



# H3 General Terms & Conditions of Venue Hire

For use in relation to Claudelands, Hamilton Gardens, FMG Stadium Waikato and Seddon Park

Version 2.2

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## DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS

Unless the context otherwise requires the following words have the following meanings:

**"Agreed Use"** means the specific use for which the Hirer is able to use the Hire Areas as set out Schedule A.

**"Agreement"** means the agreement relating to hiring the Hire Areas for the Hire Period which comprises Schedules A-F, any other schedules, plans and annexures attached to them together with these General Terms and Conditions of Hire and any policies, procedures, guidelines and rules set out by the Operator relating to the use, occupation, services, safety and security of the Venue.

**"Artist"** means, if applicable, each and any of the Artist(s) named in Schedule A of this Agreement.

**"Bond"** means the bond (if any) set out in Schedule A.

**"Business Day"** means any day of the week other than Saturday, Sunday, or any public holiday or regional holiday observed in Hamilton.

**"Caterer"** means the Operator's caterer to the Venue from time to time.

**"Common Areas"** means the areas shown coloured in green on the Venue Site Plan which the Hirer is authorised to use in common with the Operator and any other authorised user of the Venue.

**"Consumables"** means utilities used or consumed by the Hirer or provided to the Hirer for the Event or consumed as a result of the Event including power, water, gas, telephones and data.

**"Consumer Price Index"** means the Consumer Price Index (All Groups) as calculated by the Department of Statistics and published quarterly (or such replacement index (as reasonably nominated by the Operator) of the Consumer Price Index (All Groups) should that index cease to exist).

**"Corporate Hospitality Packages"** means any special promotional packages to the Event which may include such extras as food and beverage provided in a corporate dining setting and preferential/exclusive seating rights.

**"Corporate Hospitality Revenue"** means all revenue generated from sale of Corporate Hospitality Packages to the Event.

**"COVID-19 Event"** means an event where the New Zealand Government or relevant health authority at any time issues or changes any order or guidance or state of emergency (whether under the Health Act 1956 or Civil Defence Act 2002 or other statutory authority) prohibiting or limiting mass gatherings or otherwise rendering it impossible or impracticable to hold the Event on the Event Day due to the COVID-19 pandemic or other risk to public health, or where the parties agree, such agreement not to be unreasonably withheld or delayed, that there is good reason to believe or reasonably anticipate that it will not be possible or practicable to hold the Event due to likely or probable orders, guidance or changes thereto in respect of measures relating to the COVID-19 pandemic or other risk to public health.

**"Credit Card Surcharge"** means any surcharge payable by the Hirer on credit card payments made under this Agreement and being at the rate determined by the Operator from time to time.

**"Due Date"** means the due date for any payment as specified in Schedule A.

**"Duty Manager"** means the Operator's representative on duty at the Venue during the Hire Period.

**"Estimated Attendees"** means the estimated number of Patrons attending the Event as detailed in Schedule A.

**"Event"** means the event or activity to be staged by the Hirer at the Venue using the Hire Areas.

**"Force Majeure"** means any event or circumstance beyond the reasonable control of the party claiming the existence of such event or circumstance which that party is unable to prevent or overcome by the exercise of reasonable care and at a reasonable cost, and includes but is not limited to:

- a) Act of God, fire, earthquake, storm, flood or landslide;
- b) Explosion or public mains water or electrical supply failure;
- c) Sabotage, riot, civil disturbance, insurrection, epidemic, natural or civil emergency (whether in fact or law), act of terrorism or act of war (whether declared or not);
- d) Unavoidable accident, but does not include:
  - (i) any labour strikes, lockouts or unrest by any employees or independent contractors of the Hirer; or
  - (ii) lack of funds for any reason.

**"General Terms and Conditions"** means the general terms and conditions applying to this Agreement.

**"Gross Revenue from Ticket Sales"** means, in relation to a Public Event, the total revenue received by the Ticketing Agent on behalf of the Hirer in relation to ticket sales for the Event being the ticket price less:

- a) GST; and
- b) Inside Charges; and,
- c) any credit card fees charged by the Ticketing Agent; and,
- d) any printing charges payable to the Ticketing Agent, but excluding revenue (if any) received by the Ticketing Agent on account of tickets sold as part of a Corporate Hospitality Package. At its sole discretion the Operator may permit other deductions to be made and, if it does so:
  - a) the additional deductions will be stated in Schedule B; and
  - b) the definition of Gross Revenue from Gross Ticket Sales detailed in Schedule B shall take precedence over the definition in these General Terms and Conditions.

**"Guarantor"** means the person(s) (if any) named as Guarantor in Schedule A.

**"H3"** means the Operator.

**"H3 Representative"** means any person to whom authority is delegated by the Operator with respect to conducting any matter with respect to a Venue on behalf of the Operator, including, but not limited to, the Duty Manager.

**"Hire Area(s)"** means those areas within the Venue or any area adjacent to the Venue to be hired or used by the Hirer either exclusively or in common with others, as detailed in the Venue Site Plan, and includes any common areas that the Operator allows the Hirer to use for the purposes of access to and egress from the Hire Areas or that are part of the facilities at the Venue that are made available for the Hirer's use such as, without limitation, toilets, grounds or car parks.

**"Hire Period"** means the period specified in Schedule A.

**"Hirer"** means the person named as the Hirer in Schedule A where the context requires and includes:

- a) those persons for whom the Hirer is responsible, being, by way of example only the Hirer's Representatives, any Artists, employees, agents, volunteers, contractors, exhibitors, promoters, invitees, Patrons, performers, participants;
- b) the Hirer's successors and assigns.

**"Hirer's Publications"** means all promotions, advertising, signage and other like materials, tickets, broadcasting, television, film, electronic media or other publications produced by or on behalf of the Hirer related to the Event.

**"Hirer's Representatives"** mean those persons nominated in writing by the Hirer with authority to make arrangements on behalf of the Hirer with the Operator.

**“Impact Event”** means any event specified as an Impact Event in Schedule A.

**“Inside Charges”** has the meaning ascribed to that term in Part B of Schedule F.

**“Intellectual Property Rights”** means any and all trademarks, service marks, trade or business names, domain names, rights in get-up, rights in goodwill or to sue for passing-off, unfair competition rights, copyright (including rights in software), performers’ rights, database rights, design rights, patents, rights in confidential information and any other intellectual property rights whatsoever, in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent insights or forms of protection which new, or in the future, Subcontract in any jurisdiction.

**“Losses”** means, without limitation, any damage, cost, loss, claim, expense or liability of whatever nature (including the costs referred to in clause 14 together with default interest specified in clause 11(e)) incurred or sustained by a party by reason of the acts or omissions of the other party (including the breach of this Agreement by the first party) and, in relation to the Operator, means any damage, cost, loss, claim, expense or liability of whatever nature incurred or sustained by the Operator:

- a) as a result of the Hirer’s acts or omissions and/or the Hirer hiring the Venue; or,
- b) which is caused directly or indirectly by Patrons or other persons for whom the Hirer is responsible.

**“Major Event”** means an event which the Governor General by order in Council on the recommendation of the Economic Development Minister (after consultation with the Commerce Minister and the Sports Minister), declares to be a Major Event in accordance with the powers contained in Section 7 of the Major Events Management Act 2007.

**“Maximum Hire Fee”** means, where applicable, the maximum venue hire fee set out in Schedule A (but subject to adjustment in accordance with clause 11).

**“Merchandise”** means all promotional, branded or other goods or items whatsoever sold by the Hirer at the Venue during the Hire Period.

**“Merchandising Revenue”** means all revenue generated from the sale of Merchandise.

**“New Event Notification”** means the form(s) described as such by the Operator and the Ticketing Agent from time to time.

**“Operator”** means Hamilton City Council trading as H3, as represented under delegated authority by the relevant H3 Representative H3 Director and being the Operator of the Venue.

