

SCHEDULE 2

General Terms and Conditions

1. TERM AND HIRE PERIOD

- 1.1 The term of this Agreement will run from the date of execution until one month after the end of the Hire Period specified in Schedule 1.
- 1.2 In the event that HIRER wishes to vary the Hire Period it will provide NCC with as much advance notice as possible. Any changes will be subject to NCC's consent in writing.

2. HIRE FEE, CANCELLATION, CANCELLATION FEES AND SERVICE CHARGES

- 2.1 The Hire Fee (including any Deposit) specified in Schedule 1 will be paid by HIRER upon the due dates (subject to receipt of a duly authorized GST tax invoice).
- 2.2 If the Venue booking is cancelled by HIRER after a booking has been confirmed by NCC, the following cancellation fees will apply:
- (a) cancellation more than 12 months from the Hire Period: NCC will retain the Deposit paid by HIRER;
 - (b) cancellation between 12 months and 3 months from the Hire Period (inclusive): NCC will retain 50% of the Hire Fee;
 - (c) cancellation less than 3 months but more than 15 days from the Hire Period (inclusive): NCC will retain 75% of the Hire Fee;
 - (d) cancellation between 15 days and 7 days from the Hire Period: NCC will retain 100% of the Hire Fee plus be entitled to charge for 80% of all Service Charges;
 - (e) cancellation less than 7 days from the Hire Period, NCC will retain 100% of the Hire Fee plus be entitled to charge for 100% of the Service Charges;

Where HIRER becomes liable for cancellation fees, NCC will invoice HIRER for the amounts due and payable under this Agreement taking into account the Deposit and any payment instalments received.

Following the payment or retention of any cancellation fees under this clause (whether by set-off against amounts already paid or otherwise), NCC will return the balance of the Hire Fee to HIRER.

- 2.3 NCC may cancel the booking if:
- (a) the activity to which the booking relates contravenes the Conditions of Hire set out in the Specific Terms; or
 - (b) circumstances mean that it is no longer safe for HIRER to use the Venue; or
 - (c) HIRER provided incorrect or misleading information, or failed to provide material information that had been requested, to NCC in making the booking.

If the Event is cancelled by NCC pursuant to clause 2.3(a) or 2.3(c) above, then clause 2.2 will apply in respect of cancellation fees.

As an alternative to cancelling the booking under this clause, NCC may relocate or otherwise change the booking if doing so:

- (d) is reasonably practicable;
- (e) will resolve matters identified in (a) to (c) above; and
- (f) is acceptable to HIRER (with any varied terms and conditions mutually agreed in writing).

For the avoidance of doubt, this clause 2.3 applies independently of clause 26 set out in the General Conditions below.

- 2.4 In addition to the Hire Fee payable pursuant to this Agreement, HIRER will pay to NCC the Service Charges set out in Schedule 1.

3. PERMITTED USE

- 3.1 HIRER will use the Venue solely for the Event described in the Schedule.
- 3.2 The Venue Capacity is specified in Schedule 1. HIRER is solely responsible for ensuring that it does not exceed the specified Venue Capacity.
- 3.3 HIRER will not sublet / sub-licence any part of the Venue unless the terms of any such subletting / sub-licence are approved in writing by NCC.
- 3.4 HIRER will forthwith comply with any reasonable instructions or directions made or given by NCC in relation to the Venue and NCC will have the power and will be at liberty to suspend or control to any extent and in any way it may deem necessary any event or any aspect of any event which takes place at the Venue.

