

Ballarat Performing Arts Centre

VENUE HIRE AGREEMENT TERMS & CONDITIONS

PARTIES:

1. Ballarat Performing Arts Centre

by its Ballarat Performing Arts Centre Street Soldiers Hill 3350

2. The person named in the Schedule

of the address specified in the Schedule

("Hirer")

BACKGROUND

- A. Ballarat Performing Arts Centre has the control, management and possession of the building.
- B. Ballarat Performing Arts Centre offers parts of the 3 Buildings on hire for specific functions.
- C. The Hirer has requested and Ballarat Performing Arts Centre has agreed to hire to the Hirer the Buildings on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

1. Definitions and interpretation

In this Agreement, unless the context otherwise requires:

- **"Building"** 1861, 1867. 1864
- **"Business Day"** means a day on which trading banks in the are open for business;

- **“Cleaning Charge”** means a charge for cleaning the Function Area (and parts of the building accessed by the Hirer and its guests, staff and contractors) of between \$150.00 and \$550.00 (plus GST) depending on the extent of cleaning required (at the discretion of our cleaning service
- **“Confirmed Booking”** means a booking confirmed in writing by Ballarat Performing Arts Centre payment of the required deposit;
- **“Function”** means the function to be held by the Hirer on the Function Date;
- **“Function Area”** means the part of the building specified in the Schedule, or such other part of the Building as Ballarat Performing Arts Centre decides to substitute as a replacement area at its absolute discretion either before or during the Function;
- **“Function Date”** means the date specified in the Schedule;
- **“Function Times”** means the times specified in the Schedule;
- **“Hire Fees”** means the hire fees specified in the Schedule;
- **“Liquidated Damages”** means a fee of \$100 (plus GST) per hour (or part of an hour) after the Function Times during which the Hirer and its employees, contractors and guests fail to vacate the building or to remove any goods or materials brought into the building by or on behalf of the Hirer, being reasonable compensation to Ballarat Performing Arts Centre
 - for its additional costs and loss of amenity resulting from such occurrence;
- **“Schedule”** means the application form attached to this Agreement;
 - a reference to the singular includes the plural and visa versa;
 - a reference to a gender includes any gender;
 - a reference to individuals includes corporations and visa versa;
 - a reference to a Schedule is to a Schedule of this Agreement;
 - the words “include” or “including” are not words of limitation;
 - a reference to a statute, regulation or other law includes all regulations and instruments made under such law and all consolidations, amendments, re-enactments or replacements of it;

- where a word or phrase is defined in this Agreement other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- headings are convenience only and do not form part of this Agreement;
- the obligations and liabilities imposed and the rights and benefits conferred upon the parties to this Agreement are binding on them and continue in favour of each of the parties' entitled successors, legal representatives and permitted assigns;
- any obligation covenant or liability arising from this Agreement where a party consists of more than one person binds each of those persons jointly and severally;

2. Venue Hire

- 2.1 Ballarat Performing Arts Centre agrees to hire the Function Area to the Hirer between the Function Times on the Function Date in consideration for the Hirer agreeing to pay the Hire Fee, the Cleaning Fee and any other applicable fees and charges and to comply with the terms and conditions of this Agreement.
- 2.2 This Agreement is not intended to grant any exclusive rights in relation to the Function Area, and its staff and contractors are entitled to full and unrestricted access to the Function Area throughout the Function Times.
- 2.3 This Agreement relates only to premises, and does not include any plant, equipment, installations or fixtures.

3. Hire Fee

- 3.1 The Hirer must pay the Ballarat Performing Arts Centre as follows:
- (a) Full payment of the hire will be invoiced one month prior to the event and paid in full before the keys will be released.

- 3.2 The Hirer's booking will be confirmed only upon receipt by Ballarat Performing Arts Centre of the deposit.
- 3.3 Ballarat Performing Arts Centre may change the Hire Fee at its discretion if the Hirer's proposed Function Date or Function Times or any other specifications change.
- 3.4 The Hirer must pay the Cleaning Fee, any Liquidated Damages, and any other amounts owing, to the Ballarat Performing Arts Centre within 305 days after receipt of an invoice from Her Majesty's Theatre for those charges.

