

# **Bendigo Venues & Events**

## **TERMS AND CONDITIONS OF HIRE**

These Terms and Conditions of Hire should be read together with the attached Hiring Agreement and associated Schedules.

# TERMS AND CONDITIONS OF HIRE

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**The Hirer and Bendigo Venues & Events (the Centre) agree that the Centre will grant a non-exclusive licence to the Hirer to use the Venue/s for such Event and/or Performances as is or are set out in the Hiring Agreement upon the Terms and Conditions detailed in this document.**

**IT IS AGREED AS FOLLOWS:**

**PART ONE  
LICENCE**

- |                            |   |  |
|----------------------------|---|--|
| Grant of licence           | 1 | The Centre grants to the Hirer a non-exclusive licence to occupy and use the venue/s and any additional rooms for the purpose of presenting the Event and/or Performances or use or uses at the times during the Licence Period as specified in the Hiring Agreement.  |
| No other licence           | 2 | The grant of the Licence by the Centre and the enjoyment of the Licence by the Hirer is on and subject to the terms of the Hiring Agreement and the Terms and Conditions of Hire. Unless expressly provided for in this Agreement no other right or licence is granted to the Hirer.   |
| Not assign                 | 3 | A party shall not assign, sell, transfer, delegate, licence, mortgage, charge or otherwise encumber the Hiring Agreement or any licence, right, obligation or authority hereby granted unless the other party to the Hiring Agreement has previously approved such action in writing. The other party shall not unreasonably withhold consent under this clause. |
| No partnership, no tenancy | 4 | The full agreement between the parties is contained in the Hiring Agreement, its Schedules, Appendices and the Terms and Conditions of Hire and nothing herein shall be deemed to constitute a partnership between the Centre and the Hirer or to create a relationship of landlord and tenant between the parties.  |
| Fully ticketed venue       | 5 | The Hirer acknowledges and agrees that the Centre is a fully ticketed venue and the Centre has the exclusive right to undertake, and is responsible for, the printing, sale and distribution of all tickets for the Event and/or for each Performance.   |
| Term of licence            | 6 | The Licence Period commences at the Commencement Time on the Commencement Date and expires at the Expiry Time on the Expiry Date as set down in Schedule 1.  |
| Preparation time           | 7 | The Hirer may prepare for each Performance by using the venue/s and any additional rooms no earlier than the Access Time on each Performance Day and may use the additional rooms during and immediately after each Performance, and must vacate the Centre no later than the Clearance Time as set down in Schedule 1.  |
| Additional rooms           | 8 | The Hirer may use additional rooms and/or additional facilities only as expressly permitted by the Centre.   |

## PART TWO DEFINITIONS

Definitions  
apply:

- 9 In this Terms and Conditions of Hire the following definitions
- a) “**Terms and Conditions of Hire**” means this Agreement including each schedule and appendix and annexure;
  - b) “**Hiring Agreement**” means the attached Hiring Agreement including each schedule and appendix and annexure;
  - c) “**Business Day**” means Monday to Friday excluding public and bank holidays in Victoria;
  - c) “**Centre**” means the facilities at 8-10 Gaol Road, Bendigo, Victoria and includes all equipment, fixtures, furnishings and fittings in those areas and includes the Ulumbarra Theatre and all additional rooms;
  - d) “**Clearance Time**” means the time identified in Schedule 1 of the Hiring Agreement, such time relating to each Event and/or Performance;
  - e) “**Commencement Date**” means the first day of the Licence Period;
  - f) “**Access Time**” means the time for access to the venue/s specified in Schedule 1 of the Hiring Agreement;
  - g) “**Complimentary ticket**” means a ticket given to the Hirer under the Hiring Agreement in respect of which no fee or charge other than as provided in Clause 37 is payable;
  - h) “**Effective date**” means the date of signing this Agreement;
  - i) “**Event and/or Performances**” means the function, show, exhibition, display, theatrical production, presentation, sporting event, celebration, promotion, commemoration or other event identified in the Hiring Agreement as the Event Name;
  - j) “**Expiry Date**” means the last day of the Licence Period;
  - k) “**Expiry Time**” means the time on the Expiry Date for the conclusion of the Event as specified in Schedule 1 of the Hiring Agreement

- l) “**Fees, charges, costs,**” includes, without limitation, the Hiring Fee, labour costs, service charges, service fees, costs of consumables, costs of hire or purchase of equipment, production costs of complimentary tickets, ticket sales transaction fees, ticket exchanges fees, ticket re-sales fees, ticket telephone booking fees, ticket selling fees, fire service fees, credit card fees and other fees and charges levied or incurred by the Centre directly or indirectly relating the Event and/or Performances;
- m) “**Force majeure**” means a circumstance beyond the reasonable control of a party that occurs without the action, fault or negligence of the party affected. Such a circumstance may include but not be limited to civil disturbance, war, strike or act of God;
- n) “**Gross Receipts**” means the total revenue received by the Centre in relation to the Event and/or Performances derived from the sale of tickets to the Event and/or Performances and programs and merchandise less all expenses, fees and charges suffered or incurred by the Centre in relation to the sale of tickets for the Event and/or Performances or the sale of programs and merchandise, and less the revenue retained by the Centre under Clause 23;
- o) “**GST**” means the goods and services tax imposed on the supply of goods and services pursuant to *A New Tax System (Goods and Services Tax) Act 1999*, as amended and any other value added tax or tax on consumption, goods or services;
- p) “**Hirer**” means the organisation, partnership or individual hiring Venue/s within the Centre to stage Events and/or Performances and includes the Hirer’s agents, employees and contractors.
- q) “**Licence Period**” means the period of time identified in Schedule 1 of the Hiring Agreement;
- r) “**Loss**” includes claims, demands, actions, damages, costs, losses and expenses;
- s) “**Merchandise**” means any items and products offered for sale related to the Event and/or Performances;
- t) “**Program**” means a printed program containing information relevant to the Event and/or Performances;
- u) “**Staff**” means the Centre’s staff designated by The Centre to assist in presenting the Event and/or Performances;
- v) “**Strike**” means the cessation of work arising from a dispute between an employer and employee or employees and includes bans or limitations on work imposed by employees or a partial or total cessation of work approved by a registered industrial association of employees;

