

## Hiring Agreement – Part B

### Terms and Conditions

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#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions applying to Part A and Part B

The following definitions apply to Parts A and B of this Hiring Agreement:

**‘Business Day’** means Monday to Friday from 8.30am to 5.30pm excluding public holidays in Christchurch.

**‘Cancellation Notice’** has the meaning given to it by clause 12.1.

**‘Centre’** means Te Pae Christchurch Convention Centre being the Christchurch Convention and Exhibition Centre and any associated facilities, areas and equipment.

**‘Client’** means the person hiring the Event Facilities, as more particularly detailed in Part A of the Hiring Agreement.

**‘Delegates’** means all persons who attend or enter any part of the Centre for the Event, other than the Client’s Representatives.

**‘Deposit’** has the meaning given to it in Part A.

**‘Estimated Costs’** means all costs and expenses set out in an Event Order signed by the Client (see clause 3) for services provided or to be provided to the Client at its request which are incurred by the Manager prior to the Event or are estimated as being incurred by the Manager during or after the Event.

**‘Event’** means the event to be held within the Event Facilities, at the Centre, during the Hiring Period as detailed in Part A of the Hiring Agreement. Events may include an exhibition, conference, banquet, meeting or public event.

**‘Event Facilities’** means that specific part or those specific parts of the Centre that is/are being hired by the Client as detailed in Part A of the Hiring Agreement.

**‘Event Fittings’** includes the structures to be erected, the products displayed, equipment and any other thing intended to be used in the Centre by the Client which does not form part of the Centre.

**‘Event Order’** has the meaning given to it by clause 3.1.3.

**‘Final Costs’** means the costs actually incurred by the Manager in providing services and holding the Event for the Client as detailed in the final statement referred to in clause 4.3 and clause 4.4.

**‘Force Majeure’** has the same meaning given to it at clause 16.2.

**‘GST’** means goods and services tax chargeable in accordance with the GST Act.

**‘GST Act’** means the Goods and Services Tax Act 1985.

**'Hiring Agreement'** means the hiring agreement for events held at the Centre which is comprised of Part A (including Schedules) and Part B. These terms and conditions form Part B of the Hiring Agreement.

**'Hiring Fees'** means the hiring charge payable by the Client as detailed in Part A of the Hiring Agreement.

**'Hiring Period'** means the period in which the Client will use the Event Facilities as detailed in Part A of the Hiring Agreement.

**'HSW Act'** means the Health and Safety at Work Act 2015.

**'Indirect Loss'** means any loss, cost, damage or expense which is indirect, and any loss of profits, revenue, income, business, business opportunity, contract, reputation, goodwill or any direct or indirect financing costs or penalties or damages payable.

**'Input Tax Credit'** means a credit for input tax or other deduction from output tax under the GST Act.

**'Manager'** means ASM Global (NZ) Limited, the manager and operator of the Centre.

**'OneMusic'** means the OneMusic NZ the joint licencing organisation of APRA AMCOS and Recorded Music NZ.

**'Owner'** means Rau Paenga Limited, a Crown entity company for the purposes of the Crown Entities Act 2004, or any person that subsequently becomes the owner of the Centre.

**'PCBU'** means a person conducting a business or undertaking and has the same meaning as in the HSW Act.

**'Representative'** means, in relation to a person named in this Hiring Agreement, the employees, officers, servants, agents, invitees, licensees, exhibitors, contractors and sub-contractors of that person and any person working under the direction or control of the first person.

**'Schedules'** means the schedules appended to Part A of the Hiring Agreement, which include:

- (a) Schedule 1: Payment Schedule; and
- (b) Schedule 2: Event Facilities Inclusions Schedule.

**'Stakeholder'** has the meaning given to it at clause 4.2.

**'Taxable Supply'** has the same meaning as in the GST Act.

**'Tax Invoice'** has the same meaning as in the GST Act and includes credit notes and debit notes.

**'Ticketed Events'** means Events where tickets are available for public sale and are controlled by the Manager or a third party ticketing provider nominated by the Manager. Such Events have an Event Type classification as set out at Part A of 'Ticketed Event'.

### 1.2 Interpretation

In this Hiring Agreement, unless the context otherwise requires:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Hiring Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any 'thing' includes a part of that 'thing';

- (f) a reference to '\$' or 'dollars' is a reference to the lawful currency of New Zealand, and all monetary amounts within the Hiring Agreement shall be deemed to be New Zealand dollars unless expressly stated otherwise;
- (g) a reference to a part, clause, party, annexure, attachment or schedule is a reference to a part and clause of, and a party, annexure, attachment and schedule to, this Hiring Agreement;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to a body created under a statute, including a statutory authority, corporation sole or a body corporate, includes a reference to any body, governmental agency, authority, office holder or department which is the successor to that body in respect of any rights, powers or obligations exercisable in association with this Hiring Agreement;
- (k) 'includes' means includes without limitation and 'include' and 'including' have corresponding meanings; and
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Hiring Agreement.

## 2. THE HIRING AGREEMENT

### 2.1 Terms and Conditions

This document is the Manager's terms and conditions for events held at the Centre and forms Part B of the Hiring Agreement.

### 2.2 Entering into the Hiring Agreement

Once the proposed terms have been agreed by the Manager the Client must sign Part A of this Hiring Agreement (which will document such agreed terms) and return it to the Manager by any method referred to at clause 18.2.2, for countersignature by the Manager.

By signing Part A of the Hiring Agreement, the Client agrees to and will be bound by both Part A (including the Schedules) and Part B (terms and conditions) of the Hiring Agreement upon acceptance by the Manager in accordance with this clause. The Hiring Agreement will be made at the time when the Manager countersigns the Hiring Agreement.

The Client acknowledges that:

- (a) the Manager has entered into this Hiring Agreement as the agent of the Owner and not in its own capacity and the obligations of the Manager under this Hiring Agreement are to be construed accordingly; and
- (b) in its capacity as agent of the Owner, the Manager may enforce the rights expressed to be conferred on the Owner and/or the Manager under this Hiring Agreement (and for the avoidance of any doubt such rights are enforceable by the Owner directly) for the purposes of Subpart 1 (Contracts Privity) of Part 2 of the Contract and Commercial Law Act 2017.

### 2.3 Changing the Hiring Agreement

This Hiring Agreement can only be changed by written agreement between the Manager and the Client.

Changes to this Hiring Agreement will not take effect until the Manager accepts the changes, issues a signed variation to this Hiring Agreement which sets out details of the change (signed by both parties) and gives a copy of the variation to the Client.

### 3. FINALISING EVENT DETAILS

#### 3.1 Notices

The Client and the Manager must regularly liaise with each other in relation to the Event. In particular the Client and the Manager must give each other notice in accordance with the following timetable to finalise details of the Event. Any notice given under this clause 3.1 must comply with clause 18.

**3.1.1 20 Business Days before the Start of the Hiring Period** the Client must supply the Manager with final confirmation of all details of the Event, including:

- (a) program and timetable for the Event;
- (b) staging, rigging and equipment required; and
- (c) services required from the Manager,

subject always to any changes that will be made as a result of the remaining requirements set out in this clause 3.1.

**3.1.2 20 Business Days before the Start of the Hiring Period** the Client must supply the Manager with a written confirmation notice for food and beverage and other services required.

