

# THE RECHABITE - PERFORMER, ACT & EVENT STANDARD TERMS AND CONDITIONS

## BACKGROUND

- A. HAPPY HEART PTY LTD. Is the management company behind and licensee of THE RECHABITE, herein referred to as 'VENUE'.
- B. HAPPY HEART proposes to engage the ACT for the purpose of presenting at THE RECHABITE on the terms and conditions that follow.

## DEFINITIONS AND INTERPRETATIONS

- A. All references to HAPPY HEART in this Agreement includes its Directors, employees, contractors, volunteers, sponsors, funding bodies and affiliated organisations.
- B. All references to the ACT in this Agreement includes all employees, contractors, performers, agents and patrons of the ACT, and all obligations on the part of the ACT are joint and several on the part of each individual.
- C. In this Agreement:
  - Capacity means** the maximum number of individuals that will be admitted to the Venue for a session of the EVENT;
  - Force Majeure** Event has the meaning given to that term in clause 10.14;
  - Ticketing System** means the ticketing system administered by the ACT and the Venue where tickets for sessions of the EVENT are sold online at megatix.com.au or the ACT's preferred ticketing platform.
  - Space** means the location of the room at/in which the EVENT will be presented;
  - Opening Performance** means the first performance of the EVENT at the Venue, excluding any sessions for which preview tickets are available;
  - Season** means the total instances in which the EVENT is scheduled to perform at the Venue;
  - Session** means each individual performance;
  - Settlement** means the completion of the financial reconciliation process and any applicable remittance of payment for ticket sales revenue and all other financial obligations arising from this Agreement between HAPPY HEART and the ACT after the conclusion of the final session;
  - Specific Terms** means the particulars of this Agreement; and
  - Venue** means the venue at/in which the EVENT will be presented.

## THE PARTIES AGREE:

### 1. TERM

This Agreement takes effect immediately upon signing by the ACT and will conclude upon the earlier of either the date of Settlement, or the date highlighted in the Performance Agreement.

### 2. ACT OBLIGATIONS

#### CONTENT

- 2.1. The ACT agrees to:
  - a. present the EVENT and perform as agreed to by HAPPY HEART during the Term, in accordance with the terms of this Agreement, and not to deviate from the agreed content without prior written approval from the Venue; and
  - b. render their services to the best of their professional skill and ability, in willing cooperation with the Venue.
- 2.2. Unless otherwise stated, the Venue will be responsible for all costs incurred in relation to the presentation of the EVENT including, but not limited to: venue staffing and public liability insurance, and upon discussion production, technical and marketing costs.
- 2.3. The ACT warrants that all content in the EVENT is original and does not infringe on the rights of any third party OR that such permissions and/or approvals have been obtained and usage authorised.
- 2.4. The ACT accepts sole responsibility for:
  - a. obtaining all relevant permissions, approvals permits and licenses in relation to the intellectual property of the EVENT, including but not limited to APRA licensing for the use of any music in the EVENT and the ACT accepts liability for all costs incurred in doing so;
  - b. obtaining personal belongings' insurance and workers' compensation coverage for any and all act staff, performers and contractors; and
  - c. all Australian taxes, duties and charges imposed or levied in Australia in connection with the supply of services and revenue gained from the EVENT during the Term, including but not limited to Goods and Services Tax (GST) and income tax.

#### EXCLUSIVITY

- 2.5. If applicable and/or upon discussion, the ACT will present the EVENT in Western Australia exclusively at the Venue for HAPPY HEART for the period of the TERM.
- 2.6. If applicable and/or upon discussion, the ACT agrees to inform HAPPY HEART in writing of any other Australian performances of the EVENT occurring outside of Western Australia for the period of the TERM plus three month before the TERM plus six months after the TERM.
- 2.7. If applicable, breach of clauses 2.5 and 2.6 may give rise to relevant financial implications and repercussions.