4 HIRER'S OBLIGATIONS

4.1 HIRER will be responsible for:

- (a) keeping all noise to permitted levels as specified in NCC's local noise consents / ordinances;
- (b) maintaining a no smoking and no vaping policy in the designated non-smoking areas of the Venue;
- (c) maintaining and leaving the Venue after use in a clean, sanitary, tidy and secure condition;
- (d) not doing anything that compromises any insurance cover;
- (e) not defacing or affixing any items on the walls or fences (as applicable) of the Venue (or any adjacent trees / buildings) without NCC's written consent;
- (f) prohibiting fireworks, weapons or any other objectionable or dangerous articles from being brought into the Venue or used therein unless prior written permission has been obtained from NCC and subject to such conditions as may be specified by NCC;
- (g) exercising proper supervision and control over all persons coming into or being about the Venue and surrounding areas. Ensuring that any incidents, which have caused, may cause or are likely to cause injury or ill health to persons at the Venue or damage to Council property including facilities and chattels are reported immediately to NCC's appointed Manager;
- (h) not allowing anything to be done which may become a nuisance, or source of damage or annoyance, to any persons in proximity to the Venue;
- (i) permitting NCC's staff and representatives to enter and work in the Venue during the Hire Period;
- (j) refraining from any use of smoke machines unless prior written approval has been given by NCC;
- (k) returning all keys / access cards within five days of the end of the Hire Period or on termination or expiry of this Agreement, whichever is the later.

4.2 The Hirer must not allow the Venue to be used, without the prior written consent of NCC, for any activity that involves:

- (a) games of chance, sweepstakes, lotteries or any form of betting or gambling at the Venue; or
- (b) any filming or recording for the purpose of public broadcast.

4.3 HIRER will be responsible for making adequate arrangements for the receipt and custody of all Hirers' property necessary for the Event on arrival at the Venue and during the Event under the direction of, and by arrangement with, NCC's appointed Manager. HIRER will be responsible for the removal of all HIRER's property (including all tent pegs and other materials or property) immediately upon the termination of the Event and for making good at its own expense any damage to the Venue caused by such removal. HIRER will not remove any equipment/furnishings belonging to NCC which are located at the Venue.

- 4.4 If HIRER does not remove all HIRER's property or give up possession of the Venue upon termination of the Event NCC may arrange for such removal and HIRER will be liable for such further charges as may be determined by NCC for such removal and making good such damage.

5 HEALTH AND SAFETY

- 3.1 HIRER will ensure that persons under HIRER's control comply at all times with:
- (a) the Health and Safety at Work Act 2015 and any regulations made thereunder;
 - (b) NCC's applicable health and safety policies and procedures, including evacuation schemes notified to HIRER;
 - (c) any Health and Safety Plan prepared by the Hirer pursuant to clause 5.4 below;
 - (d) any standard operating procedures notified by NCC to HIRER;
 - (e) any applicable safety programme including the "Guide to Safe Working Practices in New Zealand Theatre and Entertainment Industry" which is available at www.etnz.org, or, in the case of Events that are held as part of an international tour, any international guide or code of similar nature that is applicable to such an Event;
 - (f) AS/NZS ISO 9001:2008 - Quality management systems – Requirements;
 - (g) AS/NZS ISO 14001:2004 - Environmental management systems - Requirements with guidance for use; and
 - (h) all amendments to the above.
- 5.2 HIRER agrees to consult, co-operate with and co-ordinate with NCC in respect of all health and safety matters pertaining to the Event.
- 5.3 HIRER will immediately notify NCC of any hazards of which it becomes aware at the Venue. HIRER must also immediately notify NCC of any incident, accident or notifiable injury, illness, incident or event it becomes aware of at the Venue including those involving any equipment or persons under HIRER's control, and HIRER will provide NCC with such assistance as may be reasonably necessary to conduct any incident or accident investigation at no cost to NCC.
- 5.4 If requested by NCC, HIRER will prepare and submit a "Health and Safety Plan" (being a plan to manage all aspects of health and safety for the Event; including specific goals and objectives, risk management, emergency management, roles and responsibilities and measurement / performance) for the Event. The Hirer will not be permitted to access the Venue during the Hire Period until such time as the Health and Safety Plan has been approved by NCC.
- 5.5 NCC may request that HIRER undertake a site induction of the Venue on a suitable time and day prior to the Event. HIRER will be required to sign a form at the completion of the induction indicating acceptance all conditions regarding use of the Venue.
- 5.6 Without limiting the foregoing, HIRER will comply with any consent, approval or notice issued, controlling, imposing limits on or requiring abatement of the sound pressure level of noise emanating from the Event.
- 5.7 HIRER is deemed to have inspected all equipment situated at the Venue and accepts the same on hire as complying in all respects with the Health and Safety at Work Act 2015. Any defective equipment or equipment not satisfactory or suitable to HIRER's needs must immediately be reported to the Venue Manager.
- 5.8 The Venue Manager or a duly nominated representative will have the right to inspect HIRER's equipment and supervise the erection and operation of the electrical services including stage, partition walls and other lighting and sound amplification equipment. The Venue Manager will be entitled to reject HIRER's equipment if it is deemed by the Venue Manager to be hazardous or to constitute a risk to public safety.
- 5.9 If NCC considers that there are any unsafe conditions, or unsafe work practices undertaken by persons under HIRER's control, in the Venue, then it will inform HIRER's representative and ask them to ensure that necessary action is taken promptly to make the area safe. If NCC reasonably considers that the action taken is not adequate, it may, at HIRER's expense, remove people, vehicles or any other property from the Venue or refuse any person access to the Venue. HIRER authorises the Venue Manager to take such actions as set out in this clause.

