

ACMI TERMS & CONDITIONS – PRIVATE EVENT

1. Definitions

In this Agreement, unless the context requires otherwise, the following words and expressions have the following meanings:

"the Act" means the Film Act 2001 as amended from time to time;

"Additional Facilities" means the staff, facilities, equipment, services and other items excluding the Centre Facilities which ACMI agrees to provide to the Client and which are described in item 6 of Schedule A;

"this Agreement" means this agreement between the Client and ACMI;

"Associated Persons" means:-

(a) the employees, agents and guests of the Client; and

(b) any other persons in any way engaged by or associated with the Client (other than employees or agents of ACMI);

"Centre" means the Australian Centre for the Moving Image at Federation Square, Melbourne, Victoria and includes the portion or the whole of the Centre as the case requires and the Centre Facilities and any other part of Federation Square which is used or managed by ACMI in connection with the Event;

"Centre Facilities" means those cinemas and spaces within the Centre described in item 5 of Schedule A which the Client shall have the licence and authority to use in accordance with the provisions of this Agreement;

"Clearance Time" means the time by which the Client must vacate the Centre, ensure the departure of the Associated Persons from the Centre and remove all items and equipment associated with the Event from the Centre following the conclusion of the last of the Presentations, as specified in item 12 of Schedule A;

"Deposit" means the amount referred to in item 7 of Schedule A which the Client is to pay to ACMI on or before the date also referred to in that item of the Schedule;

"Event" means the single Presentation or series of Presentations comprising the Event described in item 3 of Schedule A;

"Event Dates" means the days on which the Event is to be held as detailed in item 4 of Schedule A;

"Event Co-ordinator" means the person appointed by ACMI and set out in item 2 of Schedule A;

"Event Information Deadlines" means the date by which the Client is to provide relevant information relating to the Event to ACMI or the Event Co-ordinator under the terms of this Agreement as specified in item 11 of Schedule A;

"Event Times" means the times on the Event Dates at which the Event is to be held as detailed in item 4 of Schedule A and includes bump in and bump out times of a minimum of 30 minutes each;

"Hiring Fee" means the amount and or formulas for payment specified in item 6 of Schedule A;

"Presentation" means a single screening, performance or program forming part of the Event;

"Security Bond" means the security bond referred to in clause 7.2;

"Service Fees" means the fees (if any) in respect of the provision of the Additional Facilities specified in item 6 of Schedule A.

2. Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

(a) The singular includes the plural and vice versa;

(b) A reference to a Clause, Sub-clause, Schedule or Appendix is to a Clause, Sub-clause Schedule or Appendix of this Agreement;

(c) If a party consists of more than one person this Agreement binds them jointly and each of them severally; and

(d) This Agreement binds in addition to the parties, their respective legal personal representatives and successors.

3. Grant of Licence

3.1 Subject to the provisions of this Agreement and to the special conditions (if any) set out in item 16 of Schedule A, ACMI grants to the Client a licence and authority to use the Centre Facilities and the Additional Facilities for the purpose of presenting the Event at the Event Times only.

3.2 This Agreement does not create a tenancy or any other relationship between the Client and ACMI other than that of licensee and licensor.

3.3 The Client must not sub-let any part of the Centre Facilities.

3.4 The Client must not access any areas of the Centre other than the Centre Facilities for any aspect of conducting the Event.

3.6 The Client acknowledges and agrees that some foyer areas within the Centre are common public areas controlled by Federation Square management and as a consequence, the use of wall, ceiling and floor spaces within these areas are subject to the approval of Federation Square management.

4. Provision of Information by the Client

The Client shall provide to the Event Co-ordinator prior to the Event Information Deadline, in a form prescribed by ACMI from time to time all information which the Event Co-ordinator may reasonably require with respect to the Event.

5. Payment of Fees and Other Sums

5.1 In consideration of ACMI agreeing to grant to the Client a licence and authority to use the Centre Facilities and Additional Facilities, the Client must pay to ACMI:-

(1) the Hiring Fee of the amount and by the date set out in item 6 of Schedule A; and

(2) the Service Fees and all other sums which are payable by the Client to ACMI pursuant to this Agreement, and ACMI may deduct such fees and other sums from the Deposit in accordance with the provisions of this Agreement.

5.3 The Client will pay to ACMI all additional amounts paid or payable by ACMI in providing the use of the Centre Facilities and the Additional Facilities.

6. Cancellation or Postponement of any Presentation or the Event

If for any reason (including events beyond the Client's control, but excluding any default on the part of ACMI), the Client is unable to proceed with the Event on the Event Dates:-

(1) the Client must immediately notify ACMI in writing of that fact;

(2) subject to sub-clause 6(5), the Client's liability to pay the Hiring Fee under Clause 5 shall be as follows:

(a) if the cancellation is notified more than 3 months prior to the first Event Date, the Deposit will be refunded to the Hirer;

(b) if the cancellation is notified less than 3 months prior to the first Event Date, the Deposit will be retained by ACMI;

(c) in addition to paragraph (b), if the cancellation is notified less than 14 days prior to the first Event Date, the

- Hirer must pay the balance of the Hiring Fee as if the Event took place on the Event Dates;
- (3) the Client must pay to ACMI upon demand:-
 - (a) all costs of any nature incurred by ACMI in providing and preparing for the use of the Centre Facilities for the cancelled or postponed Presentation or Event, including without limitation the cost of all front of house staff and catering staff, the cost of all services provided by sub-contractors and the cost of Additional Facilities and equipment;
 - (b) all costs of any nature incurred as a result of the failure to present any Presentation or the Event or any change in the scheduled times;
 - (4) ACMI may refuse to provide the Client with the Centre Facilities on the relevant Event Dates or at the Event Times and is entitled to grant the licence and authority to use the Centre Facilities on those dates and at those times to any other party; and
 - (5) where both parties agree to the Event being moved to another date, the Deposit will be retained by ACMI and applied to the alternate booking.

7. Deposit and Security Bond

- 7.1 The Client acknowledges and agrees that
- (1) this Agreement is conditional upon the Deposit being paid by the Client to ACMI on or before the date specified in item 7 of the Schedule and any failure to pay the Deposit by that date will allow ACMI to vacate the Event Dates; and
 - (2) the Deposit is not refundable in the case of cancellation by the Client other than as set out in clause 6(2).
- 7.2 ACMI may require the Client to lodge with ACMI a Security Bond of the amount set out in item 7 of Schedule A. ACMI may utilise the Security Bond to compensate ACMI for any costs, losses, expenses or damages incurred or payable by ACMI by reason of any breach of the Client's obligations under this Agreement, but prior to doing so, must give written notice to the Client of the breach and the amount claimed. Within 30 days after the last Event Date, ACMI must repay to the Client the balance, if any, of the Security Bond not utilised by ACMI.