#### RECHABITE PARTICIPATION

- 2.8. The ACT acknowledges and agrees that it must:
  - a. provide detailed and accurate information to HAPPY HEART as and when required by the Venue including, but not limited to, the deadlines specified in the Specific Event Terms;

- b. respect and not disparage nor bring into disrepute the Venue, HAPPY HEART, Venue staff and Directors, Venue affiliated organisations, or sponsors of either the Venue or HAPPY HEART;
- c. provide contact details for all participants involved in the presentation of the EVENT, including, but not limited to, full names, email addresses, postal addresses and contact phone numbers; and
- d. comply with all Venue policies and procedures that are made available to the ACT.

#### MARKETING

- 2.9. Unless otherwise stated and subject to clauses 2.11 and 2.13, the ACT is responsible for the creation, production and distribution of marketing or promotional materials and for the marketing and promotion directly related to the EVENT. This does not preclude the ACT from entering into an agreement with the Venue for it to create, produce or distribute marketing and promotional materials external to this Agreement.
- 2.10. The ACT agrees to:
- a. adhere to all marketing embargoes and instructions issued by HAPPY HEART, including an embargo prohibiting the announcement of the ACT'S involvement with the Venue or the publishing of any details about THE RECHABITE program online or elsewhere prior to the date HAPPY HEART specifies (upon discussion) or after approval by HAPPY HEART;
  - b. if applicable, cooperate with all promotional activities as requested by HAPPY HEART, within reason and subject to artist availability including, but not limited to, interviews, photo shoots, promotional appearances, giveaways and reviews. The ACT agrees to provide details of a representative contact to facilitate such activities; and
  - c. supply marketing and promotional material as required by HAPPY HEART including, an ACT logo if available, links to relevant websites and/or social media (including Facebook, Twitter and YouTube), a biography, media release and/or show blurb.
- 2.11. The ACT warrants that any materials supplied will be original and that use of the materials by the Venue, HAPPY HEART, HAPPY HEART affiliated organisations, or sponsors of either the Venue, HAPPY HEART will not infringe any other party's copyright interests.
- 2.12. The ACT acknowledges and agrees that:
- a. HAPPY HEART will assist in the marketing and promotion of the EVENT at the Venue if required;
  - b. HAPPY HEART may reasonably edit or modify these materials without seeking approval from the ACT to fit different size requirements, colour profiles and use across different media;
  - c. no additional compensation shall be paid by the Venue to the ACT for any interviews and/or promotional activity that it undertakes, unless confirmed by the Venue in writing;
  - d. any marketing or promotional activity undertaken by the ACT must adhere to guides, policies and procedures as issued by the Venue and must be submitted to the Venue for written approval prior to the fabrication, distribution or commencement of any such activity; and
  - e. HAPPY HEART has the absolute and unfettered right to veto any marketing or promotional material undertaken or prepared by the ACT, and/or to require the act to retract, remove, repair or restore any marketing or promotional material failing to meet The Rechabite Brand Guide standards, at the expense of the ACT.

#### SPONSORSHIP

- 2.13. The ACT must not enter into a sponsorship relationship without prior written approval from HAPPY HEART, where such approval will not be unreasonably withheld.
- 2.14. HAPPY HEART reserves the right to enter into sponsorship relationships on behalf of the Venue.
- 2.15. The ACT agrees to honour, within reason, any requests from HAPPY HEART relating to sponsorship requirements of official Venue sponsors.

### 3. THE VENUE'S OBLIGATIONS

- 3.1. HAPPY HEART will undertake the production and presentation of the EVENT, including but not limited to:
- a. the submission of the EVENT in order to appear on their website subject to timely provision of relevant information by the ACT;
  - b. the production of the Venue's website and inclusion of a listing of the EVENT on the Venue's website, subject to timely provision of relevant information by the ACT;
  - c. offering, at its discretion, promotional opportunities to the ACT;
  - d. upon discussion the provision of ticketing services (for ticketed events only) via the Venue's preferred ticketing system (Megatix) or the ACT's preferred ticketing platform;
  - e. any additional support as stated in the Specific Event Terms.

