

Schedule 1

ABC	Name: Australian Broadcasting Corporation ABN: 52 429 278 345 Address: 700 Harris Street, Ultimo NSW 2007
Licensee	Name: Wagga Wagga City Council ABN: 56 044 159 537 Address: 243 Bayliss Street, Wagga Wagga NSW 2650
Premises	ABC Wagga Wagga, 100-104 Fitzmaurice Street, Wagga Wagga NSW 2650
Licence	Licensee and the Licensee's Agents to access and use the Licensed Area for the Permitted Purpose on a non-exclusive basis
Licensed Area	The car parking area shaded green on the annexed plan marked Annexure "A" located at 100-104 Fitzmaurice Street, Wagga Wagga NSW 2650
Licence Fee	\$1.00 plus GST, if demanded
Permitted Purpose	To hold a live music performance as part of the Licensee's Lost Lanes 2021 winter festival, including the sale of food and beverages.
Term	Commencement: 9:00am, Saturday 26 June 2021 Expiry: 9:00am, Sunday 27 June 2021
Address for Notices – Licensee	Name: Emma Corbett, Events Officer Address: 243 Bayliss Street, Wagga Wagga NSW 2650 Email: Corbett.Emma@wagga.nsw.gov.au
Address for Notices – ABC	Attention: Les Johnston, Regional Property Manager QLD ACT NSW ABC South Brisbane, 114 Grey Street, South Brisbane QLD 4101 Email: johnston.les@abc.net.au <u>with a courtesy copy to:</u> General Counsel, ABC, GPO Box 9994, Sydney NSW 2001 Email: legal@your.abc.net.au

Schedule 1

By signing below the ABC and the Licensee agree to be bound by the terms of this Schedule 1 and the attached General Terms and Conditions for the Licence.

EXECUTED AS A DEED

Signed, sealed and delivered by the **Australian Broadcasting Corporation** in accordance with the *Australian Broadcasting Corporation Act 1983* (Cth) by its duly authorised officer in the presence of:

.....
Signature of witness

.....
Signature of duly authorised officer

.....
Name of witness (print)

.....
Name of duly authorised officer

.....
Date

Signed, sealed and delivered by **Wagga Wagga City Council** by its duly authorised officer in the presence of:

.....
Signature of witness

.....
Signature of duly authorised officer

.....
Name of witness (print)

.....
Name of duly authorised officer

.....
Date



General Terms and Conditions

The parties agree as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Agreement means this agreement.

Business Day means a day that is not a Saturday, Sunday or a gazetted public holiday in the metropolitan area in which the Premises is located.

Claim means any allegation, debt, cause of action, liability, proceeding, suit, claim or demand of any nature and howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or howsoever otherwise.

Force Majeure means any act of God, act of terrorism, revolution, civil strife, fire, flood, war, public disaster, plague or epidemic, government order, delay in transportation or other cause, strike or labour stoppage, event or circumstance outside a party's control, which is not due to any lack of reasonable prudence or foresight.

GST has the meaning specified in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Licensee's Agents means the Licensee's employees, licensees, sublicensees, contractors, agents, customers and visitors at any time on the Licensed Area.

Proportionate Liability Legislation means the *Civil Liability Act 2002* (NSW) *Part 4* and any comparable laws and regulations in the Commonwealth and other States or Territories of Australia in force from time to time

WHS Laws means the *Work Health & Safety Act 2011* (Cth) and *Work Health & Safety Regulations 2011* (Cth) and all comparable laws and regulations in the States or Territories of Australia in force from time to time.

1.2 In this Agreement:

- (a) capitalised terms have the meanings given in Schedule 1;
- (b) a word or expression in the singular includes the plural, and the other way around;
- (c) a reference to a party to this or any other agreement includes that party's successors and permitted assigns;
- (d) a reference to dollars or \$ is a reference to Australian dollars.
- (e) if there is any inconsistency, the documents take the following order of precedence: Schedule 1, the General Terms and Conditions and Annexure A; and
- (f) the words "including" and "include" are not words of limitation and mean "including but not limited to" and "include but not limited to".

