

GOSFORD CITY COUNCIL

TERMS AND CONDITIONS OF HIRE OF THEATRES

THESE TERMS AND CONDITIONS OF HIRE apply to the parties named in the attached Agreement.

WHEREAS THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1. In these Terms and Conditions of Hire and Agreement hereto unless the context of subject matter otherwise dictates or requires the following expressions shall have the meanings hereby assigned to them: -

1.2.

“**Venue**” means the premises named in the Agreement and which comprises venues as detailed in Part 1 of the Agreement;

“**Owner**” means the Local Authority or Board or Trust as named in Part 1 of the Agreement;

“**Hirer**” means the person or body specified in Part 1 of the Agreement;

“**Venue Management**” means the person authorised by the Owner to manage the Venue;

“**Agreed**” means agreed in writing from time to time between the Owner and the Hirer;

“**Agreed Use**” means the event/performance or series of events/performance specified in Part 3 of the Agreement and includes any access to associated areas that the Owner may grant to the Hirer or his agents or servants or employees or contractors to the Venue or part of the Venue for the preparation of any event/performance or series of events/performance or for any other purpose;

“**Approved**” means approved in writing from time to time by the venue management;

“**Liquor**” has the same meaning as the expression of “liquor” in the State Liquor Act (New South Wales) as amended;

“**Event**” or “**Performance**” means the conduct of an activity, function or event or the presentation or exhibition of items or works of a musical or dramatic or instructive or other agreed nature described in Part 3 of the Agreement hereto by way of discharge of these Terms and Conditions of Hire;

“**Strike**” means a strike as defined in relevant New South Wales industrial disputes legislation and includes:-

(a) bans or limitations on work imposed by employees with a view to enforcing compliance by an employer or employers generally with demands made on him or them by or on behalf of employees; and

(b) a partial or total cessation of work approved by a registered industrial association of employees;

“**Owner’s Staff**” means any person employed by the Owner whether on wages or casual rates or piecework rates or a person under contract to the Owner for labour only or substantially for labour only; or a Volunteer engaged by the Owner and working under his direction;

“**Authorised Officer**” means a person determined by the Venue Management as having particular authority;

“**Cancelled**” in relation to the agreed use means the failure by the Hirer to proceed with the agreed use or any part thereof due either to a breach by the Hirer of the provisions of these Terms and Conditions of Hire which may or may not result in the revocation by the Owner of the license granted herein or any other reason whatsoever;

“**Commencement**” in relation to an event or performance means the time at which the first activity commences or is presented as part of the event or performance;

“**Dressing Rooms**” or “**Change Rooms**” shall mean those rooms or areas so designated for that purpose by the Technical Manager or his authorised officer for use during the preparation of and in the course of performances;

“**Schedule of Fees & Charges**” shall mean those fees and charges applied by the Venue at the time of the event or performance and may vary from those included at the time of issue of this Agreement.

“**Venue Questionnaire**” shall mean the questionnaire provided by the Venue requesting information pertaining to the presentation and promotion of the event or performance named in this Agreement.

- 1.2 Words importing the singular shall include the plural and vice versa and reference to one gender shall include all genders;
- 1.3 Where two or more persons are Hirers these Terms and Conditions of Hire shall bind the Hirers and any two or greater number of them jointly and each of them severally and shall also bind the executors, administrators and permitted assignees of them and every two or greater number of them jointly and severally;
- 1.4 Headings herein are for convenient reference only and shall not in any way control or affect the construction of these Terms and Conditions of Hire or any clause thereof;
- 1.5 A reference to any designated room area or part of the Venue referred to in these Terms and Conditions of Hire shall be a reference to that room area or part of the Venue as defined or described in a plan kept in the office of the Venue Management.

2. HIRING OF THE VENUE

Subject to the provisions of these Terms and Conditions of Hire the Owner grants to the Hirer license and authority to use and occupy that part of the Venue referred to in Part 2 of the Agreement for the purpose only of the agreed use and the Hirer agrees to undertake the agreed use accordingly.

3. PAYMENTS

3.1 License

In consideration of the license hereby granted for the Hirer will pay to the Owner the amounts specified in Part 4 of the Agreement at the time and in the manner specified. Such amounts applied shall be those Fees and Charges applicable at the time of the event or performance; or as negotiated with the Venue Management.

3.2 Security Deposit

The Hirer shall upon the signing of the Agreement pay a deposit to the value of one hundred percent (100%) of the first day's basic rental or such other amount as is specified in Part 4 of the Agreement no later than the date specified in the Agreement and the Hirer grants a charge over the said security deposit in favour of the Owner as security for all monies payable by the Hirer under the Agreement.

- 3.3. The Owner may apply the security deposit for or towards the discharge or payment of any liability of the Hirer to the Owner.