### 4. TICKETING AND SETTLEMENT

#### TICKETING SYSTEM

- 4.1. The ACT will manage tickets via the Venue's preferred ticketing system (Megatix) or the ACT's preferred ticketing platform as detailed in the Specific Event Terms, unless prior discussed and approved by the Venue in writing.
- 4.2. The ACT agrees that the entire capacity of each session of the EVENT shall be listed, managed and sold via HAPPY HEART on behalf of HAPPY HEART and agrees not to make any other ticketing or sales arrangement.
- 4.3. Ticket prices shall include GST.
- 4.4. Ticket prices are inclusive of the Ticketing Fees.
- 4.5. The ACT must not solicit donations or other monies from audience members during the EVENT additional to ticket price without prior written approval from HAPPY HEART, where such approval shall not be unreasonably withheld.
- 4.6. All ticket exchanges are subject to the applicable terms and conditions. Please note exchange charges may apply.

#### COMPLIMENTARY TICKETS & HOLDS

- 4.7. The Venue will hold 20 tickets from the EVENT's ticket capacity for partners, stakeholders, and venue, to be allocated at the discretion of HAPPY HEART.
- 4.8. HAPPY HEART reserves the right to adjust the number of Holds per Session in response to demand.
- 4.9. HAPPY HEART agrees to release any unallocated holds (including ACT Holds) to the saleable pool of tickets.
- 4.10. Additional complimentary tickets for the ACT are to be allocated by the ACT, subject to capacity availability, at a cost to the ACT of \$2.20 (Goodwill Club/Hello Rooftop Bar) or \$3.00 (Rechabite Hall/Rechabite take over) per ticket (to be deducted at Settlement).

#### SETTLEMENT

- 4.11. Financial reconciliation of ticket sales will occur no later than 14 days after the EVENT conclusion via Electronic Bank Transfer, subject to:
  - a. the ACT (or payee of Settlement) providing HAPPY HEART with all necessary financial details including, but not limited to:
    - i. Bank Account Details;
    - ii. ABN and GST Status, or Statement by Supplier (if payment is being made to an Australian individual or company);
    - iii. ABN and GST Status, or Tax Withholding Variation (if payment is being made to an International individual or company);
  - b. the ACT having completed all other requirements detailed in the Specific Event Terms; and
  - c. the ACT not being in breach or having any outstanding obligations under this Agreement.
- 4.12. At Settlement HAPPY HEART will:
  - a. deduct any agreed additional expenses incurred by it on behalf of the ACT; and
  - b. provide the ACT with a Recipient Created Tax Invoice detailing, where applicable, income, deductions and additions.
- 4.13. Unless agreed otherwise, the ACT is and will remain solely responsible for the payment of artists, suppliers, and contractors associated with the EVENT and HAPPY HEART will not enter into discussion with suppliers in regard to unpaid accounts.

## 5. RIGHTS

- 5.1. HAPPY HEART may communicate directly with performers, artists and show producers, in consultation with the ACT.
- 5.2. HAPPY HEART reserves the right to decide on the presentation and production of the EVENT, the presentation and production of the Venue and the marketing and promotion of the Venue at large.
- 5.3. The ACT grants HAPPY HEART, on a royalty-free basis, an irrevocable exclusive license:
  - a. to use the ACT's name, image and biography for promotional activity;
  - b. to use any marketing or promotional materials referred to in clauses 1, 2.10 and 2.13 in perpetuity to publicise and promote the EVENT and the Venue at large and any subsequent events ran by the Venue;
  - c. to take photographs, audio and/or video recordings of the ACT's rehearsals and performances for archival purposes and to publicise and promote the ACT and the Venue at large, in perpetuity. HAPPY HEART may edit or modify the photographs or recordings without seeking prior approval from the ACT and may share the Photographs and recordings of the EVENT with the ACT upon written request to HAPPY HEART, subject to any conditions that HAPPY HEART considers fit.
- 5.4. HAPPY HEART agrees that the ACT will retain all intellectual property relating to content performed by the ACT at the EVENT unless otherwise agreed in writing.
- 5.5. The ACT grants HAPPY HEART the right to approve media attendance at the ACT's rehearsals and performances and to allow media to take photographs of the EVENT for promotional or review purposes.
- 5.6. Wherever possible, the parties agree to ensure that all photographs and footage of the ACT or the EVENT will contain the correct acknowledgement and titles of the ACT and the Venue. This includes, but is not limited to: event name, artist name, venue name, photographer/videographer and context (e.g. THE RECHABITE 2021).
- 5.7. The ACT acknowledges that the Venue is neither responsible nor liable in any way for any publication or republication by any person other than HAPPY HEART.
- 5.8. The ACT consents to HAPPY HEART doing any act or omissions which would otherwise be an infringement of the ACT's moral rights as a performer.

