

TERMS AND CONDITIONS

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PART ONE

LICENCE

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|----------------------------|----|--|
| Grant of licence | 1. | Macedon Ranges Shire Council grants to the Hirer a non-exclusive licence to occupy and use the Venue/s and the 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 Schedule 1. |
| No other licence | 2. | The grant of the Licence by Macedon Ranges Shire Council and the enjoyment of the Licence by the Hirer is on and subject to the terms of this Agreement, comprising these Terms and Conditions as well as Schedule 1. 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 this Agreement or any licence, right, obligation or authority hereby granted unless the other party to this 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 this Agreement (comprising these Terms and Conditions, and Schedule 1) and its Appendices and nothing herein shall be deemed to constitute a partnership between Macedon Ranges Shire Council 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 Venue is a Fully ticketed venue and Macedon Ranges Shire Council 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 additional rooms at the Venue no earlier than the Preparation 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 Macedon Ranges Shire Council . |

PART TWO

DEFINITIONS

Definitions

9. In this Agreement the following definitions apply:
- a) **“Agreement”** means this Agreement including each schedule and appendix and annexure;
 - b) **“Business Day”** means Monday to Friday excluding public and bank holidays in Victoria;
 - c) **“Centre”** means *Kyneton Town Hall at Macedon Ranges Shire Council, 129 Mollison St, Kyneton* and includes all equipment, fixtures, furnishings and fittings in those areas and includes the Venue, and the additional rooms;
 - d) **“Clearance Time”** means the time identified in Schedule 1, such time relating to each Event and/or Performance;
 - e) **“Commencement Date”** means the first day of the Licence Period;
 - f) **“Commencement Time”** means the time on the Commencement Date specified in Schedule 1;
 - g) **“Complimentary ticket”** means a ticket given to the Hirer under this 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 Item 3 of Schedule 1;
 - j) **“Expiry Date”** means the last day of the Licence Period;
 - k) **“Expiry Time”** means the time on the Expiry Date specified in Schedule One
 - l) **“Fees, charges, costs,”** includes, without limitation, the Hiring Fee, labour costs, service charges, service fees, costs of consumables, 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 **Macedon Ranges Shire Council** 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 is not limited to, health pandemic, civil disturbance, war, strike or act of God;
 - n) **“Gross Receipts”** means the total revenue received by the **Macedon Ranges Shire Council** 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 **Macedon Ranges Shire Council** 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 **Macedon Ranges Shire Council** 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) **“Licence Period”** means the period of time identified in Item 4 of Schedule 1;
 - q) **“Loss”** includes claims, demands, actions, damages, costs, losses and expenses;
 - r) **“Merchandise”** means any items and products offered for sale related to the Event and/or Performances;
 - s) **“Program”** means a printed program containing information relevant to the Event and/or Performances;
 - t) **“Staff”** means the **Macedon Ranges Shire Council**’s staff designated by the **Macedon Ranges Shire Council** to assist in presenting the Event and/or Performances;
 - u) **“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;
 - v) **“Ticket”** means a ticket enabling admission to the Venue and the Centre for the purpose of viewing an Event and/or Performance;

- w) **“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;
- x) **“Use”** means any rehearsal, set-up time or other use of the Venue/s or Centre incidental to an Event and/or Performance;
- y) **“Venue”** means the venues in the Centre identified in Item 3 of Schedule 1.