8. Warranties of the Client concerning presentation of the Event

- The Client warrants, at the time of entering into this Agreement and at all times during the continuance of this Agreement that:-
- (1) the Client has properly informed itself as to the suitability of the Centre and the Centre Facilities for the presentation of the Event and has not relied upon any representation or advice of ACMI, its employees or agents;
 - (2) the Event will not cause any damage to the Centre or to the reputation or standing of ACMI;
 - (3) it has obtained all necessary authorisations, licences, consents, releases and waivers from third parties to enable the Event to be promoted and conducted; and
 - (4) any screening of material forming part of the Event will not infringe the intellectual property rights of any third party.

9. Client's obligations concerning presentation of the Event

- 9.1 The Client must:-
- (1) present the Event on the Event Dates and at the Event Times;
 - (2) observe and comply, and ensure that all Associated Persons observe and comply with any rules and regulations (including a Client Code of Conduct) made or adopted by ACMI or Federation Square for use and operation of the Centre;
 - (3) obtain at its expense and produce to the Event Co-ordinator upon request, all permits and other licences required by any government, municipal or statutory authority or under any legislation in order to stage the Event and all necessary licences and authorisations relating to the use in the Event of any copyrighted materials, sound recording, film or performing right (including licences from the Australasian Performing Right Association) or other patented or copyrighted equipment, device or dramatic right;
 - (4) ensure proper supervision of all Associated Persons;
 - (5) provide an authorised and responsible representative on site who will co-ordinate all communications with ACMI and be contactable for the duration of the Event;
 - (6) comply with the technical support requirements set out in item 15 of Schedule A; and
 - (7) comply with all other reasonable requirements of ACMI notified by it to the Client.
- 9.2 The Client must conduct and manage the Event in a proper and orderly manner. The Client agrees that ACMI, its employees and agents may refuse admission to or remove any person from the Centre including any of the Associated Persons at any time, regardless of whether the Event is in progress or the Associated Persons are in any way essential to the Event. The Client must instruct the Associated Persons on the appropriate conduct on their part necessary to avoid a breach of this Clause.
- 9.3 The Client must and must ensure that the Associated Persons comply with all reasonable directions of the Event Co-ordinator in connection with the safe and proper use of the Centre, the Centre Facilities and the Additional Facilities.

10. Damage to the Centre

- 10.1 The Client must pay to ACMI the cost of repairing and making good any damage of the type referred to in Clause 10.1 (unless caused by the negligence of ACMI, its employees or agents) including the cost of labour and materials and replacement equipment.
- 10.2 The Client must pay to ACMI the amount of any revenue which ACMI calculates to have been lost by reason of any damage of the type referred to in Clause 10.1 or the repairing and making good of any such damage.

11. Marketing, Promotion, Sponsorship and Merchandise

- 11.1 The parties must contribute to the promotion of the Event in the manner and to the extent set out in item 8 of Schedule A.
- 11.2 The Client must submit to the Event Co-ordinator for approval details of all advertisements, promotions, sponsorships and merchandise (including trailers) in relation to the Event and will not advertise or promote the Event without the prior approval of the Event Co-ordinator. Without limiting this clause 11.1, any use by the Client of ACMI's name, logo, image, trade marks or other intellectual property in any advertising, promotional, sponsorship or merchandising material must receive the prior written consent of ACMI. ACMI has given consent to the signage set out in item 14 of Schedule A.
- 11.3 Any sponsorship arrangements pertaining to the Event, including a list of relevant sponsors of each party is set out in item 9 of Schedule A. The Client must keep ACMI informed of any additional sponsors it proposes to appoint in connection with the Event. Unless otherwise stated in item 9 of Schedule A, sponsors appointed by ACMI shall take precedence over the Client's sponsors in the Centre. ACMI retains the full discretion to determine what, if any, rights may be granted to the Client's sponsors that affect the Centre or the conduct of the Event.

- 12. Catering**
- 12.1 If the Client requires ACMI to provide catering for the Event, the Client must provide ACMI with full details of its catering requirements no later than 30 days prior to the Event. As at the date of this Agreement, the Client's catering requirements are set out in item 13 of Schedule A.
- 12.2 The Client acknowledges that ACMI has a preferred caterer. An alternative caterer may be used only in exceptional circumstances.
- 13. Rights of ACMI regarding operation of the Centre**
- 13.1 ACMI reserves the exclusive right to grant to any other person or to retain for itself the right to:-
- (1) nominate preferred suppliers for equipment and catering supplies;
 - (2) provide the security and cleaning services at the Centre; and
 - (3) designate technical and facilities staff to assist in delivering the Event.
- 13.2 The Client agrees that it will comply with any directions made by ACMI in exercising the rights reserved under Clause 13.1.
- 14. Rights of ACMI in respect of the Event**
- 14.1 ACMI reserves for itself the right:-
- (1) to determine in its absolute discretion acceptable sound limits in respect of the Event;
 - (2) to suspend or control the Event if in the reasonable judgment of ACMI it is not in accordance with this Agreement or it is necessary to vacate the Centre in order to avoid exposing any person to danger or if directed by the Police, Fire Brigade or any other relevant authority;
 - (3) to modify the level or nature of beverage service during the Event where the Event Co-ordinator considers it reasonable to do so having regard to circumstances (including compliance with Responsible Service of Alcohol regulations) and in such case, there shall be no adjustment to the Hiring Fee or other financial arrangements under this Agreement;
 - (4) to levy a commission on merchandise sales and such sales will be conducted according to ACMI's standard operating procedures.
- 14.2 The Client agrees that it will comply with any reasonable directions made by ACMI or the Event Co-ordinator in exercising the rights reserved under Clause 14.1.
- 15. Insurance**
- If instructed by the Event Co-ordinator, the Client must take out and keep current during the Event Dates, public liability insurance to cover its own legal liability and noting the interest of ACMI in the amount specified in item 10 of Schedule A and provide evidence of currency of insurance at least fourteen days prior to the Event.
- 16. Indemnity**
- The Client hereby agrees to indemnify, to keep indemnified, and save harmless ACMI its employees and agents from and against all claims, demands, actions, damages, costs, losses and expenses of any nature whatsoever ("Claims") which may be incurred directly or indirectly by reason of or in relation to the use of the Centre, the Centre Facilities and Additional Facilities by the Client or the Associated Persons including without limitation Claims arising out of or in connection with any breach by the Client of this Agreement or breach of a third party's intellectual property rights, except to the extent that any Claim arises out of any act or omission of ACMI or Event Co-ordinator or any of their respective employees, agents or contractors.
- 17. Default**
- If at any time:-
- (1) the Client commits a breach of any condition of this Agreement;
 - (2) the Client is or becomes insolvent, becomes bankrupt, or has a receiver, manager, administrator or similar officer appointed over any of its assets,
- then notwithstanding any prior waiver, or indulgence granted by ACMI to the Client ACMI may, after providing a reasonable opportunity to the Client to remedy the default if in the opinion of the Event Co-ordinator the default is capable of being remedied, terminate this Agreement by giving the Client notice in writing, whereupon this Agreement and any licence hereby granted to the Client shall be at an end but without prejudice to any right or remedy of ACMI for any breach by the Client of this Agreement.
- 18. Assignment**
- The Client must not assign its interest in the subject matter of this Agreement or any right under this Agreement.
- 19. Force Majeure**
- The obligations of a party, other than the obligation to pay money, shall be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by force majeure. Force majeure means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected.
- 20. Clearance of the Centre Facilities**
- The Client and Associated Persons must vacate the Centre and remove all of the Client's equipment by the Clearance Time in respect of each Presentation and must at the Client's expense make good any damage to the Centre caused by the removal of equipment. The Client must leave the Centre in a clean, safe and proper condition. Where the Client fails to remove its equipment, ACMI may store such equipment at the Client's cost and dispose of such equipment where the Client fails to collect such equipment within a reasonable period of time. Where the Client fails to vacate the Centre within the time prescribed, the Client must pay an additional hiring fee equal to 150% of the hourly rate for each hour over time.
- 21. Privacy Guidelines**
- The parties must comply with the Information Privacy Principles contained in ACMI's privacy policy and in the *Information Privacy Act 2000 (Victoria)* in relation to the collection of information from patrons attending the Centre. The format of all surveys which collect data from patrons attending the Event must be approved by the Event Co-ordinator and provided by the Event Information Deadline.
- 22. GST**
- 22.1 For the purpose of this clause unless the context otherwise requires:
"Act" means the A New Tax System (Goods and Services Tax) Act 1999 as amended.