2. Licence

2.1 In consideration of each party incurring obligations under this Agreement, the ABC grants to the Licensee, and the Licensee accepts from the ABC, the Licence for the Term, subject to the terms and conditions stated in this Agreement.

2.2 The ABC and the Licensee agree that nothing contained in this Agreement is deemed to create in or confer upon the Licensee any estate or interest whatsoever in or over the Licensed Area. The rights of the Licensee will be those of a Licensee only and do not comprise any other or further rights.



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2.3 The Licensee has a personal right of entry on the terms specified in this Agreement and has no interest in the land within the Premises on which the Licensed Area is situated. The legal right to possession and control over the Licensed Area remains at all times vested in the ABC.

2.4 The Licensee must not assign, sublicense, mortgage, charge or otherwise deal with its rights under this Agreement.

3. Licence Fee

3.1 The Licensee must pay to the ABC the Licence Fee upon receipt of an invoice from the ABC specifying the amount owing.

4. Use of the Licensed Area

4.1 The ABC gives no warranty as to the suitability of the Licensed Area for the Permitted Purpose or as to the use to which the Licensed Area may be put.

4.2 If the Licensee requires any services within the Licensed Area, the Licensee must arrange such services (if approved by the ABC) and the costs of those services will be payable by the Licensee.

4.3 The Licensee must not use the Licensed Area until:

- (a) the Licensee's plans and specifications for the Permitted Purpose have been approved by the ABC. If the ABC requires consultants or other assistance to assess whether approval is granted, the Licensee must pay the ABC's reasonable costs;
- (b) the Licensee has obtained all consents, approvals and authorisations required to be obtained from governmental agencies and other authorities for the Permitted Purpose and has provided copies of those authorisations to the ABC;
- (c) the Licensee has provided the ABC with evidence of its site specific risk assessments which include a detailed scope outlining methods and controls; and
- (d) the Licensee has provided evidence to the ABC that the Licensee and all Licensee's Agents engaged by the Licensee to carry out the Permitted Purpose have, before accessing the Licensed Area, obtained insurance policies as typically required in the ordinary course of such business including but not limited to public liability insurance of no less than \$20 million (for a single claim) or such other amount as reasonably required by the ABC from time to time.

4.4 The Licensee must:

- (a) not use or permit the Licensed Area to be used for any purpose other than the Permitted Purpose;
- (b) carry out the Permitted Purpose strictly in accordance with the Licensee's plans and specifications as approved by the ABC;
- (c) comply with all consent and approval conditions, applicable laws and the requirements of all government agencies and other authorities in connection with the Licensed Area and the Permitted Purpose;
- (d) not use or permit the Licensed Area to be used for any illegal, unlawful or immoral purpose;
- (e) not cause or permit to be caused any damage to the Licensed Area, Car Park and Land and must at its own expense make good any damage so caused, prior to the end of the Term (or immediately upon earlier termination). If the Licensee fails to comply with this subclause the ABC may rectify any damage caused by the Licensee or the Licensee's Agents at the Licensee's expense, which is recoverable from the Licensee;
- (f) comply with all reasonable requirements of the ABC in matters pertaining to the use of and access to the Licensed Area by the Licensee's employees, contractors and members of the public under this Agreement;
- (g) cause as little disturbance as possible to the ABC and neighbouring properties;
- (h) not make any alterations or additions to the Licensed Area without the ABC's prior consent;
- (i) not store or use inflammable or dangerous substances on the Licensed Area;
- (j) ensure that all motor vehicles using the car spaces are registered and insured, and if requested by the ABC, provide evidence to the ABC;