PART THREE

PAYMENTS

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| Consideration | 10. | As consideration for Macedon Ranges Shire Council's Grant of Licence hereunder the Hirer shall pay to Macedon Ranges Shire Council such fees, charges and costs associated with its use of the Venue/s in the sums and on the dates specified in Schedule 1 hereto and such sums shall become the property of Macedon Ranges Shire Council . |
| Staff's labour | 11. | The Hirer shall at the conclusion of the Licence Period pay Macedon Ranges Shire Council the costs of all staff provided or engaged by Macedon Ranges Shire Council for the purpose of staging the Event and/or Performances as listed in Schedule 1 hereto. |
| Facilities, equipment | 12. | The Hirer shall at the conclusion of the Licence period pay to Macedon Ranges Shire Council the costs of facilities, technical equipment or items specified in Schedule 1 hereto and used during the Licence Period. |
| Promotion, publicity, services, items | 13. | The Hirer shall at the conclusion of the Licence period pay to Macedon Ranges Shire Council the costs of providing promotion, advertising, publicity and/or any other services or items requested by the Hirer and as specified in Schedule 1 and/or the Appendices hereto. |
| 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 the Hirer shall pay to Macedon Ranges Shire Council if so demanded the further sum determined by Macedon Ranges Shire Council for each half of one hour or part thereof during which the time overrun occurs. |
| Set-off | 15. | Macedon Ranges Shire Council 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 (if applicable) 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 Macedon Ranges Shire Council's written demand for payment. |

- Sufficient gross receipts 17. If **Macedon Ranges Shire Council** calculates that the Gross Receipts will be sufficient to allow **Macedon Ranges Shire Council** to deduct all fees, charges, costs and money payable under Clause 23 **Macedon Ranges Shire Council** may by arrangement with the Hirer pay the excess to the Hirer provided always that Gross Receipts held by **Macedon Ranges Shire Council** relating to Events and/or Performances not yet completed are retained by **Macedon Ranges Shire Council**.
- Security deposit (bond) 18. The Hirer shall pay a security deposit in the amount specified in Item 14 of Schedule 1. **Macedon Ranges Shire Council** 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 deposit in the amount specified in Item 15 of Schedule 1 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 as set out in Item 17 of Schedule 1.
- Goods and Services Tax 21. e supply of goods and/or services under this Agreement by **Macedon Ranges Shire Council** 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 **Macedon Ranges Shire Council** to supply goods and/or services to the Hirer as set out in the Schedule and/or Appendices hereto represent the full amount of the fees, prices, charges and costs payable by the Hirer to **Macedon Ranges Shire Council**.
- Account 22. **Macedon Ranges Shire Council** shall provide to the Hirer within five business days of the end of the Licence Period an account setting out the details of:
- the total Gross Receipts earned for the Event and/or Performances presented during the Licence Period;
 - the hiring fees, charges and costs; and
 - the total of all amounts due by the Hirer to **Macedon Ranges Shire Council** and the account shall be deemed to be true and correct unless the Hirer notifies **Macedon**

Ranges Shire Council in writing within three days of receipt the account of any error in or objection to the account.

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| Disbursement | 23. | Macedon Ranges Shire Council shall pay to the Hirer within ten 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 in accordance with this Agreement. |
| No agent or trustee | 24. | Macedon Ranges Shire Council 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 Macedon Ranges Shire Council as a debtor to the Hirer and shall be disbursed as described in this Agreement. |

PART FOUR

USE OF VENUES and the CENTRE

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| <i>Macedon Ranges Shire Council's obligations</i> | 25. | Macedon Ranges Shire Council 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 Macedon Ranges Shire Council .
Macedon Ranges Shire Council shall: |
| Public access | 25.1. | ensure access to the Venue 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 Venue/s 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 1 and Appendix A, Technical Requirements form, and other appendices hereto; |
| Schedule staff | 25.4. | provide and schedule the personnel as specified in Schedule 1 and Appendix A of this Agreement to assist the Hirer to present the Event and/or Performances. All personnel provided by Macedon Ranges Shire Council remain the employees or contractors of the Macedon Ranges Shire Council |

- and are subject to the sole direction of the **Macedon Ranges Shire Council**. Any and all involvement of any additional personnel who are not employees or contractors of the **Macedon Ranges Shire Council** shall be subject to the consent of the **Macedon Ranges Shire Council** 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 and the **Macedon Ranges Shire Council** 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 **Macedon Ranges Shire Council** on such monies shall be and remain the property of the **Macedon Ranges Shire Council**.
- 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 **Macedon Ranges Shire Council**.
- 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