- "GST" has the meaning given in Section 195-1 of the Act.
Where any other term is used in this clause which is defined in the Act it shall have the same meaning which it bears in the Act.
- 22.2 The following principles apply when determining the amount payable ("the Payment") for any taxable supply made pursuant to this Agreement:
- (a) if the Payment is determined by reference to any cost, expense or liability incurred by a person, the reference to cost, expense or liability means the actual amount incurred less the amount of any GST input tax credit or similar rebate which is or can be claimed by the person in respect of that cost, expense or liability;
 - (b) subject to sub- paragraph (c), if the Payment arises from a revenue sharing arrangement or an obligation to pay a specified percentage of any revenue, sales, fee or any other amount, the Payment is to be calculated by reference to the relevant amount gross of GST with the recipient of the Payment responsible for paying GST; and
 - (c) if a person is liable to GST in relation to making the taxable supply, the Payment for the taxable supply as calculated under this clause, shall be increased by the applicable GST.
- 22.3 A party's right to any payment from the other party under this Agreement is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- 22.4 Any Deposits or Bond payable under this Agreement will not include GST.
- 23. Governing Law**
The law of this Agreement is the law of the state of Victoria and the Commonwealth of Australia. The parties submit themselves to the jurisdiction of the Courts of Victoria and the Commonwealth of Australia for all proceedings arising from this Agreement.
- 24. Mediation**
If there is any dispute between the parties concerning this Agreement, then the parties must prior to issuing legal proceedings, attempt to resolve any such dispute by mediation utilising the Dispute Settlement Centre of Victoria managed by the Victorian Department of Justice.
- 25 Confidentiality**
The parties to this Agreement must keep confidential and not allow, make or cause any disclosure of the terms of this Agreement and any documents which are or information which is confidential under this Agreement, without the prior written consent of the other parties, unless disclosure is required by law.

ACMI TERMS & CONDITIONS - PUBLIC EVENT

1. Definitions

In this Agreement, unless the context requires otherwise, the following words and expressions have the following meanings:

"Access Pass" means a pass which is issued by ACMI to the Client to enable persons to have access to the non-public areas of the Centre during the Event;

"the Act" means the Film Act 2001 as amended from time to time;

"Additional Facilities" means the staff, facilities, equipment, services and other items excluding the Centre Facilities which ACMI agrees to provide to the Client and which are described in item 6 of Schedule A;

"this Agreement" means this agreement between the Client and ACMI;

"Associated Persons" means:-

- (a) the employees, agents and guests of the Client; and
- (b) any other persons in any way engaged by or associated with the Client (other than employees or agents of ACMI);

"Business Day" means a day other than a Saturday, Sunday or any other day which is a public holiday or bank holiday in the place where any thing is to be done;

"Centre" means the Australian Centre for the Moving Image at Federation Square, Melbourne, Victoria and includes the portion or the whole of the Centre as the case requires and the Centre Facilities and any other part of Federation Square which is used or managed by ACMI in connection with the Event;

"Centre Facilities" means those cinemas and spaces within the Centre described in item 5 of Schedule A which the Client shall have the licence and authority to use in accordance with the provisions of this Agreement;

"Clearance Time" means the time by which the Client must vacate the Centre, ensure the departure of the Associated Persons from the Centre and remove all items and equipment associated with the Event from the Centre following the conclusion of the last of the Presentations, as specified in item 12 of Schedule A;

"Deposit" means the amount referred to in item 7 of Schedule A which the Client is to pay to ACMI on or before the date also referred to in that item of Schedule A;

"Event" means the single Presentation or series of Presentations comprising the Event described in item 3 of Schedule A;

"Event Dates" means the days on which the Event is to be held as detailed in item 4 of Schedule A;

"Event Co-ordinator" means the person appointed by ACMI and set out in item 2 of Schedule A;

"Event Information Deadlines" means the dates by which the Client is to provide relevant information relating to the Event to ACMI or the Event Co-ordinator under the terms of this Agreement as specified in item 11 of Schedule A;

"Event Times" means the times on the Event Dates at which the Event is to be held as detailed in item 4 of Schedule A and includes bump in and bump out times of a minimum of 30 minutes each;

"Hiring Fee" means the amount and or formulas for payment specified in item 6 of Schedule A;

"Merchandise" means all items and products relating to the Event but excluding food and beverages, which the Client wishes to have sold;

"Presentation" means a single screening, performance or program forming part of the Event;

"Security Bond" means the security bond referred to in clause 7.2;

"Service Fees" means the fees (if any) in respect of the provision of the Additional Facilities specified in item 6 of Schedule A.

2. Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) The singular includes the plural and vice versa;
- (b) A reference to a Clause, Sub-clause, Schedule or Appendix is to a Clause, Sub-clause Schedule or Appendix of this Agreement;
- (c) If a party consists of more than one person this Agreement binds them jointly and each of them severally; and

(d) This Agreement binds in addition to the parties, their respective legal personal representatives and successors.

3. Grant of Licence

3.1 Subject to the provisions of this Agreement and to the special conditions (if any) set out in item 21 of Schedule A, ACMI grants to the Client a licence and authority to use the Centre Facilities and the Additional Facilities for the purpose of presenting the Event at the Event Times only.

3.2 This Agreement does not create a tenancy or any other relationship between the Client and ACMI other than that of licensee and licensor.

3.3 The Client must not sub-let any part of the Centre Facilities.

3.4 The Client must not access any areas of the Centre other than the Centre Facilities for any aspect of conducting the Event. The Client acknowledges that ACMI's duty technician/projectionist or facilities officer is the only person authorised to have access and control over the electrical switches and equipment at the Centre.

3.5 All Events taking place in the cinemas must be ticketed if they are open to the public, including Events to which entry is free. Where the Event is or is required to be ticketed, the provisions set out in Schedule C shall apply.