## 6. INTERNATIONAL ARTISTS

#### VISAS

- 6.1. The ACT agrees to cooperate with the Department of Immigration and Border Protection in relation to visa applications.
- 6.2. All fees and charges related to obtaining a visa are the sole responsibility of the ACT and are determined by the Department of Immigration and Border Protection.
- 6.3. HAPPY HEART accepts no liability or responsibility for unsuccessful visa applications.

#### WORK RIGHTS

- 6.4. This Agreement and the ACT'S ongoing engagement is conditional on the ACT:
  - a. obtaining and maintaining any appropriate valid visa issued by the Department of Immigration and Border Protection which may be required to enable the ACT to lawfully work in Australia; and
  - b. complying with any visa conditions imposed on the ACT.
- 6.5. If the ACT'S visa status changes, the ACT is required to notify HAPPY HEART immediately and provide full details and information in respect of the ACT'S changed circumstances.
- 6.6. From time to time, HAPPY HEART may conduct a Visa Entitlement Verification Online with the Department of Immigration and Border Protection to ensure the ACT'S ongoing compliance with this clause. The ACT'S acceptance of this Agreement constitutes the ACT'S express consent to HAPPY HEART undertaking any Visa Entitlement Verification Online.
- 6.7. The ACT acknowledges correct permits to enter Western Australia from interstate for the Term in accordance with the State Governments COVID-19 Policy must be obtained – to be managed in consultation with HAPPY HEART.

## 7. CANCELLATION

- 7.1. Other than in the event of a significant or major failure by HAPPY HEART to fulfill its obligations under this Agreement or a Force Majeure Event, the ACT will be ready and able to perform the EVENT, as per this Agreement.
- 7.2. Should circumstances arise that prevent the ACT from fulfilling their obligations under this Agreement, the ACT must notify HAPPY HEART immediately and in any event, no later than 24 hours before the next Session. Should circumstances arise that prevent HAPPY HEART from fulfilling its obligations under this Agreement, HAPPY HEART must notify the ACT within 48 hours of becoming aware of such circumstances.
- 7.3. HAPPY HEART reserves the right to advise the ACT of changes to the date/time listed on the Agreement, where circumstances require. Such changes will be advised no later than 4 weeks prior to the Event Date. In the event that this change renders the original booking no longer feasible, the cancellation fee will be waived in full. Every endeavour will be made to find a suitable date/time to reschedule.
- 7.4. If the ACT elects to cancel the EVENT, such election shall not be effective until received in writing by HAPPY HEART. In the event of cancellation for any reason other than a Force Majeure Event, any and all expenses incurred by the ACT are non-refundable.
- 7.5. Should the ACT cancel the EVENT in part or in full or a Session, for any reason other than a Force Majeure Event or some other cause deemed 'necessary and unavoidable' by HAPPY HEART, the ACT must pay to HAPPY HEART (within 14 days of notification by invoice) \$5,000 including GST.
- 7.6. The ACT must reimburse HAPPY HEART for any expenditure incurred by HAPPY HEART in relation to the EVENT or SESSION including, but not limited to, any monies already paid to the ACT by HAPPY HEART.
- 7.7. In the event of cancellation due to Force Majeure or any other event beyond the reasonable control of either party, any losses remain where they lie.
- 7.8. In the event of cancellation, both Parties agree to act in good faith and to make all reasonable efforts to mitigate the loss of the other party.