**3.1.3 10 Business Days before the Start of the Hiring Period** the Manager will supply the Client with an ‘**Event Order**’ setting out the details of the Event based on the initial notice, confirmation notice and any notices of change accepted by the Manager, for final confirmation by the Client.

**3.1.4 7 Business Days before the Start of the Hiring Period** the Client will supply the Manager with the signed Event Order and approximate number of Delegates requiring food or beverage.

**3.1.5 5 Business Days before the Start of the Hiring Period** the Client will supply the Manager with the final number of Delegates requiring food or beverage.

**3.1.6 From time to time** the Client can provide notices of change setting out details of any proposed changes to an initial notice, confirmation notice, event order or final numbers notice. The Manager will not be taken to have accepted any notice of change unless it confirms the notice in writing.

**3.1.7 Late Fees may apply** for significant or late changes in notices. Requests from the Client for additional services received 5 Business Days or fewer before the Start of the Hiring Period may attract a Late Fee of 20% of the cost of the additional services. In addition, should the final number of Delegates requiring food and beverage vary by greater than 5% greater than the notice given in 3.1.4, the Manager may charge a Late Fee of 20% of the food and beverage costs to the Client.

#### 3.2 Effect of Event Order

The Client will be bound by, and the Manager can rely on, the Event Order once signed by the Client.

### 3.3 Inconsistency

To the extent that there is any inconsistency between this Hiring Agreement and any notice given under this clause 3, this Hiring Agreement will prevail over the notice.

### 3.4 More details

The Manager may request the Client to provide further written information about the expected number and origin of visitors to the Event, the likely number of exhibitors at the Event, or other relevant information about the Event. The Client will provide the further information within a reasonable time after receiving the request from the Manager.

## 4. PAYMENTS BY THE CLIENT

### 4.1 Hiring Fees and other charges

The fees that are payable from the Client to the Manager are as follows:

#### 4.1.1 Hiring Fee and Deposit

- (a) The Deposit is payable in accordance with Schedule 1 of Part A of the Hiring Agreement. The Deposit paid is non-refundable unless clause 4.2(b) applies.
- (b) The Hiring Fee (less the Deposit, as applicable) is payable in accordance with Schedule 1 of Part A of the Hiring Agreement. All paid instalments of the Hiring Fee are non-refundable unless clause 4.2(b) applies.

#### 4.1.2 Estimated Costs

Estimated Costs are payable by the Client at least 5 Business Days prior to the commencement of the Hiring Period. Where Estimated Costs arise less than 5 Business Days before the Hiring Period such Estimated Costs must be paid by the Client prior to the first day of the Hiring Period.

All instalments of the Hiring Fee, the Deposit and Estimated Costs are payable by the Client in the manner set out in the Tax Invoice issued by the Manager.

#### 4.1.3 Final Costs

- (a) Final Costs will be calculated using the number of people actually attending the Event or the final numbers notified to the Manager in the final numbers notice given under clause 3.1.5, whichever is greater; plus the costs and expenses of the services actually provided to the Client in relation to the Event.
- (b) The Final Costs are payable by the Client to the extent not already paid as Estimated Costs. Any amounts of Final Costs owing will be either charged to the Client's authorised credit card at the time incurred, or will be settled as part of the final statement provided to the Client, where either clause 4.4 (a) or 4.4 (b) will apply.

#### 4.1.4 Credit card processing fee

A fee for credit card payments will be calculated at the amount charged by the relevant credit card merchant to the Centre. Only one credit card payment per invoice will be accepted.

### 4.1.5 Public holiday surcharges

A public holiday surcharge will apply to all food and beverage (except public catering), audio visual and other labour related costs, unless otherwise confirmed by the Manager in writing. No surcharge will apply to room rental.

### 4.1.6 Legal costs

The Client must pay all outside legal costs and consultant fees incurred by the Manager in respect of this Hiring Agreement, including any cost incurred in connection with:

- (a) any request by the Client for a variation from the terms of this Hiring Agreement and the preparation of any actual variation;
- (b) any claim or action against the Client or in giving notices to the Client or enforcing any terms of this Hiring Agreement;
- (c) any breach by the Client of this Hiring Agreement; and
- (d) the performance or observance by the Client of any of the terms of this Hiring Agreement.

## 4.2 Deposit and advance payments

Clause 4.1 requires the Client to pay a Deposit and the Hiring Fee (as more particularly detailed in Part A) and make an advance payment for Estimated Costs. The Client will be issued a tax invoice requesting payment from the Manager in respect of each instalment due.

The Deposit and all instalments of the Hiring Fee and Estimated Costs paid by the Client under this Hiring Agreement will be held by the Manager as stakeholder (*Stakeholder*) for the Manager and the Client until the earlier of the following:

- (a) a default by the Client under this Hiring Agreement, including the Client's cancellation of the Event, upon which the amounts will be released to the Manager;
- (b) the failure by the Manager to provide the Event Facilities in its entirety for the Hiring Period, upon which the amounts will be released to the Client;
- (c) the occurrence of a Force Majeure, upon which:
  - (i) the amount to which the Manager is entitled to receive under clause 16.1 is released to the Manager; and
  - (ii) the remainder is released to the Client;
- (d) the termination of this Hiring Agreement, upon which the amounts will be released to the Manager; and
- (e) the end of the Hiring Period, upon which the amounts will be released to the Manager and treated as part payment of the Hiring Fee and the Final Costs and applied in the manner set out in this Hiring Agreement.

The Deposit, instalments of Hiring Fee and Estimated Costs paid by the Client under this Hiring Agreement will be held in a separate bank account established for funds that the Manager holds as a stakeholder, until they are disbursed in accordance with this clause 4.2. The funds held as stakeholder will be exclusive of GST. The GST portion will be remitted to the Inland Revenue Department as per the GST Act.

## 4.3 Final Statement and adjustment after the Event

No more than 10 Business Days after the end of the Hiring Period, the Manager will give the Client a final statement (which may be in the form of a Tax Invoice) showing:

- (a) all amounts paid by the Client to the Manager under this Hiring Agreement;
- (b) any amounts owing by the Client to the Manager under this Hiring Agreement or otherwise; or
- (c) any overpayment by the Client to the Manager which is refundable to the Client.

#### 4.4 Payment or refund after Final Statement

No later than 10 Business Days after the Manager gives the final statement to the Client, as applicable:

- (a) the Client must pay the Manager all amounts shown in the final statement as owing to the Manager; or
- (b) the Manager must pay the Client all amounts shown in the final statement as refundable to the Client.

#### 4.5 All statements are final

The Client must notify the Manager promptly, and in any event within 5 Business Days of receiving the final statement in accordance with clause 4.3, of any errors in, or objections to, the final statement in writing. If no written notice is given by the Client within that time, the statement will be final and will remain payable pursuant to clause 4.4.