3.6 The Client acknowledges and agrees that some foyer areas within the Centre are common public areas controlled by Federation Square Management (**FSM**) and as a consequence, the use of wall, ceiling and floor spaces within these areas are subject to the approval of FSM.

3.7 For each day that the Client is hiring only one cinema, the Client's Presentations will be scheduled at quarter past the hour to ensure safe and efficient entry and egress of all patrons from the cinemas. If the Client is hiring both cinemas simultaneously, it will ensure that Presentations are scheduled so that entry times are at least 15 minutes apart.

4. Provision of Information by the Client

4.1 The Client shall provide to the Event Co-ordinator prior to the Event Information Deadlines, in a form prescribed by ACMI from time to time:-

- (1) all information which the Event Co-ordinator may require with respect to the lighting, sound, fittings, electrical installations and other equipment which the Client proposes to use in staging the Event;
- (2) all other information or details relating to the Event which the Event Co-ordinator may require or which may be expected to affect the safety of the Centre or reputation of ACMI.

4.2 The Event Co-ordinator may after receiving all or any part of the details referred to in Clause 4.1 and having regard to the reputation of ACMI and the Centre, the structural and technical nature of the Centre or the safety of any person specify requirements with respect to the use of any equipment which the Client proposes to use in relation to the Event, including the requirement for the Client to book a technical rehearsal for use of external equipment.

5. Payment of Fees and Other Sums

5.1 In consideration of ACMI agreeing to grant to the Client a licence and authority to use the Centre Facilities and Additional Facilities, the Client must pay to ACMI:-

- (1) the Hiring Fee of the amount and by the date set out in item 6 of Schedule A; and
- (2) the Service Fees and all other sums which are payable by the Client to ACMI pursuant to this Agreement, and ACMI may deduct such fees and other sums from the Deposit in accordance with the provisions of this Agreement.

5.2 ACMI shall allocate staff for the Event (as set out in paragraphs (a) and (b) below) at no additional cost to the Client provided that such staff may be utilised in multiple events and may not be exclusively allocated for the Event. If additional staff are requested by the Client, they will be charged at the rates set out in item 6 of Schedule A.

- (a) Where no cinema is occupied for the Event -
 - 1 x AV technician;
 - 1 x Event Co-ordinator or Visitor Services Supervisor;
- (b) Where a cinema is occupied for the Event -
 - 1 x projectionist;
 - 1 x ticket seller per cinema;
 - 1 x usher per cinema;
 - 1 x Event Co-ordinator or Visitor Services Supervisor.

5.3 The Client will pay to ACMI all additional amounts paid or payable by ACMI in providing the use of the Centre Facilities and the Additional Facilities, including without limitation:-

- (1) the wages and on-costs for any additional cleaning, catering or security staff or other additional persons which ACMI engages by reason of any act or omission of the Client;
- (2) the cost of providing additional air-conditioning and illumination to the Centre and any temporary or Client's equipment used in connection with the Event (including hire, delivery, installation and removal of equipment);
- (3) an additional hiring fee for any variation or increase in the Event Dates or Event Times or Additional Facilities; and
- (4) the cost (charged in half hour blocks) of booking the Centre for technical rehearsal for external equipment or for technical checks of screening material to be used during the Event.

6. Cancellation or Postponement of any Presentation or the Event

If for any reason (including events beyond the Client's control, but excluding any default on the part of ACMI), the Client is unable to proceed with the Event on the Event Dates:-

- (1) the Client must immediately notify ACMI in writing of that fact;
- (2) subject to sub-clause 6(5), the Client's liability to pay the Hiring Fee under Clause 5 shall be as follows:
 - (a) if the cancellation is notified more than 3 months prior to the first Event Date, the Deposit will be refunded to the Hirer;
 - (b) if the cancellation is notified less than 3 months prior to the first Event Date, the Deposit will be retained by ACMI;
 - (c) in addition to paragraph (b), if the cancellation is notified less than 14 days prior to the first Event Date, the Hirer must pay the balance of the Hiring Fee as if the Event took place on the Event Dates,

PROVIDED THAT where the Client is unable to proceed with one or more Presentations (but not the entire Event) on the scheduled Event Dates, ACMI will adjust the cancellation fees payable under this sub-clause (2) on an equitable basis having regard to the extent of Presentations cancelled;

- (3) the Client must pay to ACMI upon demand:-
 - (a) all costs of any nature incurred by ACMI in providing and preparing for the use of the Centre Facilities for the cancelled or postponed Presentation or Event, including without limitation the cost of all front of house

- staff and catering staff, the cost of all services provided by sub-contractors and the cost of Additional Facilities, ticketing services and equipment;
- (b) all costs of any nature incurred as a result of the failure to present any Presentation or the Event or any change in the scheduled times;
- (4) ACMI is entitled to grant the licence and authority to use the Centre Facilities on those dates and at those times to any other party and may refuse to provide the Client with the Centre Facilities on the relevant Event Dates or at the Event Times; and
- (5) where both parties agree to the Event being moved to another date, the Deposit will be retained by ACMI and applied to the alternate booking.

7. Deposit and Security Bond

7.1 The Client acknowledges and agrees that

- (1) this Agreement is conditional upon the Deposit being paid by the Client to ACMI on or before the date specified in item 7 of Schedule A and any failure to pay the Deposit by that date will allow ACMI to vacate the Event Dates; and
- (2) the Deposit is not refundable in the case of cancellation by the Client other than as set out in clause 6(2).

7.2 If in the opinion of ACMI:-

- (1) there is a heightened risk of damage to the Centre by reason of the nature of the Event;
- (2) the Event or any Presentation may not proceed as scheduled;
- (3) the Client may not discharge its obligations under this Agreement; or
- (4) the Client may not be in a position to pay to ACMI all monies payable under this Agreement as and when due,

ACMI may require the Client to lodge with ACMI a Security Bond of the amount set out in item 7 of Schedule A. ACMI may utilise the Security Bond to compensate ACMI for any costs, losses, expenses or damages incurred or payable by ACMI by reason of any breach of the Client's obligations under this Agreement, but prior to doing so, must give written notice to the Client of the breach and the amount claimed. Within 30 days after the last Event Date, ACMI must repay to the Client the balance, if any, of the Security Bond not utilised by ACMI.

8. Warranties of the Client concerning presentation of the Event

The Client warrants, at the time of entering into this Agreement and at all times during the continuance of this Agreement that:-

- (5) the Client has properly informed itself as to the suitability of the Centre and the Centre Facilities for the presentation of the Event and has not relied upon any representation or advice of ACMI, its employees or agents;
- (6) it has the financial, technical, commercial and legal capacity to promote and stage the Event in accordance with information provided to ACMI;
- (7) it has and will continue to provide all relevant information to ACMI pertaining to the Event to enable ACMI to comply with its obligations hereunder;
- (8) the Event will not cause any damage to the Centre or to the reputation or standing of ACMI;
- (9) it has obtained all necessary authorisations, licences, consents, releases and waivers from third parties to enable the Event to be promoted and conducted;
- (10) any screening of material forming part of the Event will not infringe the intellectual property rights of any third party;
- (11) it has obtained any classification or exemption required for any material to be screened as part of the Event from any relevant authority prior the Event being advertised or promoted; and
- (12) it will not do anything which will bring ACMI into disrepute or make adverse comments about ACMI in the media.