4. Cancellation of Bookings

- 4.1 The Hirer may cancel a Confirmed Booking at any time by written notice to Ballarat Performing Arts Centre Theatre, in which case BPAC may deduct from the deposit a cancellation fee of:
 - (a) one quarter of the Hire Fee, if written notice of the cancellation is received by Ballarat Performing Arts Centre at least 30 days before the Function Date; or
 - (b) half of the Hire Fee, if written notice of the cancellation is not received by Ballarat Performing Arts Centre at least 30 days before the Function Date.

Ballarat Performing Arts Centre must refund to the Hirer the balance of the deposit (if any) after deduction of the cancellation fee. If the deposit is insufficient to cover the cancellation fee, then the balance is a debt due and payable by the Hire to Ballarat Performing Arts Centre immediately upon cancellation.

- 4.2 Ballarat Performing Arts Centre may cancel a Confirmed Booking at any time if, in Ballarat Performing Arts Centre. opinion, an event has occurred causing the Function Area or Building to be unsafe or inappropriate to hold the Function. If that occurs and, in Ballarat Performing Arts Centre reasonable opinion, the Hirer

is not in any way responsible for the cancellation, then Ballarat Performing Arts Centre must refund the Deposit in full.

5. Hirer's Obligations

- 5.1 The Hirer must not, and must take active steps to ensure that none of its staff, contractors or guests, do any of the following:
- (a) damage or attempt to damage any part of the building or its installations, fittings or fixtures;
 - (b) damage, touch, lean against, sit on, move, cover, obscure or endanger any artworks, heritage items or displays in the building;
 - (c) attach any sign, decoration or other item to any part of the building;
 - (d) interfere with or alter any of the electrical, security, lighting or sound systems in the building;
 - (e) invite or permit into the building more than the expected number of guests specified in the Schedule;
 - (f) enter areas of the building other than the Function Area, except for the areas designated by Ballarat Performing Arts Centre as the route for entry to and exit from the Function Area or for use of toilet facilities;
 - (g) cause any nuisance to neighbours or other users of the Building;
 - (h) create excessive noise or vibration in any part of the Building;
 - (i) bring into the building any flammable materials, or light or maintain a naked flame except in a manner approved in writing by Ballarat performing Arts Centre
 - (j) take or consume any food or drink outside the Function Area, except into any areas of the building specifically designated by Ballarat Performing Arts Centre for that purpose;
 - (k) smoke anywhere inside the building;
 - (l) use the Function Area or the Building for any purpose except the Function as described in the Schedule;

- (m) do, say or display anything defamatory, offensive or of a pornographic nature.

5.2 The Hirer must:

- (a) ensure that the Event Manager is present and in control of the Function at all times and at least one hour before the Function commences;
- (b) engage and have at the Function sufficient staff to manage guests and ensure that the building and all artworks, displays, fittings and fixtures are properly protected.

5.3 The Hirer must comply with all laws, regulations and by-laws and government or regulatory orders applying to the Function and the Function Area. The Hirer must comply with any Occupation Health and Safety laws applying to its workers.

5.4 The Hirer is responsible for any advertising of the Function, but must first have Ballarat Performing Arts Centre's written approval of the proposed content, format and manner of the advertising.

5.5 The Hirer must:

- (a) vacate the Function Area by the end of the Function Times;
- (b) promptly remove any goods or materials brought into the Function Area by or on behalf of the Hirer; and
- (c) leave the Function Area in a thoroughly clean and tidy condition.

5.6 All sound, electrical and lighting requirements, signs, banners and decorations connected with the Function must be approved by Ballarat Performing Arts Centre before the Function and may be subject of a further charge.

5.7 The Hirer must comply with all directions of BPAC management and staff whilst in the building.

- 5.8 All deliveries for the Function must be arranged with and approved by Ballarat Performing Arts Community staff prior to delivery.
- 5.9 BPAC reserves the right to refuse entry to the Building to any of the Hirer's guests.
- 5.10 The Hirer may only permit its contractors (such as operators of electrical, lighting or sound systems and any providers of music or other entertainment) to provide services at the Function if they have first been approved in writing by BPAC

6. Food and Liquor

- 6.1 The Hirer must only bring into and supply liquor in the building if it has first obtained a valid temporary liquor permit pursuant to the Liquor Control Reform Act 1998 covering the hours and area of the Function, and provided a copy to Ballarat Performing Arts Centre
- 6.2 The Hirer must only supply food in the building if it is brought into the Function Area by a caterer first approved in writing by Ballarat Performing Arts Centre and who is registered pursuant to the *Food Act 1984*, and whose staff has appropriate food handling qualifications.

