

# **Darebin Council Creative Culture & Events venues**

## **Terms and conditions of hire**

**For events and performances open to the  
general public**

# GENERAL TERMS

## Contents

1. DEFINITIONS.....	3
2. APPLICATION .....	4
3. CONTROL OF VENUE .....	4
4. LICENCE .....	4
5. PAYMENT OF FEES .....	5
6. FEES & CHARGES.....	5
7. EVENT DOCUMENTATION .....	5
8. STAFF.....	5
12. DAMAGE REPORT .....	7
13. ALTERATIONS TO VENUE .....	7
14. TICKETING.....	7
15. PROGRAMS AND MERCHANDISE .....	8
16. CAMERAS AND RECORDING DEVICES.....	9
17. INSURANCE.....	9
18. INTELLECTUAL PROPERTY RIGHTS .....	10
19. COMPLIANCE WITH LAWS AND POLICIES .....	10
20. CANCELLATION OF BOOKING .....	10
21. ALTERATION OF BOOKING DATES .....	11
22. INDEMNITY .....	11
23. LIABILITY.....	12

## 1. DEFINITIONS

In this Agreement, unless the context requires otherwise:

**Access Period** has the meaning given that term in clause 4.3

**Agreement** means this agreement, and includes the Schedules to the Agreement

**Booking Fee** means the fee to be charged by The Centre in respect of the sale of each ticket transaction as set out in the Key Terms

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in Melbourne, Victoria.

**Cancellation Notice** has the meaning given to that term in clause 19.

**Companion Card** means a Companion Card issued or recognised by the Victorian Government.

**Complimentary Tickets** means a Ticket to which no fee or charge applies other than as expressly provided for in this Agreement.

**Conditions of Use** means all the details relating to use of The Centre as set out in this Agreement

**Customer Data** means the full name, address, phone number and email address of the person who has purchased a ticket.

**Deposit** means the deposit amount set out in the Key Terms

**Essential Term** means any term in this Agreement which is identified as an essential term.

**Event** means the concert, show, function, display, theatrical production or other event or activity at The Centre as set out in the Key Terms

**Event Date/s** means the Event Date/s specified in Schedule 1.

**Event Information** means any information in relation to the Event and which The Centre reasonably requires the Presenter to provide The Centre in accordance with this Agreement, as set out in the Key Terms

**Event Period** means the period commencing on the first Event Date of each Event and ending on the final Event Date of each Event.

**Fees** are the fees specified, but not limited to, in Section 1: Key Terms and include GST.

**GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

**Hiring Fee** means the fee for the grant of the Licence as set out in the Key Terms.

**House Seats** means the seats reserved for or by The Centre in accordance with clause 14.9

**Intellectual Property Rights** includes all copyright (including future copyright) and neighbouring rights, all rights in relation to inventions (including patent rights), plan varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Licence** means the access licence granted under clause 4.1.

**Loss** means any loss including any liability, cost, expense (including legal costs), claim, proceeding, action, demand or damage.

**Merchandise** means any items and products offered for sale in relation to the Event.

**Notice** means any notice, demand, consent or other communication whatsoever given or made under this Agreement.

**Performance Time** means the times for each performance of the Event including intervals as set out in Schedule 1.

**Personnel** means in relation to the Presenter:

- a) The Presenter's directors, officers, employees, agents, contractors, financiers, professional advisers, invitees, licensees and guests;
- b) Artists, performers, musicians, dancers, assistants, producers, technicians and any person engaged by the Presenter in relation to the Event; and
- c) Any persons granted security identification cards or keys at the request of the Presenter.

**Program** means any publication relating to the Event that is distributed or sold to persons attending any performance of the Event.

**Programs and Merchandise Fee** means an amount equivalent to a percentage set out in the Key Terms of the full retail price of the Programs and Merchandise.

**Special Access Tickets** has the meaning given to that term in clause 14.5(d)

**Schedule** means a schedule to this Agreement.

**The Centre** shall mean Northcote Town Hall Arts Centre the building located at 189 High Street, Northcote, 3070, where the Event will be presented.

**The Centre Manager** shall mean the Head of Operations of Northcote Town Hall Arts Centre and shall include a person appointed to act in their absence.