9. Client's obligations concerning presentation of the Event

9.1 The Client must:-

- (1) present the Event on the Event Dates and at the Event Times;
- (2) observe and comply, and ensure that all Associated Persons observe and comply with:-
 - (a) any rules and regulations made or adopted by ACMI or FSM for use and operation of the Centre;
 - (b) the provisions of all industrial agreements, awards and determinations governing any person engaged or employed by the Client in connection with the Event and all Occupational Health and Safety Act requirements of ACMI; and
 - (c) the provisions of any statutes, regulations, by-laws or other requirements (including censorship laws) of any government, municipal or statutory authority applying to the Centre;
- (3) obtain at its expense and produce to the Event Co-ordinator upon request, all permits and other licences required by any government, municipal or statutory authority or under any legislation in order to stage the Event and all necessary licences and authorisations relating to the use in the Event of any copyrighted materials, sound recording, film or performing right (including licences from the Australasian Performing Right Association) or other patented or copyrighted equipment, device or dramatic right;
- (4) ensure proper supervision of all Associated Persons;
- (5) provide to the Event Co-ordinator at no cost to ACMI a copy of the Client's proposed program for the Event prior to its publication or distribution and upon approval by the Event Co-ordinator, six copies of the Client's final program for the Event;
- (6) deliver screening material to ACMI at least five working days prior to the Event Date (or 10 days if cueing by ACMI is required), with all material requiring cueing to be accompanied by clear English language instructions indicating a menu and or navigational directions to the relevant content in the format specified in item 4 of Schedule A and consistent with the technical specifications required by the Centre;
- (7) comply with the print movement schedule and associated requirements set out in item 16 of Schedule A;
- (8) give ACMI a minimum of 24 hours notice of any request to use smoke machines, pyrotechnics or similar features within the Centre (which request may be granted or refused at ACMI's discretion);
- (9) provide an authorised and responsible representative on site who will co-ordinate all communications with ACMI and be contactable for the duration of the Event; and
- (10) comply with the technical support requirements set out in item 17 of Schedule A.

9.2 The Client must pay the call out fee of the Metropolitan Fire Brigade (MFB) if the MFB attends the centre by reason of a false activation of the fire alarm caused by the Client, its employees, agents or invitees.

9.3 The Client must not use and must ensure that the Associated Persons do not use the Centre Facilities for any purpose other than for the purpose of presenting the Event or for any purpose which in the Event Co-ordinator's opinion constitutes a nuisance or a danger to any other person.

9.4 The Client must not and must ensure that the Associated Persons do not without the prior written consent of the Event Co-

ordinator-

- (1) bring into the Centre any firearms, explosives, inflammable liquids, hazardous materials, drugs or alcoholic beverages (whether for sale or supply) or any other goods or services for the purpose of sale or supply;
 - (2) make or attempt to make any collections whether for charity or otherwise; or
 - (3) remove or obscure whether directly or indirectly any signage, logo or other representation;
 - (4) suspend any object or thing from the roof of the Centre;
 - (5) install or use or bring into the Centre any equipment, fittings or electrical installation for the staging of the Event; or
 - (6) bring liquid, sand or similar substances into areas where computers are installed, including without limitation, the Screen Pit and the Games Lab.
- 9.5 The Client acknowledges that the Centre is a non-smoking venue and smoking is only permitted in outdoor areas which are not otherwise designated as "no smoking" areas.
- 9.6 The Client must not do anything whereby:-
- (1) any authorisation or licence in force in respect of the Centre may be forfeited, suspended or not renewed; or
 - (2) any member of the police force or emergency services or any employee or agent of ACMI is obstructed in the exercise of his duties at the Centre.
- 9.7 The Client must conduct and manage the Event in a proper and orderly manner. The Client agrees that ACMI, its employees and agents may refuse admission to or remove any person from the Centre including any of the Associated Persons at any time, regardless of whether the Event is in progress or the Associated Persons are in any way essential to the Event. The Client must instruct the Associated Persons on the appropriate conduct on their part necessary to avoid a breach of this Clause.
- 9.8 The Client must and must ensure that the Associated Persons:-
- (1) use the Centre, the Centre Facilities and the Additional Facilities in a safe and proper manner so as not to create any risk of injury or damage to person or property;
 - (2) comply with all reasonable directions of the Event Co-ordinator in connection with the safe and proper use of the Centre, the Centre Facilities and the Additional Facilities;
 - (3) refrain from marking, painting, drilling into or otherwise defacing any part of the Centre or making any alteration or fix any item to the structure, fittings, decorations or furnishings of the Centre or the Centre Facilities without the prior approval of the Event Co-ordinator;
 - (4) comply with the Event Co-ordinator's directions concerning all equipment brought into the Centre;
 - (5) do not block or obscure emergency exits, emergency lights or fire protection equipment; and
 - (6) do not exceed the floor loading of 5kpa within the Centre.
- 9.9 The Client is responsible for any equipment it brings into the Centre including any equipment supplied by a third party for the Event and ACMI shall have no liability to the Client for any loss of or damage to any such equipment unless such loss or damage is caused by the negligence of ACMI.

10. Damage to the Centre

- 10.1 The Client must report to the Event Co-ordinator any damage to the Centre, the Centre Facilities, any of the Additional Facilities or other equipment, facilities and services provided by ACMI sustained during use by the Client, any Associated Person or any persons attending the Event immediately upon becoming aware of the damage.
- 10.2 The Client must pay to ACMI the cost of repairing and making good any damage of the type referred to in Clause 10.1 (unless caused by the negligence of ACMI, its employees or agents) including the cost of labour and materials and replacement equipment and must if required by ACMI itself repair and make good any such damage.
- 10.3 The Client must pay to ACMI the amount of any revenue which ACMI calculates to have been lost by reason of any damage of the type referred to in Clause 10.1 or the repairing and making good of any such damage.

