

HIRE AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2017

BETWEEN: **Mount Barker District Council** of PO Box 54, Mount Barker SA 5251
 (Council)

AND:

BACKGROUND

- A. The Council has received an Application from the Applicant for the grant of a hire agreement from the Council to use the Facility for the Activity during the Time of Use.
- B. The Council has agreed to grant a hire agreement to the Applicant in accordance with the terms and conditions of this Hire Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Hire Agreement unless the context otherwise requires:

- 1.1.1 **Applicant** means the entity specified in Item 1 and where the context permits includes the employees, agents and invitees of the Applicant.
- 1.1.2 **Application** means the application made by the Applicant for the granting of this Hire Agreement.
- 1.1.3 **Activity** means the activity approved by this Hire Agreement and described in Item 6 of the Schedule.
- 1.1.4 **Council** means the Mount Barker District Council of PO Box 54, Mount Barker SA 5251 and includes its members, employees, agents and authorised representatives.
- 1.1.5 **Facility** means the reserve or building within the Council's area and described in Item 2 of the Schedule.
- 1.1.6 **Hire Agreement** means this hire agreement granted by the Council to the Applicant for the Activity.
- 1.1.7 **Hire Fee** means the fee set out in Item 4.
- 1.1.8 **Legislation** includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any local government body or authority.
- 1.1.9 **Noise** means sound or a sound that is loud, unpleasant, unexpected, or undesired.
- 1.1.10 **Refundable Bond** means the amount set out in Item 8 payable by the applicant as a refundable bond.

- 1.1.11 **Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation.
- 1.1.12 **Structure** means any structure fixture fitting or property erected and/or installed in or on the Facility by the Applicant including of a temporary nature.
- 1.1.13 **Time of Use** means the period described in Item 3.

1.2 Interpretation

- 1.2.1 words importing the singular embrace the plural and words importing one gender shall embrace the other gender and vice versa respectively;
- 1.2.2 any reference to a person shall be deemed to include a corporate body and vice versa;
- 1.2.3 all moneys payable by the Applicant to the Council under this Hire Agreement shall be recoverable as a debt;
- 1.2.4 headings are for convenience of reference only and shall not affect the construction or interpretation of this Hire Agreement;
- 1.2.5 a reference to an Item is a reference to an item of the Schedule;
- 1.2.6 a reference to the Schedule is a reference to the schedule attached to this Hire Agreement.

2. GRANT OF HIRE AGREEMENT

In consideration of payment of the Hire Agreement Fee, the Council authorises the Applicant to use the Facility for the Activity during the Time of Use.

3. APPLICANT'S COVENANTS

The Applicant expressly agrees with the Council that the Applicant must comply with the terms and conditions of this Hire Agreement as follows:

3.1 Fee

- 3.1.1 The Applicant must pay to the Council the Hire Fee in the manner and at such times set out in Item 5 and the parties acknowledge that except as otherwise provided in this Hire Agreement the Hire Fee is inclusive of all utilities consumed by the Applicant during the Time of Use.
- 3.1.2 The Applicant must pay to the Council the Bond in the manner and at the times set out in Item 9, which Bond will be returned to the Applicant at the expiry or earlier termination of this Hire Agreement unless the Council is of the reasonable opinion that the Bond is required for repairs or maintenance to the Facility or any Structure as a result of the Applicant's use of the Facility for the Activity.

3.2 Permits, certificates, licences, authorisations etc.

- 3.2.1 The Applicant must provide to the Council prior to using the Facility or commencing the Activity a copy of all permits, certificates and any other authorisations which may be required from the Council or some

other governmental, civic, or municipal authority to undertake the Activity including but not limited to an Australian Prudential Regulatory Authority licence for the broadcast of music.

3.2.2 The Applicant must not:

3.2.2.1 serve, sell or provide to persons; or

3.2.2.2 consume or allow persons to consume;

alcohol or alcoholic beverages in or on the Facility without the Council's prior approval and if legally required a liquor licence for the sale and /or consumption of alcohol a copy of which must be provided to the Council prior to using the Facility or commencing the Activity.

3.3 Indemnity & Release

3.3.1 The Applicant indemnifies the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the Activity or the granting of this Hire Agreement.

3.3.2 The Applicant releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the Activity or the use of the Facility except where any action, cost claim or damage is caused by the negligence or default of the Council its officers, employees or its agents.

3.4 Public Risk Insurance

3.4.1 The Applicant must effect and maintain a public risk insurance policy from a reputable insurer in the name of the Applicant and noting the interests of the Council as owner of the Facility for the minimum amount in Item 7.1 of the Schedule per claim or such other amount as the Council may reasonably require from time to time and such policy must;

3.4.1.1 bear an endorsement from the insurer indicating the insurer accepts the indemnity given by the Applicant to the Council under clause 3.3.1; and

3.4.1.2 cover the injury, loss or damage to persons or property arising directly or indirectly from;

(a) the Activity; or

(b) the use of the Facility.