## 8. TERMINATION AND SUSPENSION

- 8.1. Where:
  - a. the ACT fails to comply with any of its obligations under this Agreement or becomes unable to perform any of its obligations and take all actions contemplated under this Agreement;
  - b. events or circumstances make it improbable (in the reasonable opinion of HAPPY HEART) that the condition set out in clause 6.4 ( Visa Condition ) can be fulfilled;
  - c. the Visa Condition is not fulfilled before 5.00 pm on the day before the Opening Performance;
  - d. the Visa Condition having been fulfilled, does not remain fulfilled in all respects at all times until Settlement;
  - e. the ACT is unable to use the Venue at any time during the Term as a result of any act, event or cause, other than a lack of funds, which is beyond the reasonable control of the ACT;
  - f. any representation, warranty or statement made or repeated by the ACT in or in connection with this Agreement is untrue or misleading in any respect (including by omission) when so made or repeated;
  - g. a material provision of this Agreement that purports to impose an obligation on the ACT is or becomes void, voidable, illegal or unenforceable or of limited effect (other than because of equitable principles or laws affecting creditor's rights generally);
  - h. the ACT acts in a manner likely to bring itself, HAPPY HEART into disrepute or in a manner which results in a serious incompatibility between the parties, with any such situation to be determined by HAPPY HEART at its sole discretion, then HAPPY HEART may elect to terminate this Agreement with immediate effect by providing the ACT with a notice of termination or, at its election, to suspend the operation of this Agreement until such matter is remedied to its absolute satisfaction by providing the ACT with a notice of suspension.
- 8.2. If the ACT receives a notice of suspension pursuant to clause 8.1, the parties must commence negotiations in good faith as soon as practicable in order to remedy any such matter, including where relevant, to determine alternative dates for the Sessions. No charge or fee is payable by the ACT under during any period that this Agreement is suspended and no payments (where applicable) will accrue or be made by HAPPY HEART to the ACT.
- 8.3. If HAPPY HEART elects to terminate this Agreement pursuant to clause 8.1, the ACT will have no entitlement to claim compensation or damages from HAPPY HEART on account of any inconvenience or direct or indirect loss to the ACT. Such termination shall be without prejudice to any remedies HAPPY HEART may have against the ACT for breach or non-performance of any provision of this Agreement.
- 8.4. Despite any other provision of this Agreement, this clause 9.4 and clauses 2.6, 2.7, 2.8, 2.13, 2.14, 5.3, 5.6, 5.7, 5.8, 10 and 11 survive the expiry or termination of this Agreement.

## 9. INDEMNITY

- 9.1. The ACT indemnifies and must keep indemnified HAPPY HEART its Directors, employees and contractors, from and against all actions, claims, damages, liabilities, costs, fines, levies, penalties, losses and expenses (including legal fees on a full indemnity basis) that may be brought against the Venue or which HAPPY HEART may pay, sustain or incur as a direct or indirect result of any one or more of the following:
  - a. any breach or non-performance of this Agreement by the ACT; or
  - b. any wrongful, willful or negligent act or omission of the ACT or any of its officers, employees, agents or contractors.

## 10. GENERAL

### NOTICES

- 10.1. Any notice under this Agreement between the Parties must be made in writing and may be personally delivered, mailed or emailed to the addresses set out in this Agreement or to such other addresses as a Party may designate pursuant to this notice provision.
- 10.2. Notices will be deemed to be given:
  - a. Where served personally, upon delivery;

- b. Where served by post (other than overseas airmail), three (3) Working Days after posting;
- c. Where served by email, upon receipt of confirmation the recipient has received that email correspondence.

#### NO TENANCY RIGHTS

10.3. Nothing in this Agreement shall create any tenancy rights in respect of the Venue.

#### NO MERGER

10.4. The obligations, warranties, undertakings and indemnities given under or pursuant to this Agreement, to the extent not already fully performed at completion of the provision of the Services, shall not merge on completion of the provision of the Services but shall remain enforceable to the fullest extent, notwithstanding any rule of law to the contrary.

#### NO WAIVER

10.5. No waiver of any breach, or failure to enforce any provision of this Agreement at any time by either party shall in any way affect, limit or waive such party's right to enforce and compel strict compliance with the provisions of this Agreement.

#### ENTIRE AGREEMENT

10.6. This Agreement, including each document, policy or schedule attached to this Agreement from time to time, constitutes the entire agreement, understanding and arrangement (express or implied) between the parties and supersedes all prior and contemporaneous communications and any prior agreements between the parties regarding the subject matter of this Agreement.

