ARTIST AND GALLERY AGREEMENT FOR TRANBY INDIGENOUS ART GALLERY 2018

The Tranby Indigenous Art Gallery provides a platform for Aboriginal and Torres Strait Islander artists to have their Works displayed at the Tranby National Indigenous Adult Education and Training campus. The Gallery forms part of Tranby's 60th anniversary celebrations and provides an opportunity for the community to come together to celebrate and promote Aboriginal and Torres Strait Islander Peoples' art and culture.

THIS IS AN AGREEMENT BETWEEN:

Name:_____

Address: _____

Telephone: _____ Fax:_____

Email: _____

Emergency contact details: _____

(**Artist**)

AND

Name: Tranby National Indigenous Adult Education and Training

ABN: 82 479 284 570

Address: 13 Mansfield Street, Glebe, NSW 2037

Telephone: + 61 2 9660 3444 Fax: + 61 2 9660 1924

(**Tranby Indigenous Art Gallery or Gallery**)

THE PARTIES AGREE AS FOLLOWS:

1. Works

1.1. The Artist agrees to provide the Gallery with artworks (**Works**) for the purpose of the Tranby Indigenous Art Gallery.

1.2. The Works will exhibited for sale at the Gallery and via an online gallery (**Online Gallery**). Works that are not sold at the Gallery or the Online Gallery will be included in an art auction on a date to be determined in November or December 2018 (**Tranby Indigenous Art Gallery Auction or Art Auction**). By providing the Works to the Gallery, the Artist agrees to the Works being included in the Art Auction if not sold at the Gallery or Online Gallery prior to that date.

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1.3. The Gallery does not provide any guarantee that the Works will be sold at the Tranby Indigenous Art Gallery or at the Tranby Indigenous Art Gallery Auction.

1.4. All Artists who submit their Works will be considered for potential inclusion as a candidate in the Indigenous Business Hub. The Indigenous Business Hub is another initiative undertaken by Tranby as part of its 60th anniversary celebrations. The purpose of the Indigenous Business Hub will be to provide assistance to individuals looking to set up their own businesses. Artists retain the right to decline an offer to be a candidate in the Indigenous Business Hub.

2. Term

2.1. Subject to clause 17, the period of this agreement is from 1 March 2018 to 28 February 2019 (**Term**). Any extension of this agreement will be agreed between the Artist and Gallery.

3. Agency

3.1. The Artist appoints the Gallery as an exclusive agent for the exhibition, promotion and sale of the Works for the duration of the Term.

3.2. The Gallery maintains sole discretion as to where the Works are displayed within the Gallery.

4. Transport of Works

4.1. Unless otherwise specified in this agreement, the Artist must arrange and pay for transport of the Works to the Gallery and is responsible for packing and transit insurance.

4.2. Works for exhibition must arrive at the Gallery by the date specified by the Gallery to the Artist.

4.3. The Gallery must provide the Artist with a receipt for the Works upon their delivery. The receipt must detail:

a the date of delivery;

b a description of each Work;

c the Retail Price as notified by the Artist under clause 6.1; and

d the Gallery commission rate under clause 6.3.

4.4. The Artist must, at the Artist's own expense, arrange and pay for repacking, transport and transit insurance in relation to Works being returned to the Artist from the Gallery (whether following termination of this agreement or otherwise). If the Artist does not collect the Works from the Gallery within 30 calendar days after termination of the agreement, the Gallery cannot be held responsible for the Works.

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4.5. The Gallery and the Artist agree that the purchaser is responsible for the transportation of the purchased Works to the purchaser's location.

4.6. The Gallery and the Artist agree that the Gallery will enter into a separate agreement with the purchaser that sets out the terms on which the Works are sold to that purchaser.

5. Installation, display and maintenance of Works

5.1. The Gallery is responsible for unpacking, installing and displaying the Works and must ensure that these activities are carried out by skilled personnel.

5.2. The Artist is responsible for the cleaning and maintenance of the Works if this is required during the Term. The Artist may contact the Gallery during the Term to organise a mutually convenient time for cleaning and maintenance of the Works.

5.3. The Gallery must not frame or remount the Works unless the Artist:

a has requested this; or

b has given prior written consent.

5.4. If the Artist requests from, or consents to, the Gallery framing or remounting the Works, the Gallery must consult with the Artist as to the materials and techniques to be used and must ensure that the Works are not damaged or altered by this process.

5.5. The Gallery must not charge the Artist for framing or remounting under clauses 5.3 and 5.4 unless the Gallery has obtained the Artist's prior written consent to the charge.

6. Price and commission

6.1. The Artist must notify the Gallery in writing of the retail price of each Work (**Retail Price**).

6.2. The Gallery must offer each Work for sale at the Retail Price recorded on the receipt under clause 4.3.

6.3. The Gallery's commission is 20% of the Retail Price of each Work. This Gallery commission rate will be the same whether the Works are sold at the Gallery or through the Art Auction.

