

## 1. DEFINITIONS/INTERPRETATION

### 1.1 Definitions: Unless the context requires otherwise, in this Agreement:

**Agreement** means the Venue Hire Agreement as set out in clause 2.1.

**Commencement Date** means the date that this Agreement is signed by both parties, the Hirer has paid the Initial Instalment and the booking is confirmed by Venues Wellington pursuant to clause 6.1.

**Event** means the function, show, or other event for which the Venue is hired as described in the Venue Hire Agreement - Specific Terms, or as amended with the written consent of Venues Wellington.

**Estimated Event Charges** means the estimated price for the Services as set out in the Venue Hire Agreement - Specific Terms or the Event Plan.

**Event Charges** means the actual price for the Services as outlined in the Event Plan and additional charge form.

**Event Plan** means the document to be provided to the Hirer by Venues Wellington (or its agents and subcontractors) pursuant to clause 5.1 which specifies the Event layout (including the provision of an Event floor plan if necessary), the Event programme/timetable including all break/meal requirements), equipment and supplies being bought to the Venue by the Hirer as advised by the Hirer, the Services to be provided by Venues Wellington and the Estimated Event Charges.

**Force Majeure Event** means, in relation to either party (Affected Party) an event or circumstance which is beyond the reasonable control of the Affected Party, including any:

- a) act of God;
- b) strike, lock-out or other industrial disturbance by or amongst employees of a person other than the Affected Party;
- c) act of public enemy, or declared or undeclared war or threat of war;
- d) terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party); or
- e) governmental or regional or local authority restraint, legislation or by law.

**GST** means goods and services tax chargeable under the Goods and Services Tax Act 1985.

**Hire Period** means the period during which the Hirer will hire the Venue as specified in the Venue Hire Agreement - Specific Terms.

**Hirer** means the hirer or person/s named as the hirer on the Venue Hire Agreement - Specific Terms.

**Initial Payment Instalment** means the initial payment made by the Hirer as part of the Venue Hire Price.

**Pack-in Period** means the pack-in period set out in the Venue Hire Agreement - Specific Terms, if applicable.

**Pack-out Period** means the pack-out period set out in the Venue Hire Agreement - Specific Terms, if applicable.

**Persons Under Hirer's Control** means all employees, agents, contractors, performers, suppliers, customers, delegates, exhibitors, merchandisers and other invitees of the Hirer.

**Services** means the services and Venue set-up requirements (including equipment, technical requirements and food and beverage requirements) to be provided by Venues Wellington to the Hirer upon request as set out in the Event Plan (and

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where applicable subsequently amended by the written agreement of both parties).

**Terms and Conditions** means these Venue Hire Agreement - General Terms and Conditions.

**Venue** means the venue(s) specified in the Venue Hire Agreement - Specific Terms.

**Venue Hire Agreement - Specific Terms** means the "Specific Terms" attached to these Terms and Conditions detailing the Hirer's booking, the Event and the Venue Hire Price.

**Venue Hire Price** means the price payable for the Venue hire as set out in the Venue Hire Agreement - Specific Terms.

**Venue Manager** means the Venues Wellington manager of the Venue on duty during the Hire Period.

**Venue Technician** means the Venues Wellington appointed technician for the Venue.

**Venues Wellington** means WREDA (trading as "Venues Wellington") its successors and assignees or any person acting on behalf of and with the authority of Venues Wellington.

**Venues Wellington Event & Show Coordinator** means the person appointed by Venues Wellington to coordinate the Event.

**WCC** means the Wellington City Council (being the owner of the Venue (and other Venues Wellington venues) under the management of Venues Wellington).

**Working Day** means any day other than a Saturday, Sunday or a public holiday applying in Wellington.

**Wellington Regional Economic Development Agency(WREDA)** means the council controlled trading organisation owned by WCC and the Greater Wellington Regional Council that undertakes tourism, venue management, economic development and event activities.

## 1.2 **Interpretation:** In this Agreement, unless the context indicates otherwise:

**Defined Expressions:** expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement including the background;

**Headings:** section, clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;

**Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

**Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;

**Monetary Amounts:** all monetary amounts are stated exclusive of GST and in New Zealand currency and all amounts payable by a party under this Agreement are to be paid in that currency;

**Plural and Singular:** words importing the singular number include the plural and vice versa;

**Schedules:** the schedules to this Agreement and the provisions and conditions contained in these schedules have the

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same effect as if set out in the body of this Agreement;

**Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this Agreement's sections, clauses and schedules; and

**Statutes and Regulations:** references to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

## 2. AGREEMENT

2.1 **Agreement:** The following documents form the Venue Hire Agreement between the Hirer and Venues Wellington:

- a) the Venue Hire Agreement - Specific Terms;
- b) the Terms and Conditions;
- c) the Event Plan (and/or agreed changes to the Event Plan);
- d) the Credit Application Form (if any);
- e) any addendum outlining changes to the Agreement which is signed by an authorised signatory of each party (such addendum to be in a form specified by Venues Wellington).

2.2 **Conflict:** In the event of any conflict between the documents constituting the Agreement, the Venue Hire Agreement - Specific Terms will prevail over the Terms and Conditions and the Event Plan, and the Terms and Conditions will prevail over the Event Plan. Any addendum will prevail over the Venue Hire Agreement - Specific Terms, the Terms and Conditions and the Event Plan.

2.3 **Hirer's Warranty:** By signing this Agreement the Hirer warrants and agrees that the Event is accurately and comprehensively described in the Agreement and that the Hirer fully understands this Agreement.

2.4 **Applicability:** The Terms and Conditions will apply if the Hirer or the Hirer's subcontractors are granted access to the Venue outside of the Hire Period.

## 3. VENUE HIRE, SERVICES, VENUE HIRE PRICE AND EVENT CHARGES

3.1 **Venue Hire and Services:** Venues Wellington will hire the Venue to the Hirer for the Hire Period and provide the Hirer with the Services. For the avoidance of doubt, this Agreement does not create a lease or any interest in land relating to the Venue (or any part thereof), or otherwise confer on the Hirer any rights of exclusive possession.

3.2 **Venue Hire Price and Event Charges:** The Hirer will pay Venues Wellington the Venue Hire Price for the hire of the Venue and will pay Venues Wellington the Event Charges for the provision of the Services at the times set out in this Agreement.

## 4. NATURE OF THE EVENT

4.1 The Hirer undertakes and agrees that:

- a) the Hirer will only use the Venue to stage the Event as it is comprehensively described in the Venue Hire Agreement - Specific Terms or as amended in writing by agreement between the parties;
- b) the Event will be run in accordance with the best industry standards and in accordance with all relevant legislation relevant to that Event at all times;
- c) the Venue will not be used by the Hirer for any performance or activity that is of an objectionable nature, is in breach of reasonable standards of public decency or is likely to create a nuisance. If there is any likelihood of objectionable content of any kind in the Event then the Hirer must disclose this to Venues Wellington prior to

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signing this Agreement or as soon as practicable after becoming aware of the same and ensure that it is made absolutely clear in all marketing and promotional material.