#### ASSIGNMENT

10.7. The ACT shall not be entitled to directly or indirectly assign or otherwise dispose of (including by way of sub-contract) any of its rights or interests in, or any of its obligations or liabilities under, or in connection with or arising out of this Agreement, except with the prior written consent of HAPPY HEART, which consent may be withheld at HAPPY HEART's absolute discretion.

#### VARIATION

10.8. This Agreement cannot be amended or varied except in writing signed by the parties.

#### SEVERABILITY

10.9. If at any time any part of this Agreement is held by a court of competent jurisdiction to be unreasonable, illegal, invalid or unenforceable for any reason whatsoever, that term will be enforced to the maximum extent permissible so as to affect the Parties' intent, and the remainder of this Agreement will continue in full force and effect.

#### NO RELATIONSHIP

10.10. Nothing contained in this Agreement shall be construed as creating an employer-employee relationship, a partnership, an agency, or a joint venture between the Parties or granting a franchise to either Party. Neither Party shall have authority to make any statements, representations or commitments or to take any action binding the other except as provided in this Agreement or authorized in writing by the other.

#### COSTS

10.11. Each party shall bear its own costs relating to the negotiation and preparation of this Agreement and related documentation and any issues arising out of this Agreement.

#### APPLICABLE LAW

10.12. The laws of the State of Western Australia govern this Agreement and both Parties submit to the non-exclusive jurisdiction of the courts of Western Australia. No party will institute legal proceedings unless reasonable steps are first taken to settle any dispute by negotiation.

#### FURTHER ASSURANCES

10.13. Each Party agrees to execute any further documents and do any further acts within its power as may be reasonably necessary from time to time to give effect to the terms and intentions of this Agreement.

#### FORCE MAJEURE

10.14. For the purpose of this Agreement, a 'Force Majeure Event' means any act, event or cause, other than a lack of funds, which:

- a. directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this Agreement; and
- b. is beyond the reasonable control of that party;
- c. *Covid-19*: Should the Venue be required to cancel the EVENT as a result of State Government restrictions and/or advice and direction from relevant third parties, the Venue shall advise the ACT of the same. Upon confirmation that the Venue is cancelling the EVENT for the above reason, the ACT agrees to waive any fees that would otherwise be owed by HAPPY HEART for the remainder of the Term.

10.15. Where any failure or delay by a party ( Affected Party ) in the performance of its obligations under this Agreement is caused, directly or indirectly, by a Force Majeure Event:

- a. the Affected Party must immediately give the other party written notice of that fact as well as notifying the other party on an ongoing basis of the expected duration of the Force Majeure Event and of measures taken to comply with this clause;
- b. the Affected Party is not liable for that failure or delay;
- c. subject to the parties agreeing otherwise, the Affected Party's obligations under this Agreement are suspended, to the extent to which they are affected by the relevant Force Majeure Event and in any event excluding any obligations to pay money, for the duration of the Force Majeure Event;

- d. the Affected Party must use best endeavors to work around or overcome the effect of the Force Majeure Event and recommence performance of this Agreement as soon as possible once the Force Majeure Event has ceased;
- e. if the Force Majeure Event continues for more than 30 consecutive days and while it continues, any party other than the Affected Party may, at its sole discretion, terminate this Agreement by giving written notice to the Affected Party and all other parties (if any).

#### AUTHORITY

10.16. The ACT warrants that they are authorised to enter into this Agreement.

#### CONFIDENTIALITY

10.17. All matters pertaining to this Agreement are confidential between HAPPY HEART and the ACT and all affiliated ACT staff or contractors.

10.18. If the ACT discloses any confidential information contained in this Agreement in any circumstances that might cause damage to the Venue, its staff, volunteers, clients, stakeholders or Board members, and whether the disclosure takes place during or after the term of this Agreement, the ACT is regarded as having breached confidentiality and HAPPY HEART may choose to pursue legal action.

#### NUDITY POLICY

10.19. The ACT agrees to ensure they state the EVENT is 18+ Restricted on all online material including ticketing links and Facebook event pages if it contains any nudity or adult themes.