- 3.4. Provided that the Hirer shall have complied with the terms and conditions of these Terms and Conditions of Hire the security deposit or such balance thereof as remains after any deductions for payments as provided herein shall be repaid to the Hirer;

3.5. Forfeitures

At the discretion of the Owner any amounts paid by the Hirer (including the security deposit) pursuant to these Terms and Conditions of Hire will be forfeited to the Owner in the event that the proposed hiring does not proceed.

3.6 Over-runs

In the event of the agreed use extending beyond the time or expiration of the license as specified in Part 2 of the Agreement the Hirer will pay to the Owner a further amount for each half hour or part thereof during which the agreed use extends beyond the time of expiration of the license as agreed in Part 6 of the Agreement.

3.7 Omission of Single Nights

If any single nights are omitted from a season hiring at the Hirer's request the Hirer will be liable for payments of the normal rental except when such omission is due to a prior booking or the date is taken up by another Hirer.

3.8 Retention of Box Office Receipts

Should the Hirer default in making any of the payments pursuant to these Terms and Conditions of Hire in addition to any other remedy the Owner may possess under these Terms and Conditions of Hire, the Owner may at the complete discretion of the Owner take control of the proceeds of ticket sales collected or received by the Owner in connection with the agreed use and apply such monies as follows:

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- (a) in refunding collected monies to ticket holders; and
 - (b) in payment to the Owner in compensation for deficiency or loss or damage arising by virtue of the Hirer's breach of these Terms and Conditions of Hire being a liability incurred by the Hirer or arising in connection with the agreed use;

provided that nothing in these Terms and Conditions of Hire shall be interpreted as making the Owner or any of its agents or servants liable to the Hirer for any losses in ticket revenue due to fraud or non-payment by a purchaser;

3.9 The Hirer covenants and agrees with the Owner to produce and present at its own expense in all things the events or performances set out in Part 3 of the Agreement and in addition to the costs and expenses incurred in the production and presentation of the said events or performances it shall, at the conclusion of the contractual period or at such other time as may be determined by the Venue Management, pay to the Owner:-

3.9.1 **Venue Staff**

Any costs incurred for staff provided by the Owner for the Hirer's use or as are considered necessary to meet the Hirer's requirements, at the applicable labour charge out rates as specified in Part 8 of the Agreement. The Owner reserves the right to specify a minimum number of staff to be engaged or present during any time of the agreed use;

3.9.2 **Booking Fee**

As specified in Part 7 of the Agreement a booking fee in respect of all tickets sold either by it at the Owner's Ticket Sales Venue or elsewhere howsoever at such locations as the Owner may have approved or by the Hirer or a person acting on his behalf being sales by way of subscription or affected in any other manner howsoever;

3.9.3 **Credit Charges**

As specified in Part 7 of the Agreement charges and service fees payable to banks or any other credit organisation in respect of ticket sales made from the Owner's Ticket Sales Venue or elsewhere in connection with the agreed use;

3.9.4 **Promotion / Advertising**

The costs incurred at the Hirer's request and paid or payable by the Owner or payable to the Owner for promotion and publicity materials and advertising materials and advertising space and the distribution of promotion and publicity materials or any other costs or expense relating to the promotion and advertising of the agreed use howsoever incurred;

3.9.5 **Cleaning / Waste Disposal**

The amount of any cost or expense additional to that normally incurred by the Owner for the purpose of maintaining that part of the Venue in respect of which the license is granted herein in a clean and sanitary condition including the cost of waste disposal and the incurring of such additional cost or expense will be at the sole discretion of the Venue Management;

3.9.6 **Production Charges**

As specified in Part 5 of the Agreement amounts determined by the Owner, all power, air conditioning and stage operational costs and production hires and charges; and

3.9.7 Any other costs for facilities, equipment, services or items provided by the Owner on the Hirer's behalf.

4. **USE OF THE VENUE**

The Hirer further agrees with the Owner as follows:-

4.1 **Date / Time and Number of Events and Performances**

A performance or event covered by these Terms and Conditions of Hire will be held on the date or dates and times as referred to in Part 3 of the Agreement and only in such numbers as are agreed;

4.2 The Hirer will not commence any performance or event earlier or later than the starting time or times specified in Part 3 of the Agreement unless such change of time shall have previously been approved in writing by the Venue Management;

4.3 **Use of Additional Staff**

The Hirer will not use or employ any additional staff to that of the Owner's staff unless the use or employment of such staff has been previously approved by the Venue Management or his authorised officer;

