



FACULTY OF THE
VICTORIAN COLLEGE OF THE ARTS
AND
MELBOURNE CONSERVATORIUM
OF MUSIC

ARTIST BOOKING SERVICE CLIENT BOOKING FORM TERMS AND CONDITIONS

BACKGROUND

- A** ARTIST BOOKING SERVICE operates a booking service, including maintaining a Register of Artists that members of the public may refer to enable them to choose a performing artist.
- B** The Client has selected an Artist from the Register of Artists and wishes to book the Artist to deliver the Performance described in the booking form.
- C** ARTIST BOOKING SERVICE agrees to provide the Artist for the Performance.
- D** The parties have agreed that the Performance will be delivered on the terms and conditions contained in this Agreement.

OPERATIVE PROVISIONS:

1 INTERPRETATION

1.1 In this Agreement, unless the contrary intention appears from the context:

"**Agreement**" means this document, any annexes and attachments to this document and any Booking Forms;

"**Artist**" means the performer who is contracted by ARTIST BOOKING SERVICE to deliver the Performance and who is nominated in the Booking Form and includes all Artists involved in a group Performance.

"**Client Booking Form**" means the form recording the details about the booking intended to be given to then Client.

"**Client**" means the person or organisation with whom ARTIST BOOKING SERVICE has an agreement covering the Performance and includes their nominated representative.

"**Confidential Information**" means information that:

- (a) is by its nature confidential;
- (b) is designated by the parties as confidential; or
- (c) the parties know or ought to know is confidential;

and includes without limitation the terms of this Agreement and all information about the University, its employees, agents, research, property, policies and operations which is made available or which becomes known during the term of this Agreement or as a result of executing this Agreement but does not include information which:

- was in the public domain at the time of its provision by the University; or
- became part of the public domain after its provision by the University, otherwise than through a disclosure by the Client or any person to whom it has disclosed Confidential Information;

"**Lead Artist**" means the Artist nominated on the Booking Form who is responsible for the Lead Artist Responsibilities if the Performance is an ensemble performance or the Artist if the Performance is a solo Performance.

"**Lead Artist Responsibilities**" means the additional responsibilities nominated on the Booking Form and set out in the contract between the ARTIST BOOKING SERVICE and the Lead Artist.

"**Performance**" means the performance agreed with the Client and to be delivered by the Artist as set out in the Booking Form;

"**Register of Artists**" means the register setting out information about artists that is made available by ARTIST BOOKING SERVICE to the public.

"**University**" means the University of Melbourne.

2 ARTIST BOOKING SERVICE'S OBLIGATIONS AND WARRANTIES

- 2.1** ARTIST BOOKING SERVICE agrees to deliver the Performance as set out in the Booking Form in accordance with this Agreement.
- 2.2** ARTIST BOOKING SERVICE agrees to perform its obligations under this Agreement in a competent and professional manner.
- 2.3** ARTIST BOOKING SERVICE agrees that the Lead Artist will arrive 30 minutes before the time for Performance set out in the Booking Form unless otherwise specified in the Booking Form.
- 2.4** In the event that the specified Artist is not able to deliver the Performance then the ARTIST BOOKING SERVICE may at its discretion substitute another artist. The ARTIST BOOKING SERVICE will endeavour to discuss alternatives with the Client and to substitute a comparable artist but has no liability if this is not possible. For the avoidance of any doubt however, if no substitute artist is provided by ARTIST BOOKING SERVICE then the Client shall be entitled to a complete refund of the Performance fee'.

3 CLIENT'S OBLIGATIONS AND WARRANTIES

- 3.1** The Client warrants that it has all applicable licenses and permissions for holding the Performance.
- 3.2** The Client must inspect the environment for the Performance and ensure that is safe and that adequate shelter is provided. If the Lead Artist considers on reasonable grounds that Client has not met its obligations under this clause then the Lead Artist may refuse to deliver the Performance and ARTIST BOOKING SERVICE will have no liability
- 3.3** The Client must ensure that the Lead Artist is aware of all of the details relevant to the Performance.
- 3.4** The Client must provide Refreshments for the Artist as set out in the Booking Form.
- 3.5** The Client must not make alcohol available to the Artist.
- 3.6** The Client agrees that the Artist will be paid for the length of time the Artist is required on site (excluding 30 min set-up) and should the event run longer than the agreed time the Client will pay for the additional time charged in 30 minute increments.