## 5. SET UP, EVENT PLAN, REMOVAL OF EQUIPMENT/SUPPLIES AND PACK-IN/PACK-OUT

- 5.1 **Event Plan:** Based on discussions between the parties, Venues Wellington will, at least 10 Working Days prior to the commencement of the Hire Period, notify the Hirer of the Event Plan. Unless the Hirer responds in writing with any amendments to the Event Plan within 2 Working Days of the Event Plan being notified by Venues Wellington, the Hirer will be deemed to have accepted the Event Plan as notified by Venues Wellington. If the Hirer responds with amendments to the Event Plan, then Venues Wellington shall make such changes as may be necessary to the Event Plan and reissue it to the Hirer as the final Event Plan agreed by the parties.
- 5.2 **No Obligation:** Venues Wellington will not be obligated to provide any Services that are not specified in the Event Plan (or any amended Event Plan).
- 5.3 **Removal of Equipment and Supplies:** The Hirer will remove all their equipment and supplies relating to the Event from the Venue at the end of the Hire Period. Venues Wellington may take lien over and dispose of any equipment and supplies that have not been removed within a reasonable time after the Hire Period provided Venues Wellington has given reasonable written notice to the Hirer to remove such equipment and supplies and apply the proceeds to discharge the costs of disposal and/or any money owing to Venues Wellington.
- 5.4 **Pack-in Period and Pack-out Period:** During the Pack-in Period or Pack-out Period the Hirer may only use the Venue for setting up or removing equipment (as applicable), to view the Venue or to hold rehearsals. The Hirer may not perform or use the Venue for any part of the Event during the Pack-in or Pack-out Periods. Outside contractors for the Event will only be granted access to the Venue within the Pack-in Period and Pack-out Period. Additional access may be charged by Venues Wellington as an additional venue access fee.

## 6. BOOKING CONFIRMATION

- 6.1 **Booking Confirmation:** No booking is confirmed until Venues Wellington notifies the Hirer in writing that it has received and signed the Agreement (excluding the Event Plan) following execution by the Hirer, and that it has received payment of the Initial Payment Instalment as detailed in the Venue Hire Agreement - Specific Terms.
- 6.2 **Venue Availability prior to confirmed booking:** Until such time as a booking is confirmed by Venues Wellington in accordance with clause 6.1, the Venue will be available for hire by third parties during the Hire Period (or part thereof). In the event that a third party wishes to hire the Venue during the Hire Period (or part thereof) before the Hirer's booking has been confirmed, Venues Wellington will use reasonable endeavours to contact the Hirer to request that it provide Venues Wellington with a signed copy of the Agreement (excluding the Event Plan) and the Initial Payment Instalment. In the event that Venues Wellington is unable to contact the Hirer, or Venues Wellington is able to contact the Hirer, but the Hirer fails to provide Venues Wellington with a signed copy of the Agreement (excluding the Event Plan) and the Initial Payment Instalment within 2 Working Days of such contact, Venues Wellington reserves the right to make the Venue available to other third parties during the Hire Period (or part thereof) without notice.
- 6.3 **No Liability:** If Venues Wellington is unable to contact the Hirer after using reasonable endeavours to do so, or if the Hirer fails to provide Venues Wellington with a signed copy of the Agreement (excluding the Event Plan) and the Initial Payment Instalment, Venues Wellington will not be liable to the Hirer in any respect if the Venue is booked by a third party.

## 7. CHANGES TO THE EVENT/EVENT PLAN

If the Hirer wishes to make any changes to the Event/Event Plan in the period leading up to the start of the Hire Period,

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and Venues Wellington is agreeable to such changes, Venues Wellington may charge the Hirer an additional amount to cover its administrative costs, and other reasonable costs that may apply as a result of the changes made, in addition to the Venue Hire Price and the Estimated Event Charges. Where Venues Wellington agrees to such changes (which it will not be obliged to do), Venues Wellington will record any variation to the terms of this Agreement in an addendum (and will issue the Hirer with an amended Event Plan as appropriate); with any such variation and amended Event Plan forming part of this Agreement.

## 8. CANCELLATION/POSTPONEMENT/REDUCTION

8.1 **Cancellation by Hirer:** Subject to clause 26, once a booking has been confirmed, and the Event is subsequently cancelled by the Hirer, the following cancellation fees will apply:

- a) cancellation more than 12 months from the Hire Period: Venues Wellington will retain 25% of the Venue Hire Price;
- b) cancellation between 12 months and 6 months from the Hire Period (inclusive): Venues Wellington will retain 50% of the Venue Hire Price;
- c) cancellation less than 6 months but more than 3 months from the Hire Period (inclusive): Venues Wellington will retain 75% of the Venue Hire Price;
- d) cancellation less than 3 months from the Hire Period: Venues Wellington will retain 100% of the full Venue Hire Price;
- e) cancellation between 6 and 4 Working Days from the Hire Period: Venues Wellington will retain 100% of the full Venue Hire Price plus be entitled to charge for 80% of all Estimated Event Charges;
- f) cancellation less than 4 Working Days from the Hire Period, Venues Wellington will retain 100% of the full Venue Hire Price plus be entitled to charge for 100% of the Estimated Event Charges.

Where the Hirer becomes liable for cancellation fees, Venues Wellington will invoice the Hirer for the amounts due and payable under this Agreement less any payment instalments held.

Following the payment of any cancellation fees under this clause 8.1 (whether by set-off against amounts already paid or otherwise), Venues Wellington will return the balance of the Venue Hire Price, if any, to the Hirer.

8.2 **Cancellation by Venues Wellington:** If the Event is cancelled by Venues Wellington in accordance with this clause the provisions of clause 8.1 will apply. Venues Wellington may cancel the booking and terminate this Agreement if:

- a) Venues Wellington reasonably considers that the staging of the Event or the nature of the Event will, or might, contravene any statute, order, regulation, rule of law or any other requirement of a public or local authority; or
- b) Venues Wellington reasonably considers that the management of the Event by the Hirer is deficient or inadequate and/or the behaviour of any Person Under Hirer's Control is such that it would lead to danger or injury to any person or material damage to any property, including the Venue itself; or
- c) the Hirer fails to comply with clause 16.2.

8.3 **Postponement:** Where the Hirer proposes a postponement of the Event (with a new Hire Period), Venues Wellington shall have sole discretion to determine whether it approves of any such postponement proposal, as well as sole discretion to determine whether any conditions (including additional fees, charges or costs) should apply as a result of such postponement proposal. Venues Wellington will notify the Hirer in writing of its decision as soon as reasonably practicable after receiving the Hirer's postponement proposal. In agreeing to any postponement proposal, Venues Wellington reserves the right to specify any conditions that will apply. The Hirer shall have 2 Working Days from receipt of Venues Wellington's decision to accept the decision on the conditions specified by Venues Wellington. If Venues Wellington does not agree to the postponement proposal, or the Hirer does not accept the decision on the conditions specified by Venues Wellington, then the Hirer will have the right to continue with the booking on the terms

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set out in this Agreement, or to cancel the Event pursuant to clause 8.1.

8.4 **Reduction in Hire Period and/space within the Venue:** Any reduction in the Hire Period and/or the required space within the Venue following confirmation of a booking is subject to Venues Wellington's prior written approval (which may be given or withheld at Venues Wellington's sole discretion). In determining whether or not to give its approval, Venues Wellington will also have a discretion as to whether there should be a corresponding reduction in the Venue Hire Price and/or the Estimated Charges (it being the case that Venues Wellington may give its approval to a reduction in the Hire Period and/or the required space within the Venue, but not to a reduction in the Venue Hire Price and/or the Estimated Charges).

## 9. TERM & TERMINATION

9.1 **Term:** The Term of this Agreement shall commence on the Commencement Date and expire one month from the last day of the Hire Period.