6 FIRE SAFETY

6.1 First responders (police, ambulance and fire service) will at all times have the right of entry to the Venue and NCC / HIRER will comply with any directions that may be given to them in this regard.

6.2 HIRER will require all persons under the control of HIRER to co-operate with NCC in respect of any requirement to perform a fire drill and/or emergency evacuation procedure. NCC will use its reasonable endeavours to authorise any disturbance that may be caused to HIRER by such drills and procedures.

7 CARPARKING

7.1 Parking for all HIRER vehicles is restricted to car parking spaces allocated to HIRER by NCC.

7.2 HIRER will comply with all instructions received from NCC and/or its authorised agents concerning car parking at the Venue.

8 ADDITIONS, ALTERATIONS OR DAMAGE

8.1 HIRER accepts the Venue "as is" from the date upon which HIRER gains access to the Venue to commence to the Hire Period. Any improvements, changes, alterations and/or decorations, including sound and electrical equipment and apparatus to support the same will be made and paid for by HIRER and NCC will have no liability with respect thereto. None of these improvements, changes, alterations and/or decorations will be made by HIRER other than in accordance with this Agreement (and with HIRER obtaining any necessary additional approvals from any government or local authorities having jurisdiction).

8.2 Other than the permitted Venue Dressing outlined in Schedule 1, HIRER undertakes that it will not carry out any further alterations or additions to the Venue unless the prior written approval of NCC is obtained by HIRER.

8.3 HIRER will, at HIRER's own expense, reinstate the Venue to the condition that it was in prior to the commencement of the Hire Period; including the removal of any venue dressing (and any approved alterations or additions) and the repair of any damage caused; unless otherwise agreed in writing by NCC.

8.4 Subject to any insurance cover that NCC may have in place, HIRER will be liable for all costs and expenses in respect of any damage caused by HIRER, its staff / employees, its contractors and/or any other person engaged by HIRER to work at the Venue.

9 ADVERTISING AND PROMOTION

9.1 HIRER will be primarily responsible for all aspects of the advertising and promotion of the Event. NCC may agree to undertake advertising and promotion of the Event via its own marketing and social media channels.

10 STAFFING BY NCC

10. NCC has appointed the Venue Manager specified in this Agreement (above). Any directions or instructions which HIRER may wish to give NCC's staff must be communicated through the Venue Manager.

10.2 The Venue Manager will provide all reasonable assistance as may be requested by HIRER in relation to HIRER's health and safety obligations, the operation of equipment and any technical matters.

10.3 NCC will determine the number of staff it requires for the Event (taking into consideration operational requirements, capacities, attendances and health and safety requirements).

10.4 NCC will advise HIRER of the number of staff that will be required for HIRER functions staged during the Event; together with the associated costs.

11 TERMINATION

11.1 Either party may terminate this Agreement immediately upon the giving of notice to the other party if:

(a) the other party is in material breach of the terms and conditions of this Agreement and fails to remedy the default within 10 Business Days after written notice requiring the remedy of the breach; or

(b) the other party ceases or threatens to cease to carry on its business, or fails to comply with a statutory demand; or

(c) the other party is insolvent, or a court is required to presume that it is insolvent; or

(d) an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for the other party's winding up or dissolution, or the other party enters into an arrangement,

compromise or composition with or assignment for the benefit of its creditors or any of them;
or

- (e) an administrator is appointed over all or any of the other party's assets or undertaking, any step preliminary to the appointment of an administrator is taken, or a controller or similar officer is appointed to all of the other party's assets or undertaking.