**“Pack-In”** means and refers to that part of the Hire Period during which the Hirer erects and installs any infrastructure needed for the Event in the Hire Area and during which the Hirer prepares the Hire Areas and the Venue for the Event.

**“Pack-Out”** means and refers to that part of the Hire Period after completion of the Event during which the Hirer must remove all of its Event infrastructure from the Hire Areas and the Venue.

**“Parties”** means the Operator, Hirer and any Guarantor(s).

**“Patron”** means a person attending the Venue for an Event.

**“Private Event”** means an event or activity not open to the general public.

**“Public Event”** means an event, or activity which is stated to be a Public Event in Schedule A being an Event which is open to the general public irrespective of whether a ticket is required for entry.

**“Reservation Fee”** means the non-refundable fee specified in Schedule A.

**“Service Charges”** means the total amount payable by the Hirer to the Operator for all Services and charges for catering (which are invoiced as part of the Service Charges) provided under this Agreement.

**“Services”** means those services provided by the Operator as set out in Schedule C (or as varied by the Parties in writing) which may include technical, security, supply of equipment, parking, cleaning, supply of employees and personnel and other services provided to the Hirer by the Operator or the Venue or their contractors.

**“Significant Event”** means an event determined by the Operator in its sole discretion as significant and will be based on such criteria as determined by the Operator, including but not limited to importance to the city, value, economic impact, reputation or attendance.

**“Ticketing Agent”** means the Operator’s ticketing agent from time to time.

**“Ticketing Terms and Conditions”** means the terms and conditions of the Ticketing Agent that the Hirer must comply with in relation to ticketing of the Event as set out in Part B of Schedule F.

**“Venue”** means the Venue specified in Schedule A.

**“Venue Hire Fee”** means the venue hire fee set out in Schedule A (but subject to adjustment in accordance with clause 11).

**“Venue Images”** means the name of the Venue and the Operator, the logo(s) of the Venue and the Operator, any trademarks (registered or unregistered) relating to the Venue and the Operator and images of the Venue and its facilities;

**“Venue Requirements”** means the venue requirements as set out in clause 8.

**“Venue Resource Consent”** means the resource consent granted to the Operator by Hamilton City Council under the operative District Plan/proposed District Plan.

**“Venue Site Plan”** means the plan showing the Hire Areas under this Agreement outlined in red and any common areas that the Operator will allow the Hirer to access outlined in green, being the plan attached as Schedule D to this Agreement.

## 2. INTERPRETATION

In the construction of this Agreement, unless a contrary intention appears:

- a) headings are for convenient reference only and shall be ignored in interpreting the provisions to which they refer or any other provision.
- b) words in the singular include the plural and vice versa.
- c) a reference to a person includes a partnership and a body, whether corporate or not.
- d) a reference to a Schedule is a reference to a Schedule to this Agreement.
- e) time shall be of the essence in any provision where a time or period is given.
- f) any reference to laws, legislation or statutory requirements includes a reference to regulations or any other form of delegated legislation or local body bylaws, codes or rules or to any legislation in substitution for, or in amendment of, the legislation or statutory requirements.
- g) words that are derived from a defined term shall have a similar meaning to the defined term.
- h) all references to dollar amounts and fees payable under this agreement are references to New Zealand Dollars.

## HIRE AND USE

### 3. AGREEMENT TO HIRE/HIRE OF HIRE AREAS AND COMMON AREAS ONLY

Subject to clause 6, the Operator licenses the Hirer to use the Hire Area, and the Hirer agrees to take on licence the Hire Area for the

Hire Period and otherwise on the terms and conditions set out in this Agreement.

The Hirer is not permitted to use the Hire Area or the Venue for the Event on any day(s) other those that specified as the Event Date in Schedule A.

The Hirer shall co-operate with other occupiers, users and hirers of the Venue and take all reasonable steps to avoid disruption or inconvenience to such persons.

#### **4. HIRE PERIOD/AGREEMENT TERM**

This Agreement may apply to more than one Event. Where the Hire Period is in respect of multiple Events, this Agreement will operate for every such Event specified in Schedule A but the Operator may change the prices included in this Agreement for any Event in accordance with clause 12.

Contractors engaged by the Hirer must operate within the Hire Period. Approval must be given by the Operator if any contractor engaged by the Hirer for the Hirer's Event requires access prior to the Pack-in Date or after the Pack-out Date (both specified in Schedule A). The Operator will ensure the Hirer has authorised any contractor who requires access prior to the Pack-in Date or after the Pack-out Date. The Operator may at its discretion increase the Venue Hire Fee if the Hirer's contractors require access prior to the Pack-in Date or after the Pack-out Date.

Deliveries prior to and after the Hire Period will only be accepted if prior approval has been granted by the Operator.

The term of this Agreement is the period commencing on the date this Agreement is executed by the Parties until the earlier of:

- a) the end of the Hire Period; or
- b) the date this Agreement is cancelled or terminated in accordance with its terms.

#### **5. USE OF THE VENUE/MAXIMUM CAPACITY OF VENUE/ESTIMATED ATTENDEES**

The Hirer shall not use or permit to be used the whole or any part of the Hire Area for any use other than for the Agreed Use.

The Hirer must advise the Operator of the Estimated Attendees for its Event no later than 4 days prior to the Event if:

- a) the Estimated Attendees was not recorded in Schedule A of this Agreement when it was originally entered into; or
- b) if the Estimated Attendees stated in Schedule A has materially changed since this Agreement was entered into; or
- c) if the Operator requires the Hirer to advise the Operator of the Estimated Attendees to enable the Operator to determine and allocate sufficient services for the Event (including allocating its own employee resource for the Event (if required)).

The Hirer acknowledges that, in certain circumstances, the Operator may make its own determination (on a reasonable basis) of the Estimated Attendees if the Hirer does not do so. The Hirer further acknowledges that the Operator may rely on the estimate provided by the Hirer or determined by the Operator and the Hirer agrees that, as applicable, the Operator shall allocate services (where relevant) for the Event based on the number of Estimated Attendees as detailed by the Hirer or determined by the Operator. Where applicable, the Hirer will be liable for the cost of the relevant services based on the greater of the actual number of attendees of the Event or the number of Estimated Attendees either notified by the Hirer or determined by the Operator pursuant to this clause provided that:

- the Operator will use reasonable endeavours to consult with the Hirer in relation to any additional services which the Operator has determined are required for the Event; and
- the Operator will, where applicable, charge such additional services at the same rate charged for other services related to the Event.

The Hirer must ensure that the number of people in the Hire Area(s) at any one time does not exceed the Maximum Capacity of Hire

Area(s) set by the Operator and stated in Schedule A, unless otherwise agreed in writing with the Operator. The Hirer will be liable for any fines, costs or expenses that the Operator may incur if this Maximum Capacity is exceeded.

#### **6. BOOKING CONFIRMATION & EVENT VENUES BOOKING POLICY**

No booking is confirmed until this Agreement is signed and the Hirer has paid the Reservation Fee. If the Event is a Public Event, tickets to the Event cannot be sold until the booking is confirmed.

The Operator may cancel any prospective booking at any time up until it has been confirmed but the Operator will consult with the Hirer prior to the Operator cancelling a prospective booking.

The Operator will act in accordance with the Operators' Event Venues Booking Policy a copy of which is available from the Operator on request.

#### **7. CANCELLATION**

The Hirer may cancel the Hirer's hire or part thereof at any time. Subject to clause 11(f), the Hirer, however, will not be entitled to a refund of the Reservation Fee and the Hirer may also be liable for the payment of charges pursuant to clause 11.

The Operator may cancel the Hirer's hire of the Venue at any time up to the date 11 months prior to the Pack-in Date by giving the Hirer written notice and, in such circumstances has no obligation to provide any reasons for cancellation. In this instance any Reservation Fee paid will be refunded in full.