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- 4.4. **Venue Questionnaire**
The Hirer shall deliver to the Venue Management not later than the date specified in Part 3 of the Agreement full particulars of the Hirer's technical, staging, marketing and other requirements in the form of a completed Venue Questionnaire supplied by the Owner and will promptly inform the Owner in writing of any change or variation in those particulars;
- 4.5. **Keys**
All keys to doors and equipment in the Venue will be kept in the charge of such persons as authorised by the Venue Management;
- 4.6. **Liquor and Catering**
Notwithstanding the license hereby granted, the Hirer will not without the express written consent of the Owner or his Authorised Officer bring into or receive or provide in the Venue any liquor or alcoholic beverages; will not bring food or other refreshments into the Venue for resale to or consumption by the public or patrons attending the event or performance and shall deal only with caterers approved by the Owner;
- 4.7. **Safe and Proper Use of Venue**
The Hirer and his agents and servants will use the Venue and its facilities and its equipment in a safe proper and efficient manner to the satisfaction of the Venue Management and will immediately comply with any direction of the Venue Management or his authorised officer in connection with the safe and proper use of the Venue and its facilities and equipment and following the agreed use:-
(a) leave the Venue and its facilities and equipment in a clean safe and proper condition to the satisfaction of the Venue Management or his authorised officer; and
(b) restore at his own cost all sound lighting and staging apparatus to the basic standard arrangement to the satisfaction of the Venue Management or his authorised officer.
- 4.8. **Alterations and Additions**
The Hirer will not make any alterations or additions to the structure or the fittings or facilities or equipment of the Venue; and
- 4.9. The Hirer will not provide any additional decoration or furnishings to the Venue unless the same shall have been previously approved by the Venue Management and the Hirer shall immediately after such performance comprising the agreed use (or if agreed immediately after a series of events or performances) remove all such additional decoration or furnishings;
- 4.10. **Additional Equipment**
If the Hirer wishes to use his own sound, lighting or other electrical devices and mechanical equipment this must be of a standard acceptable to the Venue Management and accordingly the Hirer is required to submit such equipment for inspection and approval by the Venue Management or his authorised officer. In addition, all equipment brought into the Venue by the Hirer for use in the Venue must have a current electrical safety tag attached. This includes back-line equipment, e.g. guitar amps, keyboards, hairdryers, power tools etc;
- 4.11. Should the Hirer wish to place any equipment, including mixer boards, in the auditorium it must be placed so that viewing is not obstructed by such equipment. If such placement is likely to result in reduced seating capacity the Hirer must present detailed information to the Venue Management to enable tickets to be sold to an accurate plan;
- 4.12. **Sound Levels**
The Owner reserves the right to exercise control of sound levels within the Venue; such levels shall not exceed one hundred decibels A-weighted (100dbA) as recorded at the back row of seating;
- 4.13. **Pianos**
No piano shall be brought into the Venue except with the approval of the Venue Management and no piano shall be moved except under the supervision of the Venue Management or his authorised officer;
- 4.14. **Supervision of Personnel**
The Hirer shall ensure that at all times his agents and servants or any other persons having entered the Venue pursuant to or in exercise of rights granted to the Hirer under these Terms and Conditions of Hire are properly supervised and under the direction and control of a person nominated by the Hirer for that purpose and the Hirer will advise the Venue Management or his authorised officer of the person so nominated;
- 4.15. **Vacating the Venue**
The Hirer shall directly after the last performance of the agreed use remove from the Venue all his sets costumes properties and equipment together with all other goods of any kind brought into the Venue by the Hirer or his agents or servants;