7. Insurance

- 7.1 The Hirer warrants that it has taken out and holds:
- (a) the public liability with the insurer, policy number and expiry date specified in the Schedule, and that it provides cover for public liability at the Function of at least \$10 million for any one event;
 - (b) work cover insurance pursuant to the *Accident Compensation Act 1985* for all of its employees and anyone else it is responsible to insure under that Act who will be in the building in connection with the event (and that it

has ensured that any contractors for whom it is not responsible to take out work cover insurance have themselves taken out such insurance).

- 7.2 The Hirer must provide Ballarat Performing Arts Centre with a copy of its public liability insurance policy (and work cover policy if requested) at the time of signing this Agreement, including the certificate of currency and evidence that premiums are paid up to date.

8. Indemnity

The Hirer hereby indemnifies BPAC and Ballarat Performing Arts Centre employees, volunteers, contractors and agents against and releases them from any loss (including legal costs and expenses on a “solicitor and client” basis) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose directly or indirectly from or in connection with:

- (a) any breach of this Agreement by the Hirer;
- (b) the hire and use of the Function Area or access to any part of the building;
- (c) alteration by BPAC of the Hire Fee or Additional Fees;
- (d) BPAC changing the area of the Function Area;
- (e) BPAC cancelling a Confirmed Booking; or
- (f) any actions of the Hirer’s employees, staff, contractors, agents, and invitees.

9. Interest on late payments

Interest shall accrue daily on any money payable under this Agreement during the period that it is outstanding at a rate 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act* 1983 as at the date of the default.

10. GST

- 10.1 The parties acknowledge that, unless otherwise specifically stated, all payments and amounts stated or arising under this Agreement are exclusive of GST. If GST is payable on a Taxable Supply made in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the amount of GST payable in respect of that Taxable Supply as additional Consideration.
- 10.2 No payment of any amount pursuant to the previous sub-clause and no payment of the GST amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the recipient.
- 10.3 Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against the other party under this Agreement, the amount to be paid or credited is the cost or expense (reduced by the input tax credit that the supplier may claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient as calculated under this clause.
- 10.4 If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST. A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.
- 10.5 For the purposes of this clause, “GST”, “Tax Invoice”, “Taxable Supply”, “Consideration” and “Adjustment Note” have the meanings given by the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

11. Governing law

This Agreement is to be governed by and interpreted in accordance with the law of the state of Victoria, which is the appropriate jurisdiction and forum for any dispute concerning this Agreement.

12. Assignment

12.1 Rights arising out of or under this Agreement are not assignable by one party without the prior written consent of the other party or parties.

12.2 A party may not unreasonably withhold its consent to assignment.

12.3 A purported assignment without written consent will be deemed to be void and convey no rights.

13. Entire agreement

This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties.

14. Variation

A variation of this Agreement is only valid if in writing and executed by the parties in the same manner as they executed this Agreement.

15. Waiver

No right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right. A waiver by one party of its rights as a result of a breach by any other party under this Agreement does not prejudice its rights in respect of any other breach by that other party.

16. Relationship of the parties

Unless specifically stated otherwise, this Agreement is not intended to create a relationship of partnership, joint venture or agency between the parties.

17. Survival

17.1 The terms of this Agreement survive its termination to the extent permitted by law.

17.2 This Agreement is intended to bind the heirs, executors, administrators and successors in title of the parties.

EXECUTED AS AN AGREEMENT:

SIGNED by the **Hirer**

in the presence of:

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Witness

EXECUTED by the **Hirer**

by being signed by those persons

who are authorised to sign for the company:

Director: Director/Secretary:

Full name: Full name:

Usual address: Usual address:

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SIGNED for and on behalf of
Ballarat Performing Arts Centre

by []

in the presence of:

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Witness