9.2 **Termination by Venues Wellington:** Venues Wellington may at any time terminate this Agreement by notice in writing to the Hirer in accordance with the notice periods set out below, in any of the following circumstances:

- a) If the Hirer is in default in the observance or performance of any of the Hirer's obligations under this Agreement and such default is not remedied within 2 Working Days (or longer as determined by Venues Wellington in its sole discretion taking into account the circumstances) from the date Venues Wellington has notified the Hirer in writing of the default and requested the Hirer to remedy such default;
- b) If the Hirer fails to pay any sum of money payable to Venues Wellington pursuant to this Agreement or any other arrangements that are in writing signed by the Hirer on the due date for payment (whether or not demanded) and such default is not remedied within 2 Working Days from the date of the Hirer's receipt of written notice thereof;
- c) If any secured creditor of the Hirer goes into possession of any business or undertaking of the Hirer either by itself or by any agent, or any receiver is appointed over any business or undertaking of the Hirer, if the Hirer (being a natural person) has an order of bankruptcy made against the Hirer, if an application for the Hirer's liquidation is made or if a resolution is passed by the creditors or members of the Hirer's organisation resolving or requiring that the Hirer be put into liquidation (with Venues Wellington being able to terminate immediately by notice in writing); and
- d) If the Hirer enters into any arrangement, composition or assignment under the Insolvency Act or any other similar arrangements becomes unable to pay debts as they fall due (with Venues Wellington being able to terminate immediately by notice in writing).

9.3 **Obligations on Termination:** Upon termination under clause 9.2 the Hirer will immediately remove all of its property, vacate the Venue and immediately deliver to Venues Wellington all property belonging to Venues Wellington. The Hirer will have no entitlement to claim compensation or damages from Venues Wellington on account of any inconvenience or loss to the Hirer as a result of termination under clause 9.2.

9.4 **Without Prejudice:** Such termination will be without prejudice to Venues Wellington's right to recover the Venue Hire Price, Event Charges and any other money payable or paid by the Hirer under this Agreement and the rights of either party against the other in respect of an earlier breach of any of the provisions contained or implied in this Agreement.

9.5 **Cancellation of Future Bookings:** In addition to Venues Wellington's rights of termination set out above, if at any time any money payable under this Agreement is in arrears and unpaid, Venues Wellington may, after giving the Hirer seven days' written notice, cancel any bookings for future events that it is holding for the Hirer whether paid for or not.

9.6 **Survival:** Upon termination of this Agreement for any reason, clauses 2, 3, 4, 5.3, 8, 9, 10, 11, 12, 13, 18, 25, 26, 28, 29, 30 and 31, together with those other provisions of this Agreement which are incidental to, and required to give effect to

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# Venues Wellington

those clauses, will remain in full force and effect.

## 10. RELOCATION

- 10.1 Venues Wellington may, in consultation with the Hirer and acting reasonably and causing as little inconvenience as possible to the Hirer, substitute for the Venue, alternative and similar facilities within the Venues Wellington venues where, the Event will not be compromised, provided that the Event location may only be changed by Venues Wellington giving reasonable notice to the Hirer no less than (30) thirty days prior to the Event. Where the Venue is changed to another Venues Wellington venue pursuant to this clause, Venues Wellington will provide the necessary personnel to direct all suppliers, customers, delegates, exhibitors, merchandisers and ticketholders to the alternative venue.
- 10.2 Venues Wellington reserves the right, in consultation with the Hirer, to substitute the Venue for an alternative Venues Wellington venue due to low (or high) ticket sales for the Event, or where there is a significant change in the number of Event attendees from those advised by the Hirer. Where the Venue is changed to another Venues Wellington venue pursuant to this clause, all personnel and advertising costs incurred in the redirection of all Persons Under Hirer's Control and/or Event attendees will be paid by the Hirer. The Venue may only be substituted pursuant to this clause by Venues Wellington giving no less than 10 Working Days prior to the start of the Hire Period.
- 10.3 Where the Venue is changed to another Venues Wellington venue pursuant to a Force Majeure Event, or through an act of the Hirer, all personnel and advertising costs incurred in the redirection of all Persons Under Hirer's Control and/or Event attendees will be paid by the Hirer.

## 11. PAYMENT AND CHARGES

- 11.1 **Payment by Due Date:** The Hirer must pay all amounts due under this Agreement in full and cleared funds without deduction or set off in the manner required by Venues Wellington on the dates specified in the Venue Hire Agreement - Specific Terms or Event Plan, or otherwise on an invoice issued by Venues Wellington. If the Hirer disputes any amounts payable under this Agreement, the Hirer will pay the full amount due, with any disputed amount being retained or refunded by Venues Wellington (as appropriate) once the dispute has been resolved by the parties in accordance with clause 29.
- 11.2 **Non Refundable:** Any refund or repayment of amounts paid by the Hirer will be subject to clause 8.
- 11.3 **Subject to Change:** In consultation with the Hirer Venues Wellington reserves the right to amend the Venue Hire Price where changes are proposed to the Event by the Hirer (and such changes are agreed to by Venues Wellington in the Event Plan) or where there are changes to applicable law (e.g. the rate of GST is amended or the minimum wage is adjusted). Any change to this Agreement must be agreed in writing by the Hirer to be effective.
- 11.4 **Event Charges:** The Hirer will pay the Estimated Event Charges in accordance with the Event Plan. Subject to clause 16.1, Venues Wellington require up to 80% of all Estimated Event Charges paid at least 7 Working Days prior to the start of the Hire Period. As soon as practicable after the end of the Hire Period, Venues Wellington will provide the Hirer with a tax invoice for the actual Event Charges. Where the amount of the actual Event Charges is greater than the Estimated Event Charges paid by the Hirer, the Hirer will pay the balance to Venues Wellington within 7 Working Days of the date of invoice. Where the actual Event Charges are less than the Estimated Event Charges paid by the Hirer a refund of the difference will be paid as soon as practicable after the end of the Hire Period.
- 11.5 **Payment in Full:** Notwithstanding clause 11.4, Venues Wellington reserves the right to require 100% of Estimated Event Charges to be paid 7 Working Days prior to the Hire Period.

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# Venues Wellington

## 12. OVERDUE AND UNPAID AMOUNTS

- 12.1 **Default Interest:** Venues Wellington may charge interest on all overdue amounts until the date that Venues Wellington receives full payment of those amounts (including any interest). Such interest will be calculated and accrued daily at Venues Wellington's overdraft rate notwithstanding any judgement.
- 12.2 **Administration Fees:** If any amount remains overdue after 10 Working Days, then Venues Wellington may also charge for administration fees.
- 12.3 **Retention of Moneys:** Where any amount is owing by the Hirer to Venues Wellington under this Agreement, then Venues Wellington may set off all or part of any moneys due to be returned to the Hirer, or any overpayment by the Hirer, or credit in favour of the Hirer in relation to the Event, against such amounts due or becoming due by the Hirer to Venues Wellington or any of its contractors, employees, or agents.
- 12.4 **Recovery Costs:** Venues Wellington may recover from the Hirer all costs and expenses incurred while attempting to recover any overdue amounts including administration fees, debt collection fees and legal fees.

## 13. ADDITIONAL CHARGES

- 13.1 **Additional Charges:** In addition to the Venue Hire Price and the Event Charges, the Hirer may be charged for:
- a) any damage to the Venue or theft of any of Venues Wellington's property from the Venue during the Hire Period caused by the Hirer, or any Person Under Hirer's Control, arising due to the lack of care or any other breach of these Terms and Conditions by the Hirer or any Person Under Hirer's Control. The Hirer may inspect the Venue with the Venue Manager prior to the Hire Period to take note of any existing damage;
  - b) any extra cleaning, rubbish removal, repair or reinstatement of the Venue that Venues Wellington reasonably considers is required after the Hirer's Event;
  - c) any services, additional to the Services provided by Venues Wellington, either requested by the Hirer, or that the Hirer requires or uses, or which Venues Wellington considers are necessary for the safe and efficient conduct of the Event, which are not detailed in the Event Plan.
- 13.2 **Additional Performances:** If the Event is a ticketed event and has more than one performance in a day, the Hirer will pay an additional venue hire price of 50% of the daily Venue Hire Price for each additional performance.
- 13.3 **Run-on Charges:** For each hour or part of an hour that the Hirer occupies the Venue after the end of the Hire Period, Venues Wellington may charge the Hirer an additional venue access fee together with any other charges including Event Charges it incurs during this run-on period. During the run-on period, the Hirer will otherwise continue to occupy the Venue on the terms of this Agreement.
- 13.4 **Public Holiday Surcharge:** Where the term of the Hire Period includes any day which is a New Zealand Public Holiday (as defined in the Holidays Act 2003), Venues Wellington may apply a surcharge on the Venue Hire Price and all Event Charges for that day.