**Venue** means the venue or venues set out in the Key Terms.

## 2. APPLICATION

- 2.1 Application for use of The Centre shall be made to the Presenter Services team via the online booking form provided on Northcote Town Hall Arts Centre's website, and;
- 2.2 Where the application is made on behalf of an organisation or body of persons, the applicant shall state the name of such organisation and the authority of the applicant for making such application.

## 3. CONTROL OF VENUE

- 3.1 The general administration and control of The Centre shall be vested in the Centre Manager, who shall exercise absolute discretionary powers for the use, good order and control of such premises.
- 3.2 Northcote Town Hall Arts Centre gives no undertaking or warranty to any Presenter or user of The Centre or any part thereof, as to the suitability of The Centre for the purposes for which it is to be used and the Presenter must rely upon their own enquiries as to the compliance of The Centre with any law, regulation or by law of the Parliament or any authority for the purpose for which the Presenter wishes to use The Centre.

## 4. LICENCE

- 4.1 The Centre grants to the Presenter, and the Presenter accepts, a non-exclusive licence to enter, occupy and use the Venue during event times and access periods.
- 4.2 The Licence commences at the commencement time of each access period and any other time and other date specified in Schedule 1, and expires at the expiry time of each such access period or time or date as specified in Schedule 1.
- 4.3 The Presenter may have access to and use the Venue for the purpose of preparing for and conducting each Event in accordance with the access timetable specified in Schedule 1. Access to the Venue for setups and pack downs must be included in the booking. Additional room hire charges will apply for time used that is outside of the booked access times.
- 4.4 The Presenter (and all Personnel) must vacate the Venue and The Centre at the conclusion of each access period set out in Schedule 1.
- 4.5 The Presenter shall pay to The Centre the hire hourly rate in respect of each hour or part of hour during which The Centre remains occupied by the Presenter, the Presenter's guests or others attending the Event mounted by the Presenter beyond the access period specified by the Presenter in the Venue Hire Agreement. This includes, but is not limited to, any additional staffing costs incurred beyond the specified access period until the time the Presenter vacates The Centre or until the pack down is complete. Please note that any hours beyond the access period will not include the Supervising Technician within the hourly rate, and additional staffing charges for this staff member will apply, including any penalty rates if the Supervising Technician has worked in excess of 10hrs.
- 4.6 This Agreement creates only personal rights of occupation and does not confer on the Presenter any right, title or interest in or to The Centre. The Centre Manager, and any employee of The Centre whom the Centre Manager may appoint, shall at all times and notwithstanding any use, be entitled to free access to any and every part of The Centre. Therefore, The Centre may:
  - a) refuse admission to, or remove any person from, The Venue
  - b) remove from the Venue any items of equipment or property belonging to the Presenter and store them, at the Presenter's cost, in a manner and place convenient to The Centre, if the Presenter does not remove them when requested by The Centre at the conclusion of the Access Period as specified in the Key Terms of this Agreement.

- 4.7 No portion of The Centre used shall be sub-let or any tenancy transferred or assigned by the Presenter without written consent of the Centre Manager.

## **5. PAYMENT OF FEES**

- 5.1 In consideration for the grant of the Licence to the Presenter, a Licence shall only be confirmed upon the receipt of the non-refundable deposit and the return of a signed copy of this Presenter Hire Agreement by its nominated representative. The Presenter must pay to The Centre the Hiring Fee and the Additional Fees and Charges set out in the Key Terms.
- 5.2 The Presenter must pay the non-refundable deposit set out in the Key Terms to The Centre upon execution of this Agreement. If the Presenter cancels or postpones its booking for the Venue and/or the Additional Areas, the Deposit will be dealt with clause 20 of this Agreement.
- 5.3 The Presenter shall be liable on demand from The Centre Manager to pay any costs against any damage to The Centre and/or fittings or furniture contained therein, and for any abnormal cleaning of The Centre used by The Presenter, as set out in clause 11. The Presenter shall be liable on demand from The Centre Manager to pay the full cost of such damage or cleaning.
- 5.4 The Centre may set off the Hiring Fee and the Additional Fees and Charges against the Gross Receipts.
- 5.5 If, no earlier than ten business days before the first Event Date, the Gross Receipts are insufficient for The Centre to deduct the Hiring Fee and the Additional Fees and Charges, the Presenter must pay the balance of the Hiring Fee and Additional Fees and Charges to The Centre within seven days of a written request for payment from The Centre.
- 5.6 The Presenter acknowledges that this clause 5 is an Essential Term.