#### **SETTING UP THE HIRER'S EVENT**

#### **8. PLANNING VENUE REQUIREMENT AND LIAISON WITH THE OPERATOR**

Immediately upon signing this Agreement, the Operator and the Hirer must work together to plan the Hirer's Event.

Where necessary or where required by the Operator (acting reasonably) the parties will work together to develop a Venue requirement plan. The Venue requirement plan may include among other things the Hirer's Health and Safety Plan for all activities undertaken within the Hire Period, a risk management plan, an evacuation plan, an event site plan, Panel / Equipment plan, a Pack-in and Pack-out plan, cleaning requirements, onsite traffic management plan and any other requirements that the Operator may reasonably require. The Operator shall approve the Venue requirement plan.

The Operator will maintain overall supervision and control of the Venue during the Hire Period so as to protect the Venue. The Operator's supervision and control does not limit or reduce the Hirer's responsibilities and liability under this Agreement.

The Hirer must immediately notify the Operator of any changes proposed to the plan approved above and any such changes are subject to approval by the Operator.

#### **9. OPERATOR'S COMMITMENT**

The Operator will:

- a) ensure the Venue is ready and set up in accordance with the Venue requirement plan prepared pursuant to clause 8 no later than one hour before the start of the Hire Period or as set out in the Venue requirement plan;
- b) for the Hirer's protection, only accept changes to the items set out in the Schedule C or the Venue requirement plan that are authorised by the Hirer's Representatives;
- c) respond to any written requests for change to the items set out in the Schedule C or the Venue requirement plan within two Business Days of receiving them;

#### **10. PREFERRED SUPPLIERS**

The Operator has entered into preferred supplier relationships with certain parties, particularly in relation to the provision of audio and audio visual equipment and services to the Venue. If the Hirer does not use the Operator's preferred suppliers, the Operator (unless it, in writing, waives this requirement) may appoint its preferred supplier to oversee any activities (the subject of a preferred supplier relationship) undertaken by parties contracted to the Hirer (who are not the Operator's preferred suppliers) and to ensure that such activities meet the standards and requirements of the Venue and the Operator (acting reasonably). The costs incurred by the Operator in making such arrangements are chargeable to and payable by the Hirer.

## PAYMENTS

### 11. PAYMENT OF RESERVATION FEE, VENUE HIRE FEE AND BOND

The Hirer must pay the Operator all fees set out in Schedule A and this clause 11 in the manner and on the dates specified in Schedule A. All payments must be made without deduction or set off. All amounts payable are subject to change where permitted by this Agreement. The Hirer must also pay any agreed extra costs, expenses and charges incurred by the Operator specifically related to the Event.

#### a) RESERVATION FEE

The Hirer must pay the Reservation Fee plus GST in the manner specified in Schedule A. The Reservation Fee is a payment on account of the Venue Hire Fee.

#### b) VENUE HIRE FEE

The Venue Hire Fee covers only the Venue Hire. Service Charges are payable in addition to the Venue Hire Fee.

The Venue Hire Fee shall be the amount specified as the Venue Hire Fee in Schedule A except in cases where there is a Gross Revenue from Ticket Sales Percentage specified in Schedule A. In such case, the Venue Hire Fee will be an amount which is the greater of either:

- (i) the Venue Hire Fee specified in Schedule A; or
- (ii) an amount which is equivalent to the Gross Revenue from Ticket Sales multiplied by the Gross Revenue from Ticket Sales Percentage set out in Schedule A, except that the Venue Hire Fee shall not exceed the Maximum Hire Fee if one is specified in Schedule A.

The Venue Hire Fee is payable at the times and in the manner(s) specified in Schedule A or, where applicable, Schedule F.

If the Event is an event where tickets are sold by the Ticketing Agent then the Hirer authorises the Operator at its discretion, not earlier than 10 Business Days from the Pack-in Date, to request from the Ticketing Agent details of the Gross Revenue from Ticket Sales at the time of the request. If the Gross Revenue from Ticket Sales advised by the Ticketing Agent is less than the aggregate of the Venue Hire Fee and the Services Charges then the Operator may, at its discretion, serve written notice on the Hirer requiring the Hirer to pay to the Operator, not later than 3 Business Days prior to the Pack-in Date, the difference between the aggregate of the Venue Hire Fee and Service Charges and the Gross Revenue from Ticket Sales.

If the Operator requires payment pursuant to the immediately preceding paragraph, then the Hirer acknowledges the Operator may at its discretion refuse to give the Hirer access to the Venue until such payment is made.

#### c) BOND

If the Operator specifies that a Bond is required then the Bond is payable in the manner specified in Schedule A.

The Bond, less any amounts retained by the Operator in accordance with this Agreement, will be either repaid to the Hirer within 20 Business Days of the Pack-out Date. The Operator may retain out of the Bond, amounts (as determined by the Operator acting reasonably) to cover Losses sustained by

the Operator. The payment of the Bond does not limit the Hirer's liability in relation to Losses sustained by the Operator.

If the Hirer provides a bank deposit slip amounts payable to the Hirer can be direct credited to the Hirer's account.

#### d) PAYMENT OPTIONS

In relation to Reservation Fees for all Events and Venue Hire Fees and Service Charges for Events that are not ticketed via the Operator's Ticketing Agent the following payment options are available:

- Payments may be made by cash, cheque or direct credit.
- Payments by cheque (other than bank cheque) must be made five Business Days earlier than the relevant Due Date specified in Schedule A.
- Payments by direct credit must quote the Hirer's booking number stated in Schedule A and invoice number (if applicable).
- The Operator may charge the Hirer a Credit Card Surcharge where the Hirer makes any payment to the Operator by way of credit card.

#### e) FAILURE TO PAY

Failure to pay any amount on time may lead to cancellation of the Hirer's booking provided that the Operator cannot cancel a booking unless it has first served a written notice on the Hirer that an amount is unpaid and the Hirer has not, within 3 working days of the date of such notice, made payment of the outstanding amount. The Hirer also agrees to pay interest on amounts not paid on the relevant Due Date at the Operator's current overdraft rate for unsecured borrowings from the Due Date until the date payment is made.

#### f) CANCELLATION / POSTPONEMENT / VENUE REDUCTION

Unless otherwise agreed by the Operator, once a booking is confirmed in accordance with clause 6, and the Event is subsequently cancelled or postponed to an alternative date by the Hirer, or there is a reduction in the number of venues or the size of the Hire Area required by the Hirer for an Event the following cancellation charges apply:

- (i) During the period that is less than 11 months and more than 6 months from the Pack-in Date 25% of the Venue Hire Fee is payable by the Hirer.
- (ii) During the period that is less than 6 months and more than 3 months from the Pack-in Date 50% of the Venue Hire Fee is payable by the Hirer.
- (iii) During the period that is less than 3 months and more than 20 Business Days from the Pack-in Date 75% of the Venue Hire Fee is payable by the Hirer.
- (iv) During the period that is less than 20 Business Days and more than 3 Business Days from the Pack-in Date the entire Venue Hire Fee and 50% of the estimated Service Charges (including estimated catering charges as set out in Schedule A) are payable by the Hirer.
- (v) During the period that is less than 3 days of the Pack-in Date the entire Venue Hire Fee and 100% of the estimated Service Charges (including catering charges as set out in Schedule A) are payable by the Hirer; and
- (vi) If the Event is a Public Event, any amounts payable to the Ticketing Agent as detailed in Schedule F.
- (vii) If catering is required for the Event, any amounts payable to the Caterer not detailed above but detailed in Schedule E.
- (viii) If cancellation occurs within 10 Business Days of the Pack-in Date the Hirer will also be liable, but only to the extent that the amount in this subclause (viii) exceeds the amounts in (iv), (v) or (vii) above (as applicable), for any Service Charges for Services or catering charges related to the Hirer's Event for which the Operator is liable (irrespective of how liability arises) provided that the Operator will use its reasonable endeavours to minimise any such costs by ensuring that within 24 hours

of the Hirer's notice the Operator gives notice to service providers (including the Caterer) of such cancellation.