11.2 Any termination of this Agreement will be without prejudice to any existing rights or claims that either NCC or HIRER may have against the other and, except as specifically described in this Agreement, will not relieve either NCC or HIRER from fulfilling their obligations accrued prior to termination.

12 INTELLECTUAL PROPERTY

12.1 HIRER warrants that it holds all intellectual property rights arising in relation to the Event. For the purpose of this clause "intellectual property rights" includes any copyright works (including future copyright works), trade marks and service marks, design rights and any other alterations or improvements of such works, marks designs or rights.

12.2 If HIRER does not hold any of the intellectual property rights required for the Event HIRER will obtain permission from all relevant parties before such performances take place. NCC reserves the right to forbid or refuse the use of the Venue if it is of the opinion that such permission has not been obtained.

12.3 HIRER will not infringe or breach or permit to be infringed or breached, any intellectual property rights by conducting the Event and HIRER will indemnify NCC in respect of any liability NCC may incur as a result of any such breach.

13 LIMITATION OF LIABILITY

13.1 Neither party will have any liability to the other party for any loss, damage or injury (whether arising directly or indirectly), in respect of consequential losses or any loss of business or business profits, revenue, goodwill or anticipated savings or other loss. This exclusion of liability applies to liability in contract, tort (including negligence) and any other principle of legal liability.

14 ENTIRE AGREEMENT

14.1 This Agreement constitutes the entire legal and contractual relationship between the parties and, except in the case of any fraudulent misrepresentation made by either party in connection with the subject matter of this Agreement, terminates, cancels and supersedes all prior or contemporaneous agreements or representations, written or oral with respect to this Agreement and its subject matter.

15 NO WARRANTY

15.1 No warranty or representation expressed or implied has been or is made by NCC that the Venue is now suitable or will remain suitable or adequate for use by HIRER.

16. FORCE MAJEURE

16.1 Subject to clause 16.2, neither party will be liable for any failure to fulfil its obligations under this Agreement to the extent the failure is caused by a Force Majeure Event.

16.2 The party whose performance is affected or likely to be affected by a Force Majeure Event will:

- (a) give notice to the other party of the occurrence or expectation of the event or circumstance claimed to be or likely to give rise to a Force Majeure Event as soon as practicable;
- (b) provide to the other party all relevant information including an estimate of the time and action required to rectify or overcome the Force Majeure Event; and
- (c) use its best endeavours to minimise the effects of its inability to perform its obligations under this Agreement

16.3 For the purpose of interpreting this clause, "**Force Majeure Event**" means any act of nature, strike, lockout, fire, flood, storm, explosion, nuclear accident, revolution, riot, act of war (whether declared or not), government intervention, pandemic, epidemic, or any other act which is beyond the reasonable control of the affected party that prevents, hinders, or significantly interferes with the performance of obligations by a party under this Agreement.

17 NOTICES

17.1 All notices, demands and other communications required by this Agreement will be in writing and deemed to be sufficiently made if personally delivered or if sent by mail or email or delivered or sent to such address as specified in this Agreement.

18 WAIVER

18.1 No failure or delay by either party in exercising any of its rights under this Agreement will operate as a waiver of its rights and any such failure or delay will not prevent such party from subsequently enforcing any right or treating any breach by the other party as a repudiation of this Agreement.

19 NO ASSIGNMENT

19.1 Neither party may not assign or transfer this Agreement or any part of it to a third party without first obtaining the proper written approval of the other party.

20 PARTIAL INVALIDITY

20.1 If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it will be severable, will be deemed to be deleted from the body of this Agreement and will not affect the validity or enforceability of any other provisions in this Agreement.