## 5. INSURANCE, INDEMNITY AND RELEASE

### 5.1 Insurance Requirements

Unless otherwise notified by the Manager in writing, the Client must effect and maintain the following insurances for the Event with a reputable insurer and on terms acceptable to the Manager as follows:

#### 5.1.1 Public and Products Liability insurance

The Client must effect and maintain a policy of Public and Products Liability insurance which:

- (a) insures against all risks of physical loss or damage to property of every kind and description owned by the Owner or the Manager or for which they may be responsible, or owned by any third party, where the occurrence happens during the Hiring Period or any other period in which the Manager agrees to grant the Client (or its Representatives) access to the Event Facilities, as permitted by clause 6.1;
- (b) insures against all risks of personal injury or property damage to any person at, in or upon the Event, the Event Facilities or the Centre, caused by a product brought to, outside or into the Centre where the occurrence happens during the Hiring Period or any other period in which the Manager agrees to grant the Client (or its Representatives) access to the Event Facilities, as permitted by clause 6.1; and
- (c) is for a limit of liability, for Public Liability insurance, of \$10,000,000 for any one occurrence, and for Products Liability insurance, of \$10,000,000 in the aggregate.

#### 5.1.2 Any other insurance required

The Client must effect and maintain any other insurance as detailed in Part A or that the Client is required to effect by law.

### 5.2 Certificates of Currency

If requested by the Manager, the Client must provide the Manager with certificates of currency in respect of the insurance required by clause 5.1 to be effected by the Client:

- (a) at least 15 Business Days before the start of the Hiring Period; or
- (b) within a reasonable time following a request by the Manager for the Client to do so, whichever is later.

The certificate of currency must be issued by the insurer, not the broker, and must confirm details of the Client's policies such as the insured's name, business description, policy limit and excess.

### 5.3 No limitation on liability

The requirement for the Client to effect and maintain insurance will not limit the liabilities or obligations of the Client under any other provision of this Hiring Agreement.

### 5.4 Indemnity

#### 5.4.1 Client obligations

The Client indemnifies the Owner and the Manager and their respective Representatives from and against any and all loss or damage whether direct or indirect (including loss of profits, damage to reputation and/or legal fees), arising out of:

- (a) any breach by the Client or the Client's Representative of the Client's obligations under this Hiring Agreement;
- (b) the Client failing to proceed with the Event or any part of it;
- (c) the Client failing to comply with a request or direction made or given by the Manager under this Hiring Agreement;
- (d) the Client's (or its Representatives' or Delegates') use of the Event or the Event Facilities and the Centre during the Hiring Period (or any other period in which the Manager agrees to grant the Client (or its Representatives or Delegates) access to the Event Facilities, as permitted by clause 6.1);
- (e) claims by any person against the Owner, the Manager and/or their respective Representatives in respect of personal injury or death, or loss of or damage to any property, caused by the Client's (or its Representatives or Delegates) use of the Event Facilities or the Centre;
- (f) any infringement or alleged infringement of intellectual property rights by the Client or a Client's Representative;
- (g) the information provided for the preparation of the Event Order not being true and correct in all respects;
- (h) the Client failing to complete a contract with a third party; and/or
- (i) the Client failing to comply with its obligations under all applicable laws relating to occupational or workplace health and safety,

unless such loss, damage or liability is caused by the negligence of the Owner, the Manager or their respective Representatives, in which case the Client's liability to indemnify the Owner and the Manager will be reduced proportionately to the extent (if any) that the negligence of the Owner or the Manager or their Representatives has caused or contributed to the loss, damage or liability.



### 5.5 Release

The Client uses and occupies the Centre and Event Facilities at the risk of the Client. The Client releases to the full extent permitted by law, the Owner, the Manager and their respective Representatives from any and all liability resulting from:

- (a) any accident, loss, damage or injury to persons or property occurring in the Centre or Event Facilities while occupied or used by the Client under this Hiring Agreement; or
- (b) any loss or damage suffered by any person or persons arising out of the exercise by the Manager of any right or discretion under this Hiring Agreement,

but excluding any loss or damage to the extent caused by negligence or breach of this Hiring Agreement by the Manager.

### 5.6 Exclusion of liability

Neither the Owner, the Manager nor their respective Representatives have any liability (whether in contract, tort (including negligence) or otherwise at law) to the Client or its Representatives, nor is the Client or its Representatives entitled to make any claim, in respect of any Indirect Loss incurred or sustained by the Client or its Representatives.

## 6. CLIENT ACCESS AT THE CENTRE

### 6.1 Use of Event Facilities in the Centre

Subject to this Hiring Agreement, the Client will have:

- (a) the non-exclusive use of the Event Facilities for the Event during the Hiring Period (it being agreed that the Manager will not hire the Event Facilities to any other party during the Hiring Period); and
- (b) non-exclusive access to the other parts of the Centre that the Manager, in its reasonable opinion, considers necessary in connection with the Event.

In its absolute discretion the Manager may (upon request by the Client) grant the Client or its Representatives, early or later access to the Event Facilities.

The Client and its Representatives must not enter or use any other parts of the Centre other than those reasonably required to obtain access to Event Facilities.

The Client acknowledges that other clients may be conducting events or bumping in or out for events within the Centre at the same time that the Client's Event is being conducted or bumping in or out.

### 6.2 Use of other facilities in the Centre

The Manager can from time to time notify the Client of schedules for the use and sharing of services and other facilities of the Centre, schedules for access to the Centre, and restrictions on use and access.

The Client must comply with those schedules and restrictions.

### 6.3 Access to the Event Facilities by the Manager

The Manager and its respective Representatives will at all times have unrestricted access to all parts of the Centre, including the Event Facilities, for purposes including (but not limited to) safety, security, maintenance, cleaning, food and beverage and audio visual services.

### 6.4 Leaving the Centre

The Client must vacate the Event Facilities and the Centre, and remove any item/possession brought into the Centre by the Client or any of its Representatives, before the Hiring Period ends.

If it does not:

- (a) the Client must pay to the Manager an amount equal to the Hiring Fee divided by the number of days or parts of days in the Hiring Period, multiplied by the number of days or parts of days that the failure continues; and
- (b) the Manager has the right to remove any such item/possession from the Centre and arrange for its disposal and charge the Client a reasonable fee for doing so.

### 6.5 Cards, keys and passes

The Client must make sure that all access cards, keys and passes of any kind relating to the Event Facilities, the Centre or anything in them, which are given to the Client by the Manager, are:

- (a) kept in the custody of the Client or its Representatives authorised by the Manager for that purpose;
- (b) not duplicated; and
- (c) returned to the Manager when the Client vacates the Centre, or at the end of the Hiring Period, whichever is earlier.

The Client must pay the cost of replacement of any access card, key or lock lost or damaged by the Client or its Representatives or Delegates and the cost of replacement of lock barrels for any lock where the key in the possession of the Client is lost or not returned on vacating the Centre, even if that key is later found.

### 6.6 Damage

The Client acknowledges and agrees if the Client or its Representatives cause damage at the Centre or damage occurs at the Centre during the Event or in relation to the Event, the Manager will undertake the required repair or reinstatement works at the Client's sole cost. The Client must pay to the Manager on demand an amount equal to the actual costs incurred by the Manager to repair or reinstate the damaged area, facilities or equipment to the standard of repair and condition that the area, facilities or equipment were in immediately before the damage occurred. If any equipment is damaged beyond repair the Client must pay to the Manager the actual replacement cost of that equipment.