- Macedon Ranges Shire Council*** in the performance of their duties in any part of the Centre;
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| 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 or <i>Macedon Ranges Shire Council</i> |
| 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 Child Safety Standards | 26.6. | The Producer will ensure that all personnel working on this event adhere to Victoria's current Child Safe Standards, including but not limited to establishing a culturally safe environment in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued |
| Compliance with policies | 26.7. | comply with all policies and procedures adopted from time to time by <i>Macedon Ranges Shire Council</i> concerning the use of the Centre as notified to the Hirer by <i>Macedon Ranges Shire Council</i> |
| Compliance with directions | 26.8. | comply with any requirement or reasonable direction given by <i>Macedon Ranges Shire Council</i> in relation to use of the Centre including but not limited to: <ul style="list-style-type: none">a) not allow any person to smoke in the Centre;b) not allow the sale of any food or beverage in the Centre;c) not allow animals to be brought into the Centre unless previously approved in writing by <i>Macedon Ranges Shire Council</i>d) not allow or make any monetary collections or offer for sale any article in the Centre |

- unless previously approved in writing by
Macedon Ranges Shire Council
- e) not bring into the Centre any scenery, curtains, stage properties or equipment that fails to meet the safety requirements of **Macedon Ranges Shire Council** or any relevant safety or fire regulation;
- f) not do or allow to be done anything in the Centre that, in the opinion of **Macedon Ranges Shire Council** is noxious or audibly or visually offensive or a nuisance.
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| Observation of requirements of licensed premises | 26.9. | 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 Macedon Ranges Shire Council 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 Macedon Ranges Shire Council or to the Hirer; |
| Permits, licences, certificates | 26.10. | not cancel or do anything to jeopardise or make forfeit any licence, permit or authorisation held by Macedon Ranges Shire Council 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 | 26.11. | not display any signage in or on any part of The Centre other than as expressly permitted by Macedon Ranges Shire Council and only in the locations and by the methods nominated by Macedon Ranges Shire Council |
| Damage | 26.12. | 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 | 26.13. | 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 **Macedon Ranges Shire Council**. Only employees and/or contractors approved by **Macedon Ranges Shire Council** shall carry out any approved alterations or additions and only in accordance with specifications and plans approved by **Macedon Ranges Shire Council**
- Additional fittings 26.14. not add any fittings, furnishings or decorations to any part of the Centre unless such additions has been approved in writing by **Macedon Ranges Shire Council** and the Hirer shall remove all such additions prior to the end of the Licence Period or sooner if directed by **Macedon Ranges Shire Council**
- Additional electrical and heavy equipment 26.15. 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 **Macedon Ranges Shire Council** and not load any floor, stage, lift or other mechanical equipment beyond their capacities;
- Firearms, explosives, pyrotechnics, chemicals, 26.16. not bring nor allow to be brought into nor assemble inflammable substances, or manufacture in The Centre any firearms, explosives, inflammable substances, pyrotechnics, gases chemicals or other substances except as agreed in writing by **Macedon Ranges Shire Council** 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 26.17. 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 26.18. maintain the following insurance cover for the whole of the Licence Period and provide to **Macedon Ranges Shire Council** prior to the Licence

		Period evidence of the currency of such insurance cover:
		a) public liability insurance for at least the amount specified in Item 9 of Schedule 1;
		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.
Macedon Ranges Shire Council's insurance	26.19.	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.
Macedon Ranges Shire Council's sponsorship arrangements	26.20.	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 Macedon Ranges Shire Council may enjoy.
Commencement of performance	26.21.	make every reasonable endeavour to commence the Event and/or Performances referred to in Schedule 1 at the times specified on the face of admission tickets and specified in any advertising and/or promotion of the Event and/or Performances;
Advertisements	26.22.	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 Macedon Ranges Shire Council's Guidelines for Advertising;
Removal of scenery, effects	26.23.	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 Macedon Ranges Shire Council .
Security services	26.24.	not without first obtaining Macedon Ranges Shire Council's written consent arrange for or use any security services or staff other than the security services and staff provided by Macedon Ranges Shire Council ;