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- 4.16 **Failure to Remove Equipment**
In the event of the Hirer failing to remove any or all of his sets and costumes and properties and equipment and goods and materials from the Venue at the time of expiration of the license granted herein The Owner may at the sole risk and expense of the Hirer remove the same and in the further event of the Owner providing storage for same it may charge to the Hirer and the Hirer will pay to the Owner the storage charges incurred by the Owner or if stored by the Owner itself the normal and prevailing market cost payable in respect of such storage;
- 4.17 **Fireproofing**
The Hirer shall not bring into the Venue any scenery, curtains or properties to be used in connection with any performance unless the same have been fireproofed in accordance with the prevailing Fire Code in the State of New South Wales and are maintained by the Hirer in a fireproofed condition to the satisfaction of the Manager whilst the same are in the Venue;
- 4.18 **Performing Rights Copyright and Moral Right of any Author of Any Work**
The Hirer shall not infringe or breach the permit or suffer to be infringed or breached any copyright or performing right or any other protected right in connection directly or indirectly with the agreed use and the Hirer must produce evidence of the necessary authorities / consents from the copyright owner and the author of the work (if different from the copyright owner) in relation to any performance which uses other works and the intellectual property in those other works vests in another party or another party was the author of those works. Further, the payment of all or any royalties to relevant industry bodies or to any person entitled to be paid royalties shall be the obligation of the Hirer and the Hirer undertakes to pay such royalties promptly as they fall due;
- 4.19 **Broadcasts – Sound, Television or Internet**
The Hirer shall not transmit or produce or permit or allow the transmission or reproduction by television or sound broadcast or by upload to the Internet or by any other means any of the event or performance or part thereof unless the same shall have been previously approved in writing by the Venue Management. When approval has been granted for a performance to be televised, broadcast, filmed, uploaded to the Internet or recorded all publicity and advertising must clearly state that such is the case; and
- 4.19.1 In the event of any event or performance being broadcast from the Venue whether it be by or for radio or television or over the Internet and whether it be broadcast live or taped a fee as specified in Part 12 of the Agreement will be payable to the Owner by the Hirer; and
- 4.19.2 If such transmission or reproduction results in seating capacity being reduced or sight lines impeded because of technical requirements the Hirer must provide such information to enable tickets to be sold to an accurate seating plan;
- 4.20 **Programme and Merchandise Sales**
The Hirer shall not sell or permit to be sold any programme or other information sheet in the Venue other than that approved by the Venue Management and shall not sell any merchandise other than that approved by the Venue Management. All sales shall unless otherwise agreed with the approval of the Venue Management, be managed and conducted entirely by the Owner, its staff and agents thereto expressly appointed and the Hirer shall bear the cost of any expenses incurred in addition to paying such royalties and commissions specified in Part 9 of the Agreement hereto;
- 4.21 **Distribution of Owner Information**
The Hirer shall permit the Owner to announce any performance or performances in connection with the agreed use or to distribute to any persons attending the Venue any circular, brochure or information sheet provided by the Owner containing details of attractions scheduled or taking place in the Venue;
- 4.22 **Limits of Hiring**
The Venue Management reserves the right to use any other part of the Venue for any other purpose at the same time as the Hirer is occupying or using premises specified in the Agreement hereto;
- 4.23 **Display of Posters**
No posters or advertising materials will be displayed in the Venue or surrounds thereof except on notice boards and in display cases provided for the purpose and such display must be with the consent of the Owner or his Authorised Officer;

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- 4.24 **Programme Details and Variations**
The Hirer shall deliver to the Venue Management upon request full particulars of artists and items works or events to be performed or presented in connection with the agreed use and will promptly inform the Venue Management of any change or variation in those particulars including particularly, but not limited to, the non-appearance or substitution of any artist and the deletion or substitution of any item or work to be performed and where such a change or variation occurs the Hirer will undertake such further publicity at his own expense as the Venue Management may require or alternatively the Owner may undertake such publicity as determined by the Venue Management and the Hirer shall pay to the Owner the cost and expenses paid or payable by the Owner in undertaking such publicity;
- 4.25 **Agents**
The Hirer shall ensure that his agents and servants shall comply with the provisions of these Terms and Conditions of Hire at all times;
- 4.26 **By-laws**
The Hirer will in all respects observe and comply with the By-laws of the Owner in force from time to time
- 4.27 **Jeopardising of Licenses**
The Hirer shall not do or suffer to be done anything whereby any license or permit issued or in force in respect of the lawful administration or management of the Venue may be or become liable to be forfeited or suspended or the renewal thereof refused;
- 4.28 **Owner Directions**
The Hirer will forthwith comply with any requirement or direction under these Terms and Conditions of Hire made or given by the Owner which shall be at liberty to suspend or control to any extent and in any way it may deem necessary any performance or usage which in its judgment is not in accordance with the provisions of these Terms and Conditions of Hire but without rendering the Owner or the Venue Management or any other authorised person liable in damages in respect of such suspension or control;
- 4.29 **Advertising**
The Owner reserves the right to require the Hirer to submit all advertising for any given performance in advance of its placement for approval by the Owner;
- 4.30 **Logos**
The Hirer shall in respect of advertising and programme materials reproduce the name of the premises as detailed in Part 1 of the Agreement and the correct name of any auditorium or area within the Venue and the logo of the Venue and official box office symbol only in a typeface and format approved by the Venue Management; and the official venue and/or box office logo as supplied by the Owner is to be used exclusively in association with telephone booking information in all print and online material, television commercials. online and newspaper advertisements of forty (40) column centimetres or greater;
- 4.31 **Evacuation**
The Hirer agrees when requested by the Venue Management to insert into any official programme or to otherwise announce any emergency evacuation procedure as may be determined by the Venue Management; and
- 4.32 The Hirer shall comply with all directions given by any competent authority in any way relating to the conduct of the Venue and shall comply with all rules, regulations and directions with regard to fire precautions;
- 4.33 **Latecomers**
The Owner reserves the right not to admit latecomers to any given performance until there is a suitable break in that performance;
- 4.34 **Rehearsals**
No unauthorised personnel shall be permitted to attend and view a rehearsal or preview event or performance without the express permission of the Owner. Where such permission is granted, the Owner may engage such staff as it deems necessary in connection with the safe and proper use of the Venue under such circumstances, and the Hirer shall reimburse the cost of such engagement to the Owner;