## 7. CONDUCTING THE EVENT

### 7.1 Client obligations

The Client must conduct the Event in accordance with the details in the Event Order signed by the Client (see clause 3) and in so doing, and in using the Event Facilities and the Centre, the Client must:

- (a) comply with any relevant or applicable legal requirements, industry standards and the reasonable directions of the Manager;
- (b) not knowingly do or permit anything to be done that would cause the Owner or the Manager to suffer any loss or damage, or to breach any legal requirements or any permit, approval, licence, consent or authority held in relation to the Event Facilities or the Centre;
- (c) obtain at its expense, and comply with, all permits, approvals, licences, consents and authorities required for the Event;

- (d) maintain a high standard of quality and professionalism, using best industry practice;
- (e) pay all governmental taxes and levies due in respect of, or as a result of, the Event by the due date for payment;
- (f) not erect anything in the Centre or make any alterations to the Centre without the Manager's prior written approval, which will not be unreasonably withheld;
- (g) not conduct any collections, whether for charity or otherwise, in the Centre without the Manager's prior written approval;
- (h) supply and pay for performances required for the proper presentation of the Event;
- (i) use its reasonable endeavours to ensure that each performance of the Event starts and finishes at the times set out in the Event Order or as agreed with the Manager;
- (j) supply the Manager with scale drawings of the Event showing room layout and equipment locations. The Manager can make any changes to these drawings as may be reasonable or necessary and the Client must adjust the set-up of the Event accordingly. These drawings must be approved by the Manager prior to the Event;
- (k) comply with the OneMusic licence relevant for the Centre; and
- (l) comply with any reasonable direction made by the Manager about the acceptable sound level limits in the Centre.

### 7.2 Rights of the Manager

The Client must comply with any reasonable request or direction given to it or made by the Manager under this clause 7.2.

#### 7.2.1 Request for documents

The Manager can ask the Client to produce, whether before, during or after the Hiring Period, evidence that it has obtained all relevant or necessary permits, approvals, licences, consents and authorities for the Event.

#### 7.2.2 Directions by the Manager

The Manager can make or give to the Client any direction which, in the opinion of the Manager, is reasonable or necessary to ensure that the Client and the Event complies with:

- (a) this Hiring Agreement;
- (b) any relevant or applicable legal requirements;
- (c) any permit, approval, licence, consent or authority which applies to the Event Facilities or the Centre;
- (d) any permit, approval, licence, consent or authority which applies to, or is required for, the Event;
- (e) any applicable industry standards;
- (f) the Manager's policies and procedures; and
- (g) any direction of the Owner or the Manager (as applicable).

### 7.3 Emergency announcements

The Manager can make emergency announcements over any sound system and in-house video monitor system in the Centre at any time.

### 7.4 Client's responsibilities

The Client is responsible as occupier and user of the Event Facilities for:

- (a) anything done in or to the Event Facilities or the Centre by the Client or its Representatives or Delegates. For example, if this Hiring Agreement says that the Client must comply with a particular obligation, the Client must also ensure that its Representatives or Delegates also comply with that particular obligation. The Client must also ensure that its Representatives are continuously and properly supervised and under the direction and control of people approved by the Manager, such approval not to be unreasonably withheld. The Client must also ensure that all staff employed by the Client and the Client's Representatives meet the Centre's dress and presentation standards; and
- (b) anything constructed or brought into the Event Facilities or Centre for, or in relation to, the Event.

### 7.5 Responsibility for the Event

The Event and Event Fittings are at the sole risk of the Client. The Manager is not responsible for any damage to or theft from the Event or Event Fittings while in the Centre, except to the extent that such damage or theft was caused by the Manager's negligence.

### 7.6 Changes to the Event Facilities by the Manager

If, in the reasonable opinion of the Manager, the Event Facilities are inappropriate or inadequate for the Event, the Manager can (following reasonable discussions with the Client) change the Event Facilities to other facilities within the Centre for the purposes of this Hiring Agreement.

## 8. SECURITY SAFETY AND CONTROL

### 8.1 Safety obligations of the Client

The Client must:

- (a) comply with all applicable laws, regulations and requirements and directions of the Manager from time to time, including in respect of security and crowd control in the Centre and emergency situations such as emergency evacuation from the Centre;
- (b) not hinder or obstruct any member of the medical, police, fire, ambulance, first aid or other emergency services or any authorised security officers in the exercise of its duties or powers in or near the Centre;
- (c) maintain all passages in and exits from the Event Facilities free from obstruction and keep exits locked or unlocked as the Manager directs;
- (d) ensure that the public telephones, fire alarms and fire extinguishers in the Event Facilities are easily accessible;
- (e) not by any act or omission, damage the Event Facilities, the Centre or anything in them;
- (f) not do or bring into the Centre anything that, in the opinion of the Owner or the Manager, is dangerous, flammable, volatile, explosive, toxic, disorderly, noisome, offensive, immoral, unlawful or inconsistent with the purpose for which this Hiring Agreement was made or the purpose of the Centre;
- (g) not bring into the Centre any insect, animal or bird without the prior written approval of the Manager, acting in its sole discretion;
- (h) not bring any vehicles, equipment, objects or other items, including forklifts, into the Centre or the Event Facilities without the prior written approval of the Manager at its sole

discretion and in any event comply with all weight load specifications for the Centre or the Event Facilities;

- (i) make its Representatives available for any Centre induction procedures required by the Manager;
- (j) not do anything which may contaminate or pollute the Centre or its surrounding environment or any adjoining property;
- (k) advise the weight or floor loading, rigging and other requirements that may have a weight bearing impact on the floor surface or Centre structure;
- (l) acknowledge and comply with the non-smoking policy of the Centre;
- (m) comply with, and procure compliance by all of its Representatives with, any applicable laws relating to hygiene and food safety;
- (n) ensure that it, and its Representatives, use and/or serve (as applicable) alcohol responsibly in accordance with relevant legislation;
- (o) not film or record within the Event Facilities or within or around the Centre without prior approval of the Manager (the Client acknowledges that any filming or recording may require execution of a location release agreement);
- (p) ensure that all of its electrical equipment is tested and is legally compliant prior to connection to power points within the Centre. All electrical tagging must be completed by the Client, otherwise the Manager reserves the right to undertake such electrical tagging using a contractor of its choice at the Client's cost; and
- (q) be responsible for the safe handling and security of cash it receives and/or other valuables at its Event.

### 8.2 Event Safety Guidelines

The Client acknowledges that it has read and understood the Te Pae Christchurch Event Safety Guidelines available for download from the Centre's website at <https://tepae.co.nz>. The Client must also ensure that its Representatives have read and understood the Te Pae Christchurch Event Safety Guidelines. A hard copy of the guidelines is available on request.

### 8.3 Client's responsibility for safety

The Client is responsible for the safe conduct of the Event and the safe and proper use of the Event Facilities.