- w) **“Ticket”** means a ticket enabling admission to the Centre and any Venue/s for the purpose of viewing an Event and/or Performance;
- x) **“Transaction fees”** include costs and duties charged by financial institutions for the receipt of funds via the banking network including credit card charges and all other charges and duties;
- y) **“Use”** means any rehearsal, set-up time or other use of the Venue/s or Centre incidental to an Event and/or Performance;
- z) **“Venue”** means the venues in the Centre as identified in the Hiring Agreement.

### **PART THREE PAYMENTS**

Consideration	10	As consideration for the Centre’s Grant of Licence hereunder the Hirer shall pay to the Centre such fees, charges and costs sums specified in the attached Hiring Rates associated with its use of the Venue/s on the dates specified in Schedule 1 hereto and such sums shall become the property of the Centre.
Staff’s labour	11	The Hirer shall at the conclusion of the Licence period or at any such other time nominated in writing by the Centre pay the Centre the costs of all staff provided or engaged by the Centre for the purpose of staging the Event and/or Performance/s.
Facilities, equipment	12	The Hirer shall at the conclusion of the Licence period or at such other time as may be nominated in writing by the Centre pay to the Centre the costs of facilities, technical equipment or items specified in Appendix A (Technical Schedule) hereto and used during the Licence Period.
Promotion, publicity, services, items	13	The Hirer shall at the conclusion of the Licence period or at such other time as may be nominated in writing by the Centre pay to the Centre the costs of providing promotion, advertising, publicity and/or any other services or items requested by the Hirer and as specified in Schedule 2 of the Hiring Agreement.
Late finish	14	On the occasion of any Event and/or Performance or use continuing beyond the Clearance Time as set out in Schedule 1 of the Hiring Agreement the Hirer shall pay to the Centre if so demanded the further sum determined by the Centre for each quarter of one hour or part thereof during which the time overrun occurs.



Set-off	15	The Centre may deduct fees, charges and costs under Clauses 10, 11, 12, 13 and 14 and any money payable by the Hirer under Clauses 47 and 48 from Gross Receipts before paying them to the Hirer in accordance with Clause 23.
Insufficient gross receipts	16	If the Gross Receipts are insufficient to deduct the sum total of the fees, charges, costs and money under Clause 10 from them the Hirer shall pay the balance between the Gross Receipts and that sum total within seven days of the Centre's written demand for payment.
Sufficient gross receipts	17	If the Centre calculates that the Gross Receipts will be sufficient to allow the Centre to deduct all fees, charges, costs and money payable under Clause 23, the Centre may by arrangement with the Hirer pay the excess to the Hirer provided always that Gross Receipts held by the Centre relating to Events and/or Performances not yet completed are retained by the Centre.
Security deposit (bond)	18	The Hirer shall pay a security deposit in the amount specified in the Hiring Agreement if required by the Centre. The Centre may retain all or any part of the security deposit to make good any damage caused by the Hirer or occurring as a result of the Hirer's use of the Centre. This clause does not limit any other provision of this Agreement.
Deposit	19	The Hirer shall pay a non-refundable deposit in the amount specified in the Hiring Agreement on execution of this Agreement.
Firemen, safety officers	20	Under the certificate of occupancy for the Centre suitably trained fire and/or safety personnel may be required to be engaged to ensure the safety of all persons involved with the Event and/or Performances within the Licence Period. The Hirer shall pay the cost of providing such personnel if required.
Goods and Services Tax	21	The supply of goods and/or services under this Agreement by the Centre to the Hirer is a taxable supply and such Goods and Services Tax (GST) is the liability of the Hirer. The fees, prices, charges and costs for the Centre to supply goods and/or services to the Hirer as set out in the Hiring Agreement, Hiring Rates, Schedules and/or Appendices hereto represent the full amount of the fees, prices, charges and costs payable by the Hirer to the Centre including the GST.
Account	22	The Centre shall provide to the Hirer within five business days of the end of the Licence Period an account setting out the details of: <ul style="list-style-type: none"> <li>a) the total Gross Receipts earned for the Event and/or Performances presented during the Licence Period;</li> <li>b) the hiring fees, charges and costs; and</li> </ul>

- c) the total of all amounts due by the Hirer to the Centre, and the account shall be deemed to be true and correct unless the Hirer notifies the Centre in writing within three days of receipt of the account of any error in or objection to the account.

Disbursement	23	The Centre shall pay to the Hirer within eight business days of the end of the Licence Period, or when any error in and/or objection to the account as per Clause 22 is resolved, whichever event is sooner, Gross Receipts less the sum of hiring fees, labour costs and other charges and costs net of any deposit paid by the Hirer.
No agent or trustee	24	The Centre is not an agent or trustee for the Hirer. Gross Receipts applying to Events and/or Performances within the Licence Period of this Agreement are held by the Centre as a debtor to the Hirer and shall be disbursed as described in this Agreement.