## **6. FEES & CHARGES**

- 6.1 Fees for the hire of The Centre shall be available to the Presenter and may be altered by The Centre from time to time without prior notice. Fees and charges are set annually as part of Darebin City Council's budget and always alter on 1<sup>st</sup> July in any year. Presenters whose events occur in the next financial year are advised that current fees and charges are to be used as a guide only, and to ensure event budgets have contingencies to allow for any unknown fees and charges in the next financial year. A copy of current fees and charges is available from The Centre.

## **7. EVENT DOCUMENTATION**

- 7.1 The Presenter shall complete and return the prescribed Event Requirements Form to The Centre no less than ten (10) weeks prior to the first date of venue access hired by the Presenter. The completed prescribed Risk Assessment template for the event shall be required as a first draft no less than six (6) weeks prior to the first date of venue access hired by the Presenter. A first draft Production Schedule/ Event Run Sheet must be supplied to The Centre no less than ten (10) weeks prior to the first date of venue access hired by the Presenter in order for The Centre to roster operational staff and finalise event preparations.
- 7.2 The Presenter acknowledges that this clause 7 is an Essential Term.

## **8. STAFF**

- 8.1 The Presenter acknowledges and agrees that all technical and front of house staff associated with the hire of the venue will be personnel of Northcote Town Hall Arts Centre or its agents or contractors.

## **9. ADDITIONAL STAFF AND EQUIPMENT**

- 9.1 The Presenter acknowledges and agrees that where:

- a) The Centre considers it necessary, in its sole discretion and acting reasonably, to provide additional staff and / or Venue equipment; or
- b) the Presenter requests and The Centre agrees to provide additional staff and/or Venue equipment
- c) the Presenter must pay for the additional staff and/or equipment at the rates advised by The Centre. The Centre will notify the Presenter of any such fees and charges before any relevant Event Date.

## **10. PRESENTER EQUIPMENT**

10.1 Upon request by The Centre, the Presenter must provide The Centre with a list of its equipment that it wishes to use in the Venue during the Access Period. The Centre may reasonably withhold its consent to the use of any particular equipment or require such that equipment display a current electrical safety tag prior to use within The Centre.

## **11. PROPER CONDUCT AND USE**

11.1 The Presenter must conduct itself and ensure that its personnel and its invitees conduct themselves:

- a) in a proper and orderly manner;
- b) in a manner which does not adversely affect the reputation of The Centre;
- c) at all times in a manner which is not riotous, disorderly, drunken, disgraceful or improper;
- d) in accordance with any reasonable directions given by The Centre from time to time including (without limitation):
  - (i) to comply with any sound level limits imposed by the law or The Centre, and any sound engineering directions from The Centre, in respect of the use of The Centre;
  - (ii) to comply with any directions by The Centre prohibiting or regulating the sale or supply of, or access to, food and beverages within The Centre. The Centre's contracted caterer will provide all catering services within The Centre. Self-catering arrangements are not permitted within The Centre.
  - (iii) not to permit any animals to be brought into The Centre except if otherwise required by the law or permitted by The Centre in writing;
  - (iv) not to permit smoking in The Centre and otherwise to comply with any smoking restrictions or prohibitions which are imposed on The Centre in or around The Centre;
  - (v) not to interfere with or overload any fittings, connectors or equipment related to the supply of water, gas, electricity, cooling or lighting in The Centre;
  - (vi) not to overload or use the mechanical equipment in The Centre beyond their capacities;
  - (vii) not to permit any heavy articles, machinery or equipment into The Centre without first obtaining The Centre's prior written consent;
  - (viii) not to permit anything to be brought into The Centre which would endanger The Centre or any part of The Centre including any flammable, volatile, explosive or dangerous substances, firearms and any scenery, curtains or other equipment that fails to meet the safety requirements of The Centre or any relevant fire or safety law or regulation;
  - (ix) not to make, or permit the making of, any charity or other cash collections in The Centre without The Centre's prior written consent;

