

TERMS AND CONDITIONS OF HIRE

PARTIES

1. **Ballarat Performing Arts Community Inc. (BPAC)** operating as Ballarat Performing Arts Centre, Neill Street, Soldiers Hill 3350
2. **The person named in the Hire Agreement** of the organisation specified in the Hire Agreement (“Hirer”)

BACKGROUND

- A. BPAC has the control, management and possession of the 3 Buildings – **The Chapel**, the **Main Hall** and the **1861 Hall**.
- B. BPAC offers parts of the 3 Buildings on hire for specific events.
- C. The Hirer has requested and BPAC 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”** The Chapel, Main Hall, 1861 Room 1, 1861 Room 2;
- **“Cleaning Charge”** means a charge for cleaning the Event Area (and parts of the building accessed by the Hirer and its guests, staff and contractors) of the figure quoted;
- **“Confirmed Booking”** means a booking confirmed in writing by the signing of this hire agreement;
- **“Event”** means the event, function or performance to be held by the Hirer on the Event Date;
- **“Event Area”** means the part of the building specified in the Agreement or such other part of the Building as BPAC decides to substitute as a replacement area at its absolute discretion either before or during the Event;
- **“Event Date”** means the date specified in the Agreement;
- **“Event Times”** means the times specified in the Agreement;
- **“Event Manager”** means the responsible person on site on behalf of the hirer. They are the key contact and are responsible for communicating all information between BPAC and their group.
- **“Hire Fees”** means the hire fees specified in the Hire Quote;
- **“Liquidated Damages”** means a fee of \$100 (plus GST) per hour (or part of an hour) after the Event 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 BPAC for its additional costs and loss of amenity resulting from such occurrence;
- **“Quote”** means the venue hire quote 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 Quote is to a Quote 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 BPAC agrees to hire the Event Area to the Hirer between the Event Times on the Event 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 Event Area, and its staff and contractors are entitled to full and unrestricted access to the Event Area throughout the Event 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's booking will be confirmed only upon receipt by BPAC of a signed copy of this agreement, along with proof of public liability insurance.
- 3.2 The Hirer must pay BPAC as follows:
- (a) Full payment of the hire will be invoiced seven days after the Event.
 - (b) The Hirer must pay the Cleaning Fee, any Liquidated Damages, and any other amounts owing, to the BPAC within 30 days after receipt of an invoice from BPAC for those charges.
- 3.3 BPAC may change the Hire Fee at its discretion if the Hirer's proposed Event Date or Event Times or any other specifications change.

4. Cancellation of Bookings

- 4.1 The Hirer may cancel a Confirmed Booking, no later than 7 days prior to their booking. If a hirer needs to cancel within 7 days, a cancellation fee of \$100 will be charged to the Hirer.
- 4.2 BPAC may cancel a Confirmed Booking at any time if, in BPAC's opinion, an event has occurred causing the Event Area or Building to be unsafe or inappropriate to hold the Event.

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 without consultation by a BPAC staff member;
 - (d) interfere with or alter any of the electrical, security, lighting or sound systems in the building without consultation with a BPAC staff member;

- (e) invite or permit into the building more than the expected number of guests specified in the agreement;
 - (f) enter areas of the building other than the Event Area, except for the areas designated by BPAC as the route for entry to and exit from the Event 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 BPAC;
 - (j) take or consume any food or drink outside the Event Area, except into any areas of the building specifically designated by BPAC for that purpose;
 - (k) smoke anywhere inside the building or within 10 metres of doors;
 - (l) use the Event Area or the Building for any purpose except the Event as described in the Agreement;
 - (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 Event at all times and at least one hour before the Event commences;
 - (b) engage and have at the Event sufficient staff/volunteers to manage guests and ensure that the building and all, displays, artworks, fittings and fixtures are properly protected.
 - (c) follow the directions of BPAC staff at all times, in relation to safety, key access and emergency procedures.
- 5.3 The Hirer must comply with all laws, regulations and by-laws and government or regulatory orders applying to the Event and the Event Area. The Hirer must comply with any Occupation Health and Safety laws applying to its workers.
- 5.4 The Hirer is responsible for advertising of the Event. BPAC can support event marketing and a separate marketing agreement can be supplied. Use of BPAC's logo is subject to approval by BPAC management.
- 5.5 The Hirer must:
- (a) vacate the Event Area by the end of the Event Times;
 - (b) promptly remove any goods or materials brought into the Event Area by or on behalf of the Hirer; and
 - (c) leave the Event Area in a thoroughly clean and tidy condition, with furniture and equipment returned to standard position.
- 5.6 All sound, electrical and lighting requirements, signs, banners and decorations connected with the Event must be approved by BPAC before the Event and may be subject of a further charge.
- 5.7 All electrical, sound and lighting equipment brought in by the Hirer must be tested and tagged.
- 5.8 The Hirer must comply with all directions of BPAC management and staff whilst in the building.
- 5.9 All deliveries for the Event must be arranged with and approved by BPAC staff prior to delivery.
- 5.10 BPAC reserves the right to refuse entry to the Building to any of the Hirer's guests.
- 5.11 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 Event if they have first been

approved in writing by BPAC. Contractors must complete a site induction relevant to the event space prior to the event.

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 Event, and provided a copy to BPAC.
- 6.2 Any catering provided by a third party must be provided by a company 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 attachment to the signed Agreement, and that it provides cover for public liability at the Event 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 BPAC 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 BPAC 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 from or in connection with:

- (a) any proven substantial breach of this Agreement by the Hirer;
- (b) the hire and use of the Event Area or access to any part of the building, provided such loss or liability is not caused or contributed to by BPAC’s negligence, wilful misconduct, or breach of this Agreement;
- (c) any actions of the Hirer’s employees, staff, contractors, agents, and invitees that result in direct loss or damage.

Exclusions:

The Hirer shall not be liable for any loss or liability arising from BPAC’s negligence, wilful misconduct, or proven substantial breach of this Agreement.

Proportional Liability:

The Hirer’s liability under this clause shall be reduced proportionately to the extent that any act or omission of BPAC, its employees, volunteers, contractors, or agents contributed to the loss or liability.

Cap on liability:

Losses not covered by a policy of insurance (or which would have been covered by a policy of insurance if the Hirer had maintained in force that policy of insurance) shall be capped at 10 x the value of the Hire Quote.

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:

EXECUTED by the Hirer

by being signed by a person who is authorised to sign for the company:

Event Manager Signature: _____

Event Manager Full Name: _____

Date: _____

EXECUTED by BPAC

by being signed by a person who is authorised to sign for the company:

BPAC Representative Signature: _____

BPAC Representative Full Name: _____

Date: _____