**PART FOUR  
USE OF VENUES and the CENTRE**

The Centre's obligations	25	The Centre has obligations under this Agreement that apply only to those areas of the Centre used by the Hirer under the terms of this Agreement or used with the express consent of the Centre. The Centre shall:
Public access	25.1	ensure access to the Centre to members of the public to attend the Event and/or Performances;
Staff access	25.2	provide all the employees and contractors of the Hirer with access to the Centre for the purposes of fulfilling their duties to present the Event and/or Performances;
Provide facilities, equipment, services	25.3	provide at the Hirer's costs such facilities, equipment and services as specified by the Hirer in Schedule 2 of the Hiring Agreement and Appendix A, Technical Schedule, and other appendices hereto;
Schedule staff	25.4	provide and schedule the personnel as specified in Appendix A, Technical Schedule of this Agreement to assist the Hirer to present the Event and/or Performances. All personnel provided by the Centre remain the employees or contractors of the Centre and are subject to the sole direction of the Centre. Any and all involvement of any additional personnel who are not employees or contractors of the Centre shall be subject to the consent of the Centre being granted in each and every instance;
Refusal of admission	25.5	be solely responsible for accepting the surrender of tickets of admission to the Event and/or Performances before a person is allowed to enter the Venue/s and the Centre shall have the right to refuse to admit any person not surrendering a valid ticket of admission for the Event and/or Performances;

Collect receipts	25.6	be solely responsible for collecting all Gross Receipts earned in relation to the Event and/or Performances that are presented during the Licence Period whether by way of advance seat booking charges or otherwise, and any interest earned by the Centre on such monies shall be and remain the property of the Centre.
Hirer's obligations	26	The Hirer shall have obligations under this Agreement that apply to all areas of the Centre used by the Hirer or its employees and contractors with or without the consent of the Centre. The Hirer shall:
No award breach	26.1	not breach or allow to be breached any relevant industrial award or agreement applying to work practices in the Centre;
No rights infringement	26.2	not infringe or breach or allow to be infringed or breached any copyright, performing right or any industrial or intellectual or other protected right in connection with the Event and/or Performances at the Centre;
No hindrance	26.3	not hinder or obstruct any member of the police force, ambulance service, fire brigade or any emergency service or any employee or contractor of the Centre in the performance of their duties in any part of the Centre;
Proper conduct	26.4	conduct itself and ensure its employees and contractors conduct themselves in a proper orderly and lawful manner that does not constitute riotous disorderly or improper behaviour, nor permit or suffer any person to conduct themselves in a riotous disorderly or improper manner in or about the Centre, nor permit or suffer to be done in or about the Centre or its environs any act matter or thing which may prejudice the reputation of the Centre;
Compliance with laws	26.5	comply with the all laws regulations, and requirements of state and local governments, statutory authorities and with all notices, orders or directions given by any statutory or public authority in respect to the Hirer's use of the Centre;
Compliance with policies	26.6	comply with all policies and procedures adopted from time to time by the Centre concerning the use of the Centre as notified to the Hirer by the Centre;
Compliance with directions	26.7	comply with any requirement or reasonable direction given by the Centre in relation to use of the Centre including but not limited to: <ul style="list-style-type: none"> <li>a) not allow any person to smoke in the Centre;</li> <li>b) not allow the sale of any food or beverage in the Centre;</li> <li>c) not allow animals to be brought into the Centre unless previously approved in writing by the Centre;</li> </ul>

	d)	not allow or make any monetary collections or offer for sale any article in the Centre unless previously approved in writing by the Centre;
	e)	not bring into the Centre any scenery, curtains, stage properties or equipment that fails to meet the safety requirements of the Centre or any relevant safety or fire regulation;
	f)	not do or allow to be done anything in the Centre that, in the opinion of the Centre is noxious or audibly or visually offensive or a nuisance;
Observation of requirements of licensed premises	26.8	not do or suffer to be done any act or thing in or about the Centre that may contravene the terms and conditions of any licence or permit held by the Centre in respect of the supply and sale of drinks, food or other commodities and the Hirer shall comply with and carry out all lawful directions of the Liquor Licensing Commission, local government authority or any relevant authority whether such directions are given to the Centre or to the Hirer;
Permits, licences certificates	26.9	not cancel or do anything to jeopardise or make forfeit any licence, permit or authorisation held by the Centre and required for the operation and use of the Centre and shall observe and comply with the provisions of the Theatres Act in force for the time being;
No signs	26.10	not display any signage in or on any part of the Centre other than as expressly permitted by the Centre and only in the locations and by the methods nominated by the Centre;
Damage	26.11	report promptly any damage to any part of the Centre or to any article or thing supplied or provided in connection with the Hirer's use of the Centre and shall make good any such damage at its expense;
Alterations, additions	26.12	not make or allow to be made any alterations or additions to the structure, fittings, decorations or furnishings of any part of the Centre without first obtaining the written approval of the Centre. Only employees and/or contractors approved by the Centre shall carry out any approved alterations or additions and only in accordance with specifications and plans approved by the Centre.
Additional fittings	26.13	not add any fittings, furnishings or decorations to any part of the Centre unless such additions has been approved in writing by the Centre and the Hirer shall remove all such additions prior to the end of the Licence Period or sooner if directed by the Centre;