4 PERFORMANCE FEE

- 4.1** The Client will pay ARTIST BOOKING SERVICE the fee for the Performance as set out in the Booking Form.
- 4.2** If the Client does not pay the fee or any part of the fee by the due date then ARTIST BOOKING SERVICE is not obliged to hold any booking or deliver any Performance and will have no liability for failing to do so.
- 4.3** The Client must pay the whole fee even if events prevent the Performance from proceeding, provided that the Artist was willing and able to perform.
- 4.4** The Client must pay the whole fee if safety issues prevent the Performance from proceeding.
- 4.5** The Client must pay the whole fee if the Client cancels the Performance less than 1 calendar month before the Start Date set out in the Client Booking Form.
- 4.6** The Client must pay 50% of the whole fee if the Client cancels the Performance more than 1 calendar month but less than 3 calendar months before the Start Date set out in the Client Booking Form.

4.7 The Client must pay ARTIST BOOKING SERVICE the fee for any additional Performance within 7 days of date of invoice.

5 INSURANCE AND INDEMNITY

5.1 The Client or the venue must have public and products liability insurance to cover the event to a minimum of:

- \$5,000,000 if the event will be held in commercial premises; or
- \$2,000,000 if the event will be held in residential premises.

5.2 The Client indemnifies ARTIST BOOKING SERVICE against all claims, demands, charges or expenses made against or incurred by ARTIST BOOKING SERVICE as a result of any breach by the Client of this Agreement or any negligent or willful act or omission by the Client.

5.3 The liability of each party for loss suffered by, or damage to, the other party must be reduced proportionately to the extent of the other party's failure to comply with its obligations under this Agreement or the other party's negligent acts or omissions.

6 CONFIDENTIALITY AND PRIVACY

6.1 The Client covenants to keep confidential all information (including all information about Artists) provided by ARTIST BOOKING SERVICE to the Client for the purposes of this Agreement and all information created as a result of this Agreement, and not to disclose such information without the prior written approval of ARTIST BOOKING SERVICE.

7 TERMINATION

7.1 ARTIST BOOKING SERVICE may terminate this Agreement if the Client breaches any provision of this Agreement and does not rectify that breach within 7 days.

7.2 ARTIST BOOKING SERVICE may terminate this Agreement at any time if in its reasonable opinion the Client is in breach of its obligations in respect of safety.

7.3 Either party may terminate the Agreement immediately if the other party:

- a) enters into any arrangement between itself and its (or any class of its) creditors;
- b) ceases to be able to pay its debts as they become due;
- c) ceases to carry on business;
- d) has a mortgagee enter into possession or disposes of the whole or any part of its assets or business;
- e) enters into liquidation or any form of insolvency administration; or
- f) has a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.

7.4 Termination of the Agreement (for whatever cause) will not affect any right or cause of action which has accrued to the party which terminates the Agreement at or prior to the date of termination.

8 RISK

8.1 ARTIST BOOKING SERVICE has no liability for any loss of or damage to the Client's property no matter how that loss or damage is caused, unless it was caused through the gross negligence or wilful disregard of ARTIST BOOKING SERVICE or the Artist.

9 DISPUTE RESOLUTION

9.1 Any dispute or difference between the parties arising from or in connection with this Agreement, which cannot be settled by negotiation between the parties must forthwith be referred for determination by a person appointed for that purpose by the parties and, failing agreement, appointed by the President of the Institute of Arbitrators & Mediators Australia (Victorian Division) however nothing in this Agreement will prevent a party applying for urgent interlocutory relief.

9.2 Any determination made under the above sub-clause is binding on the parties and the Commercial Arbitration Act (1984)

applies to the determination except to the extent otherwise agreed by the parties.

10 SPECIAL CONDITIONS

10.1 This Agreement is subject to the terms set out in the Booking Form (if any).

10.2 In the event of inconsistency between the terms set out in the Booking Form and the provisions of the Agreement, the terms set out in the Booking Form apply.

11 GENERAL

11.1 This Agreement is made under and governed by the laws of the State of Victoria and both parties exclusively submit to the jurisdiction of courts of this State and their respective appellate courts.

11.2 Notices to or by a party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee: if by post, 3 Business Days from and including the date of postage; or if by facsimile, when transmitted to the addressee provided that if transmission is on a day which is not a Business Day or is after 5.00 pm (addressee's time) on the next Business Day.

11.3 Any provision or the application of any provision of the Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

11.4 A waiver of a breach of the Agreement or of any right, power, authority, discretion or remedy arising upon a breach of or default under the Agreement must be in writing and signed by the party granting the waiver.

11.5 A party may only assign the Agreement and any rights under the Agreement with the prior written consent of the other.

11.6 Neither party will be liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond the first party's reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike and riots and either party may terminate the Agreement if such an event occurs and continues for a period of 30 days or more.

11.7 No variation to this Agreement will be effective unless in writing and signed by ARTIST BOOKING SERVICE and the Client.

These Terms and Condition are current as at 20 January 2017