- (x) not to leave, or permit the leaving of, rubbish in any part of The Centre other than receptacles provided for that purpose;
- (xi) not to do or allow anything to be done in The Centre which is noxious, offensive or audibly or visually a nuisance;
- (xii) in relation to any occupational health and safety issues;
- (xiii) to comply with The Centre's liquor licence;
- (xiv) to adhere to Darebin Council's values: *Collaborative, Integrity, Accountable, Creative, Respect, and Making a Difference* while at The Centre;
- (xv) not to plan, undertake, or promote any gambling activity or advertising of any gambling activity. Council will not provide community grants, funding, sponsorship, Council facilities, publicity or promotion for community groups or organisations that promote gambling;
- (xvi) to comply with Darebin Council's **single-use plastic free** events policy. The policy is designed to eliminate the use of single-use plastic items from events run by Council and held in Council buildings and venues. This includes but is not limited to: plastic bags; plastic plates/bowls/cutlery; plastic take-away containers; disposable cups including coffee cups; bottled water; plastic straws; cling wrap; and balloons.

11.2 The Presenter must not, and must ensure that its Personnel do not, do anything liable to cause the cancellation, forfeiture, loss or denial of any licence, permit or authorisation held or required to be held by The Centre in respect of the use or operation of The Centre or any part of The Centre.

## 12. DAMAGE REPORT

12.1 The Presenter must promptly report, and must ensure that its Personnel promptly report, to The Centre any damage to The Centre or any part of The Centre caused by or during the Presenter's use of The Centre. The Presenter shall be responsible for making good any damage in accordance with clause 5.

## 13. ALTERATIONS TO VENUE

13.1 The Presenter must not, and must ensure that its Personnel do not, make, or permit to be made, any alterations or additions to the Venue without The Centre's prior written consent. If The Centre so consents, the Presenter must ensure the alterations or additions are made strictly in accordance with plans and specifications, and by personnel, approved by The Centre.

## 14. TICKETING

14.1 The Centre has the exclusive right to, and will be responsible for, producing, selling and distributing all admission tickets for the Event and each performance of the Event.

14.2 The Presenter acknowledges and agrees that:

- a) The Centre is a fully ticketed venue;
- b) only tickets issued by or on behalf of The Centre are valid tickets and The Centre may refuse access to the Venue for the Event to any person without a valid ticket; and

- c) all Intellectual Property Rights in any data collected by The Centre in ticketing the Venue (Ticketing Data) vests in, or is otherwise, assigned to The Centre upon creation.
- 14.3 Upon The Centre's request, the Presenter must notify The Centre of all ticketing requirements as specified on The Centre's Ticketing Form.
- 14.4 The Centre may, in its sole discretion, make decisions and give directions in respect of these matters. The Centre will act reasonably in making these decisions and will consult the Presenter if practical to do so.
- 14.5 The Centre may, in its sole discretion, but after taking into account the Presenter's preference notified in 14.3 where relevant, decide or give directions in respect of the following matters:
- a) the format, contents and conditions of the tickets including whether the ticket for any seat is to be sold as providing a restricted, side or rear view of the Event performance;
  - b) the withdrawal of tickets from sale if The Centre considers the view to be so restricted that it is undesirable to sell those tickets;
  - c) the withdrawal of tickets from sale for production purposes including sets or props; bespoke audio equipment etc and;
  - d) the number of tickets to be reserved for patrons with special access needs.
- 14.6 The Presenter may notify The Centre of changes it would like to make to information notified by it under clause 12.3. If The Centre agrees to a change requested by the Presenter, the Presenter must pay for all costs and expenses incurred by The Centre in effecting that change.
- 14.7 The parties acknowledge and agree that The Centre has no liability in respect of ticket fraud, theft or non-payment.
- 14.8 Upon request, The Centre will provide the Presenter with the number of Complimentary Tickets, to a maximum of 10%, for each session of the Event.
- 14.9 The Centre reserves for itself, on a complimentary basis, up to four (4) House Seats for which tickets are sold or issued. The Centre may, in its sole discretion, release tickets for the House Seats for sale to the public at any time. The proceeds of any such ticket sales will be included in Gross Receipts.
- 14.10 The Centre reserves the right to issue tickets to Companion Card holders on a complimentary basis for any Events for which tickets are sold or issued without charge to the Presenter, in accordance with the Companion Card programme.
- 14.11 The staff and facilities of The Centre shall be made available to the Presenter for the purpose of accepting and recording bookings for live events and for the issue of tickets for such performances. On Event Days a box office staff member is included for three hours. Any Events that require box office to remain open beyond this duration will be charged at the hourly box office staff rate as outlined in the Fees & Charges.
- 14.12 The Centre shall be at liberty to charge a selling fee on all ticket transactions sold by The Centre on behalf of the Presenter and to retain such selling fee for its own use. Any such selling fee shall not be regarded as part of the proceeds of sales of tickets for the purpose of this clause.
- 14.13 The Presenter shall strictly adhere to the advertised prices of admission for each engagement.