Additional electrical and heavy equipment	26.14 not bring any heavy articles of machinery or equipment or any electrical cables, electrical distribution panels, lights, projectors or other electrical installation equipment or fittings into the Centre without first obtaining the written approval of the Centre and all such equipment shall have been tested and tagged by a competent person in line with Australian/ New Zealand standard AS/NZS3760:2000 and shall not load any floor, stage, lift or other mechanical equipment beyond their capacities;
Firearms, explosives, inflammable substances, pyrotechnics, chemicals, gases	26.15 not bring nor allow to be brought into nor assemble or manufacture in the Centre any firearms, explosives, inflammable substances, pyrotechnics, chemicals or other substances except as agreed in writing by the the Centre to be necessary for the Event and/or Performances provided always that the Hirer shall not allow or permit any event, performance, use or act in the Centre that could cause injury to any person or property;
Qualified operators	26.16 ensure that its employees and contractors are appropriately qualified to operate any mechanical, electrical or electronic equipment in the Centre and that only licensed personnel prepare or operate any permitted pyrotechnic effects;
Insurance	26.17 maintain the following insurance cover for the whole of the Licence Period and provide to the Centre prior to the Licence Period evidence of the currency of such insurance cover: <ul style="list-style-type: none"> <li>a) public liability insurance for at least the amount of five million dollars;</li> <li>b) workers' compensation insurance within the meaning of the Accident Compensation Act 1985 in respect of any employee of the Hirer who enters the Centre.</li> </ul>
The Centre's insurance	26.18 not do or allow to be done anything in the Centre, or bring to or store in the Centre any item, which increases or may increase the premiums payable for any insurance policies in connection with the Centre.
The Centre's sponsorship arrangements	26.19 not do or allow to be done anything in the Centre, nor bring to the Centre any item, that contravenes or may damage or harm any sponsorship agreement or arrangement that the Centre may enjoy.
Commencement of performance	26.20 make every reasonable endeavour to commence the Event and/or Performances referred to in the Hiring Agreement at the times specified in Schedule 1, on the face of admission tickets and specified in any advertising and/or promotion of the Event and/or Performances;

Advertisements	26.21	ensure that all advertisements, posters and other promotions relating to the Event and/or Performances comply with all relevant laws and codes and comply with the Centre's guidelines for advertising as detailed in the Policies and Information for Hirers;
Removal of scenery, effects	26.22	remove from the Centre all scenery, curtains, stage properties, costumes, goods and effects of the Hirer prior to the end of the Licence Period or at some other time approved in writing by the Centre;
Security services	26.23	not without first obtaining the Centre's written consent arrange for or use any security services or staff other than the security services and staff provided by the Centre;
Next user	26.24	allow the Centre's employees and agents to hang cloths or scenery, store, build and fit up stage sets, conduct auditions and rehearsals or otherwise use the Centre to prepare for the next event, production or performances to be held at the Centre;
Use of Centre	26.25	not use the Centre for any purpose other than for the Event and/or Performances specified in the Hiring Agreement;
Vacation of Centre	26.26	leave the Centre in a clean and proper condition at the end of the Licence Period to the satisfaction of the Centre and remove any alterations or additions and make good any damage to the Centre caused by that removal and reinstate the Centre to its former condition to the satisfaction of the Centre;
Mutual obligations	27	The Centre and the Hirer shall discuss and implement any agreed mutually beneficial measures to assist in marketing and promoting the Event and/or Performances and improving the number of tickets sold and Gross Receipts.

**PART FIVE  
EVENT AND/OR PERFORMANCES INFORMATION**

Requirements and information forms	28	<p>The Hirer shall provide the information specified on Schedule 1 and 2 of the Hiring Agreement and Appendix A Technical Schedule at the following times:</p> <ul style="list-style-type: none"> <li>a) Schedule 1 and 2 of the Hiring Agreement, at least five business days prior to the date on which tickets for the Event and/or Performances are first to be offered for sale;</li> <li>b) The Technical Requirements Form forming part of Appendix A, the Technical Schedule, at least fifteen business days prior to the commencement of the Licence Period;</li> </ul>
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The Centre's requirements	29	The Centre may require amendments or modifications to the Hirer's information provided in the requirements forms as listed in Clause 28 and may specify requirements for the use or operation of equipment to be utilised by the Hirer and the Hirer shall comply with any such amendment, modification or requirement.
Notification of variations	30	<p>The Hirer shall immediately upon becoming aware thereof notify the Centre in writing of:</p> <ul style="list-style-type: none"> <li>a) any variation to the details contained in the completed Schedules or Appendices as listed in Clause 28;</li> <li>b) any artist or performer named in a published program or in advertising for the Event and/or Performances being unable or unwilling to appear in the Event and/or Performances;</li> <li>c) any variation to the quality, nature, content, duration or expectation of the Event and/or Performances for any reason;</li> </ul> <p>and the Hirer shall be responsible for any and all costs or expenses incurred by the Centre as a result of the Hirer's failure to comply promptly with this clause.</p>
Announce variations	31	The Hirer shall at its own cost advertise or publicise the cancellation or postponement of the Event and/or Performances or any part thereof or, where required by the Centre, any variation in its quality, nature, content, duration or participants in the same manner and through the same media, outlets and/or locations as the advertisements or publicity for the original details of the Event and/or Performances.
Information warranty	32	The Hirer represents and warrants that its information is true and accurate and not misleading when first provided and at all times throughout the Licence Period.