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- 4.35 **Protection of Floors**
The Hirer shall carry out such directions as may be issued by the Venue Management for the protection of stages and floors and to cover stages and floors by suitable material if so required by the Venue Management or his authorised officer;
- 4.36 **Industrial Awards**
The Hirer shall at all times observe and comply with the provisions of all industrial agreements, awards and determinations as regards any person or persons engaged or employed in connection with these Terms and Conditions of Hire;
- 4.37 **Facilities Provided**
The Owner may at its discretion make available for the use by the Hirer at the Hirer's cost in all respects such facilities equipment additional areas and services as are required by the Hirer PROVIDED ALWAYS that the Owner shall not be responsible for the adequacy or suitability of such facilities equipment additional areas or services;
- 4.38 **Access**
The Hirer or his agents may at any time during an event or performance have access to all parts of the premises that are necessarily used for the event or performance but not including those parts used by the owner's administration and control rooms other than those essential to the performance and allocated to the Hirer for that purpose except with the permission of the Venue Management;
5. **INSURANCE**
It is hereby agreed:-
- 5.1 **Increase of Risk**
The Hirer his agents and servants will not without the written authority of the Venue Management do or suffer to be done anything in the Venue whereby any policy of insurance on the Venue or its facilities or equipment may become void or voidable or whereby the rate of premium thereon may be increased and the Hirer will pay to the Owner in advance all amounts payable by way of costs or increased insurance premiums on any policy of insurance so affected;
- 5.2 **Insurance**
The Hirer will insure its sets, costumes, properties and equipment and all goods and materials of any kind brought into the Venue in connection with the performance and the Hirer will produce to the Venue Management proof of such insurance if so required;
- 5.3 **Public Liability**
The Hirer shall effect and at all times whilst using the venue under the authority or purported authority of these Terms and Conditions of Hire keep current a Public Liability Insurance Policy for the sum of not less than TEN MILLION DOLLARS (\$10,000,000.00) and shall present to the Venue Management acceptable documentary evidence of such cover.
- Unless evidence of insurance is provided in Part 13 of the Agreement, the event or performance may be cancelled and any Deposit paid forfeited.
6. **TICKET SALES, DISTRIBUTION AND RECEIPTS**
The Hirer agrees with the Owner as follows:-
- 6.1 **Sale and Distribution of Tickets**
Unless otherwise expressly authorised by the Venue Management, the printing and distribution of tickets of admission to each and every event or performance of the agreed use will be under the supervision of the Owner; and
- 6.2 Unless otherwise expressly authorised by the Venue Management all ticket sales for each and every event or performance of the agreed use will be made at the sales office or offices of the Owner or at locations approved by the Owner; and
- 6.3 Unless otherwise expressly authorised by the Venue Management the receipts derived from the sale of all tickets made at such other locations as the Owner may approve will be paid directly to the Owner and not to the Hirer or any other person or persons and such receipts shall be subject to all the relevant Terms and Conditions of Hire;