### 8.4 Workplace Health and Safety

- (a) Each party must comply at all times with all applicable laws (including the HSW Act and all regulations and approved codes of practice under that Act) relating to occupational or workplace health and safety including in relation to obligations to consult, co-ordinate and cooperate with each other regarding matters which both parties have duties in relation to.
- (b) The Client must comply with:
  - (i) any occupational health and safety procedures required by the Owner and/or the Manager from time to time; and
  - (ii) the Client's own occupational health and safety procedures where the standard of those procedures are equal to or greater than the procedures under clause (b)(i) or where no procedure is advised.
- (c) The Owner and/or the Manager may at any time:
  - (i) require the Client to provide documentary evidence of the Client's occupational health and safety systems or safety management plan;

- (ii) conduct an audit of the Client's workplace health and safety systems; or
  - (iii) require the Client to remedy any breach of any relevant obligations under this Hiring Agreement or at law.
- (d) The Client must notify the Manager:
- (i) Immediately about any Notifiable Event (as defined in the HSW Act) that occurs at the Centre at any time and, as soon as practicable afterwards, provide written details of the Notifiable Event as well as the steps taken to eliminate or minimise the risks to health and safety associated with the Notifiable Event.
  - (ii) As soon as practicable about any near miss incident or event that could have resulted in a serious harm accident.
  - (iii) As soon as practicable about any fact, matter, thing or circumstance that has the potential to be or to cause any accident, danger, risk or hazard to the Centre or any person using the Centre of which it becomes aware and which it does not reasonably understand the Manager to already be aware of.
- (e) The Client must fully co-operate and assist with any investigation into any incident or event and this includes with any independent person appointed by the Manager and/or the Owner to carry out an investigation. Where the Client completes an investigation into any incident or event it will promptly provide the Manager with a copy of the investigation report.

### 8.5 Undertaking construction work

#### 8.5.1 Obligations relating to Temporary Construction Work

To the extent that any work which the Client intends to perform at the Centre includes building, erecting or constructing any structure, plant or other thing ("Temporary Construction Work" in this clause), the Manager, subject to a written notice to the contrary by the Manager, authorises the Client to have management and control of each workplace at which the Temporary Construction Work is to be carried out and to discharge its duties as a PCBU under the HSW Act and all regulations and approved codes of practice under that Act until completion of that work.

Subject to a written notice to the contrary by the Manager, the Manager appoints the Client as the primary PCBU (or its contractor as identified in writing by the Client and approved by the Manager) in respect of the Temporary Construction Work and authorises the Client (or its approved contractor) to have management and control of each workplace at which the Temporary Construction Work is to be carried out and to discharge the duties of a PCBU under the HSW Act.

The Client warrants to the Manager any party that undertakes Temporary Construction Work (including itself, any sub-contractor or other person) will be sufficiently skilled, qualified and experienced to undertake the work safely having regard to the size, scale and location of the works.

The Client must promptly notify the Manager of any risks to the Owner, the Manager, their respective Representatives and/or visitors to the Centre created by the Temporary Construction Works. The Client is responsible for ensuring there is a suitable process for consulting, co-ordinating and co-operating with all other PCBUs (including the Owner) in respect of risks arising from the Temporary Construction Works which the other PCBUs also have duties in respect of.

The Client must either comply with or procure the compliance (as applicable) of any party it nominates to act as contractor with the duties under this clause and as a PCBU.

The Client must ensure it or its contractors (as applicable) are authorised or licensed (as required by all applicable laws including the HSW Act and all regulations and approved

codes of practice under that Act) to carry out any work at the workplace and comply with any conditions of such authorisation or licence and have prescribed qualifications or experience. The Client must not direct or allow a person to carry out work or use plant or substances at a workplace unless the requirements of this clause are met (including any requirement to be authorised, licensed, qualified or supervised).

The Client must if requested by the Manager or required by any applicable laws including the HSW Act and all regulations and approved codes of practice under that Act, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work, health and safety (as the case may be) to the satisfaction of the Manager before the Client commences Temporary Construction Work.

### **8.6 Client's security**

The Client acknowledges that all security personnel will be provided by the Manager pursuant to clause 10.5, unless otherwise agreed by the Manager. Where the Event has specific and bespoke security requirements (including pursuant to clause 8.1(q)) the Client may be permitted to arrange such specific and bespoke security subject to prior approval of the Manager, compliance with any direction of the Manager including as to the qualifications, training and venue induction of security personnel and such security personnel being licensed and of a high industry standard.

### **8.7 Refusal of admission by the Manager**

The Manager and its Representatives may refuse admission to, or cause to be removed from, the Event Facilities or the Centre, any person whose behaviour is objectionable, disorderly, improper or undesirable. The Manager may refuse the Client and any of its Representatives entry into the Centre where the Client has not satisfied its payment obligations in accordance with this Hiring Agreement.

## **9. FOOD AND BEVERAGE**

Only the Manager and its Representatives are entitled to (and the Client will not) bring into or provide or sell in the Event Facilities or the Centre, food and beverages (whether alcoholic or not).

However, if the nature of the Event is such as to require it, exhibitors at an Event conducted by the Client may distribute free of charge food samples to visitors or guests at the Event with the prior written approval of the Manager (which will not be unreasonably withheld).

If no food and beverage services have been required in accordance with clause 3.1, then the Manager can, in its discretion or if requested by the Client in writing, provide public catering facilities at the Event.

## **10. SERVICES PROVIDED BY THE MANAGER FOR THE EVENT**

Unless otherwise specified in Part A, the following services will be exclusively provided by the Manager at the Client's cost (as required for its Event) and will be charged either as an inclusion of the Hiring Fee under clause 10.8 or as an additional cost (as specified in Schedule 1 of Part A):

### **10.1 Audio Visual Services**

#### **10.1.1 Notice period**

The Client must advise the Manager of its audio visual requirements for the Event (if any) not less than 20 Business Days before the start of the Hiring Period.

### 10.1.2 Exclusive supply by the Manager

The Manager and its Representatives will be the exclusive suppliers of audio visual equipment and services for the Event unless:

- (a) the Manager is unable to supply the specified equipment or equivalent equipment; or
- (b) the Event is, in the opinion of the Manager, a genuine touring show with its own audio visual equipment (a touring show is deemed to be one where the equipment is transported in its entirety from one venue to another with no more than 3 days between shows). In this event the Manager will supply any audio visual equipment which is not actually touring.

### 10.1.3 Installation and removal

All audio visual equipment supplied by the Manager will be installed and removed by or under the supervision of the Manager's representatives.

### 10.1.4 Client obligations

The Client must:

- (a) ensure that any audio visual equipment used by the Client that was not supplied by the Manager is compatible with the Centre's audio visual systems, is in sound working order and condition and complies with any applicable specifications and standards; and
- (b) employ audio visual technician(s) for its Event as more particularly determined by the Manager in the Event Order. The Client must also ensure that all audio visual technicians employed by the Client and the Client's representatives meet the Centre's dress and presentation standards.

## 10.2 Rigging services

The Manager will be the exclusive provider of all rigging services and equipment at the Centre, for the Event. The Client must ensure that any rigging within the Event Facilities is performed by the Centre's licensed rigger.

## 10.3 Telecommunication and data connection services

The Manager will be the exclusive provider of all IT and telecommunications services at the Centre.

## 10.4 Cleaning services

The Manager will be the exclusive provider of cleaning services at the Centre.

## 10.5 Security services

Subject to clause 8.1(q) the Manager will be the exclusive provider of security services at the Centre.

## 10.6 Loading dock services

The Manager will be the exclusive provider of all loading dock services and related services at the Centre.

## 10.7 Other services

All services provided as part of this clause 10 will be charged as Estimated Costs (or Final Costs as appropriate). For the avoidance of doubt, if the Client requires additional non-exclusive



services for its Event that are not stipulated within this clause 10 the Client shall liaise with the Manager in the first instance. Any contractors providing such additional services must have the prior approval of the Manager.