## **15. PROGRAMS AND MERCHANDISE**

- 15.1 The Presenter must not offer for sale, sell or allow to be sold any Programs or Merchandise other than in accordance with this clause 15 or otherwise with the written consent of The Centre.
- 15.2 Unless otherwise agreed in writing by The Centre, The Centre will retain all revenue from its sale of any Programs and Merchandise. The Presenter must pay The Centre all revenue from any Programs and Merchandise it has sold.



All revenue received by The Centre in relation to the sale of Programs and Merchandise will be included as part of the Gross Receipts.

- 15.3 The Presenter must pay The Centre the Programs Fee and the Merchandise Fee set out in the Key Terms. The Centre may set off the amount of the Programs Fee and the Merchandise Fee against the Gross Receipts.
- 15.4 The Presenter must ensure that the Programs and Merchandise are sold in accordance with The Centre's directions including in relation to the manner and location in which the Programs or Merchandise are to be sold.
- 15.5 The Presenter must ensure that the Program includes information reasonably required by The Centre including venue credits, The Centre's logo, name and does not adversely affect The Centre's reputation.
- 15.6 The Presenter must seek The Centre's written consent prior to entering into an agreement or arrangement with a third party for the sale of Merchandise. In seeking The Centre's consent, the Presenter must:
  - a) Upon request, provide The Centre with a written agreement from the third party to be bound by terms reflecting clause 15 of this Agreement; and
  - b) pay any Programs Fee and Merchandise Fee and provide all relevant sales reports to The Centre on the day it is received.

#### **16. CAMERAS AND RECORDING DEVICES**

- 16.1 No still cameras, video cameras, sound recorders or any other recording device shall be used within The Centre, or photographs taken, without the written consent of the Centre Manager.
- 16.2 If The Centre consents to the making of the Recording, the Presenter must enter into a Recording Agreement with The Centre.
- 16.3 If The Centre consents to any Photography, The Centre may impose at its sole discretion any conditions on such consent, which will, as a minimum, require the Presenter:
  - a) if the Photography is published or communicated to the public to acknowledge in any such publication or communication that the photography is of Darebin Arts Centre;
  - b) to pay all costs incurred or suffered by The Centre arising from the Photography;
  - c) to pay a fee to be determined by The Centre for use of the Photography, unless The Centre considers, in its sole discretion, that the intended use by the Presenter of the Photography will not be for a commercial purpose;
  - d) provide a copy of all Photography to The Centre.

#### **17. INSURANCE**

- 17.1 The Presenter shall not do or neglect to do so or permit to be done or left undone anything which will affect The Centre's insurance policy or policies relative to fire and public risk in connection with the building.
- 17.2 The Presenter must, at its own cost, maintain the following insurance policies during the Event Period:
  - a) Public Liability Insurance (PLI) for an amount not less than the amount specified in the Key Terms;
  - b) any other insurance policies specified in the Key Terms; and

- c) workers' compensation insurance in respect of its employees and subcontractors to cover the maximum liability which may be imposed by the law from time to time in the State of Victoria.

17.3 The Presenter must, within 24 hours of a request by The Centre, deliver to The Centre satisfactory evidence that it holds a particular insurance policy and that the policy is current for all dates of the period for which the Licence has been granted.