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- (k) ensure that any works carried out by the Licensee or the Licensee's Agents on the Licensed Area are carried out in a safe manner, including:
 - (i) erecting and maintaining all safeguards necessary for safety and protection (including barriers, fences, and railings); and
 - (ii) posting danger signs and other warnings against hazards and notifying the ABC and other users of any dangerous or hazardous conditions arising out of the Permitted Purpose;
 - (iii) have on the Licensed Area at all times appropriate first aid facilities and a member of its staff fully qualified and experienced in work health and safety and familiar with work health and safety legislation;
 - (l) take all measures necessary to protect people within or around the Licensed Area in the carrying out of the Permitted Purpose;
 - (m) not display any signs or advertisements on the Licensed Area without the prior written consent of ABC; and
 - (n) prior to the end of the Term (or immediately upon earlier termination), remove from the Licensed Area all equipment, structures, rubbish, debris and other items resulting from the Licensee's and Licensee's Agents' use of the Licensed Area.
- 4.5 The ABC may by notice given orally by any of its employees, contractors or agents or in writing require the Licensee to cease any work or activity on the Licensed Area if necessary having regard for health and safety or risk of harm to the environment. The Licensee must, on receiving such notice, cease work or activity immediately.
- 4.6 The ABC may direct any vehicles, goods or fixtures be immediately removed from the Licensed Area, and the Licensee must comply.
- ## 5. GST
- 5.1 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- ## 6. Insurance
- 6.1 The Licensee must take out and keep in force during the Term and an additional 2 years the following insurance cover with a reputable and solvent insurer:
- (a) a broad form public liability insurance in an amount of not less than \$20 million for each and every Claim in relation to all acts of its officers, employees, servants, agents, contractors and other representatives in respect of any matter which may arise under or in relation to the Licence;
 - (b) workers compensation insurance in accordance with the applicable legislation; and
 - (c) insurance in respect of the Licensee's equipment situated in the Licensed Area for the full insurable replacement value.
- 6.2 Without limiting clause 6.1, it is agreed that the public liability insurance policy referred to in clause 6.1 must cover death and injury to any person, and damage to the property of any person, sustained in, on or near the Premises.
- 6.3 Certificates of currency for the insurance policies described above must be supplied by the Licensee to the ABC within 7 days of written request by the ABC.
- 6.4 The Licensee must not do anything that might provide grounds for an insurer to refuse payment of any claim made under any policy required under this clause 6.
- ## 7. Damage to Premises
- 7.1 If the Premises or Licensed Area are damaged or destroyed so as to render the same wholly or partially unfit for use for the purposes contemplated in this Agreement, the ABC is not obliged to take any steps to reinstate the Premises or Licensed Area and may terminate this Agreement without any further liability by notice in writing to the Licensee.



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8. Release

- 8.1 The Licensee exercises all rights under this Agreement at its own risk and releases the ABC from and agrees that the ABC is not liable for any damage or loss (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature however they arise and whether they are present or future, fixed or unascertained, actual or contingent in relation to:
- (a) anything unless it is caused by the ABC's act, default or negligence; and
 - (b) the ABC doing anything it is permitted or obliged to do under this Agreement.

9. Indemnity

- 9.1 The Licensee is liable for and indemnifies the ABC against damage and loss (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature however they arise and whether they are present or future, fixed or unascertained, actual or contingent in relation to:
- (a) anything caused or contributed to by the act, neglect, default or omission of the Licensee or the Licensee's Agents;
 - (b) the use or occupation of, or access to the Licensed Area by the Licensee or the Licensee's Agents;
 - (c) anything occurring on, originating in, or coming from, the Licensed Area, unless it is caused by the default or negligence of ABC; and
 - (d) the Licensee's default under this Agreement.
- 9.2 Each indemnity of the Licensee contained in this Agreement is:
- (a) a continuing obligation of the Licensee and remains in full force and effect after the termination of this Agreement; and
 - (b) a separate and independent obligation of the Licensee's costs.