### 10.8 Inclusions

All services which are provided to the Client as an inclusion within the Hiring Fee are detailed within Schedule 2 to Part A. All excluded services (being services not detailed in Schedule 2 to Part A) will be payable as additional Estimated Costs (or Final Costs as appropriate) to the extent those services are required by the Client for its Event.

## 11. PUBLICITY AND INTELLECTUAL PROPERTY

### 11.1 Client's obligations

The Client must not:

- (a) display or distribute any posters, signs, advertising or other written, printed, electronic or digital material in (or in connection with) the Centre, other than inside the Event Facilities, without the prior written approval of the Manager at its absolute discretion; or
- (b) use any logos, trade marks or other intellectual property rights owned by, or licensed to, the Owner and/or the Manager without the Manager's prior written consent. All intellectual property of the Owner and the Manager will at all times remain the property of the Owner or the Manager (as applicable).

### 11.2 The Manager's rights

The Manager is permitted to use the Client's logo for the purposes of promoting the Event, in accordance with the terms of this Hiring Agreement only.

### 11.3 Tickets/invitations for Events which are not 'Ticketed Events'

It is acknowledged that the Client may issue tickets or invitations for its Event which are not available for purchase by the general public. In such circumstances the Event will not be classed as a Ticketed Event. Notwithstanding the foregoing and without prejudice to clause 11.1, the Manager will have the right to approve the look/feel/content of all 'tickets', invitations or similar items produced by the Client in relation to its Event.

## 12. CANCELLATION OR POSTPONEMENT BY CLIENT

### 12.1 Notice of Cancellation

The Client must provide written notice of cancellation to the Manager if at any time it wishes to cancel all or part of the Event or no longer requires all or part of the Event Facilities (a 'Cancellation Notice').

### 12.2 Rights of the Manager upon cancellation

#### 12.2.1 Entitlement to amounts paid

Without prejudice to clause 4.2, where the Event is cancelled by the Client (or cancelled by the Manager as a result of the Client's default), the Manager is entitled to all amounts paid by the Client to the Stakeholder as at the date of cancellation, in accordance with Schedule 1 of this Hiring Agreement.

### 12.2.2 All rights reserved

Nothing in this clause 12 shall affect any other rights the Manager has under this Hiring Agreement or otherwise, including the right to claim against the Client for any costs incurred by the Manager in relation to the Client's Event which are not included in the amount received by the Manager pursuant to Schedule 1.

### 12.3 Postponement

For the avoidance of doubt, any postponement of the Event shall be treated as a 'cancellation' in accordance with this clause 12.

## 13. DEFAULT AND EARLY TERMINATION OF THIS HIRING AGREEMENT

### 13.1 The Manager has option to remedy defaults

Without prejudice to any of the Manager's other rights under this Hiring Agreement, if the Client does not comply with any requirement of this Hiring Agreement, the Manager may:

- (a) give notice to the Client requiring the Client to rectify the default within a reasonable time; and/or
- (b) rectify the default at the expense and risk of the Client and the Client must pay to the Manager on demand any costs reasonably incurred by the Manager in so doing.

### 13.2 Termination by the Manager

The Manager can end this Hiring Agreement by giving notice to the Client if any of the following circumstances arise:

#### 13.2.1 Default in payment and/or financial viability of the Client

The Manager can end this Hiring Agreement if:

- (a) any money payable by the Client to the Manager is not paid when due;
- (b) the Client dies or becomes bankrupt or legally incapable of managing its affairs;
- (c) the Client is insolvent or enters into any compromise or arrangement with its creditors; or
- (d) an administrator, receiver, provisional liquidator, liquidator or controller is appointed to the Client or any of its assets or an equivalent appointment is made in another jurisdiction.

#### 13.2.2 Non-compliance

The Manager can end this Hiring Agreement if the Client does not comply with:

- (a) a requirement of this Hiring Agreement that, in the reasonable opinion of the Manager, is material;
- (b) a notice given to the Client by the Manager under clause 13.1(a) requiring it to remedy a default (including failure to adequately remedy);
- (c) any relevant or applicable legal requirements;
- (d) any permit, approval, licence, consent or authority which applies to the Event Facilities or the Centre;
- (e) any permit, approval, licence, consent or authority which applies to, or is required for, the Event;
- (f) any applicable industry standards; or

- (g) any request or direction made or given by the Owner or the Manager under this Hiring Agreement.

### 13.2.3 Damage, injury or breach

The Manager can end this Hiring Agreement if it reasonably considers that the use or continued use of the Event Facilities by the Client is likely to:

- (a) cause damage to the Event Facilities or the Centre;
- (b) cause damage to the property of any third party;
- (c) cause injury to any person;
- (d) cause material damage to the reputation or goodwill of the Centre, the Owner or the Manager; or
- (e) breach any relevant or applicable legal requirements.

### 13.2.4 Act or omission

The Manager can end this Hiring Agreement if:

- (a) the Client commits an act or omission, which results, or is likely to result, in the Owner or the Manager suffering loss or damage;
- (b) in the reasonable opinion of the Manager, the description of the Event (including the addition of or changes to, speakers or performers) substantially changes from that given by the Client in this Hiring Agreement without the prior written approval of the Manager; or
- (c) in the opinion of the Owner or the Manager, the Event is or becomes offensive, illegal, detrimental to the reputation or public perception of the Owner, the Manager or the Centre, or contravenes acceptable levels of public decency.

### 13.3 Rights of the Manager on termination

If the Manager ends this Hiring Agreement under clause 13.2, then in addition to any other rights the Manager has:

- (a) without prejudice to clause 4.2, the Manager may receive any Deposit or other monies paid to the Stakeholder by the Client in accordance with Schedule 1 of Part A; and
- (b) the Client must pay any unpaid balance of the Hiring Fee and Estimated Costs or Final Costs to the Manager to the extent such costs have been incurred by the Manager.

### 13.4 Interest

Any money due but unpaid to the Manager under this Hiring Agreement may (at the Manager's election) be subject to interest calculated daily and compounded monthly on the ASB Corporate Overdraft rate plus 2% per annum.

### 13.5 Debt recovery costs

The Client must fully reimburse the Manager for any and all costs reasonably incurred in connection with the Manager taking steps seeking to recover money due to it under this Hiring Agreement.

### 13.6 Novation

If the Manager's agreement with the Owner to operate the Centre is terminated for any reason, the Client agrees to novate this Hiring Agreement to the new operator of the Centre, or any other party discharging a similar role, as nominated by the Manager or the Owner.

### 14. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

#### 14.1 No representations about suitability

Neither the Owner nor the Manager warrants or represents that the Centre, its facilities or equipment will be adequate or fit for the purposes of the Client or the Event. It is the responsibility of the Client to determine the suitability of the Centre, its facilities and equipment.

The Client acknowledges and warrants that it has had the opportunity to inspect the Event Facilities and has either:

- (a) inspected the Event Facilities and is satisfied with them; or
- (b) decided not to inspect the Event Facilities.

#### 14.2 General exclusions

Any terms, conditions, liabilities or warranties not appearing in this Hiring Agreement are expressly excluded, other than those that by law cannot be excluded.