The Hirer acknowledges and agrees that the cancellation charges detailed in this clause are:

- agreed to in good faith;
- a genuine pre-estimate of the loss the Operator is likely to suffer as a consequence of cancellation or postponement;
- reasonable and not intended as a penalty.

At the Operators discretion it may reduce or waive the cancellation charges detailed in this clause (either in whole or in part) or the Operator may enter into an arrangement with the Hirer which is inconsistent with this clause 11(f).

**g) COVID-19 Event**

If the Event scheduled to take place on the Event Date is required to be postponed due to a COVID-19 Event, then, provided that, Schedule A records that the Event can be rescheduled to a COVID-19 Delay Date, the Event will be postponed to the next COVID-19 Delay Date specified in Schedule A and that date will be the Event Date for the purposes of this Agreement and clause 61 of the General Terms and Conditions will apply. Clause 61(b)(ii) will apply to COVID-19 Delay Dates to the intent that where any third-party costs or invoices incurred by the Operator cannot be transferred to or applied to the Event when it is being held/rescheduled to a COVID-19 Delay Date, the Hirer will be liable to the Operator for the same. Where Schedule A does not record that the Event can be rescheduled to a COVID-19 Delay Date then, notwithstanding clause 61, the Operator is under no obligation to provide an alternate date and clause 61(b) applies.

**12. CPI – (CONSUMER PRICE INDEX)**

The Venue Hire Fee and the Maximum Hire Fee (if applicable) specified in Schedule A applies to only the first Event occurring pursuant to this Agreement. If this Agreement relates to Events that occur over multiple years and if a price review mechanism is not specified in Schedule B, the terms of this clause 12 shall apply in relation to a Venue Hire Fee review for each subsequent Event as detailed below.

The Venue Hire Fee (and the Maximum Hire Fee (if applicable)) shall be reviewed for each subsequent Event on the anniversary of the first Event. The new Venue Hire Fee and Maximum Hire Fee (if applicable) shall be an amount determined in accordance with the following formula:

$$D = A \times (B/C)$$

Where:

- A = Venue Hire Fee or the Maximum Hire Fee (if applicable) for the hireage in the year immediately preceding the review date;
- B = Consumer Price Index ending on the quarter immediately preceding the review date;
- C = Consumer Price Index ending on the quarter immediately preceding the date of the first Event or the date of the immediately preceding review, whichever is the later;
- D = Maximum Hire Fee or Venue Hire Fee (if applicable) for the next Event following the review date;

PROVIDED THAT (B/C) shall never be less than 1.00.

If a price review mechanism is specified in Schedule B then the Venue Hire Fee for each subsequent Event shall be increased by the greater of either:

- a) the mechanism stated in this clause 12; or
- b) the mechanism stated in Schedule B.

**TERMINATION**

**13. TERMINATION**

**Termination by the Operator:** The Operator may (at its discretion) at any time immediately terminate this Agreement either in whole or in part by notice in writing to the Hirer, if any of the following events occur:

- a) The Hirer has breached this Agreement or is in default in the observance or performance of any of its material obligations under this Agreement and, in cases where the breach or default can be remedied, such breach or default is not remedied within a reasonable time (as determined by the Operator in its sole discretion taking account of the circumstances) from the date the Operator has notified the breach or default and requested the Hirer to remedy such breach or default.
- b) If the Hirer fails to pay any sum of money payable to the Operator pursuant to this Agreement, on the due date for payment, provided that the Operator cannot terminate this Agreement unless it has first served written notice on the Hirer outlining that a payment has not been made and the Hirer has not, within 3 working days of the date of such notice, made payment of the unpaid amount.
- c) The Operator, acting reasonably, considers that there is the real likelihood of material damage to the Venue at any time as a result of the Event or as a result of booking the Event.
- d) 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 by the Hirer, if the Hirer (being a natural person) has an order of bankruptcy made against him or her, if an application for the liquidation of the Hirer (being a company) is made or there is a resolution or requirement that the Hirer be put into liquidation.
- e) If the Hirer enters into any arrangement, composition or assignment with its creditors or becomes unable to pay debts as they fall due.
- f) The Hirer makes any incorrect or misleading statement to the Operator which the Operator considers is reasonably material to this Agreement.

**Obligations on Termination:** No termination (in whole or part) shall affect the Hirer's liability to pay any moneys under this Agreement. Any Reservation Fee paid will not be refunded by the Operator if it terminates this Agreement pursuant to this clause. In addition to any other remedies available to the Operator, the Hirer shall be liable to the Operator for the amount of:

- a) any Service Charges and catering charges in accordance with the provisions of clause 11(f);
- b) any decrease in the amount of any Hire Fees achieved by the Operator from any substitute hirer of the Venue for the Hire Period or any part of it; or
- c) any Losses suffered by the Operator.

On termination under this clause the Hirer will immediately remove all the Hirer's property, vacate the Venue and immediately deliver to the Operator all property belonging to the Operator. The Hirer will have no entitlement to claim Losses from the Operator as a result of termination under this clause (or cancellation in cases where clauses 15 and 16 apply).

**Without Prejudice:** Termination shall be without prejudice to the Operator's right to recover the Venue Hire Fee and other money payable by the Hirer under this Agreement and without prejudice to 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.

**14. COSTS**

Each party will pay its own legal costs in respect of this Agreement. The Hirer shall pay all the Operator's debt collection costs and its legal costs (on a solicitor - own client basis) of, and incidental to, the

enforcement or attempted enforcement of the Operator's rights, remedies and powers under this Agreement.

#### 15. CIVIL DEFENCE EMERGENCY/POLICE

The Hirer acknowledges and agrees that, where the Venue is an emergency welfare centre for Civil Defence purposes, and a civil defence emergency occurs, the Venue in part or in its entirety may be required for use as an emergency welfare centre without notice and the Hirer will vacate the Hire Areas and the Venue forthwith without any right to compensation except that any payments made on account of the Venue Hire Fee or Service Charges shall be refunded to the Hirer.

Notwithstanding anything to the contrary in this Agreement, the parties acknowledge that, in the event of an emergency situation, a major terrorist incident (or credible threat of such incident), a serious breach of public order or similar event, the NZ Police Service may take command and control of the Venue.

#### 16. MAJOR AND SIGNIFICANT EVENTS TAKE PRECEDENCE

The Operator reserves the right at its discretion to cancel the Event or to move the Event to an alternative location should the Operator require the Hire Area for a Major Event or a Significant Event. The Operator will use its reasonable commercial endeavours to relocate the Event to a suitable alternative venue owned or managed by the Operator (as determined by the Operator acting reasonably) or with the agreement of the Hirer, may transfer the Event to an alternate suitable date.

Where this clause 16 applies, no compensation is payable by the Operator, but any payments made on account of the Venue Hire Fee or Service Charges shall be either:

- a) applied by the Operator towards the cost of an alternative location as arranged for the Event; or
- b) refunded to the Hirer if the Event is cancelled.

#### HIRER'S OBLIGATIONS

#### 17. COMPLIANCE WITH VENUE HIRE AGREEMENT, VENUE RULES AND OPERATOR'S REQUESTS

The Hirer will ensure that the use of the Hire Areas of the Venue by the Hirer and those persons for whom the Hirer is responsible, comply with:

- a) the terms set out in this Agreement including all schedules, plans and annexures;
- b) any policies, procedures, guidelines and rules set out by the Operator relating to the use, occupation, safety, services and security of the Venue, of which the Hirer will be provided a copy (or which the Hirer may obtain from the Operator) but it is the Hirer's responsibility to ensure it obtains a copy of them;
- c) all requests of the Operator, or emergency services;
- d) any request from the Operator for the Hirer to provide information or complete any survey or evaluation (or any similar or analogous activities) related to the economic or social impact of the Event.