7. Payment and costs

7.1. The Gallery must pay the Artist the price paid for each Work sold less the Gallery's commission within 30 calendar days of the sale by bank transfer or another method agreed by the Artist in writing.

7.2. Other than the commission set out in clause 6.3, the Gallery agrees not to charge the Artist for any other costs related to the Gallery.

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7.3. The commission paid to the Gallery on the sale of each of the Works will contribute towards the charitable goals of Tranby National Indigenous Adult Education and Training.

8. Goods and Services Tax

8.1. The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).

8.2. If a party is liable to pay GST in respect of any good or service supplied under this agreement, that party will invoice the other party for the GST amount payable for the good or service and will ensure that the invoice is a GST compliant invoice.

8.3. The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

9. Contact details of purchasers

9.1. To the extent allowed by law, at the time of selling a Work the Gallery will use the Gallery's best efforts to obtain the contact details of the purchaser and will forward those details to the Artist at the time of forwarding payment under clause 7.1.

10. Statement of accounts

10.1. The Gallery must provide the Artist with a statement of account at the end of the Term.

10.2. The statement of account must include the following information:

a the title of any Work sold;

b the date of sale of any Work;

c the sale price of any Work;

d the amount paid or payable to the Artist and the Gallery under clause 6;

e the title of any unsold Work which was returned to the Artist; and

f the title of any unsold Work which remains at the Gallery.

11. Inspection of books

11.1. The Gallery must maintain accurate books and records with respect to all transactions entered into with and on behalf of the Artist.

11.2. Within 30 calendar days of the Artist's written request, the Gallery must permit the Artist or the Artist's authorised representative to examine books and records relating to that particular Artist during the normal business hours of the Gallery.

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11.3. If any discrepancy is established in favour of the Artist upon examination of the books and records, the Gallery must pay:

a the costs of the examination; and

b the deficit amount to the Artist within 7 calendar days.

12. Gallery's duty of care for Works

12.1. The Gallery must:

a handle the Works with special care at all times to prevent damage or deterioration to any Work that is not a characteristic of that Work;

b ensure the safe protection of the Works at all times, including but not limited to protection from:

1. hazards of fire, flood, theft, dirt, food, drinks, smoking; or

2. handling by unauthorised or inexperienced personnel, including but not limited to members of the public; and

c store and install the Works only in a place that is equipped with adequate fire detection and protection systems.

13. Insurance and indemnity

13.1. The Gallery must take out and maintain:

a adequate insurance against loss, damage, theft and destruction of the Works whenever the Works are in the Gallery's care, custody or control. The insurance must be for a sum not less than the Retail Price of the Works; and

b appropriate public liability insurance.

13.2. If a Work has been damaged and is reparable, the Gallery shall pay the Artist the reasonable costs of repairs to the Work or, if the Artist consents to the Gallery making the repair, repair the Work to the Artist's satisfaction, subject to the repairs not exceeding the Retail Price of the Works.

13.3. If a Work has been lost, stolen or irreparably damaged, the Gallery must:

a promptly notify the Artist in writing; and

b pay the Artist the Retail Price of the Works.

13.4. The Gallery agrees to indemnify and keep indemnified the Artist against all losses, liabilities, costs and expenses (including reasonable legal expenses as between solicitor and client) arising out of or in relation to any injury, death, loss or damage suffered by any third party from use of or in connection with any of the Works, while in the Gallery's care custody or control, or while the Gallery agrees to display the Artist's works.

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13.5. Upon request, the Gallery will provide a copy of any current insurance policy to the Artist.

14. Title

14.1. The Artist retains all rights of ownership of each Work until the Retail Price is paid in full, at which time title passes directly to the purchaser.

15. Copyright

15.1. The Artist represents and warrants that the Artist owns all rights, including copyright, in the Work.

15.2. Copyright in each Work is owned by and remains with the Artist.

15.3. The Artist gives the Gallery a limited licence to reproduce, communicate, and allow others to reproduce and communicate the Works during the Term for the following purposes only:

a publicity for the Artist's Works when they are exhibited at the Gallery or as part of the Art Auction.

b critical review;

c a non-profit catalogue of an exhibition at the Gallery including an online catalogue; and

d non-commercial and non-lending archive and reference.

15.4. Subject to clause 15.3, the Gallery must not, and must not allow any other person to, photograph or otherwise reproduce the Works without the Artist's prior written consent. The Gallery must display a notice which clearly states that photography and other reproduction of the Works is not permitted.

15.5. The Gallery must display a notice that includes the Artist's name, title of the Works, the copyright symbol and the year that the Work was created next to each Work.

16. Artist information and integrity of the Works

16.1. The Gallery must permanently display a notice which identifies the Artist as the creator of the Work.

16.2. The Gallery may use the Artist's name and approved biography in connection with the exhibition and sale of the Works at the Gallery, Online Gallery and the Art Auction.

16.3. The Gallery must display next to each Work, and provide to each purchaser, a copy of any approved biography (which may include contact details) supplied by the Artist to the Gallery.