#### 14.3 Client warranties

- (a) The Client hereby represents, warrants and undertakes to the Manager that:
  - (i) it has full power and authority to enter into, and to exercise its rights and perform its obligations under this Hiring Agreement;
  - (ii) the entry into and the exercise of its rights and the performance of its obligations under this Hiring Agreement will not constitute any breach of any of its contractual obligations or any applicable law nor conflict with its constitutional documents (if any); and
  - (iii) it shall not knowingly make any political statement or other statement or representation or take any action which is any way criticising, damaging or detrimental to the reputation of the Owner, the Manager or any of their respective Representatives and affiliates.
- (b) Every person who signs this Hiring Agreement, or any notice given or required under this Hiring Agreement, on behalf of the Client, represents and warrants that they are duly authorised to do so on behalf of the Client.

### 15. GOODS AND SERVICES TAX

The following terms and conditions relating to GST apply to the Hiring Agreement:

- (a) Unless expressly stated to the contrary, all amounts referred to in this Hiring Agreement are expressed exclusive of GST.
- (b) In addition to the consideration otherwise expressed in this Hiring Agreement as payable in respect of a Taxable Supply made by the Manager under this Hiring Agreement, the Client must pay to the Manager the amount of GST which the Manager is obliged to pay in respect of that Taxable Supply under the GST Act.
- (c) The Client must pay to the Manager the GST contemplated in clause 15(b) on receipt of a Tax Invoice in relation to the relevant Taxable Supply.
- (d) If any amount to be paid by the Client to the Manager in connection with this Hiring Agreement is calculated by reference to an expense or cost of the Manager, the amount of the expense or cost for the purpose of calculating the payment is the relevant expense or cost reduced by the amount of Input Tax Credits (if any) to which the Manager is entitled in respect of the amount.

- (e) The Client hereby indemnifies the Manager, and will keep the Manager indemnified, in respect of any and all damages or costs (including, but not limited to, interest and penalties) directly or indirectly arising from, or caused by, any failure by the Client to pay any amount as and when required by this clause 15.

## 16. FORCE MAJEURE

### 16.1 Effects of Force Majeure

If there is an event of Force Majeure, then:

- (a) this Hiring Agreement will not end, but the Manager and the Client will be released from further performance of its obligations under this Hiring Agreement (other than any obligation to pay money that fell due on a date prior to the Force Majeure Event) from the time when the event of Force Majeure happens;
- (b) the Manager will be entitled to receive from any Deposit or other monies paid by the Client to the Stakeholder, the amount of any costs, charges or expenses actually incurred by the Manager before the event of Force Majeure happens, less any amount recovered by the Manager on account of successful insurance claims; and
- (c) neither the Owner nor the Manager will be liable to the Client for any loss or damage, either direct or indirect, which may be suffered or incurred by the Client.

### 16.2 Definition of Force Majeure

An event of Force Majeure includes:

- (a) war (whether declared or undeclared), revolution, act of public enemies or acts of terrorism;
- (b) riot, blockade, insurrection or civil commotion;
- (c) strike, lockout, stoppage, ban or limitation on work, restraint of labour or other industrial dispute;
- (d) act of God;
- (e) epidemic, disease or public health alert;
- (f) fire, flood, earthquake, storm or cyclone;
- (g) malicious damage, smoke or explosion;
- (h) sabotage, bomb threat or other threats of violence;
- (i) act or restraint of any governmental or semi-governmental or other public or statutory authority;
- (j) judgments, rulings, decisions or enforcement actions of any court or tribunal having jurisdiction;
- (k) breakdown of any facilities or machinery or unavailability of essential equipment, supplies or services;
- (l) cessation of or interruption to water or electricity supply; and
- (m) any other cause or event not reasonably within the control of the Manager or the Owner which may affect in whole or in part the hiring and/or obligations and/or liabilities of either party to this Hiring Agreement.

### 16.3 Notice

The party who wishes to claim the benefit of this clause as a result of Force Majeure must notify the other party as soon as reasonably possible. The notice must state:

- (a) the nature of the circumstances giving rise to Force Majeure;
- (b) the extent of that party's inability to perform under this Hiring Agreement;
- (c) the likely duration of that non-performance; and
- (d) what steps are being taken to minimise the impact of the Force Majeure event on their obligations.

### 16.4 Exception for self-induced events

However, any event which (but for this clause) would be an event of Force Majeure, which happens or is brought about (directly or indirectly) as a result of any act or omission of the party claiming the benefit of this Force Majeure clause will not be taken to be an event of Force Majeure for the purposes of clauses 16.1 or 16.2.

## 17. PRIVACY ACT COMPLIANCE

### 17.1 Privacy Act definitions

For the purpose of this clause, 'personal information' and "information privacy principle' have the same meaning as in the Privacy Act 2020 ('the **Act**').

### 17.2 Compliance with the Privacy Act

Each party must:

- (a) comply with the Act and each information privacy principle, particularly in relation to the collection, use, storage and disclosure of personal information in connection with the Event;
- (b) comply with any other reasonable principles or guidelines, relating to the handling of personal information, notified in writing, from time to time, by one party to the other;
- (c) where requested in writing, provide reasonable assistance to the other party in relation to its compliance with the Act and each information privacy principle; and
- (d) ensure that it holds all necessary consents under the Privacy Act 2020 to provide to the other party any personal information (as defined in the Privacy Act 2020) that it provides to the other party.

## 18. NOTICES

### 18.1 Basic requirements for notices

Any notice or other communication referred to in this Hiring Agreement must be:

- (a) in writing and in English;
- (b) addressed to the recipient at the addresses referred to in clauses 18.2.1 and 18.2.2; and
- (c) signed by the person giving the notice or sending the communication, or an authorised representative of that person.

### 18.2 Acceptable forms of notice under this Hiring Agreement

#### 18.2.1 Notices to the Client

Any notice or other communication to the Client referred to in this Hiring Agreement can be given by:

- (a) delivery, to the address set out in Part A; or
- (b) email, to the address provided in Part A.

#### 18.2.2 Notices to the Manager

Any notice or other communication to the Manager referred to in this Hiring Agreement can be given by:

- (a) email, to Mr Ross Steele at [rsteale@tepae.co.nz](mailto:rsteale@tepae.co.nz); or
- (b) physical delivery or post to the Centre, marked for the attention of Mr Ross Steele, unless otherwise notified by the Manager in writing.

### 18.3 Changing address for service

The Manager or the Client can change its address for service by giving written notice of the change to the other.

### 18.4 Effective of receipt

A notice given in accordance with this clause 18 takes effect:

- (a) in the case of hand delivery, at the time of actual delivery to the recipient's address;
- (b) if sent by email, at the time and date at which the sender's email system records that the email was successfully delivered to the recipient (provided that an automated "out of office", deliver failure or similar message is not received); or
- (c) if sent by post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside of New Zealand),

but if delivery, receipt of transmission is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

## 19. GENERAL

### 19.1 Joint and several liability

If the Client consists of more than one person, then its liability under this Hiring Agreement will be a joint liability of all of them and the liability of each of them severally.

### 19.2 Severance

If any clause of this Hiring Agreement is, or is found to be, illegal, invalid, void or voidable, the legality or validity of the remainder of this Hiring Agreement will not be affected and will continue in full force and effect.