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- 6.4 **Retention of Receipts**
The Owner will retain in trust all or any part of the monies which may have been paid to the Owner whether by way of advance seat booking charges or otherwise until the conclusion of the event or performance to which such monies relate or in the case of a season to the end of each week or part thereof and thereafter until the Hirer shall have paid to the Owner all sums payable under the provisions of these Terms and Conditions of Hire or which may be due and payable by the Hirer to the Owner on any other account;
- 6.5 **Cheques and Credit Cards**
The Hirer shall bear any losses incurred by the presentation of invalid cheques and credit cards;
- 6.6 **Booking Fee**
The Owner shall be at liberty to charge a booking or selling fee as specified in Part 7 of the Agreement on all tickets sold exchanged or returned on behalf of the Hirer and to retain such fee for its own use. Any such fee shall not be regarded as part of the proceeds of ticket sales for the purpose of these Terms and Conditions of Hire;
- 6.7 **Supply of Ticket Information**
The Hirer shall deliver to the Owner upon request full particulars of:-
(a) the information he requires to appear on the face of the tickets; and
(b) the prices for which the tickets are to be sold and the price barriers (if any) in respect of which the tickets are to be sold; and
(c) the persons or classes of persons who are to receive complimentary tickets or tickets at concessional prices; and
- the owner shall thereafter cause tickets to be printed with the cost of any printing or computer event creation charges or Internet programming charges thereto being met by the Hirer;
- 6.8 **House Seats**
The Owner shall at the sole discretion of the Venue Management withhold from sale and distribution for any or all performances of the agreed use the Venue Management's House Seats as specified in Part 10 of the Agreement and such seats shall be in such part of the auditorium as the Venue Management determines; and
- 6.9 The Venue Management may release House Seats for sale at his discretion provided that the Owner shall not incur any liability to the Hirer whatsoever in respect of the house seats after they have been made available for sale or distribution in accordance with these Terms and Conditions of Hire.
7. **INDEMNITIES**
The Hirer hereby indemnifies and agrees to keep indemnified the Owner from and against:-
- 7.1 The Hirer is solely liable for and must indemnify and hereby indemnifies and saves harmless the Owner from and against all liability, suits, actions, proceedings, claims, demands, penalties, losses, damage and expense which may be incurred by or brought against or made upon the Owner or which the Owner may pay, sustain or be put to by reason of, or arising out of or in the course of or in connection with either directly or indirectly the exercise or attempted exercise by the Hirer of its rights to enter the property except where such liability, suits actions, proceedings, claims, demands, penalties, losses, damage and expense arises out of a negligent or willful act or default of the Owner, its employees and/or its agents.
- 7.2 All outlays made by the Owner in the event of the Hirer not proceeding with the agreed use or canceling or postponing any performance or performances and the indemnity shall extend not only to costs actually incurred by the Owner at the date of cancellation or postponement including but not limited to refunding of tickets and the loss of booking fees in respect of ticket sales; and
- 7.3 Any other claim action demand loss damage or cost of any kind that is consequent upon the agreed use pursuant to these Terms and Conditions of Hire;
- 7.4 Any claims actions demands losses damages costs and expenses for and / or in respect of which the Owner or its agents servants performers employees invitees contractors sub-contractors or volunteer staff shall be or become liable in any respect in relation to any breach (direct or indirect) by the Hirer his agents servants performers employees invitees contractors sub-contractors or volunteer staff of any copyright moral right or other intellectual property rights existing in relation to any works associated with the Agreed Use including but not limited to the performance and advertising of the performance.

8. FURTHER AGREEMENT

The Owner and the Hirer hereby further agree as follows:-

8.1A Revocation of License

If at any time any payments pursuant to these terms and conditions of hire are not paid by the Hirer to the Owner the Owner may by notice in writing delivered to the Hirer at the Hirer's address in this agreement, demand upon not less than two (2) clear days notice, payment of outstanding payments due and in the event of the failure of the Hirer to make such payments within the said time limited then the Owner may forthwith terminate these terms and conditions whereupon the Hirer's license to use and occupy the Venue shall forthwith cease but without prejudice to any right or remedy of the Owner for any breach of the Hirer of these Terms and Conditions of Hire.

8.1B If at any time in the opinion of the Owner:-

- (a) there has been a breach or default of any agreement contained herein and on the part of the Hirer performed or observed other than that specified in Clause 8.1A hereof; or
- (b) there is likelihood that damage may be caused to the premises or any part of the Venue if the Hirer exercises their rights and authorities granted by the Agreement; or
- (c) the organisation or advertising for or the manner in which any performance is being conducted or is proposed to be conducted is or is likely to be of scandalous, libelous, obscene, or objectionable character so deemed by the Owner;

then the Owner may revoke or discontinue any license and authority hereby granted at any time by giving the Hirer at the address shown in this agreement not more than two (2) clear days notice in writing thereof whereupon these Terms and Conditions of Hire shall be at an end but without prejudice to any right or remedy

8.2 Loss, Injury or Damage

The Hirer shall repair and reinstate or pay the cost of repair or reinstatement for any loss or damage to the Venue its facilities or equipment caused by an act, omission, breach of duty or breach of statutory duty, whether willful or otherwise and whether founded in negligence or otherwise, by the Hirer his agents or servants or by the Owner's staff employed by the Hirer under these Terms and Conditions or any other person entering The Venue pursuant to or in exercise of the rights granted herein to the Hirer including a patron attending a performance and the Hirer will forthwith repay to the Owner on demand any costs incurred by the Owner in repairing or making good any damage so caused in the event of the Hirer failing to observe the provisions of this clause and in the event that the nature of the damage is of the kind which in the opinion and at the sole discretion of the Venue Management has rendered the Venue or part of the Venue in an unfit state for the agreed use or any other concurrent or subsequent uses that the Owner may have agreed with another person or persons in any concurrent or subsequent uses the Owner may have itself undertaken the Hirer will pay to the Owner all costs losses damages and expenses of any kind howsoever arising out of the postponement or cancellation of all or part of the aforesaid uses;

8.3 Notification of Loss

The Hirer shall notify the Owner immediately on becoming aware of any damage or loss to the Venue its facilities or equipment and of any injury to any person whosoever in the Venue;

8.4 Owner's Use of Premises

The Owner shall reserve the right to use any part of the Venue during the daytime or evening on such days as the Hirer shall not be using that part of the Venue in respect of which the license is granted but in a manner as shall not unduly interfere with the agreed use;