## 14. STAFF / PERSONNEL

- 14.1 **Right to Provide Staff:** Venues Wellington will have the right to supply all security and other staff (as contemplated by this Agreement) at the Venue. The cost of all staff will be charged to and paid by the Hirer unless the supply of such staff is specified in the Venue Hire Agreement - Specific Terms.
- 14.2 **Security Staff:** Venues Wellington may require additional security staff for the Event where a higher than normal risk is

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identified by Venues Wellington but will notify the Hirer in advance of such a requirement and associated costs to the Hirer.

14.3 **Medical/Emergency Staff:** Venues Wellington may require emergency or medical staff or ambulance services for the Event where a higher than normal risk is identified by Venues Wellington but will notify the Hirer in advance of such a requirement and associated costs to the Hirer.

14.4 **Technical:** All technical production must be provided by Venues Wellington's preferred technical supplier (as notified by Venues Wellington from time to time) or a Venues Wellington-approved technical supplier. Technical costs are dependent upon the Hirer's requirements with Venues Wellington's preferred technical supplier available for consultation. All technical requirements must be confirmed no less than 15 Working Days prior to commencement of the Event (and incorporated into the Event Plan).

Should the Hirer choose to utilise the services of a technical provider other than Venues Wellington's preferred technical supplier, they must be authorised and approved by Venues Wellington prior to entering the Venue in order to ensure compliance with all health and safety requirements. A representative of Venues Wellington's preferred technical supplier may be required to supervise any technical work carried out by the Hirer's approved technical provider within the Venue to ensure compliance with Venues Wellington's standard operating procedures and/or any health and safety requirements. If this is deemed necessary by Venues Wellington, then the Hirer will be charged for the reasonable cost of the representative from its preferred technical supplier throughout the pack-in, duration and pack-out of the Event.

14.5 **Traffic Management Staff:** Venues Wellington may require additional traffic management staff for the Event where higher than normal activity around pack-in/pack-out is identified by Venues Wellington but will notify the Hirer in advance of such a requirement and associated costs to the Hirer.

14.6 **Haze and Pyrotechnics:** If the Hirer is using haze machines, pyrotechnics or any other equipment that has the potential to create smoke during the Event, reference clause 17.2, Venues Wellington may require personnel for fire detection and alarm call point monitoring while the smoke detectors remain isolated. Venues Wellington will notify the Hirer in advance of such a requirement and associated costs to the Hirer.

## 15. CATERING

15.1 **No Outside Food or Beverage:** The Hirer must ensure that any Person Under Hirer's Control does not bring any food or beverage into the Venue (and does not remove any food or beverage from the Venue) as Venues Wellington will not be liable in relation to any food or beverage once it has been removed from the Venue.

15.2 **Catering Services:** All food and beverage catering must be provided by Venues Wellington's preferred or a Venues Wellington-approved caterer.

15.3 **Catering to be recorded in the Event Plan:** Any catering which the Hirer requires Venues Wellington to provide must be recorded in the Event Plan.

15.4 **Numbers:** The Hirer must notify minimum number for catering purposes in the Venue Hire Agreement - Specific Terms. The Hirer may increase catering numbers at any time up to 5 Working Days prior to the Event. After this time catering numbers become final numbers and will determine the minimum catering charge payable by the Hirer. If numbers are less than the Hirer's contracted number, then Venues Wellington reserve the right to charge against the greater number.

15.5 **Special Dietary Needs:** The Hirer must, as soon as possible, but in any case at least 5 Working Days prior to the Event, provide Venues Wellington with any specific dietary requirements (including any allergies) for guests attending an Event.

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# Venues Wellington

- 15.6 **Alcohol:** All decisions relating to the sale and/or service of alcohol during the Event will be at Venues Wellington's sole discretion, including, but not limited to, the decision as to whether alcohol is sold at an Event, and what time any bar will open or close. If alcohol is sold during the Event, the Hirer must comply and must ensure all Persons Under Hirer's Control comply with all conditions and requirements of the Venue's liquor licence. Where the Hirer requires a special licence or extensions of the Venue's licensed footprint the Hirer is responsible for obtaining these. Venues Wellington may close any bar if it considers a breach of the Sale and Supply of Liquor Act 2012 is likely or it is otherwise concerned as to the safety of the Venue or any person at the Venue. At times Venues Wellington may delegate all or some of the above authorities to a preferred supplier or an agent.
- 15.7 **Sponsors:** The Hirer will not enter into any sponsorship arrangements for food or beverage at the Event, unless under prior arrangement with Venues Wellington.
- 15.8 **Public Concessions:** Venues Wellington have exclusive supplier rights to the occupation and operation of all public concessions in Venues Wellington venues.

## 16. TICKETING

- 16.1 **Ticketing Services:** Where the Event is to be marketed to the public:
- a) All tickets must be printed and sold through Venues Wellington's nominated ticketing service provider. Tickets are not authorised to go on sale until Venues Wellington notifies the Hirer that the booking is confirmed pursuant to clause 6.1 and Venues Wellington has received the seating plan;
  - b) By signing this Agreement the Hirer agrees to enter into a ticketing agreement with Venues Wellington's nominated ticketing service provider and will pay all appropriate ticketing charges required for using the ticketing services and observe all conditions as required by the ticketing service provider;
  - c) By signing this Agreement the Hirer authorises Venues Wellington's ticketing service provider to deduct any amount due and payable by the Hirer to Venues Wellington under this Agreement from the proceeds of ticket sales and to pay that amount directly to Venues Wellington. Any amounts owed to Venues Wellington by the Hirer that are not covered by the proceeds of ticket sales will be payable by the Hirer as set out in this Agreement;
  - d) Complimentary tickets may not be sold for monetary or other consideration. Complimentary tickets will not exceed 2.5% of tickets sold;
  - e) The Hirer will provide Venues Wellington the following number of house tickets per Event for each Venue hired as follows:
    - Wellington Town Hall - 16 house tickets per Event
    - Michael Fowler Centre - 22 house tickets per Event
    - St James Theatre - 16 house tickets per Event
    - Opera House - 10 house tickets per Event
    - TSB Bank Arena - 40 house tickets per Event
    - TSB Bank Auditorium - Shed 6 - 6 house tickets per Event.Venues Wellington reserves the right to use these tickets as it deems appropriate and (where the Event is to be seated) may at its discretion determine the locations of seating. Specific ticket numbers are outlined in the Venue Hire Agreement- Specific Terms; and
  - f) Venues Wellington must also have up to 34 tickets as specified in the Venue Hire Agreement - Specific Terms for distribution to "Founder" Seat Holders as required by Funding Deed for performances in the Michael Fowler Centre only. Any unclaimed seats under this clause will be released to the Hirer for sale 5 Working Days prior to the Event.
- 16.2 **Pre-Event Sales Level:** If, within 5 Working Days prior to the Event, the ticket sales revenue, net of all ticketing service supplier charges, is less than the balance of the unpaid Venue Hire Price and the Estimated Event Charges, the amount

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# Venues Wellington

of the shortfall is payable by the Hirer no less than 48 hours prior to the staging of the Event.