11. Marketing, Promotion, Sponsorship and Merchandise

- 11.1 The parties must contribute to the promotion of the Event in the manner and to the extent set out in item 8 of Schedule A.
- 11.2 The Client must submit to the Event Co-ordinator for approval details of all advertisements and promotions (including trailers and ticketing information) in relation to the Event and will not advertise or promote the Event or the dates for sale of any tickets without the prior approval of the Event Co-ordinator. Without limiting this clause 11.1, any use by the Client of ACMI's name, logo, image, trade marks or other intellectual property in any advertising or promotional material must receive the prior written consent of ACMI.
- 11.3 The Client must provide to ACMI marketing and promotional benefits to the same value as any discount on the Corporate Venue Hire rate granted to the Client by ACMI.
- 11.4 The Client must not erect or place any flag, banner or other signage in or around the Centre without the prior approval of ACMI, which approval may be given or withheld at the sole discretion of ACMI. Without limitation, approval will not be given for any signage which is likely to detract from the appearance of the Centre, is potentially unsafe or which may cause any damage to the building, fittings or furniture within the Centre. ACMI has given consent to the signage set out in item 14 of Schedule A.
- 11.5 All promotions or advertising in relation to the Event including without limitation television, newspaper, internet and radio advertising must refer to the Centre as "Australian Centre for the Moving Image, Federation Square, Flinders Street, Melbourne", and must include any other information the Event Co-ordinator may stipulate. The location of the cinemas must be listed for the first expression as "ACMI Cinemas, Australian Centre for the Moving Image, Federation Square, Flinders Street, Melbourne" and thereafter as "ACMI Cinemas".
- 11.6 ACMI may screen advertising material and use photographs of the Event before and after the Event for publicity and promotion of the Centre.
- 11.7 The Client must not and must ensure that Associated Persons do not make any authorised recordings or photographs of any ACMI exhibit, installation or display.
- 11.8 Any sponsorship arrangements pertaining to the Event, including a list of relevant sponsors of each party is set out in item 9 of Schedule A. The Client must keep ACMI informed of any additional sponsors it proposes to appoint in connection with the Event. Unless otherwise stated in item 9 of Schedule A, sponsors appointed by ACMI shall take precedence over the Client's sponsors in the Centre. ACMI retains the full discretion to determine what, if any, rights may be granted to the Client's sponsors that affect the Centre or the conduct of the Event.
- 11.9 Where the Client proposes to make programs or Merchandise available for sale at the Centre in association with the Event, the merchandising arrangements are set out in item 15 of Schedule A.
- 11.10 ACMI may refuse to allow the sale of any programs or Merchandise which in the opinion of ACMI may be illegal, offensive or likely to damage the reputation of ACMI.

12 Catering

- 12.1 If the Client requires ACMI to provide catering for the Event, the Client must provide ACMI with full details of its catering requirements no later than 30 days prior to the Event. In that event, ACMI will advise the Client of ACMI's preferred caterer and the estimated catering costs or rates. The Client must advise ACMI of final confirmed number of patrons five working days prior to the Event and these numbers will provide the basis for the preliminary invoice. Increased numbers will be charged to the final account. Reduced numbers will be invoiced at the final confirmed number. If the confirmed numbers are more than 15% below the initial advised numbers, the per person costing may be revised upwards.
- 12.2 The Client acknowledges that ACMI has a preferred caterer. An alternative caterer may be used only in exceptional circumstances and only after ACMI's caterer had been given the opportunity to submit a quote and it is clear that the level of product or service required is not able to be delivered. Any alternative caterer must be registered and a copy of a current certificate of registration as a food business from the municipality in which the caterer is registered must be supplied to the Event Co-ordinator no less than 30 days prior to the Event. The caterer must also meet all quality assurance and regulations pursuant to the Food Act 1984 and must provide evidence of a current public liability insurance policy for not less than \$10 million.
- 12.3 Where the caterer is engaged by the Client, the Client is responsible for:
- the operation and cleaning of the kitchen and bar facilities and the standard of services (including the cost of breakages or damage to any equipment);
 - obtaining (and providing ACMI a copy of) a liquor licence appropriate to the Event; and
 - the caterer meeting all requirements of its liquor licence and the Responsible Service of Alcohol guidelines and regulations (including without limitation, appropriately trained staff).
- 12.4 Alcohol and hot beverages are not permitted in the Screen Pit or the Games Lab.
- 12.5 The Client acknowledges that patron numbers may be limited by Occupational Health and Safety Act or Building Act requirements.
- 12.6 Any other special catering requirements agreed between the parties are set out in item 13 of Schedule A and to the extent of any inconsistency between the provisions of this clause 12 and the particulars set out in item 13 of Schedule A, the latter shall prevail.

13. Rights of ACMI regarding operation of the Centre

- 13.1 ACMI reserves the exclusive right to grant to any other person or to retain for itself the right to:-
- nominate preferred suppliers for equipment and catering supplies;
 - provide the security and cleaning services at the Centre; and
 - designate technical and facilities staff to assist in delivering the Event.
- 13.2 The Client agrees that it will comply with any directions made by ACMI in exercising the rights reserved under Clause 13.1 and that as a consequence of such rights:-
- unless specifically set out in this Agreement, the Client has no right to demand that ACMI will sell or supply or will not sell or supply items of any particular type, brand or description;
 - no security organisations will be admitted to the Centre for the purpose of carrying out duties relating to the provision of security for any person including any artists or performers, without the prior written consent of the Event Co-ordinator; and
 - ACMI shall determine the appropriate allocation of security to the Event at the Client's cost having regard to the number of proposed patrons attending, with at least one security personnel being provided where alcohol is to be served at the Event.

14. Rights of ACMI in respect of the Event

- 14.1 ACMI reserves for itself the right:-
- to have access to all areas of the Centre at all times for the purpose of carrying out its normal duties;
 - to determine in its absolute discretion acceptable sound limits in respect of the Event including without limitation for music, karaoke, videos and amplified noise;
 - to refuse admission to or to remove from the Centre at any time any Associated Person;
 - to direct crowd control measures, safety and security systems and procedures;
 - to suspend or control the Event if in the reasonable judgment of ACMI it is not in accordance with this Agreement;
 - to take all actions and make all directions relating to the use of the Centre and the Centre Facilities by the Client or the Associated Persons as it deems necessary;
 - to authorise the Event Co-ordinator to exercise on behalf of ACMI and at his own discretion, the rights reserved to ACMI under this Agreement;
 - to suspend or cancel any Presentation if in the opinion of the Event Co-ordinator it is necessary to vacate the Centre in order to avoid exposing any person to danger or if directed by the Police, Fire Brigade or any other relevant authority;
 - to issue Access Passes permitting specified persons to have access to specified areas of the Centre normally closed to the public, including areas used by the Client;
 - make announcements through the medium of the Centre's sound system at the times that it deems appropriate during a Presentation describing or advertising future events at the Centre or any other matter PROVIDED THAT the announcements do not unduly disrupt or interfere with the Presentation;
 - to modify the level or nature of beverage service during the Event where the Event Co-ordinator considers it reasonable to do so having regard to circumstances (including compliance with Responsible Service of Alcohol regulations) and in such case, there shall be no adjustment to the Hiring Fee or other financial arrangements under this Agreement;
 - to convert screening material to a different format to enable it to be effectively presented on screen;
 - to levy a commission on merchandise sales and such sales will be conducted according to ACMI's standard operating procedures.
- 14.2 The Client agrees that it will comply with any reasonable directions made by ACMI or the Event Co-ordinator in exercising the rights reserved under Clause 14.1.

15. Clearance of the Centre Facilities

The Client and Associated Persons must vacate the Centre and remove all of the Client's equipment by the Clearance Time in respect of each Presentation and must at the Client's expense make good any damage to the Centre caused by the removal of equipment. The Client must leave the Centre in a clean, safe and proper condition. Where the Client fails to remove its equipment, ACMI may store such equipment at the Client's cost and dispose of such equipment where the Client fails to collect such equipment within a reasonable period of time. Where the Client fails to vacate the Centre within the time prescribed, the Client must pay an additional hiring fee equal to 150% of the hourly rate for each hour over time.