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16.4. Without limiting the Artist's moral rights under the *Copyright Act 1968* (Cth), the Gallery must not, and must not let any other person destroy, damage or alter the Work.

17. Termination

17.1. Subject to clauses 17.2 and 17.3, this agreement ends upon expiry of the Term.

17.2. If a party commits a breach of this agreement, the other party must notify the party in breach of the breach in writing. The party in breach must remedy the breach within 30 calendar days of the notice (**Notice Period**). The party who gave the notice may terminate this agreement immediately by written notice to the party in breach if:

a the breach is incapable of remedy; or

b the party in breach fails to remedy the breach within the Notice Period.

17.3. This agreement terminates automatically:

a upon the death of the Artist; or

b if the Gallery becomes insolvent, is declared bankrupt, has a liquidator appointed or goes into administration, voluntary or otherwise.

17.4. On termination or expiry of this agreement:

a all unsold Works must immediately collected by the Artist, with the Artist being responsible for cost of transportation of the Works;

b all accounts must be settled as soon as possible, but within no more than 30 calendar days after the end of this agreement; and

c any rights granted by the Artist to the Gallery under this agreement immediately revert to the Artist.

18. Disputes

18.1. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this agreement:

a either party must notify the other party in writing about the Dispute; and

b each party must refrain from starting any litigation or arbitration in relation to the Dispute until the parties have complied with clause 18.

18.2. The parties should meet within fourteen (14) calendar days after receipt of the notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.

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18.3. If the Dispute is not resolved within twenty-eight (28) calendar days after receipt of the notice of Dispute, the parties agree to submit the Dispute to mediation.

18.4. If the parties are not able to agree to a mediator or mediation process within thirty-five (35) calendar days after receipt of the notice of dispute, the parties must submit the Dispute to mediation according to the Arts Law Centre Mediation guidelines current at that time (**Guidelines**). These guidelines are part of this agreement.

18.5. If the parties are unable to resolve the Dispute within seven (7) calendar days of commencing mediation or such later time as may be agreed during the mediation, either party may refer the matter to arbitration or commence litigation.

18.6. The parties must continue to perform their respective obligations under this agreement despite the existence of a Dispute.

19. General provisions

19.1. The parties acknowledge that the Gallery becomes the agent of the Artist for the Term as a result of this agreement in respect of the Works provided to the Gallery under this agreement.

19.2. A notice required to be given under this agreement may be delivered by hand, or sent by pre-paid post or fax to the address of the party indicated at the top of this agreement. Notices are taken to have been served when received, or within two (2) business days of having been sent, whichever occurs first.

19.3. Neither party may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld.

19.4. Subject to clause 19.6, this agreement contains the entire agreement of the parties regarding its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.

19.5. Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.

19.6. This agreement may only be modified by a written amendment signed by the parties.

19.7. Invalidity of any clause of this agreement will not affect the validity of any other clause except to the extent made necessary by the invalidity.

19.8. This agreement is governed by the law in force in New South Wales. The parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.

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19.9. A person signing this agreement on behalf of a party to the agreement warrants, by that signing, that they have all the necessary authority from that party to sign this agreement of their behalf.

19.10. The following rules of interpretation apply to this agreement unless the context requires otherwise:

a headings are for convenience only and do not affect interpretation;

b the singular includes the plural and conversely;

c a reference to an agreement or document is to that agreement or document as amended in accordance with clause 19.6.

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ARTIST-GALLERY AGREEMENT FOR TRANBY INDIGENOUS ART GALLERY 2018

EXECUTED AS AN AGREEMENT

Signed by the Artist:

By its execution of this Agreement, the Artist represents and warrants that he/she is the genuine creator of the Works and has the full right and authority to enter into this Agreement and that he/she is capable, prepared and intent on meeting its obligations and responsibilities hereunder.

Signature:	
Name (PRINT):	
Date:	

Signed by the Gallery:

Signature:	
Name (PRINT):	
Position:	
Date:	

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SCHEDULE

INFORMATION REQUIRED UNDER CLAUSES 4 and 16

1. DATE OF DELIVERY OF WORK(S) TO GALLERY:

2. CHOSEN METHOD OF PAYMENT TO THE ARTIST AND ARTIST BANK DETAILS:

Method		BSB	
Name of account		Acc No.	

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3. ARTIST'S TITLE FOR THE WORK(S), YEAR WORK(S) CREATED, RETAIL PRICE AS NOTIFIED BY THE ARTIST, GALLERY COMMISSION RATE: 20% of Retail Price:

CODE	TITLE	YEAR	RETAIL PRICE $	GALLERY COMMISSION RATE (20%)

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CODE	TITLE	YEAR	RETAIL PRICE $	GALLERY COMMISSION RATE (20%)

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4. ARTIST'S DESCRIPTION OF WORK(S) & MEDIUM:

CODE	DESCRIPTION	MEDIUM

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CODE	DESCRIPTION	MEDIUM

5. ARTIST'S DISPLAY NAME AND BIOGRAPHY (including any public contact details if the Artist wishes to include this):

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