10.20. The ACT agrees to ensure that there is no full nudity in all EVENTS and that the minimum dress is a G-String.

10.21. The ACT agrees that all adult entertainment will take place only in the spaces of The Rechabite Hall and the Goodwill Club.

## 11. VENUE USAGE

Subject to the following terms and conditions, the ACT is granted a non-exclusive license to occupy and use the Venue and the theatrical equipment situated therein as detailed in Schedule 1.

#### USAGE

11.1. Throughout the Term, the ACT acknowledges and agrees that it must:

- a. use the Venue only for the permitted use described in the Specific Terms;
- b. comply with all orders and instructions given by HAPPY HEART and its Venue representatives relating to the use of the venue, facilities and equipment and any other amenities, facilities, entrances or passageways in the Venue;
- c. remove from the Venue any employee, contractor, performer or agent of the ACT who fails to comply with any of the orders or instructions given by HAPPY HEART and its Venue representatives;
- d. carry on the permitted use in an orderly and controlled manner, without damage, nuisance or disturbance to any person or property;
- e. not carry on any offensive, harmful, illegal or dangerous act in the Venue, nor encourage or permit Venue patrons to do so;
- f. not do anything which may cause damage to the Venue (including any facilities or equipment located in the Venue) and use its best endeavours to protect and keep safe from theft, damage, harm or loss the Venue, all property belonging to the Venue and any person located at the Venue;
- g. not make any structural alteration to, or attach any fixtures or fittings to, the Venue;
- h. not do anything at the Venue which may render void or voidable any of HAPPY HEART's insurance policies, or which may cause the premium on any such policy to be affected;
- i. not interfere with the smooth running of the Venue, nor do anything to obstruct the access of HAPPY HEART patrons, employees, agents, performers or contractors to any area of the Venue; and
- j. not do anything that could degrade or otherwise adversely affect the reputation of HAPPY HEART or the Venue, or any agent, partner, sponsor or associate of HAPPY HEART or the Venue.

#### RESTORATION OF VENUE

11.2. The ACT must, at the end of each Session, restore the Venue to the satisfaction of the Manager on duty or any representative.

11.3. The ACT shall strike set, remove all props, costumes and technical equipment that is not to remain for the next Session immediately following the conclusion of the Session and within the time frame set by the Manager on duty.

11.4. In the event that the ACT fails to restore the Venue in accordance with this Agreement, HAPPY HEART may restore the Venue and any costs incurred shall be recoverable from the ACT.

#### VENUE INDEMNITIES

11.5. The ACT covenants to use the Venue at the ACT's sole risk and indemnifies and must keep indemnified HAPPY HEART its officers, employees and contractors, from and against all actions, claims, damages, liabilities, costs, fines, levies, penalties, losses and expenses (including legal fees on a full indemnity basis) that may be brought against HAPPY HEART or which HAPPY HEART may pay, sustain or incur as a direct or indirect result of any one or more of the following:

- a. negligent use, waste or abuse by the ACT of any water, gas, electricity, oil, lighting or other services and facilities in the Venue;
- b. overflow or leakage of water (including rain water) in or from the Venue caused or contributed to or by any act or omission on the part of the ACT;
- c. any accident, loss, damage or injury from any cause whatsoever to property or persons within the Venue or to the Venue itself which is caused or contributed to by an act, omission, neglect, breach or default on the part of the ACT.

11.6. The ACT shall immediately bring to the attention of the Manager on duty any damage, breakage, or defect relating to the Venue and immediately make good, subject to the Venue Manager's consent, any such damage, breakage, or defect caused by the ACT.

#### ACCESS

The ACT shall only gain access to the Venue at the times specified by the Venue's management staff. This includes, but is not limited to, all load in, load out, performance, rehearsal and technical activities, unless arranged prior with the Program Manager and/or the Production Manager.

#### EVENT MANAGEMENT STAFF

HAPPY HEART will supply Box Office and front of house staff to manage ticketing and entry for patrons to the Venue at its own cost as well as crowd control personnel for the duration of the EVENT, at a level that HAPPY HEART deems appropriate and as required by the liquor license pertaining to the Venue.