21 RELEASE OF OFFICIAL INFORMATION

21.1 HIRER acknowledges that NCC is subject to the Local Government Official Information and Meetings Act 1987 (**LGOIMA**), and that under LGOIMA, NCC may be required by law to release information about HIRER, the Event and this Agreement in response to a request. Without prejudice to NCC's need to comply with its obligations under LGOIMA, NCC will use all reasonable endeavours to notify HIRER about any request it may receive for information about HIRER, the Event and this Agreement. At its discretion, NCC will consider any comments made by HIRER regarding the applicability of withholding and refusal grounds under LGOIMA to the information requested, including the commercial prejudice ground in section 7(2)(b)(ii) of LGOIMA. As is required by LGOIMA, NCC will decide on the response to the request, including what, if any, information is to be withheld. Having made its decision, NCC will use all reasonable endeavours to notify HIRER of its response to the requester.

22 DISPUTES

22.1 In the event of a dispute arising between the parties in respect of this Agreement, the parties will actively, openly, confidentially and in good faith use their best endeavours to resolve the disagreement promptly without recourse to other forms of dispute resolution.

23 GST

23.1 "GST" means goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax.

23.2 All amounts due under this Agreement are stated, quoted or estimated on a "GST exclusive" basis unless stated otherwise. HIRER agrees to pay all applicable GST in addition to those amounts.

24 REGULATORY POSITION

24.1 NCC has signed this Agreement as the owner / operator of the Venue. This Agreement does not bind NCC in its regulatory capacity in any way. When acting in its regulatory capacity, NCC is entitled to act without regard to this Agreement. For the avoidance of doubt:

- (a) any consent or agreement given under this Agreement is not an agreement or consent given in NCC's regulatory capacity;
- (b) NCC will, in its regulatory capacity, be entitled to enforce any applicable laws, including bylaws and/or regulations, against HIRER; and
- (c) NCC will not be liable to HIRER if, in its regulatory capacity, NCC enforces any applicable laws against HIRER or declines or imposes conditions on any consent or permission that HIRER seeks for any purpose associated with this Agreement.

25. REQUIREMENT TO LEAVE THE VENUE / CESSATION OF THE EVENT

25.1 HIRER acknowledges and accepts that NCC may require any person or group of persons to leave the Venue, and may require the Event to cease, if NCC reasonably considers that person or group of persons to be intoxicated or under the influence of drugs or otherwise behaving in a manner which:

- (a) impedes or adversely affects the enjoyment of other people in the Venue or attending the Event or puts those other people at risk; or
- (b) has caused any loss or damage or increases the risk of loss or damage to the Venue or any other property; or

- (c) is causing a disturbance of the peace or a nuisance; or
- (d) breaches any term of this Agreement, any health and safety obligations or any law or bylaw.

26. RELOCATION

- 26.1 NCC may, in consultation with HIRER and acting reasonably and causing as little inconvenience as possible to HIRER, substitute the Venue, for an alternative / similar venue where, the Event will not be compromised, provided that the Event location may only be changed by NCC giving reasonable notice to HIRER no less than one (1) month prior to the Event. Where the Venue is changed to another NCC venue pursuant to this clause, NCC will provide the necessary personnel to direct all suppliers, customers, delegates, exhibitors, merchandisers and ticketholders to the alternative venue.
- 26.2 NCC reserves the right, in consultation with HIRER, to substitute the Venue for an alternative NCC venue due to low (or high) ticket sales for the Event, or where there is a significant change in the number of Event attendees from those advised by HIRER; subject to the Event not being compromised. Where the Venue is changed to another NCC venue pursuant to this clause, all personnel and advertising costs incurred in the redirection of all persons under HIRER'S control and/or Event attendees will be paid by HIRER. The Venue may only be substituted pursuant to this clause by NCC giving no less than one month prior to the start of the Hire Period.
- 26.3 Where the Venue is changed to another NCC venue pursuant to a Force Majeure Event, or through an act of HIRER, all personnel and advertising costs incurred in the redirection of all persons under HIRER'S control and/or Event attendees will be paid by HIRER.

27. GOVERNING LAW

This Agreement will be construed and interpreted in accordance with the law of New Zealand and the parties irrevocably submit to the exclusive jurisdiction of the New Zealand Courts.