## 17. USE OF THE VENUE

17.1 **Permitted Use:** The Hirer may only use the Venue to run the Event in the manner detailed in the Venue Hire Agreement - Specific Terms and Event Plan (or as otherwise agreed with Venues Wellington in writing).

17.2 **Restrictive Use:** The Hirer must not allow, without the prior written consent of Venues Wellington, and then only in accordance with all applicable laws:

- a) games of chance, sweepstakes, lotteries or any form of betting or gambling at the Venue; or
- b) any broadcasting, filming or recording; or
- c) any firearms, explosives, flammable liquids or other dangerous substances (including fireworks or pyrotechnics) to be brought onto the premises, nor any heavy plant, machinery or other equipment which may cause damage or injury to property or persons. Notwithstanding any prior written consent, the Hirer will indemnify Venues Wellington in respect of any liability or expense it incurs as a result of any such damage or injury.

17.3 **Extraordinary Layout:** Venues Wellington will not be obliged to implement a layout that it determines is impractical. The cost of any extraordinary layout, changes to a layout and restoring the Venue to its original layout will be paid for by the Hirer on invoice by Venues Wellington.

17.4 **Exhibitions and Tradeshows:** Where the Event has an exhibition or tradeshow, the Hirer will provide the exhibition or tradeshow floor plans for Venues Wellington's prior approval along with any details on materials and use that Venues Wellington deems necessary to confirm compliance with Health and Safety and Building legislation.

17.5 **No Smoking:** Venues Wellington venues are strictly no smoking venues and the Hirer must adhere to and enforce this policy and the requirements of the Smoke-free Environments Amendment Act 2003. For the avoidance of doubt no smoking means that smoking on stage as part of a performance is not permitted. Where the Hirer requires designated outdoor smoking areas for the Event, the Hirer must advise Venues Wellington of that requirement when the Hirer confirms the Services under clause 7.1.

17.6 **Advance Deliveries:** The Hirer may make advance deliveries to the Venue of equipment or supplies for the Event during the Pack-in Period. Such advance deliveries must be clearly marked for the Event and may only be received at the Venue after prior negotiation and agreement with Venues Wellington before the Hire Period. Storage of advance deliveries may be subject to reasonable fees and the availability of suitable storage at the Venue.

17.7 **Receipt of Advance Deliveries:** Any advance deliveries to the Venue are entirely at the Hirer's own risk and will only be received by Venues Wellington on the basis that Venues Wellington has no liability for loss or damage to any equipment or suppliers, before, during and after the Event. To facilitate advance deliveries to the Venue, Venues Wellington may sign delivery receipt documentation on the Hirer's behalf, provided always that Venues Wellington accepts no liability in relation to the deliveries and the Hirer will fully indemnify Venues Wellington in this regard.

17.8 **Temporary Structures:** The Hirer must advise Venues Wellington in writing if the Hirer plans to construct or erect any stage, rigging, scaffolding, marquee or other temporary structure or suspend any object or thing from the ceiling of the Venue. Venues Wellington reserves the right to approve that such work be carried out by a suitably competent or qualified person and in full compliance with all relevant legislative regulations.

17.9 **Maximum Capacity:** The maximum number of persons that can be admitted to the Hirer's Event will be determined by Venues Wellington's Emergency Evacuation Plan and the New Zealand Fire Service's recommendations and will be advised to the Hirer by Venues Wellington. The Hirer must ensure that the number of people in the Venue during the

Hirer's Initials \_\_\_\_\_

# Venues Wellington

Event does not exceed the maximum capacity.

- 17.10 **Responsible Conduct:** The Hirer is responsible for the conduct of all Persons Under The Hirer's Control in and around the Venue and undertakes to use all reasonable endeavours to ensure that none of them behave in a riotous, offensive or disorderly manner (including drunken behaviour) or in such a manner that is likely to damage the reputation of the Venue or cause danger or annoyance to members of the public, Venues Wellington, other venue hirers or the users of any other venue. Venues Wellington may eject or refuse admission to any person who it considers is unable to act in accordance with its reasonable standards of behaviour.
- 17.11 **Licences, Permits, Consents and Authority:** Venues Wellington represents and warrants that it has acquired and maintains all licences, permits and consents required for a venue to hold the Event and will provide the Hirer copies of these on request. The Hirer must, at the Hirer's expense, obtain all licences, permits and consents that may be required for the Event (including consent for any structures to be erected) and provide Venues Wellington with copies of these on request. In addition, the Hirer will obtain the relevant authorisation in relation to use of any third party intellectual property and will not use the Venue for the public performance of any literary, dramatic, musical or other work or entertainment in breach of copyright.
- 17.12 **Compliance with Laws and Venues Wellington's Directions:** During the Hire Period the Hirer will comply and will ensure that all Persons Under Hirer's Control comply with all applicable statutes, bylaws, regulations and approved codes of practice and rules of conduct for the Venue and any directions of Venues Wellington and that they do not do or omit to do anything that may cause the Hirer to be in breach of the Hirer's obligations under this Agreement. The Hirer will also take all steps reasonably required to comply with the requirements of and preserve the continuity of all licences held in relation to the Venue.
- 17.13 **Noise Levels:** The Hirer will ensure that at no time during the Event will noise levels exceed Wellington City Council's stipulated local noise ordinances. The Hirer acknowledges and accepts that the Event may be cancelled by Wellington City Council noise control officers if local noise ordinances are exceeded and the Hirer fails to take steps to reduce the noise level of its Event. The Hirer further acknowledges and accepts that it will be responsible for any fine or penalty imposed by Wellington City Council as a result of local noise ordinances being exceeded.

## 18. CARE OF THE VENUE

- 18.1 **Restrictions:** In respect of the Venue, the Hirer must
- a) not drive nails, tacks, screws or pins into walls, furnishings, floors and ceilings;
  - b) not write, decorate, attach posters or disfigure any wall or ceiling surfaces;
  - c) not make any alteration to the structure, fittings, decorations or furnishings of the Venue;
  - d) protect all floors (in particular, where there is a sports floor that requires special care), walls, doors and windows at all times including during the packing in, installation and removal of all displays, exhibits and equipment; and
  - e) take proper care of the Venue and ensure no damage occurs to the Venue.
- 18.2 **Reasonable Care:** During the Hire Period the Hirer must take all reasonable care in the use and occupation of the Venue so that, excepting fair wear and tear, the Venue is left in the same clean and tidy condition on completion of the Hire Period as it was at the beginning of the Hire Period.
- 18.3 **Final Inspection:** Venues Wellington will inspect the Venue at the conclusion of the Hire Period to assess any damage. The Hirer may arrange with the Venue Manager to be present during this inspection. As agreed with the Hirer, the cost of any repairs and additional cleaning required by Venues Wellington to reinstate the Venue to a clean and tidy condition will be charged to the Hirer in addition to the Venue Hire Price and any Event Charges.