3.4.2 The Applicant must not commence the Activity until the Applicant has provided to the Council a copy of the public risk insurance policy specified in clause 3.4.1.

3.4.3 If the Applicant intends to use the Facility for a one-off adhoc event, public risk insurance may be covered under Council's Hall Hirer's Insurance Policy. If applicable, this should be noted in Item 7.2 of the Schedule.

3.5 **Compliance with Statutory Requirements**

The Applicant must at its own cost and expense comply with any Statutory Requirements relating to the Activity and the use of the Facility including but not limited to the installation and use of any Structure.

3.6 **Authorised Use**

3.6.1 The Applicant must not undertake any activity or allow the Facility to be used other than in accordance with this Hire Agreement including but not limited to permitting any unlawful activity to take place in or on the Facility.

3.6.2 The Applicant acknowledges that the following are not permitted in or on the Facility at any time without the Council's prior written consent:

3.6.2.1 Vehicles;

3.6.2.2 Horses (and similar animals); and

3.6.2.3 Fireworks.

3.6.3 The Applicant must not install or erect a Structure without the Council's prior approval.

3.6.4 The Applicant must not affix any signs on in or to the Facility without the Council's prior approval.

3.7 **Maintain condition of Facility**

3.7.1 The Applicant must at its own cost and expense during the Time of Use keep the Facility in a good, safe and clean condition to the Council's satisfaction and comply with all reasonable requests of the Council in relation to the Facility.

3.7.2 If the Applicant does not maintain the Facility in accordance with its obligations under clause 3.7.1 the Council may carry out any such maintenance and the Council shall be entitled to recover any costs incurred in doing so from the Applicant.

3.8 **Damage**

3.8.1 The Applicant must when;

3.8.1.1 undertaking the Activity; and

3.8.1.2 using the Facility;

3.8.2 take all reasonable precautions to avoid damage to the Facility or any land or buildings in the immediate vicinity of the Facility and must notify the Council of any damage or potential hazards within a reasonable time of the Applicant becoming aware of them.

3.8.3 If the Applicant causes any damage to trees, shrubs, grass or irrigation forming part of, or adjacent to, the Facility, the Applicant must repair any such damage within 7 days.

3.8.4 If the Applicant causes any damage to the Facility or any of the Council's property as a result of the Activity or the Applicant's use or misuse of the Facility, or fails to repair damage in accordance with clause 3.8.3, the Council will undertake the rectification and repairs and any costs incurred in doing so must be reimbursed by the Applicant upon request and the Applicant may forfeit any security bond paid.

3.9 **Security**

The Applicant must at the Applicant's cost ensure that sufficient security staff is present at all times during the Times of Use to secure the Facility if in the Council's reasonable opinion such security is required.

3.10 **Fire precautions**

The Applicant must comply with all requirements and directives of the Council with regard to fire safety systems and procedures including fire evacuation drills and other procedures.

3.11 **Noise**

The Applicant shall not allow any noise which can be heard from outside the Town Hall during the hire period.

4. **MUTUAL COVENANTS**

4.1 **Hire Agreement Not Transferable**

This Hire Agreement is not transferable.

4.2 **Execution of Hire Agreement**

This Hire Agreement is not effective and the Facility must not be used until the Applicant has received a copy of this Hire Agreement signed by the Council.

4.3 **Warranty**

4.3.1 The Applicant warrants that it has inspected the Facility and the Facility is safe and fit for the Activity and the Applicant's use.

4.3.2 The Council does not warrant that the Facility will be suitable (structurally or otherwise) for the Activity or the Applicant's use.

4.4 **Contractual rights only**

This Hire Agreement does not confer on the Applicant any exclusive right, entitlement or proprietary interest in the Facility.

4.5 **Council's right to enter**

4.5.1 The Council may (except in the case of emergency when no notice will be required) enter the Facility at any time upon providing reasonable notice to the Applicant to do anything the Council must or may do under this Hire Agreement or must do under any Statutory Requirements.

4.5.2 In an emergency the Council may:

4.5.2.1 close the Facility; and

4.5.2.2 prevent the Applicant from entering the Facility.

4.6 Termination of Hire Agreement

This Hire Agreement will immediately terminate on the earlier of;

- 4.6.1 the expiration of the Time of Use; or
- 4.6.2 the termination of the Hire Agreement by the Council as permitted under this Hire Agreement.

4.7 Obligations on termination

4.7.1 Upon the expiration or earlier termination of this Hire Agreement the Applicant shall at its own cost and expense return the Facility to its condition prior to the Hire Agreement being granted including but not limited to:

- 4.7.1.1 removing the Structure (if any);
- 4.7.1.2 ensuring the Facility is clean and tidy and that any rubbish resulting from the Activity or the Applicant's use of the Facility is removed and disposed of;
- 4.7.1.3 replacing any furniture in its original position;
- 4.7.1.4 ensuring any doors and windows are securely fastened and any lights and power are switched off before leaving the Facility; and
- 4.7.1.5 returning the key to Council as set out in the signed Key Custodian Form.