#### 18. LEGAL COMPLIANCE

The Hirer must at all times comply with all applicable New Zealand laws, bylaws, regulations, codes, standards, liquor licensing, and resource consents (including, without limitation, the Venue Resource Consent, all licences for public assembly and in relation to noise controls).

Without limiting the scope of this clause the Hirer shall:

- a) comply with the no smoking policy in the Venue;
- b) comply with the fire safety evacuation scheme for the Venue;
- c) comply with the Health & Safety at Work Act 2015 and any regulations made under it and any policies of the Operator related to Health and Safety;
- d) comply with the requirements of the Sale and Supply of Alcohol Act 2012 and any liquor licence obtained for the Event;

- e) obtain as necessary and comply with any resource consent(s) required or issued for the Event;
- f) obtain as necessary and comply with any building consent(s) required in relation to the Event;
- g) comply with any law regulation, order or directive imposed by the New Zealand Government related to requirements for events (including the Event) and Patrons in respect of COVID-19 (including, but not limited to, use of vaccination passports, vaccination requirements or any associated matter) together with complying with any policy or policies of the Operator relating to such matters.
- h) comply with the District Plan guidelines for noise during the Event and any noise restrictions which apply to the Venue;
- i) comply with any relevant hygiene and care requirements where animals are involved in the Event;
- j) copyright laws.

The Hirer is liable for all costs and expenses of complying with this clause 18.

Copies of all licences, permits, consents or certificates must be provided to the Operator not less than 10 Business Days prior to the Pack-in Date.

#### 19. ACKNOWLEDGEMENT AND WARRANTIES

By signing this Agreement the Hirer warrants that the Event and the use of the Venue are accurately described.

The Hirer warrants that the Venue will not be used for performance or activity that is:

- a) of an objectionable nature; or
- b) in breach of reasonable standards of public decency; or
- c) likely to create nuisance.

The Operator reserves the right to cancel any performance or activity immediately upon written notice where in the opinion of the Operator, acting reasonably, such performance or activity is objectionable, in breach of reasonable standards of public decency or is likely to create nuisance.

#### 20. NO INDUCEMENTS

The Hirer warrants to the Operator that no form of inducement or reward has been or will be directly or indirectly provided to any of the Operator's staff or representatives.

#### 21. NO REPRESENTATIONS BY THE OPERATOR

The Hirer is deemed to have inspected the Venue and to have become adequately acquainted with the Venue, its equipment and Services.

The Hirer acknowledges that the Operator has made no representation concerning the adequacy or appropriateness of the Venue for the Hirer's purposes or the Event.

#### 22. USE OF THE VENUE AND STORAGE AT VENUE AT HIRER'S RISK

Use and occupation of the Venue by the Hirer is at the Hirer's own risk in all cases.

Equipment stored at the Venue is stored at the Hirer's own risk and at the risk of the owners of the equipment. Neither the Operator nor its staff are responsible for or liable for any loss or damage to the equipment stored at the Venue at any time. Equipment stored at the Venue outside of the Hire Period may incur a storage fee.

#### 23. INSURANCE

For all Events, the Hirer will obtain and maintain (and will produce to the Operator not later than 10 Business Days prior to the Pack-in Date evidence of) public liability insurance for not less than \$5,000,000 with an insurance company approved by the Operator.



In certain circumstances the Hirer may be eligible to accept an offer of insurance cover from the Operator under the Operator's own public liability insurance policy. Where the Hirer is eligible and does accept such offer:

- a) the Hirer is not required to comply with this clause 23; and
- b) will pay the cost of the insurance cover under the Operator's policy at the rate specified by the Operator.

The Hirer acknowledges it is an essential term of this Agreement that the Hirer complies with this clause and the Operator shall be entitled to prevent the Hirer's Event from occurring at the Venue until the Hirer has complied with this clause.

#### **24. LIABILITY**

The Hirer will be liable to the Operator for any Losses arising as a result of:

- a) The Hirer's acts or omissions or the acts or omissions of a Patron or any person for whom the Hirer is responsible;
- b) The Hirer's failure or the failure of a Patron or any person for whom the Hirer is responsible to comply with any provision of this Agreement or rules set out by the Operator.

#### **25. AUDIT**

The Operator reserves the right to carry out an audit of all financial and other records held by the Hirer, or any agent of the Hirer relating to the Event and all and any earnings made by the Hirer from the Event, but only to the extent necessary to enable the Operator to verify and establish the correct revenue figures, from which any Venue Hire Fee or any of the other payments or charges due in respect of the Hire of the Venue, are to be calculated.

If required by the Operator, the Hirer will provide the Operator with reasonable assistance including providing access to the Hirer's premises and will permit the Operator to take copies of extracts from the Hirer's books, accounts and records.

Should the Operator undertake an audit, then the Operator will pay the costs associated with the audit (except as noted below) and the Hirer will meet its own costs associated with compiling the information required to enable the Operator to carry out the audit.

If the Operator identifies, following audit or otherwise, that there is a deviation of 2% or more in favour of the Hirer from the amounts previously disclosed by the Hirer to the Operator, then the Hirer will be required to pay the total cost of the audit plus further monies payable to ensure the correct fee is paid (as evidenced by the audit).

For the purposes of this clause the Operator will mean and include any auditor appointed by the Operator to conduct such audit.

#### **26. ALTERATIONS & DECORATIONS**

The Hirer must not make nor allow to be made any alterations or additions to any part of the Venue nor hang any items from the walls or ceiling (including, without limitation, decorating the Venue) or install any electrical or mechanical device without first obtaining the written consent of the Operator.

The Operator will inspect the Venue the next Business Day after the Hire Period ends to assess any damage. The Hirer may arrange to be present during this inspection.

If any damage occurs this will be repaired by the Operator's contractor at the Hirer's cost.

The cost of making good any resulting damage to the Venue or Services to the Venue shall be payable by the Hirer in addition to any other monies payable under this Agreement.

#### **27. DEFECTS**

The Hirer shall give to the Operator prompt notice of any incident which occurs, or any defect in, the Venue of which the Hirer is aware.

#### **28. REINSTATEMENT**

The Venue (including all buildings and structures, internal and external, walls, grass and hard surfaces) must be reinstated, excepting fair wear and tear to at least the condition it was in prior to the Event commencing. All reinstatement must be completed within the Hire Period after which time the Operator may complete reinstatement on the Hirer's behalf and at the Hirer's cost.

#### **29. SPONSORSHIP**

The Hirer must discuss any sponsorship requirements for the Event with the Operator.

The Hirer must not enter into sponsorship arrangement for the Event:

- a) that would be materially detrimental or inconsistent with the goodwill reputation of the Operator and/or the Venue Images;
- b) that the Operator determines, acting reasonably, is in conflict with or may prejudice any existing or prospective sponsorship arrangements of the Operator.

#### **30. ELECTRICIANS / ELECTRICAL DEVICES AND LEADS**

The Hirer will ensure that:

- a) its electrical contractors comply with the requirements of the Operator; and
- b) Any electrical devices used at the Venue are used in a manner which complies with the Operator's requirements, and the Hirer will indemnify the Operator for any Losses which occur as a result of a breach of this clause.

#### **31. REPRESENTATIVES**

The Hirer must confirm the name and contact details of the Hirer's Representatives to the Operator on signing of this Agreement. The Hirer's Representatives must have the authority to direct all and any of the Hirer's employees, agents, contractors or invitees, must be contactable by the Operator at all times during the Hire Period and must be at the Venue during the Event and have authority to authorise Event related expenses.