Next user	26.25.	allow Macedon Ranges Shire Council'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	26.26.	not use The Centre for any purpose other than for the Event and/or Performances specified in Schedule 1;
Vacation of Centre	26.27.	leave The Centre in a clean and proper condition at the end of the Licence Period to the satisfaction of Macedon Ranges Shire Council 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 Macedon Ranges Shire Council
Mutual obligations	27.	Macedon Ranges Shire Council 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.	The Hirer shall provide the information specified in the Appendices and Schedule 1 to Macedon Ranges Shire Council at the following times: <ul style="list-style-type: none">a) Schedule 1 - 4, Event Information Form, at least ten business days prior to the date on which tickets for the Event and/or Performances are first to be offered for saleb) Schedule 1 -4 , Ticketing Arrangements Form, at least ten business days prior to the date on which tickets for the Event and/or Performances are first to be offered for sale;c) Appendix A, Technical Requirements Form, at least ten business days prior to the commencement of the Licence Period;
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- Macedon Ranges Shire Council's requirements
- Notification of variations
- Announce variations
- Information Warranty
- d) Schedule 1 - 5, Personnel Requirements Form, at least ten business days prior to the commencement of the Licence Period;
- e) Appendix B, Recording and/or Broadcasting Form, at least ten business days prior to the commencement of the Licence Period.
29. **Macedon Ranges Shire Council** 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.
30. The Hirer shall immediately upon becoming aware thereof notify **Macedon Ranges Shire Council** in writing of:
- a) any variation to the details contained in the completed requirements forms, Appendices A, B, C, D and E as listed in Clause 28;
- 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;
- c) any variation to the quality, nature, content, duration or expectation of the Event and/or Performances for any reason;
- and the Hirer shall be responsible for any and all costs or expenses incurred by **Macedon Ranges Shire Council** as a result of the Hirer's failure to comply promptly with this clause.
31. As the sole ticketing Agent Macedon Ranges Shire Council shall contact all ticket holders to advise of the cancellation or postponement of the Event and/or Performances or any part thereof at no cost to the Hirer.
32. Deleted

PART SIX

TICKETING

- Ticketed venue
33. **Macedon Ranges Shire Council** 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

Provision of information

take all reasonable steps to ensure others do not, offer for sale, sell, re-sell or otherwise distribute or dispose of any tickets to the Event and/or Performances.

34. The Hirer shall provide to **Macedon Ranges Shire Council** at least ten 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 1 and 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 GST
 - 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 or lighting control equipment or any other structures and the locations of any seats in the Venue 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) the number and location of complimentary tickets required by the Hirer set out in Item 9 of Schedule 1, subject to Clause 37;
 - g) 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 **Macedon Ranges Shire Council** shall take into account the Hirer's written advice and instructions but may make its own

Macedon Ranges Shire
Council's discretion

- decision in relation to any of the matters referred to in this clause.
34. The Hirer acknowledges and agrees that is not liable for fraud, non-payment or theft by any person not being an employee of **Macedon Ranges Shire Council**
- a) shall in consultation with the Hirer, 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;
 - b) 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;
 - c) 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;
 - d) may with written approval from the Hirer, 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 by the same artist/performer listed in Item 3 of Schedule 1.

Changes to ticketing
information

36. The Hirer may request that changes be made to the information provided by the Hirer under Clause 34 and **Macedon Ranges Shire Council** shall advise the Hirer of the reasonable costs incurred in making such changes and the time required to effect those changes.