#### TECHNICAL & PRODUCTION SERVICES

- 11.7. The ACT will have access to the standard in-house Production Equipment, including basic Sound and Lighting at no additional cost. The standard in-house equipment specifics are provided in the Venue Specifications.
- 11.8. The ACT may book the Venue's preferred lighting and sound operator at a rate of \$50 plus GST per hour with a minimum of 4-hours. This can be arranged with the Venue's Production Manager up to two weeks prior to the event in writing.
- 11.9. Any technical requirements outside the in-house Production Equipment should be sourced by the ACT and approved by the Venue's Production Manager in writing.
- 11.10. Equipment owned by the Venue but not included in the Technical Specifications for that space may be hired by the ACT at an additional rate.
- 11.11. Any additional equipment hired from the Rechabite will incur a labour cost fee of \$25 plus the equipment hire cost by the ACT.

#### PROPERTY AND EQUIPMENT

- 11.12. The ACT is prohibited from operating the equipment and technical facilities of the Venue without the consent of HAPPY HEART.
- 11.13. Where HAPPY HEART consents to the use of its equipment and technical facilities by the ACT, the ACT must:
  - a. warrant that any operation of equipment and technical facilities shall only be undertaken by suitably qualified employees, agents, performers and contractors of the ACT;
  - b. submit, upon request by HAPPY HEART, the ACT's qualifications to operate the equipment and technical facilities. HAPPY HEART will be entitled to determine, at its sole discretion, whether the ACT is suitably qualified to operate the equipment or technical facilities; and
  - c. indemnify HAPPY HEART for any loss or damage to any equipment or technical facilities that arises directly or indirectly as the result of any acts or omissions on the part of the ACT where the ACT uses any non-HAPPY HEART equipment.
- 11.14. No equipment or consumables belonging to the Venue are to be taken off the Venue's premises for any reason whatsoever, unless by prior arrangement confirmed in writing by the Venue.
- 11.15. Any additional equipment, backline or instruments brought onto the premises by the ACT, or their affiliated artists, is done so at their own risk. THE ACT is responsible for the equipment safety, storage and collection of all their equipment.
- 11.16. The ACT agrees not to bring anything into the space that will jeopardise or affect the venue's public building compliance. Any equipment, install techniques or behaviour that does so, will be removed from the venue immediately.
- 11.17. The ACT accepts sole liability for any loss incurred by HAPPY HEART due to damage or theft of HAPPY HEART property that occurs as a consequence of acts or omissions by the ACT or its personnel in the course of their use of the Venue, or where, at other times, as a result of acts or omissions by the ACT or its personnel that compromise the security of the venue.
- 11.18. HAPPY HEART will not be held liable for any missing/misplaced equipment left at the Venue at Bump Out. Any equipment enquiries can be made to [hello@therechabite.com.au](mailto:hello@therechabite.com.au)

#### HEALTH & SAFETY

- 11.19. The ACT will be solely responsible for the health and safety of every employee, contractor, performer or agent of the ACT working at the Venue during the duration of the Term.
- 11.20. The ACT will immediately notify the Manager on Duty of any significant hazards that it observes or otherwise becomes aware of at the Venue. The ACT will also notify the Manager on Duty immediately of any incident it becomes aware of at the Venue involving any equipment, facilities, employees, contractors or patrons, and provide the Manager on Duty with such assistance as may be required to conduct an incident investigation.
- 11.21. The ACT will notify HAPPY HEART in writing of any risks associated with their performance and the strategies proposed to avoid these.

## 12. DECLARATION

- 12.1. The Performance Agreement is a contract and when signed by both Parties, constitutes offer and acceptance of the terms specified for the Event.
- 12.2. The Performance Agreement is the entire agreement between the parties about its subject matter.
- 12.3. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by the signed Performance Agreement and has no further effect.
- 12.4. Both parties accept the terms and conditions specified in both the General Terms and the Specific Terms contained in the Performance Agreement, and any other relevant attached schedule/s to the Performance Agreement at time of signing.

## END OF STANDARD CONTRACTUAL TERMS AND CONDITIONS