## **PART SIX TICKETING**

Ticketed venue	33	The Centre is exclusively responsible for the printing, sale and distribution of admission tickets to the Event and/or Performances and the Hirer shall not, and shall ensure others do not, offer for sale, sell, re-sell or otherwise distribute or dispose of any tickets to the Event and/or Performances.
Provision of information	34	The Hirer shall provide to the Centre at least five Business Days prior to the date on which tickets for the Event and/or Performances are first to be offered for sale, the completed Schedule 2 of the Hiring Agreement including written notification of the following:

- a) the name or names of the Event and/or Performances and their nature, the names of artists and/or performers appearing and other particulars of the Event and/or Performances including the Performance Days and Performance Times and the wording to be printed on admission tickets;
- b) ticket prices, inclusive of all fees and charges;
- c) details of ticket sales arrangements including the dates tickets are first to be offered for sale for each Event and/or Performance and if the sale of tickets for any Event and/or Performance is conditional upon ticket sales for prior performances during the Licence Period reaching a particular number;
- d) the requirements of the Event and/or Performances relating to the audience seating area, particularly the locations of any sound mixing, lighting control equipment, video equipment or any other structures and the locations of any seats in the Centre which are to be withheld from sale as a result;
- e) any contingency or condition that the Event and/or Performances are subject to;
- f) details of any variation to the Centre's refunds or exchanges policy for tickets that are purchased but cannot be used by the purchasers;
- g) the number and location of complimentary tickets required by the Hirer subject to Clause 37;
- h) the representatives of the Hirer who are authorised by the Hirer to make decisions on its behalf concerning the ticketing requirements for an Event and/or Performance and to receive ticket sales reports,

and the Centre shall take into account the Hirer's written advice and instructions but may make its own decision in relation to any of the matters referred to in this clause.

The Centre's discretion

35 The Hirer acknowledges and agrees that:

- a) The Centre is not liable for fraud, non-payment or theft by any person not being an employee of the Centre;
- b) The Centre shall determine the number of tickets to be made available for sale for each Event and/or Performance and when those tickets will be made available for sale;
- c) The Centre shall determine the format, contents and conditions relating to the printing of the tickets of admission and shall determine the conditions of sale of the tickets including whether the ticket for any seat is to be sold as providing a restricted, side or rear view of an Event and/or Performance;



- d) The Centre may withdraw from sale any tickets for seats if it determines that the view from those seats is so restricted as to make it undesirable to sell those tickets;
  - e) The Centre may at its absolute discretion provide a refund to any person who purchased a ticket to an Event and/or Performance of the price of that ticket, or provide replacement tickets for another Event and/or Performance.
- Changes to ticketing information 36 The Hirer may request that changes be made to the information provided by the Hirer under Clause 34 and the Centre shall advise the Hirer of the costs incurred in making such changes and the time required to effect those changes.
- Complimentary tickets 37 The Centre may provide to the Hirer the number of tickets specified under Clause 34 g) for each Event and/or Performances as complimentary tickets and the Hirer shall pay on demand to the Centre the charge specified in the Hiring Rates. The Hirer shall not offer for sale, sell or re-sell complimentary tickets or otherwise dispose of them under any contractual arrangement or for valuable consideration.
- House seats 38 The Centre shall reserve for its own use, for each Event and/or Performance for which tickets are issued or sold, the number of house seats outlined in the Hiring Agreement and shall retain the right to determine the location of those seats. The House Seats are outside the scope of the Grant of Licence described in this Agreement.
- Use of house seats 39 The Centre may use the House Seats at its discretion, and shall:
- a) release for sale to the public any tickets for House Seats not utilised by the Centre a minimum of five minutes prior to the commencement of the Event and/or Performance;
  - b) include the proceeds of any sales of any tickets for House Seats in Gross Receipts.

**PART SEVEN**  
**PROGRAMS, MERCHANDISE, RECORDING, BROADCASTING, PHOTOGRAPHY**

- No sale 40 The Hirer shall not offer to sell, sell or allow to be sold any programs or merchandise other than in accordance with conditions set out in this Agreement or as expressly permitted by the Centre in writing.
- Revenue 41 All revenue from the sale of programs and merchandise shall be retained by the Centre or, if not sold by the Centre, paid to the Centre on the day it is received. The Centre shall retain eleven per cent of the revenue earned from the sale of programs and merchandise (including GST), and account for the balance as part of Gross Receipts.

Hirer's obligations	42	The Hirer shall ensure that programs or merchandise are sold only by the Centre's employees unless agreed otherwise in writing by the Centre and the Hirer shall be liable for the wages and any other costs associated with the provision of such staff by the Centre. The Hirer further undertakes to provide three copies of the Event and/or Performances program specific to the Licence Period to the Centre at no cost to the Centre.
Other party	43	The Hirer may with the Centre's prior written consent, enter into an agreement with a third party for the sale of programs and/or merchandise and shall provide to the Centre the third party's written agreement to be bound by this Agreement insofar as it is relevant.
Program contents and credits	44	The Hirer shall ensure that printed programs for the Event and/or Performances include such information as may reasonably be required by the Centre including but not limited to venue credits, emergency exit plans, disclaimers and conditions, and the Hirer shall ensure that the programs' contents do not bring the Centre into disrepute.
Recording, broadcasting, photography	45	The Hirer must not without the prior written consent of the Centre cause or allow any recording, film, telecast, broadcast or photographic record to be made in or around the Centre and the Centre may at its sole discretion grant such consent on specific terms and conditions. The Hirer's request for the Centre's written consent herein shall be made on the Recording and/or Broadcasting Form contained as part of Appendix A, Technical Schedule.
Consent given	46	If the Centre grants its written consent under Clause 45, the Hirer shall publicise and credit in each instance and at every opportunity that any recording, film, telecast, broadcast or photograph was staged at the Centre and if any recording, film, telecast, broadcast or photograph is used for commercial purpose the Hirer shall pay to the Centre a fee to be determined by the Centre.