### 19.3 Assignment

The Client must not assign any rights or obligations under this Hiring Agreement. The Manager may assign its rights and obligations under this Hiring Agreement to any other party that has the right to operate the Centre.

### 19.4 Successors

Reference to a party to this Hiring Agreement includes any executor, administrator or successor in title of that party.

### 19.5 Exercise of rights

A single or partial exercise or waiver by the Manager of any right it has under this Hiring Agreement will not prevent any other exercise of that right, or the exercise of any other right, by the Manager.

### 19.6 Remedies are cumulative

The rights provided under this Hiring Agreement are cumulative and not exclusive of any other rights provided by law.

### 19.7 Governing law and jurisdiction of courts

This Hiring Agreement is governed by the law that applies in New Zealand.

The Manager and the Client irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand and waive any objection they may have to the jurisdiction of those courts.

### 19.8 Warranty of authority

Every person who signs this Hiring Agreement, or any notice given or required under this Hiring Agreement, on behalf of the Client, by so doing represents and warrants that he or she is duly authorised so to do on behalf of the Client.

### 19.9 Dispute resolution

- (a) A party claiming that a dispute has arisen out of or in relation to this Hiring Agreement must notify the other party.
- (b) Within 3 Business Days after a notice is given under sub-clause (a), the General Manager (or equivalent) of each of the parties must meet together and endeavour to resolve the dispute within that 3 Business Day period or such later period as agreed between the parties.
- (c) If the dispute is not resolved in accordance with sub-clause (b), the dispute must be referred:
  - (i) for mediation, in accordance with the Standard Mediation Agreement promulgated by the Resolution Institute or if there is not a Standard Mediation Agreement promulgated by that organisation at the time of the dispute the mediation will be conducted in a manner determined by the mediator (except that the mediation will be conducted on a without prejudice basis); and
  - (ii) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current President of the New Zealand Law Society or his or her nominee.

## 20. CONFIDENTIALITY

### 20.1 Confidentiality of agreement and information obtained

- (a) The Manager and the Client acknowledge and agree that:
  - (i) this Hiring Agreement and its provisions and substance;
  - (ii) all information relating to the Owner, the Manager, the Centre, the Event, or to the operation of the Centre;



- (iii) all information received by the Client in performing the terms of this Hiring Agreement; and
- (iv) all information supplied by the Client to the Manager under or in relation to this Hiring Agreement,

is information of a confidential nature and will be received, supplied and communicated in circumstances of confidence, ("**Confidential Information**").

- (b) Each party will receive such information on a commercial in confidence basis.
- (c) Each party will to the fullest extent possible, preserve confidentiality.

### 20.2 Parties to maintain confidentiality

The Manager and the Client must not disclose any of the Confidential Information to any third party without first obtaining the consent in writing of the other party, except to the extent that:

- (a) the disclosure is required by law or allowed under clause 20.4;
- (b) the disclosure is made by a party to a lender to the party for the purpose of obtaining finance;
- (c) the disclosure is made by either of the parties to its legal or accounting advisers, or a related company;
- (d) the disclosure is necessary to perform the Manager's obligations under this Hiring Agreement;
- (e) the information is or has become public knowledge other than as a result of an unauthorised disclosure by either of the parties; or
- (f) the disclosure is necessarily made by the Client or the Manager in order to comply with any statutory, reporting, or disclosure requirements binding upon it.

### 20.3 Acknowledgment

Each party acknowledges that:

- (a) it is aware that any breach of this clause 20.3 will result in a party suffering loss, for which damages may not be an adequate remedy;
- (b) the disclosure of Confidential Information to any third party in breach of this clause 20.3 will prejudice the future supply of Confidential Information; and
- (c) in the event of a suspected, anticipatory or actual breach of this clause 20.3 or any obligation of confidentiality under this agreement, the parties are entitled to seek and obtain injunctive relief or specific performance;

### 20.4 Disclosure by the Owner

Notwithstanding the provisions of this clause 20.4, the Client acknowledges and agrees that:

- (a) the Manager may disclose to the Owner, certain Event related information and that such information may include Confidential Information of the Client;
- (b) Confidential Information of the Client provided to the Owner by the Manager is provided on the understanding that such information is commercial in confidence information of the Client; and
- (c) use and disclosure of Confidential Information of the Client may be required by law (including under the Official Information Act 1982), Crown or parliamentary convention.

### 20.5 Continuing obligation

The obligations contained in this clause 20.5 will remain in full force and effect after the termination in whole or in part of this Hiring Agreement and will not be deemed to be waived, merged or extinguished on such termination.

## 21. TICKETED EVENTS

### 21.1 The Manager as Agent

The Manager may elect to undertake and manage all ticketing services (using its nominated ticketing provider, as part of its exclusive venue services) for Ticketed Events as agent for the Client, at its absolute discretion. The costs and further details in respect of ticketing arrangements will be governed by Part A of this Hiring Agreement and this clause 21.

### 21.2 Notices applying to Ticketed Events

At least 25 Business Days before the Client wishes to start selling or distributing tickets, the Client must provide the Manager with details required by the Manager in relation to those tickets, including the number of tickets issued, the exact starting time and approximate finishing time for each day of the Event and (where relevant) for each performance.

### 21.3 Ticketing fees

Where applicable the Manager will charge the Client ticketing fees in accordance with current rates of its nominated ticketing sub-agent, as more particularly set out in Part A.

### 21.4 Retention and offset of money

The Manager is entitled to keep and deduct from any money it receives from ticket sales:

- (a) any agency fees, service fees or booking fees in respect of the sale of tickets; and
- (b) any amounts which are due and owing to the Manager under this Hiring Agreement from time to time.

### 21.5 Calculation of Ticket Commission

If a ticket commission is applicable, as more particularly detailed in Part A of the Hiring Agreement, it will be calculated on total actual ticket receipts (including GST) less:

- (a) any refunds processed by the Manager; and
- (b) booking fees and credit card charges in respect of sales and admissions to the Event.

Ticket commission will be calculated as part of Final Costs and deducted from ticket sales in accordance with clause 21.4.

### 21.6 Ticket Refunds

The Manager can in its reasonable discretion:

- (a) refund to a purchaser all or part of the price of a ticket; or
- (b) give a purchaser a replacement ticket to the Centre for any performance in the Event to any day of the Event or to any other event to be staged at the Centre.

A refund may include any agency fees, service fees and telephone booking fees paid by the purchaser and the Client must pay to the Manager on demand the total cost to the Manager of any refund given.

### 21.7 Event or performance cancellation

If a Ticketed Event, or performance to which tickets relates as part of a Ticketed Event, is cancelled (including a postponement) for any reason:

- (a) the Client must immediately arrange an announcement to the public and schedule advertising advising of the cancellation to a level approved by the Manager;
- (b) unless otherwise advised, full ticket refunds (including system booking fees, agents' fees and any booking, subscription or any other service fees) will be available to ticket-holders from the point of sale only;
- (c) the Client must pay to the Manager on demand an amount equal to:
  - (i) the total system booking fees income from the sale of tickets for the Event or performance at the date of cancellation;
  - (ii) any costs incurred by the Manager in facilitating the refunds of tickets or advertising the cancellation; and
  - (iii) the amount of any shortfall in the ticket sales proceeds (occurring for any reason) of the amount required to satisfy full ticket refunds as required from time to time.