#### **32. HIRER'S PUBLICATION AND VENUE IMAGES**

The Hirer acknowledges that the high quality and accuracy of the Hirer's Publications and the proper use and correctness of the Venue Images is important to the continuing success of the Venue and events conducted there, and to the reputation and image of the Operator and the Venue and its facilities and, accordingly, the Hirer agrees:

- a) not to use any Venue Images in any of the Hirer's Publications except with the prior approval of the Operator;
- b) to ensure that the Hirer's Publications show any approved Venue Images accurately, without any abbreviations or other representations in substitution for them;
- c) at the Operator's request, to provide the Operator for its approval, a copy of all the Hirer's Publications relating to the Event which contain Venue Images;
- d) if the Hirer proposes to sell or issue tickets for the Event, to include in all promotional material containing Venue Images, any detail the Operator reasonably requires (such as the Venue opening hours and a map showing the Venue);
- e) to ensure any person for whom the Hirer is responsible complies with sub-clauses (a) – (d) inclusive.

The Operator agrees to act reasonably when asked for its approval in relation to any matter contemplated by this clause 32 and to treat as confidential any material given to the Operator for approval under this clause 32.

### 33. COPYRIGHT WORKS

In using the Venue the Hirer shall not infringe or breach any copyright or permit or allow any copyright to be infringed by any person for whom the Hirer is responsible. The Hirer will obtain and comply with the terms of any licence required from any holder or owner of copyright which is required for the Event or for any performance related to the Event.

The Hirer will indemnify the Operator if the Operator suffers any Losses as a result of the Hirer or any person for whom the Hirer is responsible breaching the obligations stated in this clause.

### 34. BROADCASTING AND FILMING

The Hirer shall not make (or permit the making of) any audio and/or audio visual recording and it shall not grant broadcasting or filming rights related to Event without the prior written consent of the Operator which will not be unreasonably or arbitrarily withheld. The Operator may impose reasonable conditions and requirements on the Hirer incidental to the giving of consent under this clause (including requiring the Hirer to enter into a location agreement). Cameras may be brought into and used inside the Venue for private (but not commercial) purposes.

The Operator will not be responsible for any consequences arising from any matter contemplated by this clause 34 (including allegations of breach of privacy or infringement of intellectual property by a third party) and the Hirer will indemnify the Operator for any Losses suffered in connection with any matter contemplated by this clause 34.

### 35. PERFORMING RIGHTS

The Operator has a licence from the One Music NZ which authorises the Operator to play pre-recorded music in the Venue. The Operator does not have any other licences. The Hirer will obtain and comply with the terms of any licences from APRA/AMCOS or One Music NZ (or any successor organisations) which are necessary or required for the Event and will pay all fees, royalties or other payments due to those organisations. The Hirer will provide to the Operator copies of such licences if requested by the Operator. The Hirer will indemnify the Operator if the Operator suffers Losses as a result of the Hirer or any person for whom the Hirer is responsible breaching the terms of this clause.

### 36. COMMUNICATIONS/STATEMENTS

The Hirer will not make any announcements, publicity, statements or disclosures about any matter related to this Agreement, including, by way of example only, the Operator, the Operator's staff, contractors or service providers, the Venue and its facilities, except in a form and manner acceptable to the Operator or as may be required by law.

Prior to the Hirer communicating with neighbours of the Venue, the information to be provided to the neighbours of the Venue, must be approved by the Operator and the Operator reserves the right to have such information and communication sent by the Operator itself (as opposed to the Hirer) and to be present in any meetings between the Hirer and any neighbours of the Venue.

## OPERATOR'S OBLIGATIONS

### 37. NEGLIGENCE OF OTHER HIRERS/LICENSEES

The Operator shall not be responsible to the Hirer for any act, omission, default or neglect of any other hirer, tenant, licensee, service provider, contractor, agent, representative or Patron of the Venue.

### 38. OPERATORS ACCESS TO THE VENUE

The Operator is entitled to enter the Venue at any time (without notice) for any reasonable purpose related to the Operator's business

(but not to attend the Event as a Patron). Such access shall be carried out without undue interference with the Hirer's use of the Venue.

The Operator has its own Venue security pass which all the Operator's staff associated with operating the Venue during the Event shall wear at all times. Alternatively, the Hirer can provide the Operator with the relevant Event passes free of charge for its staff during the Event.

The Hirer shall ensure that all gate and security staff are aware of the relevant passes and arrange for the appropriate free access for the Operator.

### 39. DUTY MANAGER

The Operator will provide a Duty Manager during the Hire Period. The Duty Manager represents the Operator and oversees use of the Venue during the Event. The Hirer must comply with all requests made by the Duty Manager.

If the Operator acting reasonably considers that there are any conditions in relation to the Event or associated with the Event which are unsafe or which could cause harm it will inform the Hirer or the Hirer's Representatives and prompt action shall be taken by the Hirer to rectify the concern. This may include the Operation requiring that the Hirer contract fire and/or medical services (at the Hirer's cost\_ where any such personnel s contracted must be suitably equipped and trained (and, if required by the Operator acting reasonably, such provider to be approved by the Operator).

If the Duty Manager, after consultation with the Hirer, considers the action taken inadequate the Duty Manager may, at the Hirer's expense make the condition(s) safer, remove people, vehicles or any other property from the Venue, or refuse any person access to the Venue. The Duty Manager is also responsible for completing a site inspection prior to opening the Hirer's Event to the public. If an area is found to be unsafe such area cannot be opened to the public until it has been made safe.

Any difficulties the Hirer has with the Operator's safety procedures must be discussed prior to the Pack-in Date.

Emergency procedures take priority over all other arrangements.

The Operator may, at the Hirer's cost, require any person or group of people to leave the Event or may stop or terminate the Event if a situation arises or is likely to arise that in the opinion of the Duty Manager acting reasonably:

- a) will unreasonably impede or adversely affect the enjoyment of other people at or around the Venue, or puts people at risk; or
- b) will cause loss or damage to the Venue or any property or is likely to do so; or
- c) will breach any term of this Agreement or any law or bylaw; or
- d) where Patrons are intoxicated, on drugs or violent.

The Hirer will be charged at the current rate for the Duty Manager where applicable. Further details of the Duty Manager's role and responsibilities are available from the Operator. The provision of a Duty Manager does not limit or reduce the Hirer's responsibilities or liability under this Agreement.

### 40. CAR PARKING

Where there is public parking available at the Venue this clause 40 applies. For all Public Events, the Operator will manage the on-site parking for the Event and may charge a fee for public parking on-site and the Operator will be entitled to retain as its revenue all fees charged. If such a fee is charged then the Operator will set-off the costs associated with the management of the on-site parking from the fees charged. Event staff may park at no charge on presentation of the correct parking accreditation.

If:

- a) the Operator does not charge a fee; or

b) the costs associated with the management of the parking exceed the total fees received by the Operator, then the Operator will charge to the Hirer the costs (or the balance of such costs as applicable) of management of the on-site parking.

For Private Events the Operator may choose whether it manages the parking on-site or whether it will require the Hirer to do so. If the Operator requires the Hirer to manage the parking on-site then the Hirer will follow the Operator's reasonable directions and all policies, procedures or guidelines of the Operator relating to the same.

#### **41. SECURITY**

The Operator has on-site security at the Venue. At some venues this includes monitored CCTV. Security at the Venue and for the Event is managed by the Operator. The Operator may contract a third party to provide security services at the Venue. The Hirer's requirements for security must be discussed with the Operator prior to the Event and the Operator will ensure appropriate security is engaged (whether the same is provided by the Operator directly or by a third party). All costs and charges in relation to security will be payable by the Hirer.

