓

Agreement Type:	✓
Service Level Agreement	
Sponsorship Agreement	✓
Section 67 Cash Transfer Agreement	
Consultant	
Rental Agreement	
Film Agreement	
Host City Agreement	
City Services Agreement	
Other	
If other, indicate type of agreement:	

Agreement Status:	Name of Legal Advisor:	Proof attached
Vetted by Legal Services	Themba Gwadiso	✓
Unvetted		✓

Contract compliance checks:		✓
Before ED signs, ensure steps 1, 2 and 3 are completed		
1.	Signed and dated by EO / other party	✓
2.	Two witnesses	✓
3.	Each page initialled by all of the above	✓
4.	Rights Package	✓
5.	Business Plan	✓
6.	Approval	✓
7.	Public Liability	✓
8.	Constitution (if applicable)	
9.	Signature Authorisation Letter (if applicable)	
10.	Final check by Rowelna Williams	RAW
11.	Signed and dated by ED: Safety and Security and Events	
12.	Two witnesses	
13.	Each page initialled by all of the above	

Name of Manager/ Prof Officer	Signature	Date
Babalwa Mafilika		20/01/20