Complimentary tickets

37. **Macedon Ranges Shire Council** may provide to the Hirer the number of tickets specified under Clause 34 f) for each Event and/or Performances as complimentary tickets and the Hirer shall pay on demand to **Macedon Ranges Shire Council** the charge specified in Item 9 of Schedule 1. If the Hirer requests, and **Macedon Ranges Shire Council** agrees to provide, additional complimentary tickets in addition to those provided for in Clause 34 f), the Hirer shall pay on demand to **Macedon Ranges Shire Council** a charge equal to the selling fee of each ticket. 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. **Macedon Ranges Shire Council** shall reserve for its own use, for each Event and/or Performance for which tickets are issued or sold, the number of House Seats as specified in Item 10 of Schedule 1 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. **Macedon Ranges Shire Council** may use the House Seats as specified in Item 10 of Schedule 1 at its discretion, and shall:
- release for sale to the public any tickets for House Seats not utilised by **Macedon Ranges Shire Council** by **11.00am** on the day of any Event and/or Performance;
 - include the proceeds of any sales of any tickets set out in (a) above 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 **Macedon Ranges Shire Council** in writing.
- Revenue 41. All revenue from the sale of programs and retained by **Macedon Ranges Shire Council** or, if not sold by **Macedon Ranges Shire Council** paid to **Macedon Ranges Shire Council** on the day it is received. **Macedon Ranges Shire Council** shall retain the percentage specified in Item 11 of Schedule 1 of the revenue earned from the sale of programs and merchandise, 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 **Macedon Ranges Shire Council** employees unless agreed otherwise in writing by **Macedon Ranges Shire Council** and the Hirer shall be liable for the wages and any other costs associated with the provision of such staff by **Macedon Ranges Shire Council**. The Hirer further undertakes to provide three copies of the Event and/or Performances program specific to the Licence Period to

- Macedon Ranges Shire Council** at no cost to **Macedon Ranges Shire Council**
- Other party 43. The Hirer may with **Macedon Ranges Shire Council's** prior written consent, enter into an agreement with a third party for the sale of programs and/or merchandise and shall provide to **Macedon Ranges Shire Council** 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 **Macedon Ranges Shire Council** 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 or **Macedon Ranges Shire Council** into disrepute.
- Recording, broadcasting, photography 45. The Hirer must not without the prior written consent of **Macedon Ranges Shire Council** cause or allow any recording, film, telecast, broadcast or photographic record to be made in or around The Centre and **Macedon Ranges Shire Council** may at its sole discretion grant such consent on specific terms and conditions. The Hirer's request for **Macedon Ranges Shire Council's** written consent herein shall be made on the Recording and/or Broadcasting Form, Appendix B.
- Consent given 46. If **Macedon Ranges Shire Council** grants its written consent under Clause 45 above, 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 **Macedon Ranges Shire Council** the fee specified in Item 12 of Schedule 1.

PART EIGHT

POSTPONEMENT, CANCELLATION

- Postponement 47. Except for reason of Force Majeure or as outlined in Part 13 of this Agreement, if the Hirer wishes to postpone its booking at any time prior to the Licence Period:
- a) the Hirer shall promptly notify **Macedon Ranges Shire Council** in writing of its intention to postpone the

booking of the Licence Period, and **Macedon Ranges Shire Council** shall assess if the dates on which the Hirer now wishes to present the Event and/or Performances are available; and

- b) if the alternate dates are not available, **Macedon Ranges Shire Council** 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 Item 4 of Schedule 1, but otherwise shall remain in full force and effect.

Cancellation

- 48. Except for reason of Force Majeure or as outlined in Part 13 of this Agreement, if the Hirer wishes to cancel its booking at any time prior to the Licence Period:
 - a) the Hirer shall promptly notify the **Macedon Ranges Shire Council** in writing of its intention to cancel the booking of the Licence Period;
 - b) the Hirer shall remain liable for its obligations to **Macedon Ranges Shire Council** under this Agreement, however if **Macedon Ranges Shire Council** re-hires the Venue to some other party the Hirer shall be entitled to be released from its obligations to pay any Fees, charges, costs to the extent that **Macedon Ranges Shire Council** recovers any amount from the re-hiring of the Venue;
 - c) the Hirer shall pay to **Macedon Ranges Shire Council** on demand all costs and expenses actually incurred by Macedon Ranges Shire Council in providing and preparing the Venue for the Event and/or Performances including the costs of refunding ticket purchases.