8.5 Front-of-House Advertising

The Owner shall reserve the right to use the front-of-house areas and other areas to advertise forthcoming attractions provided however that the Hirer may with the consent of the Venue Management or his authorised officers place such advertising material in the front-of-house area or other areas of the Venue in respect of which the license is granted as may be necessary to effectively advertise the agreed use;

8.6 Cancellation of Booking

In the event of the Hirer being unable to present such performance or performances on the dates and times specified in Part 3 of the Agreement the Hirer shall remain liable for all charges due unless and until he has been notified by the Owner in writing that the premises have been re-let for the date or dates aforementioned when the Hirer shall then be liable to pay the amount specified in Part 11 of the Agreement;

8.7 **Strikes, Power Failures**

The Owner shall not be liable to the Hirer or his agents or servants for any loss of income or benefit or any liabilities which may be incurred either to the Owner or any other person or for any damage or loss or injury caused to the Hirer or his agents or servants or to goods or equipment owned, operated or hired by the Hirer, his agents and servants resulting from:-

- (a) a strike by employees or contractors engaged or employed by either the Owner or the Hirer or any other persons or group of persons; or
- (b) any interruption or cessation in the supply of potable water or electricity or any other type of power or energy to The Venue or failure of any equipment owned or operated or hired by the Owner for the supply of chilled water or electricity or any other power or energy.

8.8 **Emergency Security Services**

The Hirer, his agents and servants will not hinder or obstruct in the exercise of their duties at the Venue any member of the medical or nursing profession, police force or security officer employed or authorised by the Owner or fire brigade, ambulance service, first aid service or other emergency evacuation procedures; and

8.9 The Hirer, his agents, employees and contractors will observe the Venue's internal security and emergency evacuation procedures; and

8.10 If at any time in the opinion of the Venue Management;

- (a) there exists an emergency in the Venue due to an actual or imminent occurrence that causes or threatens to cause loss of life or injury or distress to persons or danger to the safety of the public or destruction of or damage to property; or
- (b) the Venue is required, requisitioned or resumed for the use of a Government or public authority for any public purpose by reason of emergency; or
- (c) the Venue is damaged or destroyed by act of war or in the course of resisting or repelling such action or is being repaired, remedied or made good or attempts are being made to do so as a result of such action; or
- (d) a breach of copyright is being committed; or
- (e) the use of the Venue for the agreed use in respect of which this license and authority is granted, prohibited obstructed or hindered by reason of any industrial action or act of God or civic disorder;

the Venue Management may revoke or discontinue the license and will repay to the Hirer all sums paid by the Hirer under the provisions of these Terms and Conditions of Hire in respect of that part of the agreed use so affected;

8.11 **Impossibility of Contractual Obligations due to Prescribed Events (Force Majeure)**

That in the event of the Owner or Hirer or both parties being unable to perform and discharge their contractual obligations arising out of these Terms and Conditions due to strike, civil disturbance, war or act of God then the parties shall be relieved of their respective obligations accruing and occurring during such time provided that the time for performance as specified in the Agreement shall not be extended as a result thereof except by written agreement of both parties.

8.12 **Right of Entry**

The Venue Management or any other person authorised by him shall have the right to enter at any time any room or area or part of the Venue in respect of which this license is granted.

8.13 **Maximum Seating**

The Hirer will not cause the maximum seating capacity of the venue of the agreed use to be exceeded.

8.14 **No Tenancy or Assignment**

The use of the Venue or part of the Venue in respect of which the license is granted shall not be exclusive and the possession of the Venue will remain with the Owner and these Terms and Conditions of Hire shall not in any way create a tenancy between the Owner and the Hirer nor shall the Hirer be entitled to assign the benefits of these Terms and Conditions of Hire or any rights given hereunder without the prior written consent of the Owner.

8.15 **Waiver**

The provisions of these Terms and Conditions of Hire shall not be taken (either at law or in equity) to have been waived discharged or released by the Owner or the Venue Management unless by its or his express consent.

8.16 **Dispute**

In the event of any dispute or difference arising as to the interpretation of any part of these Terms and Conditions of Hire the decision of the Venue Management shall be final and conclusive.