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## 19. HEALTH AND SAFETY

- 19.1 **Venues Wellington's Commitment:** Venues Wellington is firmly committed to the provision of a safe and healthy environment for its employees, clients, service delivery partners, contractors and the general public. Venues Wellington recognises that this commitment will only be achieved with positive leadership, the provision of necessary resources, and continued pursuit of best practice in occupational health and safety. Venues Wellington reserves the right to play a pre recorded emergency and evacuation audio message prior to commencement of the Hirer's Event.
- 19.2 **Responsibility:** Venues Wellington expects every member of its community (including the Hirer) to accept personal responsibility for promoting the safety and well being of themselves and those involved in, or affected by, Venues Wellington activities. Venues Wellington also expects that all those involved with an Event, including the Hirer, will familiarise themselves with and uphold Quality and Environmental Management Systems - Requirements.
- 19.3 **Health and Safety Compliance:** The Hirer must ensure, so far as is reasonably practicable, it will comply with all duties and/or obligations it has in law. The Hirer will ensure that all Persons Under Hirer's Control comply at all times with the provisions of:
- a) The Health and Safety at Work Act 2015;
  - b) The Health and Safety in Employment Regulations 1995;
  - c) Venues Wellington's building codes of compliance notified to the Hirer;
  - d) Venues Wellington's health and safety policies and procedures, including evacuation schemes notified to the Hirer;
  - e) any standard operating procedures notified by Venues Wellington;
  - f) any applicable safety programme including the "Guide to Safe Working Practices in New Zealand Theatre and Entertainment Industry" which is available at [www.etnz.org](http://www.etnz.org), or, in the case of Events that are held as part of an international tour, any international guide or code of similar nature that is applicable to such an Event;
  - g) AS/NZS ISO 9001:2008 - Quality management systems - Requirements;
  - h) AS/NZS ISO 14001:2004 - Environmental management systems - Requirements with guidance for use; and
  - i) all amendments to the above and, in the case of sub-clauses (d)-(f), those amendments that are notified to the Hirer.
- 19.4 **Notification:** The Hirer will immediately notify Venues Wellington of any risks or hazards which the Hirer observes or become aware of at the Venue. The Hirer must also immediately notify Venues Wellington of any incident, accident or notifiable injury, illness, incident or event it becomes aware of at the Venue including those involving any equipment or Persons Under Hirer's Control, and the Hirer will provide Venues Wellington with such assistance as may be reasonably necessary to conduct any incident or accident investigation at no cost to Venues Wellington.
- 19.5 **Access:** The Hirer acknowledges and accepts that Venues Wellington will have access to the Venue at all times in order to review, monitor and/or audit the Hirer's health and safety procedures and practices.
- 19.6 **Consultation:** The Hirer agrees, so far as is reasonably practicable, to consult, co-operate with and co-ordinate its activities with Venues Wellington in relation to any Event.
- 19.7 **Nature of Engagement:** The Hirer will facilitate, if required, engagement between the Hirer and Venues Wellington (and/or its designees) in relation to work health and safety matters.
- 19.8 **Unsafe Conditions:** If Venues Wellington considers that there are any unsafe conditions or activities in the Venue, it will inform the Hirer's representative and ask them to ensure that necessary action is taken promptly to make the area safe. If Venues Wellington reasonably considers that the action taken is not adequate, it may, at the Hirer's expense, remove people, vehicles or any other property from the Venue or refuse any person access to the Venue. The Hirer authorises the Venue Manager to take such actions as set out in this clause.

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19.9 **Removal and Termination:** Venues Wellington may at the Hirer's cost require any person or group of persons to leave the Event and may require the Event to cease and terminate this Agreement if Venues Wellington reasonably considers that person or group of persons to be intoxicated or under the influence of drugs or otherwise behaving in a manner which:

- a) impedes or adversely affects the enjoyment of other people in the Venue or attending the Event or puts those other people at risk;
- b) has caused any loss or damage or increases the risk of loss or damage to the Venue or any other property;
- c) is causing a disturbance of the peace or a nuisance;
- d) breaches any term of this Agreement, any health and safety obligations or any law or bylaw; or
- e) is likely to do any of these things.

19.10 **Responsibility:** The Hirer is responsible for maintaining standards of health, safety and environmental practice that at all times equals, or exceeds, the requirements of any health and safety legislation as applicable from time to time.

19.11 **Material Breach:** Any failure by the Hirer to comply fully with its obligations in this clause 19 will be regarded as a material breach of this Agreement and Venues Wellington will, at the Hirer's expense and without prejudice to any other rights that Venues Wellington may have, be entitled to immediately suspend all further performance by the Hirer under this Agreement until such failure has been remedied.

## 20. ELECTRICAL DEVICES

20.1 **Compliance:** Any electrical device brought into the Venue must comply with Electrical Standard NZS 3760-2001 and such certification must remain current for the duration of the Hire Period.

20.2 **Installation:** The Hirer and All Persons Under Hirer's Control must not install or connect any electrical installation, equipment or fitting into the electricity mains of the Venue without Venues Wellington's prior approval (such approval not to be unreasonably withheld or delayed). Where an installation or connection is approved such an installation or connection must be carried out by Venues Wellington's preferred electrical supplier at the Hirer's cost, or under Venues Wellington's supervision.

20.3 **Liability:** The Hirer will be liable for any costs or damages that arise out of the use of electrical devices that have not been inspected and approved in accordance with this Agreement.

## 21. MERCHANDISE

21.1 **Merchandise Service Fee:** If the Hirer wishes to sell any merchandise at the Venue the Hirer must first obtain Venues Wellington's approval, such approval not to be unreasonably withheld or delayed). All merchandise and programme vending services, including staff, equipment, and facilities, must be provided through Venues Wellington's nominated merchandise provider. The Hirer will pay a merchandise service fee as outlined in the Venue Hire Agreement - Specific Terms, to Venues Wellington on all goods sold, together with any associated costs of Services provided by Venues Wellington in relation to the sale of merchandise (if any), including all cash handling and collection charges, banking, eftpos and credit card fees and equipment hire. The Hirer must provide certified evidence of the gross sales of goods for the Hire Period, in order to enable Venues Wellington to assess the actual amount of the merchandise service fee. In addition, the Hirer must ensure that the opening and closing stock position for the goods is adequately documented and provide Venues Wellington with the opportunity to verify such position.

21.2 **Organisation:** The Venues Wellington Event & Show Coordinator is able to organise merchandising services for the Hirer.

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# Venues Wellington

## 22. PROMOTION AND ADVERTISING

- 22.1 **Sole Responsibility:** The Hirer will be responsible for all aspects of promoting the Event unless agreed otherwise with Venues Wellington.
- 22.2 **Accurate and Correct:** The Hirer undertakes to ensure that all information contained in the Hirer's advertisements and other published information, including Venue descriptions and logos, is factually correct and does not and is not likely to mislead any person or bring Venues Wellington into disrepute.
- 22.3 **Sponsors:** Venues Wellington may have arrangements with sponsors at its Venues, including but not limited to naming rights and beverage sponsors for the Venue and/or parts of the Venue. The Hirer agrees not to do anything to put Venues Wellington in breach of its obligations to any of its Venue sponsors.
- 22.4 **Prior Notice of Sponsors:** The Hirer will inform Venues Wellington of any sponsors the Hirer has arranged for the Event at least twenty 20 working Days before the Event. Venues Wellington will have the right to reject any sponsors if their sponsorship of the Event is in breach of Venues Wellington's sponsorship arrangements for the Venue in Venues Wellington's sole discretion.
- 22.5 **Film, Record and/or Photograph:** The Hirer agrees that Venues Wellington may film, record and/or photograph the Event for internal purposes. With the Hirer's prior approval, Venues Wellington may also film, record and/or photograph the Event for promotional and publicity purposes.
- 22.6 **Signage:** Venues Wellington will have the sole right to place signage at the Venue unless otherwise agreed in writing with the Hirer. Venues Wellington reserves the right to not display or to remove any banner or signage placed in a Venue that it has not agreed to or that it deems unsuitable for any reason.
- 22.7 **Venue Name:** The Hirer must refer to the Venue by its name as notified by Venues Wellington in all announcements, coverage, communications, programmes and other publicly available materials produced by, or under, its control.