**PART SEVEN  
POSTPONEMENT, CANCELLATION**

Postponement	47	<p>If the Hirer wishes to postpone its booking at any time prior to the Licence Period:</p> <p>a) the Hirer shall promptly notify the Centre in writing of its intention to postpone the booking of the Licence Period, and the Centre shall assess if the dates on which the Hirer now wishes to present the Event and/or Performances are available; and</p>
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- b) if the alternate dates are not available, the Centre shall promptly notify the Hirer and the booking of the Licence Period shall be considered cancelled and the provisions of Clause 48 b) and c) shall apply;
- c) if the alternate dates are available, this Agreement shall be deemed to be varied by inserting a new Licence Period in Schedule 1 of the Hiring Agreement, but otherwise shall remain in full force and effect. The Hirer shall remain liable under Clause 48 in respect of the original dates of the booking as if that booking was cancelled.

Cancellation

48 If the Hirer wishes to cancel its booking at any time prior to the Licence Period:

- a) the Hirer shall promptly notify the Centre in writing of its intention to cancel the booking of the Licence Period;
- b) the Hirer shall remain liable for all money payable to the Centre under this Agreement. If the Centre re-hires the Venue/s to some other party the Hirer shall be entitled to be released from its obligations to pay the Hiring Fee to the extent that the Centre recovers any amount from the re-hiring of the venue provided always that the deposit paid by the Hirer is non-refundable;
- c) the Hirer shall pay to the Centre on demand all costs and expenses incurred by the Centre in providing and preparing the venue for the Event and/or Performances including the costs of refunding ticket purchases as a result of the failure of the Hirer to conduct the Event and/or Performances.

## **PART NINE INDEMNITIES, EXCLUSION OF LIABILITY**

Indemnities

49 The Hirer agrees to indemnify and keep indemnified the Centre from and against all claims or loss suffered or incurred directly or indirectly by the Centre by reason of or in relation to the use of the Centre or any part thereof by the Hirer, its employees and contractors including but not limited to claims arising from or concerning:

- a) any accident, damage or injury to or loss of property in the Centre;
- b) any accident, damage or injury suffered by any person or to the property of any person in or about the Centre;
- c) the sale of tickets;
- d) any breach by the Hirer, its employees or contractors of this Agreement;

- e) the failure by the Hirer to obtain any necessary licence, authority or consent;
- f) installation and removal of any additional fittings, decorations or furnishings including without limitation stage and seating;
- g) the engagement of artists, performers and other personnel required for the Event and/or Performances;
- h) the transportation of the personnel, equipment, fittings, scenery, curtains and materials necessary for the Event and/or Performances;
- i) any action or negligence of the Hirer or its employees or contractors;
- j) the quality, nature, content, duration or expectation of the Event and/or Performances, or any change to them;
- k) the consideration or implementation by the Centre of any requests made by the Hirer in relation to the Event and/or Performances;
- l) the non-payment of any money due from the Hirer to the Centre.

No warranty of suitability	50	The Hirer acknowledges that the Centre gives no warranty that the Centre or any part thereof will be suitable for the purpose of staging the Event and/or Performances, and that the Centre shall not be liable for any loss suffered by the Hirer as a consequence of staging the Event and/or Performances.
Hirer's risk of entry and use	51	The Hirer agrees to enter and use the Centre or any part thereof at its own risk and releases the Centre from any and all claims and demands of any kind and from any liability that may arise in respect of any accident, damage or injury occurring to any person or property in or about the Centre associated with the Event and/or Performances.
No responsibility for selection of works	52	Any power, right or discretion conferred on the Centre under any of the provisions of this Agreement shall not be deemed to impose upon the Centre any responsibility for the selection of the work or works to be performed or presented by the Hirer during the Licence Period.
Extent of exclusions	53	To the extent permitted by law, all liability under the provisions of statutory or implied condition or warranty is excluded, but any liability which cannot legally be excluded is limited to: <ul style="list-style-type: none"> <li>a) in the case of goods: - <ul style="list-style-type: none"> <li>i) the replacement of the goods or the supply of equivalent goods and the payment of the cost of such replacement or supply; or</li> <li>ii) the repair of the goods and the payment of the cost of such repair of the goods; and</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>b) in the case of services: - <ul style="list-style-type: none"> <li>i) the supply of the services again; or</li> <li>ii) the payment of the cost of having the services supplied again.</li> </ul> </li> </ul>
Consequential loss	54	The Centre is not liable for indirect, special or consequential loss of the Hirer irrespective of how or why the loss is suffered or incurred.
Force majeure	55	The obligation of a party, other than the obligation to pay money, is suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by Force Majeure.
Affected by force majeure	56	<p>A party affected by Force Majeure shall:</p> <ul style="list-style-type: none"> <li>a) promptly give to the other party full particulars of the Force Majeure and the manner in which its obligations under this Agreement are prevented or delayed; and</li> <li>b) promptly and diligently take appropriate action to enable it to perform those obligations prevented or delayed by Force Majeure except that the party is not obliged to settle a strike, lockout or other labour supply difficulty.</li> </ul>