4.7.2 If the Applicant does not comply with clause 4.7.1 to the Council's reasonable satisfaction the Council may undertake the work itself and any costs incurred by the Council in doing so may be recovered from the Applicant and the Applicant may forfeit any security bond paid.

4.8 Breach

If the Applicant breaches a provision of the Hire Agreement and fails to remedy the breach within a reasonable time of being directed by the Council to do so the Hire Agreement will be terminated, effective immediately.

4.9 GST

- 4.9.1 For the purposes of this clause 4.9;
 - 4.9.1.1 **the Act** means the A New Tax System (Goods and Services Tax) Act 1999 ("Act");
 - 4.9.1.2 **GST** has the same meaning as that term in Section 195-1 of the Act.
 - 4.9.1.3 **Supply** means a taxable supply and has the same meaning as that term in the Act.
 - 4.9.1.4 **Tax Invoice** has the same meaning as that term in Section 195-1 of the Act.

- 4.9.2 All monies payable by the Applicant to the Council pursuant to this Hire Agreement (**Payments**) do not include any GST.
- 4.9.3 If when making a Payment to the Council, such Payment constitutes a Supply within the meaning of the Act, the Applicant shall also pay an amount on account of GST equal to the Payment multiplied by the current GST rate (**GST Amount**).
- 4.9.4 Upon receipt of the Payment and the GST Amount, the Council will provide the Applicant with a Tax Invoice in a form compliant with the Act.

4.10 **Costs**

The Applicant is responsible for all costs incurred by the Council as a consequence of any actual or threatened breach of this Hire Agreement by the Applicant.

4.11 **No Refund**

The parties agree that the Applicant will not be entitled to a refund of the Hire Fee in circumstances where the Applicant has failed to use the Facility during the Time of Use.

4.12 **Special Conditions**

The parties agree that the Special Conditions (if any) contained in Annexure A shall apply to this Hire Agreement and in the event of any inconsistency between the Special Conditions and these conditions, the Special Conditions shall prevail.

Annexure A
Special Conditions

1. The Applicant must comply with the direction of Council to lock the front doors after entering and when exiting the building.

THE SCHEDULE

<p>Item 1 Applicant</p>	<p>Name:</p> <p>Address:</p> <p>Phone no:</p> <p>Email:</p> <p>Banking details: (BSB and Account No. for refund of bond)</p>
<p>Item 2 Area of Hire ("Facility") (e.g. Hall, Kitchen, The Den)</p>	
<p>Item 3 Hire Period:</p> <p>Times of Use <i>(only between the hours of 8am and midnight)</i></p> <p>Please list <u>all</u> dates and times as failure to do so will result in no booking being made.</p>	
<p>Item 4 Hire Fees:</p>	<p>Main Hall: \$32.00 per hour inclusive of GST \$170.00 per day inclusive of GST (8 hours) Kitchen: \$32.00 per day inclusive of GST</p>
<p>Item 5 Manner of Payment of Hire Fee:</p>	<p>Occasional Hire: In advance Regular Hire: In arrears</p>
<p>Item 6 Activity</p>	
<p>Item 7.1 Public Risk Insurance (cross out which is not applicable)</p>	<p>TWENTY MILLION DOLLARS (\$20,000,000.00)</p>
<p>Item 7.2 Hall Hirer's Insurance (cross out which is not applicable)</p>	<p>TWENTY MILLION DOLLARS (\$20,000,000.00) as per Council's Hall Hirer's Insurance Policy Number AS A79954PLB</p>
<p>Item 8 Refundable Bond</p>	<p>\$500 exclusive of GST (not applicable to regular hirers)</p>
<p>Item 9 Manner of Payment of Bond</p>	

For Office Use Only	
Booking Confirmed	
Hire Agreement Signed	
Insurance Cover Confirmed	
Copy of Insurance Cover in TRIM	
Copy of Limited Liquor Licence in TRIM	
Copy of Key Custodian Form in TRIM	
Fees Paid	
Bond Paid	RC707
Receipt No.	
Account No.	RC700-W1746.100.484
Key returned	
Inspection Conducted	
Bond refund approved	
Bond Refunded	
Completed by:	

EXECUTED as an **AGREEMENT**:

Signed for and on behalf of the MOUNT
BARKER DISTRICT COUNCIL:

(signature)

(print name)

Signed by the APPLICANT:

(signature)

(print name)

HIRE AGREEMENT

MOUNT BARKER TOWN HALL

Mount Barker District Council
[Council]

AND

[Applicant]