#### **42. CLEANING & WASTE MANAGEMENT**

The Operator has exclusive rights to all commercial cleaning of the Venue. The Venue will be cleaned thoroughly after the Event and all costs of cleaning will be on-charged to the Hirer as part of the Service Charges if stated in Schedule C and otherwise as specified in this Agreement.

The Hirer acknowledges that if, as a result of the Event or the Hirer's hire of the Venue, the Venue requires extraordinary cleaning then the Operator reserves the right to charge an additional amount reflecting the additional costs and expenses incurred by the Operator related to such extraordinary cleaning.

The Operator is committed to operating an environmentally friendly facility. Waste Management procedures for efficient environmentally friendly operation of the Venue are in place. The Hirer will comply with the rules referred to in clause 45.

#### **43. PUBLICITY**

Subject to the Operator complying with relevant privacy laws and any reasonable requirements of the Hirer (including the Operator obtaining releases from any person who will be recorded or photographed), where the Event is a Public Event, the Operator reserves the right to record and/or photograph any Public Event for its own historical records and for its own publicity purposes provided that, in each case where the Operator records or photographs any Public Event, it will only do so with the Hirer's prior written consent which will not be unreasonably or arbitrarily withheld or delayed.

#### **44. SIGNAGE**

The Venue provides specific locations for any signage to be placed. The Hirer must not affix, paint, or exhibit any name, sign, name-plate, signboard, or advertisement of any description within, on or to the Venue including the fence line without the prior written approval of the Operator. Use of Venue signboards is subject to availability. Incorrect details on signage may result in the Hirer having to replace signage with the correct name or details at the Hirer's cost.

#### **45. VARIATION TO RULES, POLICIES AND PROCEDURES**

The Operator reserves the right to modify, add or change any of its rules, policies or procedures at any time and any such modifications, additions or changes will be effective on the Operator notifying the Hirer of such modification, addition or change.

#### **46. REDEVELOPMENT OF THE VENUE**

The Operator may undertake redevelopment of the Venue without reference to the Hirer. The licence granted to the Hirer under this Agreement does not give the Hirer any rights in relation to the Venue other than the rights specifically provided in this Agreement. Such redevelopment may involve building demolition and/or construction and the closure of parts of the Venue or access restrictions during the Hire Period.

The Operator will communicate any development that may impact the Event.

#### **47. DESTRUCTION OR DAMAGE TO THE VENUE**

If the Venue or any portion of the building, car parks or grounds which form part of the Venue shall be destroyed or so damaged as to render the Venue unusable in the opinion of the Operator then the licence for the Event impacted shall at once terminate but without affecting the application of this Agreement for future Events. Any termination pursuant to this clause shall be without prejudice to the rights of either party against the other. The provisions of clause 13 do not apply to termination pursuant to this clause 47.

#### **48. CLAIMS AGAINST THE OPERATOR/OPERATOR'S LIABILITY**

The Hirer agrees that it cannot make a claim against the Operator and/or the Operator's employees and/or representatives unless the claim is made prior to the date falling 20 Business Days following the Pack-out Date.

The Hirer agrees that the Operator's liability pursuant to this Agreement is at all times limited to an amount equivalent to the Venue Hire Fee or in cases where this Agreement relates to multiple Events the Venue Hire Fee payable in relation to the first Event. Each of the Operator's employees and representatives is also to enjoy the benefit of this provision.

#### **49. VENUE RESERVED TICKETS**

**Operator's Reserved Tickets:** If the Event is a Public Event then the Hirer will provide the Operator, free of charge, with the number of complimentary Tickets specified as the Operator's Reserved Tickets in Schedule A.

If the number of Operator's Reserved Tickets is not stated in Schedule A, the parties will agree prior to the Event the number of the Operator's Reserved Tickets to the Event.

The Operator shall be entitled to sell the Operator's Reserved Tickets at its discretion and retain the whole of the proceeds from sale of such tickets.

In all cases the parties will agree the seating location for the Operator's Reserved Tickets prior to the Event.

**Hirer's Venue Reserved Tickets:** The Hirer will not, without the prior written consent of the Operator, arrange to distribute, transfer or issue complimentary tickets for the Event to any person, party or Patron where such distribution, transfer or issue would mean that the Hirer has distributed, transferred or issued in total complimentary tickets which exceeds the Hirer's Reserved Tickets (Maximum) number specified in Schedule A.

The parties shall act reasonably in relation to the matters contemplated by this clause 49. In the case where the parties cannot agree, clause 55 shall apply.

#### **50. HOSTING**

If the Event is a Public Event, then unless otherwise specified in Schedule B the Operator is entitled to host guests in a room within

the Venue determined by the Operator (after consultation with the Hirer) before, during and after the Event.

#### **51. CASH SERVICES**

The Operator has entered into an exclusive arrangement in relation to the rights related to the provision of cash transaction services at the Venue (which also includes the provision of an automatic teller machine ('ATM') at the Venue). Unless the Hirer has obtained the consent of the Operator, the Hirer cannot, in relation to its Event, on its own account or via any party (other than the party to which the Operator has granted the rights contemplated above) make any arrangements in relation to the provision of cash transaction services (or similar or analogous services) nor can it (and it cannot permit or allow any party) to use or install or make available for use at the Venue or the Event any ATM or similar or analogous facility or facilities. The Hirer is not permitted under any circumstances to make direct contact with the Operator's exclusive provider of the services contemplated by this clause.

### **GENERAL PROVISIONS**

#### **52. INTELLECTUAL PROPERTY RIGHTS**

The Hirer will not, and will procure that any person for whom the Hirer is responsible do not, use (or authorise the use of) the Operator's Intellectual Property Rights except in accordance with this Agreement. The Operator will not, use (or authorise the use of) any Hirer or Artist Intellectual Property Rights other than as set out in in this clause 53.

The Operator hereby authorises the Hirer and any person for whom the Hirer is responsible to use its Intellectual Property Rights as necessary for the promotion, marketing, delivery and operation of the Event and the Hirer will not use the Operator's Intellectual Property except as approved by the Operator (acting reasonably) and in accordance with any brand guidelines provided to the Hirer by the Operator.

Without prejudice to any use in accordance with this clause 53, neither party acquires any right, title or interest in or to the Intellectual Property Rights of the other party or any Artist (if applicable) as a result of using such Intellectual Property Rights whether pursuant to this Agreement or otherwise.

If applicable, the Hirer hereby grants to the Operator the right to use the Artist's Intellectual Property Rights as necessary for the Operator to do the following using collateral provided by the Hirer:

- (a) support the Hirer's marketing of the Event (through email banners, the Operator's website and the Operator's social media channels and accounts); and
- (b) assist with the ticketing of the Event, including, as necessary, the right to sublicense those rights to the Ticketing Agent for the purposes of ticketing the Event, and the Hirer warrants it is authorised to grant such rights to the Operator.

#### **53. ASSIGNMENT**

The Operator may assign this Agreement but the Hirer may not assign, transfer, mortgage or charge the Hirer's interest in this Agreement, sub-license or grant any other person any rights in respect of the Venue or this Agreement.

#### **54. GST CLAUSE**

All amounts stated in this Agreement are exclusive of Goods and Services Tax ("GST"). The Hirer shall pay all GST payable in relation to any fees, charges or other amounts payable by the Hirer under this Agreement and GST shall be paid by the Hirer when any fees, charges or other amounts are due for payment by the Hirer under this Agreement. Where any GST is not paid by the Hirer in accordance

with this clause the Hirer shall pay Default GST together with default interest pursuant to clause 17. It shall not be a defence to a claim against the Hirer for payment to the Operator of Default GST that the Operator failed to mitigate the Operator's loss by not paying an amount of GST when it fell due under the Goods and Services Tax Act 1985.