16. Insurance

- 16.1 If instructed by the Event Co-ordinator, the Client must take out and keep current during the Event Dates, public liability insurance to cover its own legal liability and noting the interest of ACMI in the amount specified in item 10 of Schedule A and provide evidence of currency of insurance at least fourteen days prior to the Event.
- 16.2 The Client must not do or permit any of the Associated Persons to do anything which would render in any way unenforceable against the insurer any insurance effected by ACMI or the Client.

17. Indemnity

The Client hereby agrees to indemnify, to keep indemnified, and save harmless ACMI its employees and agents from and against all claims, demands, actions, damages, costs, losses and expenses of any nature whatsoever ("Claims") which may be incurred by reason of or in relation to the use of the Centre, the Centre Facilities and Additional Facilities by the Client or the Associated Persons including without limitation Claims arising out of or in connection with any breach by the Client of this Agreement or breach of a third party's intellectual property rights, except to the extent that any Claim arises out of any act or omission of ACMI or Event Co-ordinator or any of their respective employees, agents or contractors.

18. Default

If at any time:-

- (1) the Client commits a breach of any condition of this Agreement;
- (2) the Client is or becomes insolvent, bankrupt, goes into liquidation or an official manager, administrator or receiver is appointed over any of its assets;
- (3) in the Event Co-ordinator's opinion there is a likelihood that damage may be caused to the Centre or the Centre Facilities by any of the Associated Persons or by the Client exercising its rights under this Agreement;
- (4) there has been a material change in the information provided by the Client to the Event Co-ordinator pursuant to Clause 4;
- (5) in the Event Co-ordinator's opinion, the manner in which the Client or any of the Associated Persons is using or proposes to use the Centre or the Centre Facilities is likely to injure or prejudice the reputation of ACMI or the Centre or is in the Event Co-ordinator's opinion, after obtaining legal advice, illegal; or
- (6) the Client is unable to promote or proceed with the Event (in which event the provisions of clause 6(2) relating to the Deposit shall apply).

then notwithstanding any prior waiver, or indulgence granted by ACMI to the Client ACMI may, after providing a reasonable opportunity to the Client to remedy the default if in the opinion of the Event Co-ordinator the default is capable of being remedied, terminate this Agreement by giving the Client notice in writing, whereupon this Agreement and any licence hereby granted to the Client shall be at an end but without prejudice to any right or remedy of ACMI for any breach by the Client of this Agreement.

19. Privacy Guidelines

The parties must comply with the Information Privacy Principles contained in ACMI's privacy policy and in the *Information Privacy Act 2000 (Victoria)* in relation to the collection of information from patrons attending the Centre. The format of all surveys which collect data from patrons attending the Event must be approved by the Event Co-ordinator and provided by the Event Information Deadline.

20. GST

20.1 For the purpose of this clause unless the context otherwise requires:

"Act" means the A New Tax System (Goods and Services Tax) Act 1999 as amended.

"GST" has the meaning given in Section 195-1 of the Act.

Where any other term is used in this clause which is defined in the Act it shall have the same meaning which it bears in the Act.

20.2 The following principles apply when determining the amount payable ("the Payment") for any taxable supply made pursuant to this Agreement:

- (a) if the Payment is determined by reference to any cost, expense or liability incurred by a person, the reference to cost, expense or liability means the actual amount incurred less the amount of any GST input tax credit or similar rebate which is or can be claimed by the person in respect of that cost, expense or liability;
- (b) subject to paragraph 20.3(c), if the Payment arises from a revenue sharing arrangement or an obligation to pay a specified percentage of any revenue, sales, fee or any other amount, the Payment is to be calculated by reference to the relevant amount gross of GST with the recipient of the Payment responsible for paying GST; and
- (c) if a person is liable to GST in relation to making the taxable supply, the Payment for the taxable supply as calculated under this clause, shall be increased by the applicable GST.

20.3 Without limiting clause 20.2, the liability for remitting GST to the tax authorities in relation to venue hire and other fees charged by ACMI and ticket sales will be treated as follows:

- (a) if no ticketing is involved, the liability for remitting GST included in the hire fee and other fees vests with ACMI;
- (b) if box office revenue is collected by ACMI and fully passed on to the Client, the Client is liable for remitting GST on ticket sales and ACMI remains liable for remitting GST on the hire fee and other charges;
- (c) if ACMI retains a portion of the ticket sales as a component of the hire fee, ACMI will be liable for remitting 100% of the GST on ticket sales, but will be entitled to a credit for the GST included in the proportion of ticket sales paid to the Client and the Client must provide ACMI with a GST applicable settlement invoice for the ticket share percentage received by the Client.

20.4 A party's right to any payment from the other party under this Agreement is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

20.5 Any Deposits or Bond payable under this Agreement will not include GST.

21. Governing Law

The law of this Agreement is the law of the state of Victoria and the Commonwealth of Australia. The parties submit themselves to the jurisdiction of the Courts of Victoria and the Commonwealth of Australia for all proceedings arising from this Agreement.

22. Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.

23. Variation

The variation or waiver of a provision of this Agreement, or a party's consent to a departure from a provision by another party, shall be

ineffective unless in writing, executed by the parties.

24. Entire Agreement

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement, but may be amended by agreement in writing of the parties.

25. Assignment

The Client must not assign its interest in the subject matter of this Agreement or any right under this Agreement.

26. Force Majeure

The obligations of a party, other than the obligation to pay money, shall be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by force majeure. Force majeure means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected.

27. Notices

- 27.1 A notice, approval or other communication required or permitted to be given by a party to another shall be in writing and:-
- (1) delivered personally; or
 - (2) sent to an address in Australia by security post or certified mail, postage prepaid; or
 - (3) sent to an address outside Australia by prepaid airmail; or
 - (4) sent by facsimile transmission with acknowledgement of receipt from the addressee, to the address for service or facsimile number described below.
- 27.2 A notice or other communication is deemed given if:-
- (1) personally delivered, upon delivery; or
 - (2) mailed to an address in Australia, on actual delivery to the addressee, as evidenced by Australia Post documentation; or
 - (3) mailed to an address outside Australia, by airmail, seven days after posting; or
 - (4) sent by facsimile, upon the sender receiving acknowledgement of receipt from the addressee.
- 27.3 A party which receives a notice or other communication by facsimile shall forthwith acknowledge receipt to the sender.
- 27.4 ACMI's address for service is PO Box 14, Flinders Lane, Vic, 8009 and the Client's address for service is that set out in this Agreement or such other address as may be notified to ACMI from time to time.