PART NINE

INDEMNITIES, EXCLUSION OF LIABILITY

Indemnities

49. The Hirer agrees to indemnify and keep indemnified **Macedon Ranges Shire Council** from and against all claims or loss suffered or incurred directly by **Macedon Ranges Shire Council** by reason of or in relation to the negligent use of The Centre or any part thereof by the Hirer, its employees and contractors during the Licence Period 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 employee or contractor of the Hirer, or to the property of any employee or contractor of the Hirer in or about the Centre;
- c) any material breach by the Hirer of this Agreement;
- d) 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 employed or engaged by the Hirer 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 negligent action of the Hirer or its employees or contractors;
- k) the implementation by **Macedon Ranges Shire Council** of any requests made by the Hirer in writing in relation to the Event and/or Performances,

provided that the Hirer's liability under the foregoing indemnities will be reduced proportionately to the extent that any claims or loss are caused or contributed to by any act or omission of **Macedon Ranges Shire Council**, or any of its directors, officers, employees, contractors or agents.

No warranty of Suitability

50. Deleted

- Hirer's risk of entry
51. The Hirer agrees to enter and use The Centre or any part and use thereof at its own risk and releases **Macedon Ranges Shire Council** 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, except to the extent that any accident, damage or injury occurring to any person or property is due to the negligence of the Macedon Ranges Shire Council or its employees, nominees and contractors.
- No responsibility for works
52. Any power, right or discretion conferred on **Macedon Ranges Shire Council** under any of the provisions of this Agreement shall not be deemed to impose upon **Macedon Ranges Shire Council** 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:
- a) in the case of goods:-
 - i) the replacement of the goods or the supply of equivalent goods and the payment of the cost of such replacement or supply; or
 - ii) the repair of the goods and the payment of the cost of such repair of the goods; and
 - b) in the case of services:-
 - i) the supply of the services again; or
 - ii) the payment of the cost of having the services supplied again.
- Consequential loss
54. **Macedon Ranges Shire Council** 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 for as long as the Force Majeure event continues.

Affected by force majeure

56. A party affected by Force Majeure shall:
- a) promptly give to the other party full particulars of the Force Majeure event, and the manner in which its obligations under this Agreement are prevented or delayed;
 - 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.

If a Force Majeure event continues for more than seven business days, either party may terminate this Agreement by giving at least seven business days' written notice to the other party. In the event of termination on such grounds:

- a) **Macedon Ranges Shire Council** must refund moneys previously paid by the Hirer pursuant to this Agreement for any period applicable to the Force Majeure event, including the deposit, and
- b) neither party will be otherwise liable to the other except to the extent of rights or obligations which accrued before the termination.

PART TEN

MACEDON RANGES SHIRE COUNCIL'S RESERVED RIGHTS

Macedon Ranges
Shire Council's
reserved rights

57. **Macedon Ranges Shire Council** shall reserve under its discretionary control, certain rights, including the following:
- 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;
 - b) the right for **Macedon Ranges Shire Council** and its employees, nominees and contractors to have access to The Centre at all times for the purpose of carrying on the business of **Macedon Ranges Shire Council**;
 - 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, provided the foregoing does not unduly disrupt or interfere with the Event and/or Performances;

- d) the right to direct crowd control measures, safety and security systems and procedures and The Centre's evacuation procedures;
- 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;
- f) Not Used
- g) acting reasonably, the right to refuse admission to any person, including the Hirer, its employees and contractors, to the Centre at any time;
- h) acting reasonably, 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) acting reasonably, 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 Macedon Ranges Shire Council's choosing, if the Hirer does not remove such items at the end of the Licence Period;
- j) the right to provide catering services to The Centre;
- k) the right to provide cleaning services to The Centre;
- l) the right to provide security services to The Centre;
- m) the right to supply wines, spirits, drinks, refreshments, food, confectionary or other items to persons attending The Centre;
- n) the right to sell merchandise, programs and other items in The Centre;
- o) acting reasonably, the right to determine acceptable sound limits in respect of the Event and/or Performances;
- p) the right to print, supply, sell or otherwise distribute tickets and the right to provide ticketing services;
- q) 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 11