For the purposes of this clause, "Default GST" means any interest, or late payment penalty, or other sum imposed on the Operator under the relevant taxation legislation by reason of non payment of the GST payable in respect of the supply made under this Agreement but does not include any such sum levied on the Operator by reason of default by the Operator after payment of the GST to the Operator by the Hirer.

#### **55. GUARANTEE**

If a guarantor is stated in Schedule A then, in consideration of the Operator hiring the Venue to the Hirer for the Event on the terms of this Agreement, the Guarantor unconditionally guarantees to the Operator the due and punctual payment by the Hirer of all monies owned under this Agreement together with the due and punctual performance by the Hirer of all of its obligations under this Agreement.

The liability of the Guarantor under this clause shall constitute a principal obligation and such liability shall not be released or in anyway effected in any manner prejudicial to the Operator by granting of time, waiver or forbearance to sue by the Operator or by any other act, omission, matter, circumstance or law under which the Guarantor, as surety only, would, but for the provisions of this clause, have been released from liability under this Agreement. The liability of the Guarantor under this clause shall remain in full force and effect until all amounts which the Hirer, under this Agreement, is required to pay, and all obligations which it is required to perform, have been punctually and properly paid or performed (as the case requires).

The obligations of the Guarantor under this clause are in addition to, and not in substitution for, any other security or right which the Operator may have in respect of any amount payable, or obligation to be performed, by the Hirer and may be enforced against the Guarantor without first having recourse to any securities or rights and without first taking action against the Hirer.

In addition to the obligations outlined above, the Guarantor shall indemnify the Operator in respect of all Losses incurred by the Operator arising out of the non-payment of any amount by the Hirer or any breach of any obligation contained or implied in this Agreement.

#### **56. DISPUTES**

If a party believes that there is a dispute in relation to this Agreement, it will first notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to a senior representative of each party for resolution (who may use mediation to assist). Pending resolution of the dispute, both parties shall continue to perform all their obligations under this Agreement. If the dispute remains unresolved 5 Business Days after the meeting of senior representatives referred to above then the dispute shall be referred to the arbitration of a single arbitrator to be appointed by the parties or failing agreement to be appointed by the nominee of the president of the New Zealand Law Society. Such arbitration shall be carried out in accordance with the provisions of the Arbitration Act 1996.

#### **57. NOTICES**

Anything required to be given in writing under this Agreement must be in writing and delivered personally to the recipient or be posted to the recipient at the address, facsimile number or email address stated in Schedule A or as designated by the recipient in writing to the other from time to time.

Anything sent is deemed to be received:

- a) if sent by post the next Business Day after posting;
- b) if sent by facsimile on sending to the recipient's facsimile number;
- c) if sent by email on sending to the recipient's email address.

#### 58. SURVIVAL

The rights and obligations of the Parties under this Agreement which by their nature extend beyond the expiry or termination of this Agreement and in particular any right to damages, remain in effect beyond such expiry or termination until fulfilled and are enforceable by the Parties' administrators, successors and assigns.

#### 59. WAIVER

No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.

#### 60. GOVERNING LAW

This Agreement shall be exclusively governed by the law of New Zealand.

#### 61. FORCE MAJEURE

Either party to this Agreement may be excused from performing its obligations under this Agreement to the extent it is prevented from doing so because of an event of Force Majeure and shall not be held liable for any loss of income or costs incurred by the other party.

If either party wishes to claim the benefit of an event of Force Majeure, it will give the other party prompt written notice of the event specifying the effect on this Agreement. The Parties' obligations will resume on the cessation of the event of Force Majeure and the parties shall negotiate in good faith any adjustments required to take account of the event of Force Majeure.

The Operator will use reasonable endeavours to remove or mitigate any Force Majeure Event at the earliest possible time. Where the Event has to be cancelled by the Operator due to a Force Majeure Event, then the Operator will return all payments made by the Hirer under this Agreement. The Operator will have no other liability to the Hirer for or arising out of such cancellation.

If the Event cannot be held on the Event Date at the Venue because of a Force Majeure Event, then the Hirer may elect to either postpone or cancel the Event, in which case the following will apply:

- (a) If the Event can be rescheduled to a date when the Force Majeure Event no longer applies (but at all times subject to availability of the Venue and the terms in clause 6), then the Operator will retain all money received from the Hirer under this Agreement up to the date of the postponement, and will apply such money towards the Hire Fee and Service Charges including those contemplated by clause 61(b)(ii) below, as applicable, for the postponed Event; or
- (b) If the Event is cancelled for any reason (including lack of availability of the Venue) then:
  - (i) The Operator will, subject to receiving payment of the third-party costs under clause 61(b)(ii), refund all Hire Fees paid to the Operator as at the date of termination; and
  - (ii) The Hirer will be liable for, and must pay to the Operator on demand, any third party costs or invoices that the Operator has incurred in carrying out its obligations under this Agreement up to the date of cancellation, including, but not limited to, any catering, security, or audio visual charges;
  - (iii) Clause 13 applies with necessary modifications.

#### 62. AMENDMENTS

Subject to any express clause in this Agreement to the contrary, no amendment to this Agreement is effective unless it is in writing and signed by all parties.

#### 63. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement of the Parties about its subject matter and any previous agreements (whether written or oral), representations, conditions or warranties on that subject matter shall cease to have effect.

#### 64. IMPLIED TERMS AND CONDITIONS EXCLUDED

The Parties agree that to the extent permitted by law, no warranties or guarantees or other terms are to be implied into this Agreement, including under the Consumer Guarantees Act 1993, the Sale of Goods Act 1908 or otherwise.

#### 65. PARAMOUNTCY

In the event that there is any conflict between these General Terms and Conditions of Hire and Schedule A – F of this Agreement, Schedules A – F (and any other specific terms of hire detailed within those Schedules) shall prevail.

#### 66. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Agreement shall create, constituted as evidence any partnership, joint venture, agency or trust relationship between the parties, and a party may not make, or allow to be made, any representation that such relationship exists between the parties. A party shall not have the authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this Agreement.

#### 67. SIGNATURE BY COMPANY

If any person enters into this Agreement on behalf of an incorporated entity then:

- a) that person confirms it has the power and authority to enter into this Agreement on behalf of that entity;
- b) that person signed this Agreement in accordance with the constitution of the entity and any legislation governing the entity;
- c) that person confirms that the entity has resolved to enter into this Agreement and this Agreement is binding on the entity.

#### 68. COUNTERPARTS

This Agreement may be signed in any number of counterparts and may be exchanged by facsimile, email and other electronic means.

#### 69. SEVERABILITY

If any provision of this Agreement is, or becomes unenforceable, illegal or invalid for any reason the relevant provisions shall be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity or if this is not possible then such provisions shall be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.

#### 70. CONFIDENTIALITY

In carrying out the obligations of this Agreement any of the parties may disclose to the other party confidential or commercially sensitive information ("Confidential Information"). The parties must at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure or use to be made of any Confidential Information, except to the extent:

- a) required by law and in particular pursuant to a successful application made under either the Local Government Official Information and Meetings Act 1987 and/or the Official Information Act 1982;

- b) necessary to obtain the benefit of, or to carry out obligations under, this Agreement but for no other purpose whatsoever; or
- c) that the information is or becomes available in the public domain without breach by any of the parties of their confidentiality obligations under this clause or at law; or
- d) that the parties to this Agreement otherwise agree in writing.

**71. AMENDMENT TO GENERAL TERMS AND CONDITIONS**

Notwithstanding any other provision to this Agreement, including clause 61, the Operator may vary or amend these general terms and conditions and/or any policies, procedures, guidelines and rules set by the Operator relating to the use, occupation, services, safety and security of the Venue provided that:

- a) the Operator has given you written notice not less than 30 Business Days prior to the variation or amendment taking effect; and
- b) the variation or amendment does not derogate from the rights granted to the Hirer as at the date this Agreement was executed.