**PART TEN  
THE CENTRE'S RESERVED RIGHTS**

The Centre's reserved rights	57	<p>The Centre shall reserve, under its discretionary control, certain rights, including the following:</p> <ul style="list-style-type: none"> <li>a) the right to make all directions and take all actions relating to the use of the Centre by the Hirer, its employees or contractors;</li> <li>b) the right for the Centre and its employees, nominees and contractors to have access to the Centre at all times for the purpose of carrying on the business of the Centre;</li> <li>c) the right to issue passes or authorities permitting specified persons to have access to specified areas of the Centre including areas used by the Hirer in connection with the Event and/or Performances;</li> <li>d) the right to direct crowd control measures, safety and security systems and procedures and the Centre's evacuation procedures;</li> <li>e) the right to make announcements, play videos and display images relating to any subject at the times and in the places in the Centre that it deems appropriate provided that such announcements and displayed images do not unduly disrupt or interfere with the Event and/or Performances;</li> </ul>
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- f) the right to display by way of the Centre's in-house video system in locations it deems appropriate any Event and/or Performance for the convenience of the Centre, its employees, contractors and nominees and of the public attending the Event and/or Performances;
- g) the right to refuse admission to any person, including the Hirer, its employees and contractors, to the Centre at any time;
- h) the right to remove any person, including the Hirer, its employees and contractors, from the Centre or any part of it at any time;
- i) the right to remove from the Centre any items of equipment belonging to the Hirer, its employees or contractors and store them, at the Hirer's costs, in a manner and place of the Centre's choosing, if the Hirer does not remove such items at the end of the Licence Period;
- j) the right to remove from the Centre any items of equipment belonging to the Hirer, its employees or contractors, at the Hirer's cost, in a manner of the Centre's choosing, which are deemed by the Centre to be dangerous, unsafe or unfit for their proposed use;
- k) the right to make a recording of any Event and/or Performance for archival purposes;
- l) the right to provide catering services to the Centre;
- m) the right to provide cleaning services to the Centre;
- n) the right to provide security services to the Centre;
- o) the right to supply wines, spirits, drinks, refreshments, food, confectionary or other items to persons attending the Centre;
- p) the right to sell merchandise, programs and other items in the Centre;
- q) the right to determine and impose acceptable sound limits in respect of the Event and/or Performances;
- r) the right to print, supply, sell or otherwise distribute tickets and the right to provide ticketing services;
- s) the right to enter sponsorship agreements with partners of its choice relating to naming rights of, or credit for, any of the Centre's venues, rooms, spaces, services and equipment.

## **PART ELEVEN TERMINATION**

The Centre's right to terminate	58	<p>Without affecting its other rights and remedies, the Centre may terminate this Agreement by giving notice in writing to the Hirer at any time:</p> <ul style="list-style-type: none"><li>a) after the Hirer fails to carry out any material provision of this Agreement and the failure is not capable of remedy; or</li><li>b) after the Hirer fails to carry out any material provision of this Agreement, the failure is capable of remedy and the Hirer does not remedy that failure within five business days of receipt of written notice to do so; or</li><li>c) in the opinion of the Centre there is a likelihood that damage may be caused to the Centre or any part of the Centre if the Hirer exercises the rights and authorities granted by this Agreement; or</li><li>d) after any other event occurs or circumstance arises that in the opinion of the Centre, has the potential to materially and adversely affect the ability of the Hirer to perform any or all of its obligations under or to comply with the terms and conditions of this Agreement; or</li><li>e) after a warranty given by the Hirer in this Agreement is materially incorrect or misleading; or</li><li>f) if in the opinion of the Centre the organisation of or advertising for or the manner in which any performance or use is being conducted or is proposed to be conducted is or is likely to be of a libellous, scandalous, obscene or objectionable character.</li></ul>
Retained rights	59	<p>On termination of this Agreement under Clause 58 each party retains the rights it may possess against the other party in respect of any past breach of this Agreement in addition to any other rights, powers or remedies provided by law.</p>
Failure to pay	60	<p>if a party fails to pay an amount on the due date for payment, that party shall pay to the other party interest on that amount computed from the due date until the due amount is paid in full, such interest rate to be eight per cent per annum .</p>

## **PART TWELVE INTERPRETATION, NOTICES, GENERAL**

Governing law	61	<p>This Agreement is made in the State of Victoria and is governed by and is to be construed in accordance with the laws of Victoria. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Victoria and waive any right to object to proceedings being brought in those courts.</p>
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This document, clauses, headings, numbering, marginal notes	62	<p>In this Agreement:</p> <ul style="list-style-type: none"> <li>a) a reference to this document includes the document as varied or replaced regardless of any change in the identity of the parties;</li> <li>b) a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;</li> <li>d) a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;</li> <li>d) headings, subheadings, numbering and marginal notes are for convenient reference only and shall not in any way control or affect the construction or interpretation of this Agreement or any clause thereof;</li> <li>e) “including” and similar expressions are not words of limitation; and</li> <li>f) a reference to “expressly permitted” means that the party who may give or withhold permission has done so in writing in advance of the act requiring permission.</li> </ul>
Persons	63	<p>In this Agreement, reference to:</p> <ul style="list-style-type: none"> <li>a) a person includes a firm, partnership, joint venture, association, corporation or other corporate body;</li> <li>b) a person includes the legal personal representatives, successors and permitted assigns of that person; and</li> <li>c) any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body that most closely serves the purposes or objects of the first-mentioned body.</li> </ul>
Property	64	<p>In this Agreement, a reference to any property or assets of a person includes the legal and beneficial interest of that person in those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise</p>
Joint and several	65	<p>If a party to this Agreement consists of more than one person, this Agreement binds 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.</p>
Counterparts	66	<p>This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.</p>
Legislation	67	<p>In this Agreement, a reference to a statute includes regulations under it as well as any consolidations, amendments, re-enactments or replacements to it.</p>