## 18. INTELLECTUAL PROPERTY RIGHTS

18.1 The Presenter must ensure that it has secured any and all necessary copyright consents or licences to present the Event at The Centre in accordance with this Agreement including by the payment of any required royalty fees to relevant copyright collecting societies, and the Presenter hereby indemnifies The Centre against any claim for breach of copyright in connection therewith.

## 19. COMPLIANCE WITH LAWS AND POLICIES

19.1 The Presenter must at all times while using and occupying the venue:

- a) comply with, and must ensure that its personnel comply with, the requirements of all laws of any kind including in relation to occupational health and safety as outlined in the Occupational Health and Safety Act 2004 (Vic);
- b) hold, and must ensure that its personnel hold, all authorisations, permits and licenses required by law; and
- c) comply with, and must ensure that its personnel comply with, all applicable Darebin Council's policies and procedures, with particular reference to the following policies:
  - i) occupational health and safety
  - ii) adherence to council values
  - iii) child safety
  - iv) single-use plastics
  - v) gambling

All policies listed above are available on Darebin Council's website and copies can be provided to Presenters upon request.

19.2 The Presenter must:

- a) not, and must ensure that its personnel do not, hinder or obstruct any member of the police force or any emergency service or personnel of The Centre in the performance of their duties; and
- b) comply with, and ensure that its personnel comply with, any direction given by The Centre personnel or any member of the police force or emergency services in the event of an evacuation or emergency or other safety incident.

## 20. CANCELLATION OF BOOKING

20.1 The Presenter may cancel its booking for the venue not less than three months before each Access Period by written notice to The Centre (**Cancellation Notice**).

- 20.2 The Presenter acknowledges and agrees that in the event of a booking cancellation within three months before the start of each Access Period:
- a) the Deposit set out in the Key Terms will not be refunded; and
  - b) it must pay to The Centre all costs and expenses incurred by The Centre, including:
    - i) in providing and preparing the Venue for the Event;
    - ii) as a result of the failure of the Presenter to conduct the Event including the costs of providing refunds, exchanges or settling or contesting claims by members of the public who purchased tickets; and
    - iii) all Additional Fees and Charges incurred up to the date of cancellation.
- 20.3 The Presenter acknowledges and agrees that in the event of a booking cancellation within two months before the start of each Access Period:
- a) the Deposit set out in the Key Terms will not be refunded;
  - b) it must pay 100% of the Hiring Fee set out in the Key Terms; and
  - c) it must pay to The Centre all costs and expenses incurred by The Centre, including:
    - i) in providing and preparing The Centre for the Event;
    - ii) as a result of the failure of the Presenter to conduct the Event including the costs of publishing the cancellation and the costs of providing refunds, exchanges or settling or contesting claims by members of the public who purchased tickets; and
    - iii) all additional Fees and Charges incurred up to the date of cancellation.
- 20.4 The Centre reserves the right to cancel any booking where the invoice deposit has not been paid by the due date specified in this contract, with no recourse on any costs incurred by the Presenter.
- 20.5 The Presenter acknowledges that clause 20 is an Essential Term.

## 21. ALTERATION OF BOOKING DATES

- 21.1 The Presenter may alter its booking of The Centre not less than three months before the start of each Access Period by written notice to The Centre.
- 21.2 No alteration may be made to a confirmed booking date without forfeiture of the non-refundable deposit which applies to that date, whether it be for a single booking, a multiple booking, or part thereof.
- 21.3 If the revised dates on which the Presenter wishes to present the Event are unavailable:
- a) The Centre must notify the Presenter that the dates are unavailable within 5 business days of receipt of the postponement notice; and
  - b) The Presenter's booking for The Centre will be automatically cancelled and clause 15.2 will apply to the automatic cancellation.
- 21.4 If the revised dates on which the Presenter wishes to present the Event are available:
- a) this Agreement will be varied by replacing the Event Dates set out in the Key Terms with the revised dates.