TERMINATION

Macedon Ranges
Shire Council's right
to terminate

58. Without affecting its other rights and remedies, **Macedon Ranges Shire Council** may terminate this Agreement by giving notice in writing to the Hirer at any time:
- a) after the Hirer fails to carry out any material provision of this Agreement and the failure is not capable of remedy; or
 - 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 seven days of receipt of written notice to do so; or
 - c) in the reasonable opinion of **Macedon Ranges Shire Council** 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
 - d) after any other event occurs or circumstance arises that in the reasonable opinion of **Macedon Ranges Shire Council**, 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
 - e) after a warranty given by the Hirer in this Agreement is materially incorrect or misleading; or if in the reasonable opinion of **Macedon Ranges Shire Council** the organization of or advertising for or the manner in which the Event and/or Performances being conducted or is proposed to be conducted is of a libellous, scandalous, obscene or objectionable character.
 - f) **Macedon Ranges Shire Council** will not present shows that portray people or depict material in a way that reinforces the acceptance of discrimination and vilification of a person or section of the community on account of race, ethnicity nationality, gender, age,

sexual preference, religion, disability, mental illness or political belief. Noting that such content may be appropriate if the intent is to challenge such thinking and behaviour.

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| Retained rights | 59. On termination of this Agreement under Clause 58 above, 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. |
| Failure to pay | 60. if a party fails to pay an amount within seven (7) days of 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 percent. |

PART 12

INTERPRETATION, NOTICES, GENERAL

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| Governing law | 61. 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. |
| This document, clauses, headings, numbering, marginal notes | 62. In this Agreement: <ul style="list-style-type: none">a) a reference to this document includes the document as varied or replaced regardless of any change in the identity of the parties;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;c) a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;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;e) “including” and similar expressions are not words of |

- limitation; and
- 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.
- Persons
63. In this Agreement, reference to:
- a) a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
 - b) a person includes the legal personal representatives, successors and permitted assigns of that person; and
 - 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.
- Property
64. 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.
- Joint and several
65. 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.
- Counterparts
66. This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- Legislation
67. In this Agreement, a reference to a statute includes regulations under it as well as any consolidations, amendments, re-enactments or replacements to it.
- 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 above, 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. deleted
- 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. 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:
- a) personally on the person;
 - b) by leaving it at the person's current address for service;
 - c) by posting it by prepaid post addressed to that person at the person's current address for service; or
 - d) by facsimile to the person's current number for service, and the particulars for such service shall be:
 - e) for **Macedon Ranges Shire Council**, as specified in item 14 of Schedule 1;
 - f) for the Hirer, as specified in item 15 of Schedule 1, 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. at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to

the addressee's facsimile service number, if served by facsimile providing that if received after 6.00pm in the place of receipt or on a day that is not a business day, at 9am on the next business day.

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| 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. | Deleted |
| 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 13 – SPECIAL COVID-19 PROVISIONS

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| Purpose | 82. | The purpose of the clauses in this Part 13 is to modify these Terms and Conditions in response to the COVID-19 pandemic. |
| This Part to prevail | 83. | Where clauses in this Part 13 are inconsistent with clauses in other Parts of these Terms and Conditions or clauses in Schedule 1, the clauses in this Part 13 prevail to the extent of any such inconsistency (including any force majeure clause herein). |