## 23. REPRESENTATIVES

- 23.1 **The Hirer's Representative:** The Hirer will ensure that they have a representative contactable and available at the Venue at all times during the Hire Period to make decisions and incur costs on the Hirer's behalf. Before the Event the Hirer must confirm with Venues Wellington the name and contact details of the Hirer's representative.
- 23.2 **Venues Wellington's Representatives:** The Venues Wellington Event & Show Co-ordinator is Venues Wellington's primary representative for the purposes of this Agreement. Venues Wellington's other representatives include the Venue Manager and the Venue Technician.

## 24. INSURANCE

- 24.1 **Public Liability:** The Hirer must have public liability insurance in place for the duration of the Hire Period which must be for a sum not less than \$5 million (New Zealand Dollars) for any one occurrence, with a reputable/registered insurer (which insurance must be in the Hirer's name, and which must provide indemnity cover against loss, damage, costs and expenses for which the Hirer may become liable under this Agreement). The Hirer must provide proof of such insurance no less than 5 Working Days prior to the start of the Hire Period.
- 24.2 **Arrangement:** If the Hirer is unable to provide proof that it has public liability insurance pursuant to clause 24.1, Venues Wellington will arrange for the Hirer to be covered under WCC/Venues Wellington's existing public liability insurance for the Event (with the Hirer being liable for the cost of Venues Wellington arranging such insurance cover as an Event Charge).

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- 24.3 **Hirer Not to Prejudice Insurance:** The Hirer shall not do or permit to be done anything in or about the Venue which may cause any insurance effected by Venues Wellington or any other person to be rendered void or voidable or which causes the premium payable on any such insurance to be liable to increase. Copies of insurance conditions will be provided at the Hirer's request.
- 24.4 **Hirer to Occupy Venue at Own Risk:** The Hirer agrees to occupy and use the Venue (including all facilities and equipment) at the Hirer's risk and releases, to the full extent permitted by law, WCC, Venues Wellington and Venues Wellington's directors, officers, employees, agents and contractors from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage, theft or loss of any property or injury occurring to any person or property in or about the Venue as a result of the Hirer's occupation or use, except to the extent any liability arises as a direct result of Venues Wellington's wilful default or negligence. The Hirer further agrees that Venues Wellington will not be liable for any loss due to any breakdown in machinery, failure of electricity supply, leakage of water or fire, except to the extent any loss arises as a direct result of Venues Wellington's wilful default or negligence.
- 24.5 **Property Insurance:** Where property of any value (including exhibits) is brought into or left at the Venue by the Hirer or Persons Under Hirer's Control, it will be the Hirer's responsibility to arrange and have in place adequate insurance for such property at all times. Venues Wellington will not be liable for any loss or damage to any such property by virtue of Venues Wellington being or being deemed to be a bailee of the property.
- 25. LIABILITY AND INDEMNITY**
- 25.1 **Indemnity by Hirer:** The Hirer will indemnify Venues Wellington and keep Venues Wellington and Venues Wellington's directors, officers, employees, agents and contractors indemnified against all claims, actions, losses, damages and expenses of any nature which Venues Wellington may suffer or incur or for which Venues Wellington may become liable in respect of or arising out of:
- a) any action taken by any person who is dissatisfied by the Event or any matter arising out of the Event;
  - b) any allergic or other reaction to any food or beverage provided by the Hirer consumed at the Event;
  - c) the neglect or careless use or misuse by the Hirer or any Person Under Hirer's Control of the Venue, any other part of the Venue complex, any of the utilities or other services to the Venue, or arising out of any faulty equipment of the Hirer's;
  - d) any accident or damage to property or any person arising from any occurrence in or near the Venue wholly or in part by reason of any act or omission by the Hirer or any Person Under Hirer's Control or persons associated with the Hirer;
  - e) any promotion or advertising for the Event by or on the instructions of the Hirer;
  - f) any breach of the terms of this Agreement by the Hirer;
  - g) any failure of any Person Under Hirer's Control to observe and perform the terms of this Agreement; or
  - h) Venues Wellington's termination of this Agreement as a result of the Hirer's breach.
- 25.2 **Indemnities:** Each indemnity in this Agreement is a continuing obligation, separate and independent from the Hirer's and Venues Wellington's other obligations and survives termination of this Agreement for a period of 12 months after termination of this Agreement. It is not necessary for Venues Wellington to incur expenses or make payment before enforcing a right of indemnity conferred by this Agreement, except where an event occurs that may lead to Venues Wellington enforcing a right of indemnity conferred by this Agreement. Venues Wellington will use its reasonable endeavours to mitigate any damages, costs, loss or expenses incurred by it.
- 25.3 **Limitation of Trustee Liability:** Venues Wellington acknowledges that if the authorised signatory has entered into this Agreement on behalf of the trustees of a Trust then the trustees enter into this Agreement in an independent capacity without any interest in any of the assets of the Trust other than as trustee. Except where that trustee acts fraudulently, the trustee is liable under this Agreement only to the extent of the value of assets of the Trust available to meet the

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trustee's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the trustee's wilful default or dishonesty. Venues Wellington reserves the right to ask for details about the Trust's assets and insurance available to meet any such claims by Venues Wellington.

25.4 **Indirect and Consequential Losses:** To the fullest extent permitted by law, Venues Wellington will not be liable under this Agreement for any consequential or indirect losses arising out of or in any way connected to this Agreement or its performance, whether in contract, tort (including negligence) or otherwise.

## 26. FORCE MAJEURE

26.1 **Force Majeure:** In the event that Venues Wellington or the Hirer are unable to perform or discharge their respective obligations under this Agreement by reason of a Force Majeure Event, then the parties' respective rights and obligations shall be suspended and each of the parties shall be relieved of their respective obligations during the Force Majeure Event, provided always that the dates and times for the Event and Hire Period shall not be varied or extended as a result of such Force Majeure Event, except with the written agreement of both parties. Where the Event is cancelled or does not take place in accordance with the Venue Hire Agreement due to a Force Majeure Event that affects:

- a) Venues Wellington's ability to perform its obligations under this Agreement, then all payments already made by the Hirer will be returned to the Hirer other than where those payments have already been made for the provision of Services that cannot be cancelled. To avoid doubt, if a Force Majeure Event occurs which means the Venue is no longer available for the Hire Period, this will be deemed to be a Force Majeure Event that affects Venues Wellington's ability to perform its obligations.
- b) the Hirer's ability to perform the Hirer's obligations under this Agreement, then all payments already made by the Hirer will be retained by Venues Wellington and the Hirer will be issued with a credit to use at a Venues Wellington venue for **12 months** from the date of cancellation as a credit for the Hirer to use at a Venues Wellington venue subject to Venues Wellington's terms of hire. If the Hirer does not use that credit within those **12 months**, then the Hirer will forfeit those payments.

26.2 **Liability:** Subject to clause 26.1, neither party will be liable for any loss, damage, claim, liability, or default due to a Force Majeure Event.

26.3 **Events Not Included:** A Force Majeure Event does not include any event which the party affected could have prevented or overcome by exercising a reasonable standard of care or which resulted from a lack of funds for any reason.

26.4 **Seismic Activity:** Notwithstanding clause 26.1, on the occurrence of any seismic activity in Wellington or its surrounds which has, or is likely to have, had an adverse effect on the building integrity of the Venue (including its facilities and infrastructure) such that access or the safety of Venues Wellington employees/contractors, Persons Under Hirer's Control, the public and/or service providers to the Venue is in doubt (as determined in the sole discretion of Venues Wellington) Venues Wellington shall be entitled to immediately suspend the Agreement and the performance of any and all obligations in terms (without any liability or compensation due to the Hirer) thereof until Venues Wellington has received written confirmation, to its satisfaction, that the Venue is safe and fit for the intended use.