## 22. INDEMNITY

- 22.1 The Presenter agrees to indemnify and to keep indemnified, Darebin City Council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising from the occupancy and use of The Centre by the Presenter and its personnel and any activities related to that occupancy and use,

including any Recording or Photography and marketing and promotional activities for an Event, including in respect of:

- a) any breach by the Presenter of this Agreement;
- b) any negligent or wrongful acts or intentional misconduct of the Presenter or its Personnel;
- c) any personal injury, death or loss of, or damage to, real or personal property caused by the Presenter or its Personnel;
- d) the sale of tickets;
- e) the quality, nature, duration or expectation of any performance of the Event or any variations to it, or any Recording;
- f) the engagement of any performers or artists required for the performance of the Event; or
- g) any breach by the Presenter or its personnel of The Centre's standards, operating principles, policies and procedures including Darebin Council's policies as outlined in clause 12.

### **23. LIABILITY**

- 23.1 To the extent permitted by law, the Presenter acknowledges and agrees that The Centre will not be liable for:
- a) any Loss arising from any accident, damage or injury to any person or property in or about The Centre unless caused by an act or omission of The Centre's personnel (except where such personnel are acting in accordance with the Presenter's instructions or directions); and
  - b) any indirect, special or consequential loss suffered or incurred by the Presenter including loss of profits, loss of revenue and loss of business opportunity.
- 23.2 In relation to any liability not excluded under clause 23.1, to the extent permitted by law The Centre expressly limits the remedies available under or relating to this Agreement, whether derived from statute or the general law, to the following (the choice of which is to be The Centre's sole discretion):
- a) in the case of goods supplied to the Presenter, any one or more of the following:
    - i) the replacement of the goods or supply of equivalent goods;
    - ii) the repair of the goods;
    - iii) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
    - iv) the payment of the costs of having the goods repaired; and
  - b) in the case of making a Recording (if applicable) and any other services supplied to the Presenter:
    - i) the supply of the services again; or
    - ii) the payment of the cost of having the services supplied again.

### **24. FORCE MAJEURE**

- 24.1 A party is not liable for failure to perform, or for a delay in performing, an obligation (except an obligation to pay money) if each of the following is satisfied:
- a) the failure or delay arose from a Force Majeure Event;
  - b) the party took all reasonable precautions against the Force Majeure Event and did its best to mitigate its consequences, noting that this does not include settling a labour dispute on terms which, in the opinion of the party concerned, are not in its overall best interests; and
  - c) the party gave each other party notice of the Force Majeure Event as soon as practicable after becoming aware of it.
- 24.2 From the date notice is served in accordance with this clause, no party is required to perform an obligation under this Agreement which is dependent on the delayed or failed obligation until the party that gave notice is able to resume full performance of its obligations.

- 24.3 In this clause, 'Force Majeure Event' means a cause beyond the reasonable control of the party in question and includes an act of war (whether declared or not) or terrorism, the mobilization of armed forces, civil commotion or riot, natural disaster, act of God, industrial action, picket or labour disturbance, currency restriction, embargo, action or inaction by a government agency, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code introduced other than through the acts or omissions of the party seeking relief.