- Definitions 84. In this Part 13 the following terms have the following meanings:
- COVID-19 Restriction means a restriction or direction lawfully imposed by Council, a State Government or the Commonwealth Government as a result of or to manage the COVID-19 pandemic, including restrictions and directives in relation to people’s movement and activity, as well as stringent social distancing and hygiene measures;
 - COVIDSafe Plan means any plan required by any COVID-19 Restriction;
 - Performance means a performance of the Event at the Venue
- COVIDSafe Plans 85. The Hirer must provide Council with the Hirer’s COVIDSafe plan for the Event no later than 14 days prior to the Event, which must comply with all relevant COVID-19 Restrictions and be consistent with all applicable COVIDSafe plans of Council for the Venue and/or for the Event; and ensure that the Hirer’s use of the Venue for the Event complies with all applicable COVID-19 Restrictions, including but not limited to ensuring that use complies with the COVIDSafe plans of the Hirer and Council.
- Event unable to proceed due to COVID-19 restrictions 86. The parties each acknowledge that their respective business activities are, as at the date of this Agreement, subject to COVID-19 Restrictions and that such COVID-19 Restrictions are being reviewed and revised on a regular basis. Without limitation to the foregoing, the parties agree that in the event that Macedon Ranges Shire Council is unable to provide access to the Venue for the Licence Period in accordance with this Agreement, or the Hirer is otherwise unable to conduct the Event and/or Productions, on the date/s specified herein, as a result of any COVID-19 restrictions including ongoing government order/s pertaining to social distancing, self-isolation or quarantine, border closures and/or travel restrictions necessitated by the COVID-19 pandemic, the parties will negotiate in good faith to find an alternative later date for the Event and/or Productions, provided that where the parties are unable to mutually agree on and/or confirm an alternative date to occur within a reasonable time period, either party shall be entitled to terminate this Agreement without liability to the other party and any and all fees and charges paid by the Hirer

to Macedon Ranges Shire Council under this Agreement, including the deposit, will be immediately refunded.

In the event that Event and/or Performance is postponed to an alternative date or cancelled in accordance with this Special Condition, Macedon Ranges Shire Council agrees and acknowledges that there will be no ticketing cancellation charges, or reschedule charges as the case may be, payable by the Hirer to Macedon Ranges Shire Council.

Additional COVID-19
Ticketing conditions

87.

Each ticketholder's attendance at a Performance is conditional on the ticketholder

- Providing truthful answers to any health screening questions asked by the Hirer or the Council on their arrival at the Venue;
- Providing information to the Hirer and/or Council that is reasonably required for contact tracing purposes, such information to be held subject to Council's privacy policy;
- Consenting to non-invasive temperature testing;
- Complying with all relevant COVIDSafe plans and reasonable directions given by the Hirer and/or the Council to manage risk of COVID-19 infection and ensure that the Hirer and the Council comply with all relevant COVID-19 Restrictions;

Where the Hirer or Council allocate a designated seat for a ticketholder, the ticketholder must occupy that seat and must not occupy any other seat.

Council or the Hirer may refuse to permit a ticketholder to enter the Venue, and may direct a ticketholder to leave the Venue, if the Council or Hirer believes, on reasonable grounds, that the ticketholder has not complied with the conditions inclusive of these Terms and Conditions

Council will offer a full refund of the purchase price to any ticketholder, and may also offer the ticketholder an exchange ticket as an alternative to a refund, in the following circumstances,

- Between the purchase of the ticket and the commencement of the Performance, the ticketholder
 - developed any of the recognised or published symptoms of COVID-19
 - was diagnosed as being infected by COVID-19;

- came in to contact with a person who displayed any of the recognised or published symptoms of COVID-19 or was diagnosed as being infected by COVID-19;
- a COVID-19 Restriction prevents the ticketholder from attending the Venue for the Performance.

Venue capacity

88.

Tickets are sold in accordance with current venue capacities in response to State Government COVID capacity regulations to a maximum of 75% (refer Schedule 1.20 Seating Configuration / Venue Capacity and Usher Ratio).

Venue capacity for the event (capacity limit) will be confirmed 21 day prior to the event.

If ticket sales exceed venue capacity at the time of the event, and the event proceeds with a reduced capacity limit, the last tickets sold will be returned to the purchaser until the venue capacity limit is achieved.

If capacity for the event exceeds ticket sales, additional tickets will be released for sale up to the finalised capacity limit.