## 27. PRIVACY

27.1 **Collection of Information:** Where Venues Wellington collects any personal information in relation to the Hirer, for the purposes of the Privacy Act 1993, the Hirer authorises the:

- a) collection of such personal information;
- b) use and storage of such personal information for the purposes of enabling the Hirer to hire the Venue; and
- c) disclosure of the personal information to such third parties as is necessary for the purposes of enabling Venues Wellington to administer and manage the hire of the Venue by the Hirer, including but not limited to

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recovery of any moneys owed by the Hirer or costs incurred by Venues Wellington.

27.2 **Information:** On the Hirer's request, Venues Wellington will provide the Hirer with a copy of the information retained about the Hirer and/or correct any incorrect information retained about the Hirer.

27.3 **Research:** With the Hirer's consultation and approval, Venues Wellington may collect information from Event attendees for the purposes of market research. The Hirer authorises Venues Wellington to approach attendees directly, or as a joint initiative with the Hirer, at a mutually agreeable time for the purpose of collecting this information.

## 28. APPLICABLE LAW

28.1 **Compliance:** The Hirer must comply, at the Hirer's own expense, with all applicable statutes, regulations, bylaws, rules of conduct and Venues Wellington's policies and procedures for the Venue (where such policies and procedures have been notified to the Hirer) and any directions of Venues Wellington to the Hirer as they relate to the use, occupation, safety and security of the Venue.

28.2 **New Zealand Law:** The laws of New Zealand will govern this Agreement and both parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

28.3 **Legislative Change:** This Agreement may be updated by Venues Wellington at any time to achieve compliance with any legislative change.

28.4 **Notice:** Any such update of this Agreement will take effect after such notice period to the Hirer as Venues Wellington (acting reasonably) directs and shall supersede the previous version.

## 29. DISPUTE RESOLUTION

29.1 **Disputes:** If a dispute arises out of or relating to the Agreement (including any dispute as to the validity, breach or termination of it) a party to the Agreement may not commence any court or arbitration proceedings relating to the dispute unless the party has complied with subclauses 29.2 to 29.4 of this clause, the only exception being where a party seeks urgent injunctive relief.

29.2 **Written Notice:** A party to the Agreement claiming that a dispute has arisen under or in relation to the Agreement must give written notice to the other party to the Agreement specifying the nature of the dispute.

29.3 **Good Faith:** On receipt of that notice by the other party, the parties to the Agreement must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

29.4 **Mediation:** If the parties do not agree within seven days of receipt of the notice (or any further period as is agreed in writing by them) as to:

- a) the dispute resolution technique and procedure to be adopted;
- b) the timetable for all steps in those procedures; and
- c) the selection and compensation of the independent person required,

then the parties must mediate the dispute using the services of a mediator nominated by the then President of the New Zealand Law Society and the remuneration and expenses of the mediation will be borne equally by the parties.

## 30. CONFIDENTIALITY

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The Hirer and Venues Wellington will keep the terms of this Agreement and any financial arrangements in relation thereto confidential and will not disclose such information to any third party other than the Hirer's professional advisors for the purposes of this Agreement or as required by law.

## 31. VENUES WELLINGTON A COUNCIL CONTROLLED TRADING ORGANISATION

31.1 **Relationship with WCC:** The Hirer acknowledges that Venues Wellington is a council controlled trading organisation, with WCC being the owner of the Venue (and other Venues Wellington venues) and Venues Wellington acting as the venue manager for the Venue (and other Venues Wellington venues). As such, responsibility for certain activities (such as repairs and maintenance) may fall within the scope and responsibility of Venues Wellington (with Venues Wellington and the Hirer being subject to any directions and instructions of WCC).

31.2 **Official Information:** The Hirer acknowledges that Venues Wellington is subject to the Local Government Official Information and Meetings Act 1987 (the LGOIMA), and that under that LGOIMA, Venues Wellington may be required to release information about the Hirer, the Event and this Agreement. Without prejudice to Venues Wellington's right to comply with its obligations under the LGOIMA, Venues Wellington will use all reasonable endeavours to notify the Hirer as to any such required disclosure and the scope of that disclosure prior to its disclosure and to consider any comments by the Hirer regarding the commercial sensitivity of any information that is proposed to be disclosed. Venues Wellington reserves the right to delete or redact any information about the Hirer, the Event or this Agreement if Venues Wellington believes disclosure of such information to third parties would likely unreasonably prejudice the commercial position of either or both parties on the basis that, amongst other things, it is commercially sensitive and may affect their other commercial dealings (both present and future).

## 32. NO TENANCY RIGHTS

Nothing in this Agreement will create any tenancy rights in respect of the Venue.

## 33. NO WAIVER

No waiver or any breach, or failure to enforce any provision of this Agreement at any time by either party will in any way effect, limit or waive such party's right to enforce and compel strict compliance with the provisions of this Agreement.

## 34. ENTIRE AGREEMENT

This Agreement, including each document, policy or schedule attached to this Agreement from time to time, constitutes the entire Agreement, understanding and arrangement (express or implied) between the parties and supersedes all prior and contemporaneous communications and any prior agreements between the parties regarding a subject matter of this Agreement.

## 35. RELATIONSHIP

Nothing contained in this Agreement will be construed as creating an employer-employee relationship, a partnership, an agency or a joint venture between the parties. Neither party will have authority to make any statements, representations or commitments, nor to take any action binding the other except as provided in this Agreement or as authorised in writing by the other.

## 36. COSTS

Each party will bear its own costs relating to the negotiation and preparation of this Agreement and related documentation and any issue arising out of this Agreement, provided, however, that the Hirer will pay Venues

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Wellington's cost and expenses (including legal cost on a solicitor and own client basis) in enforcing the Hirer's obligations under this Agreement and recovering payment of moneys owed by the Hirer.

## **37. TRANSFER/ASSIGNMENT**

The Hirer may not transfer or assign any of its rights or obligations under this Agreement without the prior written consent of Venues Wellington; which consent will not be unreasonably withheld. For the avoidance of doubt, nothing in this Agreement will prevent Venues Wellington from being able to transfer or assign any of its rights under this Agreement.

## **38. CONSUMER GUARANTEES ACT**

The Hirer acknowledges that the hiring of the Venue by the Hirer is, in terms of the Consumer Guarantees Act 1993, a supply for business purposes and that the provisions of that Act do not apply.

## **39. SEVERABILITY**

If any provision of this Agreement shall be invalid, void, illegal or unenforceable for any reason, then that term will be enforced to the maximum extent permissible so as to reflect the parties' intent, and the remainder of the Agreement will continue in full force and effect.

## **40. JOINT AND SEVERAL LIABILITY**

Where two or more persons are named as the Hirer in the Agreement, undertakings, warranties, covenants, agreements and other obligations of the Hirer will bind, and be deemed to have been given or assumed by, each of them severally and by all of them jointly and severally and will also bind the executors administrators and permitted assignees of them jointly and severally.

## **41. NOTICES**

41.1 **Form:** Any notice under this Agreement between the parties must be made in writing and may be personally delivered, posted, faxed or emailed to the addresses set out in the Agreement or to such other addresses as agreed between the parties.

41.2 **Delivery:** Notices will be deemed to be given:

- a) Where served personally, upon delivery;
- b) Where served by post, three Working Days after posting;
- c) Where served by facsimile or email, upon receipt of the correct facsimile or email receipt confirmation.

## **42. PRIVACY**

Clause 31 of this Agreement is intended to be for the benefit of, and enforceable by WCC for the purposes of the Contracts (Privity) Act 1982.

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