Number and gender	68	In this Agreement, a reference to the singular includes the plural and vice versa, and a reference to a gender includes the other genders.
Currency	69	In this Agreement a reference to “\$” or “dollars” is a reference to Australian dollars.
Business day	70	If a payment or other act is required by this Agreement to be made or done on a day that is not a Business Day, the payment or act shall be made or done on the next following Business Day.
Provision read down	71	If a provision in this Agreement is held to be illegal, invalid, voidable or unenforceable, that provision shall be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
Provision severance	72	If it is not possible to read down a provision as allowed for in Clause 71, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or any of the other provisions of this Agreement.
Waiver of provisions	73	None of the provisions of this Agreement shall be taken either at law or in equity to have been varied waived discharged or released by the Centre unless by its notice of consent in writing.
Dispute or difference	74	Any dispute or difference arising out of the interpretation of this Agreement may be referred to Arbitration in accordance with the provisions of the Commercial Arbitration Act 1984, as amended, by either of the parties at any time after the date of completion of the Licence Period provided that neither party desires to first take action at law.
Notices	75	<p>A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:</p> <ul style="list-style-type: none"> <li>a) personally, on the person;</li> <li>b) by leaving it at the person’s current address for service;</li> <li>c) by posting it by prepaid post addressed to that person at the person’s current address for service; or</li> <li>d) by email to the person’s email address, and the particulars for such service shall be:</li> <li>e) for the Centre; Postal Address</li> </ul> <p style="text-align: right;">c/o 50 View Street Bendigo, Victoria 3550</p>

[bendigovenuesandevents@bendigo.vic.gov.au](mailto:bendigovenuesandevents@bendigo.vic.gov.au) or similar

- f) for the Hirer, as specified in the Hiring Agreement, and a notice or other communication shall be deemed served:
  - i) at the time of service if served personally or left at the person's address;
  - ii) two Business Days after posting if posted within Australia to an Australian address, or in any other case, eight Business Days after posting;
  - iii) two hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

Amendment	76	This Agreement may only be varied or replaced by a document duly executed by the parties.
Entire understanding	77	This Agreement contains the entire understanding between the parties. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting the grant of licence are superseded by this Agreement and shall have no effect.
Time and further assurance	78	Time is of the essence regarding all dates, periods of time and times specified in this Agreement and each party shall promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions prescribed in this Agreement.
Legal costs and expenses	79	Each party shall pay its own legal costs and expenses in relation to any negotiation, preparation and execution of this Agreement and other documents referred to in it.
Stamp duty or tax	80	The Hirer shall pay any stamp duty or other tax, including all fines and penalties except those arising from the default of another party, in respect of this Agreement and any document executed under it.
Waiver and exercise of rights	81	A single or partial exercise or waiver of a right under this Agreement does not prevent any other exercise of that right or the exercise of any other right and no party shall be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, failure to exercise or delay in the exercise of a right.

## PART THIRTEEN

### COVID-19 ADDITIONAL PROVISIONS

- Hierarchy 82 To the extent of any inconsistency, the clauses set out in this Part Thirteen prevail over the other clauses in this Agreement.
- COVID-19 83 The Hirer acknowledges that:
- a) this Agreement is made during the COVID-19 pandemic;
  - b) the Centre considers it is necessary and desirable for the parties to use best endeavors to ensure the safety of patrons attending the Centre.
- Authority 84 For the purposes of this Part Thirteen, ‘Authority’ means any government, local government, governmental, statutory or judicial body (including statutory corporations), authority or agency.
- Compliance 85 The Hirer must at all times comply with all relevant directions, restrictions and requirements made by an Authority relating to COVID-19.
- The Hirer must comply with all reasonable directions given by the Centre relating to COVID-19 safety.
- Cancellation 86 The Centre may immediately cancel the Event or any Performances by providing written notice to the Hirer:
- a) in order to comply with a direction, restriction or requirement made by an Authority relating to COVID-19; or
  - b) if it reasonably considers that it is necessary or desirable to ensure the safety of patrons attending the Centre and Staff, including where the Hirer has not provided to the Centre a complete COVID-Safe Plan in accordance with clause 87.
- If the Event or any Performance is cancelled in accordance with this clause the Hirer will not have any right to compensation. However, the parties will discuss in good faith the rescheduling of the cancelled Event or Performance to a later date.
- COVID-Safe Plan 87 The Hirer warrants that:
- a) it has received from the Centre a copy of its COVID-Safe Plan; and
  - b) it will comply, and will ensure that its crew, performers and other staff comply, with the Centre’s COVID-Safe Plan, as amended by the Centre from time to time.

The Centre reserves the right to vary its COVID-Safe Plan at any time to reflect the latest Authority and industry guidance. The Centre will notify the Hirer of any variation to its COVID-Safe Plan as soon

as possible.

The Hirer must provide to the Centre its own COVID-Safe Plan regarding the Hirer's management of performers and crew to the Centre for approval by no later than 30 days prior to the first scheduled Event or Performance date.

The Centre reserves the right to require the Hirer to amend its proposed COVID-Safe Plan if it reasonably considers that it does not meet the relevant Authority requirements.