10. Termination and vacation

- 10.1 This Agreement may be suspended or terminated immediately by the ABC if:
- (a) the Licensee becomes the subject of criminal or civil proceedings, or engages in conduct which in the reasonable opinion of the ABC may adversely affect the interests of the ABC; or
 - (b) an administrator or a liquidator or a provisional liquidator is appointed to the Licensee or a receiver, receiver and manager or controller is appointed to any or all of the Licensee's assets, or the Licensee is declared bankrupt; or
 - (c) a party stops or threatens to stop carrying on its business in the normal manner.

11. Confidentiality

- 11.1 The Licensee must not disclose any information about the ABC's confidential affairs or any confidential information about this Agreement during or after the Term without the express written approval of the ABC.
- 11.2 Clause 11.1 does not apply to disclosures required by law, disclosures to professional advisors necessary for the purposes of obtaining advice on this Agreement, or unless mutually agreed or where the information enters the public domain otherwise than through a breach of this Agreement.

12. Notices

- 12.1 Any notice, consent or other communication under this Agreement must be forwarded to the other party at the address of the intended recipient stated in Schedule 1 (or such other address that the recipient has notified the sender in writing).
- 12.2 A notice, consent or other communication is properly given if it is:
- (a) delivered by hand;
 - (b) sent by registered post; or



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(c) transmitted by electronic mail,
and is deemed to have been given in the case of:

- (d) hand delivery, on the date which that notice was personally delivered;
- (e) registered post, 48 hours after the date of posting; or
- (f) an email sent:
 - (i) before 5pm on a Business Day, on the date of transmission; or
 - (ii) sent after 5pm on a Business Day or at any time on a day other than a Business Day, on the commencement of the next Business Day,

provided that an out of office email or email advising the address is invalid or the email is not delivered is not issued from the recipient's email account to the sender.

13. Miscellaneous

- 13.1 This Agreement is the entire agreement between the parties and supersedes any prior or contemporaneous agreement, oral or in writing. There are no promises, terms, representations, warranties, conditions or obligations, oral or written, expressed or implied other than those contained in this Agreement.
- 13.2 This Agreement may only be amended in writing signed by the parties.
- 13.3 Any waiver or variation to a provision of this Agreement must be in writing signed by the party or parties to be bound.
- 13.4 Each party acknowledges that in entering into this Agreement it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this Agreement.
- 13.5 If either the Licensee or the ABC is unable to observe or perform any obligation or is delayed or interrupted in the performance of its obligations under this Agreement by reason of a Force Majeure then that party will not be in breach of this Agreement provided that it notifies the other party as soon as practicable of the nature of the event or circumstance and uses all reasonable endeavours to mitigate any resulting costs and resumes performance of its obligations as soon as practicable. The parties agree to meet at the request of any party and, without prejudice to their legal rights and obligations, to seek to resolve in good faith any problems encountered.
- 13.6 If any provision of this Agreement is determined by any statute or court having jurisdiction to be illegal, invalid, void or voidable that provision will be deemed to be deleted to the same extent and effect as if it was never incorporated, and the remainder of this agreement will continue in full force and effect.
- 13.7 This Agreement will be binding upon and will continue for the benefit of the parties, and their respective successors (including but without limitation, in the case of natural persons, their legal personal representatives) and permitted assigns.
- 13.8 Nothing in this Agreement will be construed as constituting a partnership, joint venture, employment or agency relationship between the parties.
- 13.9 This Agreement is governed by the laws of New South Wales, and the parties agree to submit to the non-exclusive jurisdiction of courts of New South Wales.
- 13.10 Each party will bear its own costs in relation to the negotiation, preparation and execution of this Agreement.
- 13.11 This Agreement may be executed in any number of counterparts and those counterparts taken together are one agreement.
- 13.12 Clauses 6, 8, 9, 11, 12 and 13 survive termination or expiry of this Agreement.

Annexure A – Plan