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- 8.17 **Law to Apply**
These Terms and Conditions of Hire will be interpreted and construed and the rights of the parties will be determined in accordance with the law of the State of New South Wales.
- 8.18 **Currency**
All references to sums of money are references to sums in Australian currency and all payments to be made by the Hirer to the Owner under these Terms and Conditions of Hire will be made in Australian currency.
- 8.19 **Discretion**
In any case where pursuant to these Terms and Conditions of Hire the doing or execution of any act, matter or thing by the Owner or Venue Management is dependent upon the approval or consent of it or him such approval or consent may be given or withheld in the absolute uncontrolled discretion of the Owner or the Venue Management as the case may be unless otherwise herein provided.
- 8.20 **Owner's Responsibility**
Any rights and powers of the Owners under any of the provisions of these Terms and Conditions of Hire shall not be deemed to impose upon the Owner any responsibility for the selection of the work or works proposed to be performed or being performed in the premises and any granting withholding or refusal of any permission by the Owner shall be construed accordingly.
- 8.21 **Venue Management as Agent of the Owner**
For the purpose of these Terms and Conditions of Hire:-
- (a) any action approval consent or discretion required to be taken or given by or on behalf of the Owner will be sufficiently taken or given if taken or given by the Venue Management; and
 - (b) the Venue Management is the agent of the Owner and any document or writing purporting to be signed by the Venue Management will be presumed to have been signed by him.
- 8.22 **Notice**
Without prejudice to any other means of giving notice any notice given under these Terms and Conditions of Hire shall be sufficiently given:-
- (a) to the Hirer if addressed to the Hirer or to any director, secretary, manager, executive officer or organiser of the Hirer and served personally on the Hirer or that director, secretary, manager, executive officer or organiser or if forwarded by prepaid post or facsimile to the place of business of the Hirer last known to the Venue Management;
 - (b) to the Owner or the Venue Management if addressed to the office of the Venue Management and a notice sent by post or facsimile will be deemed to be given or served at the time when it ought to be delivered in the ordinary course of post or facsimile transmission.
- 8.23 **Industrial Relations Service Fee**
The Hirer in addition to charges as specified in the Agreement may be required to pay the Owner an Industrial Relations Service Fee on a per performance basis on a scale of rates as varied from time to time by the Executive Council of the Entertainment Industry Employers Association as specified in Part 14 of the Agreement.
- 9. PLANT AND ELECTRICAL INSTALLATIONS**
- 9.1 Notwithstanding the provisions of Clause 7 of these Terms and Conditions, the Hirer shall not carry out or perform any work whatsoever affecting or otherwise interfering with the air conditioning plant, the electric plant and/or the electrical fittings contained in the Venue.
- 9.2 Where any of the things referred to in the last preceding sub-clause have been damaged and the Hirer is, pursuant to Clause 7 of these Terms and Conditions responsible therefore, for the purposes of Clause 7 of these Terms and Conditions the Hirer shall be deemed to have failed, neglected or refused to make good and repair such damage and the Owner shall be at liberty to proceed accordingly.
- 9.3 The Owner shall not at any time be in any way or on any ground whatsoever liable for the failure or non-working of the air conditioning plant, the electric plant and/or the electrical fittings contained in the Venue or for the non-supply of electric power or light to the Venue.
- 10. NONEXCLUSIVITY**
The Owner reserves the right to use any part of the Venue at any time or times as the Hirer shall not be using the same for his own rehearsals or performances and by mutual agreement in such a manner that the Owner's usage shall not interfere with any performance which the Hirer shall be giving.

11. SEASON EXTENSIONS

The Hirer may make such arrangements with the Venue Management for the use of the Venue for the purposes of rehearsals and other preparations for the presentation or holding of the attraction and where the Venue is used by the Hirer in accordance with such arrangements such use shall be deemed to be an extension of the season and permit fees and charges shall be payable by the Hirer accordingly.

12. PRIVACY:

The Owner respects the privacy of all customer and business contacts, and is committed to safeguarding the personal information provided and to complying with the National Privacy Principles in the *Privacy Act 1988* (the NPPs). The Owner will comply with NPP1.3 when it collects personal information from customers and with NPP2 when it uses and discloses this personal information.

If the Owner discloses personal information to a third party, it will only do so on the basis that the third party has agreed to the matters specified in this clause, and that the third party will comply with the NPPs when it handles the personal information of the Owner's customers.

Under the "direct marketing rules" in NPP2.1, the Owner is required, in each and every direct marketing communication to individuals, to prominently display a notice that any individual may choose not to receive any further direct marketing communications. The Owner is also required to respect any "opt outs" received.

Conditions applicable to the use of customer information are:

- The personal information of the Owner's customers will only be used once for the purpose for which it was disclosed by the Owner;
- The personal information of the Owner's customers will not be disclosed to any third parties unless the Owner has provided express consent in writing;
- An opt-out will be included on any promotional material sent to the Owner's customers. This will be in a minimum font size of 7 points and will read as follows:

We respect your privacy. If you prefer not to receive anything from (the Owner) again, please tick here and return with original envelope to the Privacy Officer, (the Owner).

- All promotional material which is proposed to be provided to the Owner's customers must be approved by the Owner prior to production.
- The Owner will manage the opt-out process.

13. FURTHER CLAUSES AND SPECIAL CONDITIONS

Further clauses or special conditions relevant to these Terms and Conditions of Hire (if any) shall be specified in Parts 15 & 16 of the Agreement.