28. Mediation

- 28.1 If there is any dispute between the parties concerning this Agreement, then the parties must attempt to resolve any such dispute by the mediation procedure set out herein.
- 28.2 The mediation procedures is as follows:
- (a) a party may start mediation by serving a mediation notice on the other party;
 - (b) the mediation notice must state that a dispute has arisen and identify what the dispute is;
 - (c) the parties must jointly request the appointment of a mediator and failing agreement within seven (7) days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria to appoint a mediator;
 - (d) once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
 - (e) if the dispute is not resolved within thirty (30) days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

29 Confidentiality

The parties to this Agreement must keep confidential and not allow, make or cause any disclosure of the terms of this Agreement and any documents which are or information which is confidential under this Agreement, without the prior written consent of the other parties, unless disclosure is required by law.

TICKETING CONDITIONS

1 Definitions

In this Schedule C, the following expressions shall bear the meanings set out herein:

"Complimentary Tickets" means Tickets issued without charge for the Event;

"Gross Takings" means the total sale proceeds of Tickets to the Event;

"Gross Ticket Price" means the price at which a Ticket is sold to members of the public;

"Tickets" means tickets of admission to the Centre for the purpose of enabling members of the public to witness a Presentation;

2 Ticketing Information

ACMI must approve the ticketing structure presented by the Client and may suggest changes to assist in the processing of ticketing.

3 Cancelled Events

If for any reason (including events beyond the Client's control, but excluding any default on the part of ACMI), the Client is unable to proceed with the Event on the Event Dates, the costs referred to in clause 6(3)(b) of Schedule B include:

- (1) all costs incurred by ACMI in making any announcements, placing advertisements and generally advising members of the public who have purchased Tickets for the Presentation so affected of the circumstances; and
- (2) the cost to ACMI of settling or contesting at its discretion any claims by members of the public who purchased Tickets.

4. Change in quality, nature or duration of the Event

If in the opinion of either ACMI or the Client, the quality, duration, nature or expectation of any Presentation is or will be in any way adversely affected, for any reason, the Client must pay ACMI upon demand:-

- (1) all costs incurred by ACMI in making any announcements, placing advertisements and generally advising members of the public who have purchased Tickets for the Presentation so affected of the circumstances;
 - (2) the cost to ACMI of settling or contesting at its discretion any claims by members of the public who purchased Tickets,
- and ACMI may hold so much of the Gross Takings as ACMI believes may be required for the payment of refunds and the settling or contesting of claims as referred to in paragraph (2) for that period of time which ACMI deems appropriate in the case of cancellation by the

Client.

5 Security Bond

If in the opinion of ACMI:

- (1) the estimated Gross Takings for the Events may not exceed the total amount which the Client is liable to pay to ACMI under this Agreement; or
 - (2) circumstances may arise which require a refund to purchasers of Tickets of the Gross Ticket Price;
- ACMI may require the Client to lodge with ACMI a Security Bond in the manner set out in clause 7 of Schedule B.

6. Tickets and Ticket Sales

- 6.1 Either ACMI or the Client shall have the right to sell Tickets for the Event as stated in item 18 of Schedule A.
- 6.2 Where the ACMI ticketing software is used for Ticket sales, the Client must not engage a ticketing agent. All Ticket sales at the Centre must occur through the ACMI box office and no money may be collected by the Client or any agent at the Centre.
- 6.3 Where the Client engages a ticketing agent for the sale of Tickets, the Client must supply ACMI with accurate attendance figures for each Presentation no later than the end of the calendar month during which the Presentation occurred.
- 6.4 All costs of Ticketing (including online ticketing) must be borne by the Client and where ACMI sells Tickets, it may charge a booking or administration fee to purchasers of Tickets.
- 6.5 ACMI may determine or impose the conditions applicable to the sale of Tickets at its discretion.
- 6.6 The Ticket prices for the Event will be those set out in item 19 of Schedule A. The Client must submit for the approval of the Event Co-ordinator full particulars of the information required by the Event Co-ordinator in relation to Tickets pursuant to this Agreement.
- 6.7 ACMI may withhold from sale any seats at any Presentation which would have a restricted view due to any factor affecting the sightlines.
- 6.8 The Client and ACMI shall receive the number of Complimentary Tickets specified in item 20 of Schedule A in respect of each Presentation.
- 6.9 The Client agrees that:-
 - (1) no person will be admitted to any Presentation without a Ticket, a Complimentary Ticket, or an Access Pass;
 - (2) ACMI shall not be responsible for any failure in the ticketing system or for any act, omission or default in respect of the printing supply and sale of the Tickets nor for any fraud on the part of any person engaged by ACMI in respect of the printing, supply and sale of the Tickets;
 - (3) ACMI may for any lawful reason, refund to any person who has purchased Tickets for a Presentation, the Gross Ticket Price or part thereof in respect of the Tickets or in lieu of a refund offer to provide Tickets to another Presentation and ACMI shall be under no liability to the Client in respect of any refund or replacement Tickets;
 - (4) the final determination of the number of Tickets to be sold for each Presentation shall be made by the Event Co-ordinator based on the information provided to the Event Co-ordinator by the Client;
 - (5) no Tickets will be released for sale until after the Event Co-ordinator is satisfied that ACMI has received sufficient information relating to the Event;
 - (6) nothing in this Agreement shall be interpreted as making ACMI or any of its employees or agents, liable to the Client for any losses in revenue in respect of Tickets due to fraud or theft by any person or non-payment by the purchaser of a Ticket;
 - (7) the "Conditions of Sale" and "Conditions of Entry" published on ACMI's website at http://www.acmi.net.au/ticket_conditions.htm apply for all ticketed Events.
- 6.10 ACMI reserves the right to retain six house seats at each Presentation for use by ushers and other ACMI representatives.

7. Takings

The Client agrees that in respect of all sales of Tickets where ACMI is responsible for selling Tickets:-

- (1) the Gross Takings will be retained by ACMI or its agent until the conclusion of the Event and then applied together with the Deposit by ACMI in satisfaction of all amounts payable by the Client to ACMI or owing to or deductible by ACMI which have not previously been paid to ACMI or deducted by it from the Deposit;
- (2) within five working days after the conclusion of the Event ACMI shall make available to the Client a box office statement detailing the amount of the Gross Takings;
- (3) unless otherwise agreed, within 30 days after the conclusion of the Event, ACMI shall:-
 - (a) furnish to the Client a final statement detailing the manner in which the Deposit and the Gross Takings have been applied by ACMI towards satisfaction of the amounts payable by the Client or deductible by ACMI in accordance with paragraph 7(1); and
 - (b) subject to this paragraph 7 and to Clauses 7 and 20 of Schedule B being satisfied, pay to the Client the balance of the Gross Takings;
- (4) the Client will examine the box office and final statements promptly and in each case will notify ACMI in writing of any error or objection within two days of receipt;
- (5) that unless ACMI receives notification in accordance with paragraph 7(4) the box office and final statements will be deemed true and correct;
- (6) if the Deposit and the Gross Takings prove insufficient to cover all amounts payable to or deductible by ACMI pursuant to this Agreement, the Client will pay the balance shown therein to be due to ACMI within 14 days of receipt of a tax invoice from ACMI; and
- (7) in the case of a long term hiring, ACMI may arrange for a number of interim settlements on a periodic basis as set out in this paragraph 7.