## 25. COVID-19 OR OTHER PANDEMIC, INCLUDING CANCELLATION OF EVENT

- 25.1 A party is not liable for failure to perform, or for a delay in performing, an obligation, if each of the following is satisfied:
- a) the failure or delay arose from a COVID-19 or other pandemic event;
  - b) the party took all reasonable precautions against the COVID-19 or other pandemic event and did its best to mitigate its consequences, and;
  - c) the party gave each other party notice of the COVID-19 or other pandemic event as soon as practicable after becoming aware of it.
- 25.2 The Centre may be required to cancel the Presenter's Event for any, but not limited to any, of the following:
- a) a Venue-specific COVID-19 outbreak;
  - b) updated advice or regulatory restrictions from the Victorian State Government or the relevant Health Authorities to the sector; or
  - c) by order of Darebin Council's Incident Controller Officer for COVID-19 or other pandemic.
- 25.3 The Presenter, and the Presenter's Personnel, agree to abide by The Centre's COVID-19 Safe Venue Plan, work protocols and procedures, and take responsibility for failures to do so. A copy of The Centre's COVID-Safe plan can be provided to Presenters upon request. ***Please note this is a live document, and will be updated as required.***
- 25.4 The Presenter will be required to submit their own COVID-Safe plan regarding their management of performers and crew at The Centre six (6) weeks prior to their first booking date, for approval by The Centre Manager.
- 25.5 The Presenter acknowledges, in agreement with The Centre, that additional time and resources may be required in pre-production to implement COVID-Safe plans and venue inductions for all Personnel the Presenter has onsite at The Centre, and allocation of time for this will need to be reflected in the Presenter's production schedule.
- 25.6 The Presenter agrees that, in line with The Centre's COVID-Safe plan, all Presenter Personnel will be required to sign-in to the Venue register upon entry and exit of the building for each day of the Access Period, which may include temperature checks and COVID-19 symptom questionnaires.
- 25.7 With reference to clause 25.6, the Presenter agrees that The Centre Manager, or nominated staff in their absence, have authority to exclude a person presenting with symptoms of COVID-19, from the Venue, including the Presenter's Personnel.
- 25.8 The Presenter agrees to pay any additional costs, including but not limited to, additional contracted cleaner onsite bookings, that occur as a direct result of the Presenter's Event requirements, such as multiple performances over the same day, which requires the Venue to book additional services beyond what the Venue deems reasonable to absorb in-line with adhering to COVID-Safe protocols and hygiene standards.
- 25.9 The Presenter acknowledges, and accepts, that any patron capacity limitations at The Centre are as per current Victorian State Government Regulations, which are subject to change in line with regulations, and The Centre's COVID-Safe plan.

## 26. TERMINATION AND DISPUTE RESOLUTION

- 26.1 The Centre may immediately terminate this Agreement by written notice to the Presenter if any of the following occurs:

- a) The Presenter is in breach of its obligations under this Agreement and does not remedy the breach (to the extent that it can be remedied) within 14 days after receiving a written notice from The Centre Manager specifying the breach and requiring it to be remedied;
  - b) The Presenter commits a breach of this Agreement which cannot be remedied;
  - c) The Presenter commits multiple or recurring breaches of this Agreement;
  - d) There is a change in the person or persons in effective control of the Presenter including any change in the underlying beneficial ownership of the Presenter;
  - e) A crime is committed by the Presenter's directors, shareholders or personnel which The Centre reasonably considers may have the potential to adversely affect The Centre's reputation; or
  - f) The Presenter ceases, or indicates that it is about to cease, carrying on its business
- 26.2 The Presenter may immediately terminate this Agreement by written notice to The Centre if any of the following occurs:
- a) The Centre is in breach of its obligations under this Agreement and does not remedy the breach (to the extent that it can be remedied) within 14 days after receiving a written notice from the Presenter specifying the breach and requiring it to be remedied;
  - b) The Centre commits a breach of this Agreement which cannot be remedied.
- 26.3 When this Agreement ends, the Presenter must immediately deliver up to The Centre all of The Centre's equipment, information, documents, records and other property used by it under this Agreement or otherwise in the Presenter's control or possession.
- 26.4 If this Agreement ends for any reason:
- a) each party retains its rights under this Agreement and at law in respect of any breach of this Agreement by the other party; and
  - b) the Presenter must make payment to The Centre for any amounts payable before the date of termination.
- 26.5 If a dispute arises under this Agreement, either party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. Both parties must meet within five business days of the notice and endeavour to resolve the dispute in good faith. While this process is pursued, each party must continue to perform its obligations under this Agreement. Nothing in this clause 25.5 restricts or limits the right of either party to obtain interlocutory relief, or immediately terminate this Agreement in accordance with its terms.

## SCHEDULE 1

Access Period and Timetable

[EVT-BKGS]

*NB: This is an initial estimate of venue hire costs only. A final cost estimate can be provided closer to the first access date.*

## SECTION 3: ACCEPTANCE OF PRESENTER VENUE HIRE AGREEMENT

**Executed as an agreement on**

Thursday, September 24, 2020

Signed for and on behalf of **Darebin Arts Centre**  
**ABN 75 815 980 522** in the presence of:

-----

Signature of authorised person:

-----

Print name:

-----

Signature of witness:

-----

Print name:

Signed for and on behalf of **\*Legal Name - Account\***  
**ABN \*ABN\*** in the presence of:

-----

Signature of authorised person:

-----

Print name:

-----

Signature of witness:

-----

Print name: