

Conditions of use of Emporium Creative Hub

This Agreement sets out the conditions of use on which ACMI grants the User the right to use **Emporium Creative Hub**.

1. In consideration of the payment of the User Fee, ACMI grants the User the right to use **Emporium Creative Hub** for the Period of Use.
2. The User must:
 - (a) comply at all times with the Code of Conduct made available to the User by ACMI;
 - (b) comply with any reasonable requirements or directions provided by ACMI in relation to the use and occupation of **Emporium Creative Hub**;
 - (c) comply with ACMI's Policies;
 - (d) at the end of the Period of Use (or sooner termination of this Agreement):
 - i. ensure that **Emporium Creative Hub** is left in a clean and tidy condition and any damage caused by the User has been repaired to ACMI's satisfaction; and
 - ii. deliver to ACMI all keys, passes and security codes giving access to any parts of **Emporium Creative Hub** or Building which are held by the User or any of the User's members, agents, guests or invitees, whether or not they were supplied by ACMI; and
 - (e) otherwise act in accordance with the terms of this Agreement.
3. The User must not:
 - (a) use **Emporium Creative Hub** for any purpose other than the Acceptable Use;
 - (b) do anything in connection with **Emporium Creative Hub** which may cause a nuisance, interfere with any other person or be dangerous or offensive in ACMI's reasonable opinion;
 - (c) display or affix any signs, advertisements, posters, flag or notices, to any part of **Emporium Creative Hub** or the Building without the prior written consent of ACMI (such consent to be at the absolute discretion of ACMI);
 - (d) use **Emporium Creative Hub** for any illegal purpose or carry on any noxious or offensive activity on **Emporium Creative Hub** or the Building;
 - (e) use any equipment, plant or fitting in **Emporium Creative Hub** for any purpose except that for which it was constructed, installed or designed;
 - (f) transfer this arrangement to another person or legal entity;
 - (f) prepare, cook or store food in **Emporium Creative Hub** or the Building other than in areas which have been provided or approved by ACMI for that purpose;

- (g) use the sinks (or other appurtenances) in **Emporium Creative Hub** or the Building nor permit them to be used for any purpose other than those for which they were designed;
- (h) interfere, misuse or overload any services to **Emporium Creative Hub** (including electricity, gas and water);
- (i) in any way interfere with, hinder or obstruct access to any air-conditioning plant or equipment, lifts, escalators, fire alarm system or any other service;
- (j) remove ACMI's property from **Emporium Creative Hub**;
- (k) do anything in **Emporium Creative Hub** or Building which may cause:
 - i. any insurance policy covering **Emporium Creative Hub** or the Building to become void or voidable; or
 - ii. any claim on any insurance policy covering **Emporium Creative Hub** or the Building to be rejected or a premium to be increased.

Payment of User Fee

- 4.1 ACMI will use reasonable endeavours to provide the User with **Emporium Creative Hub** in consideration for the User paying the User Fee in the manner specified in clause 4.2.
- 4.2 The User (other than a "Casual" User specified in the Application Form) will be invoiced at the start of each month. If the User starts after the 1st of each month, the User's User Fee will be prorated for the remainder of the month in which they join. If, a User has selected "Casual" in the Application Form, the User Fee must be paid in advance and in full before the "Casual" User is granted access to **Emporium Creative Hub**.
- 4.3 It is the User's responsibility to ensure it has sufficient funds in the User's nominated account to enable the successful debit of the User Fee each month or as otherwise agreed. If the transaction is rejected for any reason the User will be liable for any reasonable costs incurred by ACMI in recovering the debt, including but not limited to any legal, bank or collection agency fees.
- 4.4 ACMI may review the User Fee from time to time in accordance with the terms of this Agreement at ACMI's reasonable discretion.
- 4.5 Unless the User is notified otherwise, the User Fee and any other process referenced on, ACMI's website, www.emporiumcreativehub.com.au or otherwise communicated to the User are quoted exclusive of Goods and Services Tax (GST).
- 4.6 ACMI may charge the User an administration fee of up to A\$50 each time the User Fee remains overdue past the 30th of the month.

GST

5. If GST is imposed on any supply made pursuant to this Agreement (Taxable Supply), the User must pay, in addition to any amounts otherwise payable, an amount calculated by multiplying the prevailing GST rate by those amounts, without any deduction or set-off. The payment of GST is subject to ACMI's receipt of a valid tax invoice that complies with the requirements of *A New Tax System (Goods and Services Tax) Act 1999*. The User Fee is exclusive of any withholding taxes and payments for other taxes which may arise under any Australian or international law (excluding any income tax obligation arising on ACMI). Any such taxes will be payable by the User.

Continued occupancy after Period of Use

6. If the User continues to occupy **Emporium Creative Hub** after the end of the Period of Use, without objection by ACMI:
 - (a) the User occupies **Emporium Creative Hub** subject to the same terms and conditions as contained in this Agreement; and
 - (b) ACMI or the User may end this Agreement during any period of overholding immediately by notice in writing to the other party.

Compliance with Laws

7. The User must comply with all laws and any requirements of any authority in connection with its use of **Emporium Creative Hub**.

Damage to Emporium Creative Hub

8. The User must give ACMI prompt written notice of any damage to **Emporium Creative Hub**, the appurtenances, the services or the Building or anything likely to be a risk to **Emporium Creative Hub** or any person in **Emporium Creative Hub** of which the User becomes aware.
9. The User must not deface or damage **Emporium Creative Hub** or the Building or carry out any alterations or works on **Emporium Creative Hub** or the Building.

Health and safety

10. The User must not do or permit anything to be done in connection with **Emporium Creative Hub** which in the reasonable opinion of ACMI may endanger **Emporium Creative Hub** or be a risk to any person or property.
11. The User must:
 - (a) carry out the Acceptable Use in a business-like and reputable manner;
 - (b) observe and obey all fire or emergency drills;
 - (c) make sure that it is fully aware of and complies with all occupational health and safety and emergency procedures; and

- (d) inform ACMI immediately if the User is aware of a risk or a danger (for example: a bomb threat or a fire) in any part of **Emporium Creative Hub** or the Building.

Emergency evacuation

12. In the event that there is, or may be anything that is, a risk or a danger (for example: bomb threat or a fire), the User must:
 - (a) immediately obey any instructions given to the User by ACMI, the police or the fire brigade or other emergency authority including leaving **Emporium Creative Hub** or the Building; and
 - (b) not re-enter **Emporium Creative Hub** or the Building unless ACMI or the police or fire brigade or other appropriate authority advise that it is safe to do so.

Heavy Equipment, flammable substances, hazards

13. The User must not bring onto **Emporium Creative Hub** or Building:
 - (a) any object which by its nature is likely to cause damage to **Emporium Creative Hub** or the Building; or
 - (b) chemicals or flammable substances or liquids or other hazardous things.

User release and indemnity

14. The User uses and occupies **Emporium Creative Hub** at its own risk and to the maximum extent permitted by law releases ACMI, the State of Victoria and the landlord/owner of the Building and their respective employees and agents ("the **Released Parties**") from all claims resulting from any damage, loss, death or injury in connection with **Emporium Creative Hub** and the Building except to the extent that such claims arise out of any unlawful act or omission of or any misconduct by the Released Parties.
15. The User indemnifies and keeps indemnified ACMI, the State of Victoria and the landlord/owner of the Building and their respective employees and agents ("the **Indemnified Parties**") from and against all claims in respect of or arising from:
 - (a) any damage, loss, death or injury in connection with **Emporium Creative Hub** and the Building and the use and occupation of **Emporium Creative Hub** and the Building by the User which the indemnified will or may be or become liable whether during or after the Period of Use;
 - (b) any action or demand due to any damage, loss or injury or death caused or contributed to by the Indemnified Parties doing anything which the User must do under this Agreement, but has not done or has not done properly;

- (c) the negligent or careless use or neglect of the services, facilities or appurtenances of **Emporium Creative Hub** or Building by the User;
- (d) broken or damaged glass in or near **Emporium Creative Hub** or the Building caused or contributed to by an act or omission on the part of the User; and
- (e) any damage caused to **Emporium Creative Hub**, the Building or any ACMI property, by malfunctioning or incorrectly used equipment brought into **Emporium Creative Hub** by the User, the User's employees or the User's guests. This includes, but is not limited to, damage caused by non-compliant electrical equipment or electrical equipment not fit for use in Australia,

except to the extent that such claims arise out of any deliberate act, negligent omission, or default of the Indemnified Parties.

- 16. The indemnity in clause 15 is independent from the User's obligations under this Agreement and does not end when this Agreement ends. The Indemnified Parties may enforce an indemnity before incurring an expense.

No warranty made by ACMI

- 17. The User acknowledges it does not rely upon any representation that **Emporium Creative Hub** is suitable for the Acceptable Use or any other purpose whatsoever and must make its own enquiries as to the suitability of **Emporium Creative Hub** for the Acceptable Use.
- 18. To the extent permitted by law, ACMI expressly disclaims all conditions and warranties, express or implied, in respect of the User's use of **Emporium Creative Hub**. Where the law precludes such exclusion and implies certain conditions and warranties into these terms and conditions, the liability of ACMI for breach of such condition or warranty shall be limited, where legally permissible, to (at ACMI's option):
 - (a) re-supplying **Emporium Creative Hub** for a period equivalent to the Period of Use; or
 - (b) reimbursing the User for the cost of an alternative Studio for the Period of Use.
- 19. Subject to the application of any law, the operation of which cannot be excluded, ACMI will not be liable to the User or any other person for:
 - (a) any loss or damage incurred by the User due to:
 - i. any damage to **Emporium Creative Hub** or the Building;
 - ii. the failure of ACMI's fixtures or any plant and equipment to operate properly;

- iii. the interruption or damage to any services (including electricity, gas or water) to **Emporium Creative Hub** or the Building; or

- iv. the overflow or leakage of water in **Emporium Creative Hub** or the Building; or

- (b) any economic loss, loss of revenue, loss of production, loss of profits, loss of income, loss of reputation, loss or impairment of goodwill, loss of business, loss of customers, loss of an opportunity or chance, loss of value, loss of use, loss of anticipated savings, increased costs of work or materials, or the cost of defending and settling any claim or any other form of indirect and/or consequential loss or damage arising from the User's use of **Emporium Creative Hub**.

Ending this Agreement

20. ACMI may cancel this Agreement by written notice to the User:

- (a) With immediate effect, if the User:
 - (i) breaches any of the User's obligations in this Agreement and, if such breach is capable of remedy, the User does not remedy the User's breach within 7 days of being notified by ACMI;
 - (ii) fails to pay any applicable User Fee, and such failure is not remedied within 14 days;
 - (iii) fails to comply with ACMI's Policies, provided that ACMI has given the User written notice of such failure and ACMI's required remedy, and a reasonable time to rectify the failure;
 - (iv) breaches any law or regulation;
 - (v) becomes subject to any form of insolvency or administration;
 - (vi) ACMI has received notice from the landlord/owner of the Building terminating its arrangement; or
 - (vii) ACMI has received a request to terminate this Agreement from the landlord/owner of the Building or the State of Victoria.
- (b) Subject to Australian Consumer Law (if applicable), termination of this Agreement by ACMI pursuant to clause 20 (a) will not entitle the User to a refund for any portion of the User Fee, and the User shall remain liable for any User Fee (or any part thereof) which has become due but remains unpaid.

- (c) The User may terminate this Agreement by giving 30 days' prior written notice to ACMI, if ACMI makes changes to the terms of this Agreement pursuant to clause 46 (b), other than changes to the terms that are required by law and those changes take effect during the User's Period of Use.
21. Either party may terminate this Agreement by giving 30 days' notice in writing to the other party, at any time without cause or as otherwise agreed between the parties in writing.
22. The User remains liable to ACMI in respect of any breach of this Agreement that occurs prior to the termination of this Agreement, notwithstanding that termination may have occurred.

Internet

23. Each User is entitled to fair use of internet within **Emporium Creative Hub** which will be provided via a mix of WiFi and hard-wired network connections (**Network**) and may be accessed via User's own device. The User must not use the Network for excessive downloads or for any illegal purpose. The User must not use any form of 'torrent client' or similar file sharing software on the Network. ACMI may block traffic which may be harmful to Users, the Network or to other parts of the ACMI network. ACMI does not warrant that data exchanged with the Network and other parts of the ACMI network will be free of viruses or other malware. Users are responsible for securing any device they use to access the internet, or any printers provided as part of **Emporium Creative Hub**, including the installation of firewalls and anti-virus systems as appropriate. ACMI may monitor Network traffic as part of routine management and statistical analysis of the Network but will endeavour not to disclose User's data to third parties unless that disclosure is required by law.

Emporium Creative Hub Meeting Spaces

24. Meeting spaces will be provided in **Emporium Creative Hub** for all Users, and meeting space bookings are limited to 2 hours.
25. ACMI makes no representation or warranty as to the availability or suitability of the User's desired meeting space. ACMI reserves the right to refuse or vary a User's meeting space booking, amend or suspend access to the meeting spaces, or limit the number of meeting space bookings a User makes as may be reasonably necessary to ensure fair use amongst all users of **Emporium Creative Hub**.
26. The User is only entitled to use **Emporium Creative Hub** for the Acceptable Use on the days and times allocated to the User.

27. ACMI may limit the number of guests the User brings into **Emporium Creative Hub** from time to time, having regard to fair use for all users of **Emporium Creative Hub**.

Security

28. A swipe card is needed by all Users to access **Emporium Creative Hub** and will be allocated on sign up. Swipe cards are not transferrable and must be returned to ACMI at the end of the User's Period of Use. The User must not lend the User's swipe card to any other person and must notify ACMI immediately if it is lost or stolen. If the User loses its swipe card the User must purchase a new card from ACMI at the applicable fee advised in writing by ACMI to the User.

Confidentiality and Privacy

29. The User must not, and must ensure that its employees, agents and contractors do not, disclose or otherwise make available any Confidential Information to any other person. All Confidential Information must be kept secret and returned to ACMI upon request.
30. The User consents to ACMI publishing or otherwise making available information in relation to the User (including the terms of this Agreement) as may be required by the Auditor-General or to comply with the *Freedom of Information Act 1982* (Vic) and the User must do all things necessary to assist ACMI in complying with any such requirements.
31. The User must comply with the Information Privacy Principles in the *Privacy and Data Protection Act 2014* (Vic), any applicable code of practice under that legislation and ACMI's Privacy Policy to the same extent that ACMI is bound by those instruments.
32. The User must not, and must ensure that its employees, agents and contractors do not do anything which may bring ACMI's name into disrepute or otherwise damage ACMI's goodwill, reputation or public image.

Insurance

33. The User must maintain public liability insurance for the amount of \$5 million for one single event with a reputable insurer at all times for the duration of the User's Period of Use and provide a certificate of currency to ACMI upon request.
34. ACMI accepts no responsibility for loss or damage to any User property in **Emporium Creative Hub**.

Dispute Resolution

35. The parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them under this Agreement. Neither party will resort to legal proceedings, or terminate this Agreement, until the following process has been

exhausted, except if it is necessary to seek an urgent interim determination.

- 36.** If a problem arises (including a breach or an alleged breach) under this Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at an operational level:
- (a) either party may notify the other; and
 - (b) management representatives of each of the parties will then endeavour in good faith to agree upon a resolution.
- 37.** The parties may attempt to resolve any dispute by mediation. The mediation procedure is as follows:
- (a) a party may commence mediation by serving a notice of mediation on the other party;
 - (b) the notice must state that a dispute has arisen and identify the subject matter of the dispute;
 - (c) the parties must jointly appoint a mediator, and if the parties fail to agree on the appointment within 7 days of the service of the mediation notice, either party may apply to the president of the Law Institute of Victoria to nominate a mediator;
 - (d) the parties must jointly appoint the mediator and comply with the instructions of the mediator; and
 - (e) if the dispute is not resolved within 30 days after the appointment of the mediator, or any other date agreed by the parties in writing, the mediation ceases.

Notices

- 38.** A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:
- (a) personally on the person at **Emporium Creative Hub**; or
 - (b) by email to the person's current email address for service.
- 39.** The particulars for service of ACMI are specified either on www.emporiumcreativehub.com.au or in the Application Form.
- 40.** The particulars for service of the User are specified in the Application Form.
- 41.** A notice or other communication is deemed served:
- (a) if served personally or left at the person's address, upon service; or
 - (b) if served by email, at the time of receipt of notification delivered to the sender's email address.

Force Majeure

- 42.** If a party (the **Affected Party**) is unable to carry out any of its obligations under this Agreement due to a Force Majeure Event, the Affected Party shall immediately notify in writing the other party.
- 43.** Upon such notification, the other party may elect to either suspend this Agreement for a period of up to 30 days or, if suspension is not feasible, terminate this Agreement. If the Force Majeure Event continues beyond the period of suspension, either party may terminate this Agreement. In the event of a suspension or termination pursuant to this clause, no payment of compensation will be due from the Affected Party to the other party.

Right to occupy only

- 44.** The User acknowledges and agrees with ACMI that:
- (a) the User is not entitled to exclusive occupation of **Emporium Creative Hub** and this Agreement does not create any estate or interest in **Emporium Creative Hub**, other than a contractual right;
 - (b) the User may not permit other parties to use **Emporium Creative Hub** or deal with its interests under this Agreement without the prior written approval of ACMI;
 - (c) ACMI and its agents may enter **Emporium Creative Hub** at all times for any reason;
 - (d) this Agreement does not constitute a lease at law and the User will not claim before a court or tribunal that this Agreement constitutes a lease at law; and
 - (e) in the event that a court or tribunal determines that this Agreement is a lease at law, ACMI may, at its option, terminate this Agreement by written notice to the User.
- 45.** Notwithstanding any other provision, this Agreement automatically ends, and the User must vacate **Emporium Creative Hub**, if ACMI's right to occupy the Building ends or is terminated.
- 46. Miscellaneous**
- (a) The User is responsible for ensuring the suitability of the ACMI property at **Emporium Creative Hub** meets the needs of the User's business and to use the ACMI property in a safe manner. Prior to bringing any electrical equipment into **Emporium Creative Hub**, the User must ensure that the equipment has been inspected and tested in accordance with AS/NZS 3760:2010.
 - (b) ACMI may amend the terms of this Agreement or the User Fee by providing 30 days written notice to the User.
 - (c) The User may change the User's personal and billing information and change or cancel the User's membership by emailing hello@emporiumcreativehub.com.au. The User

must do this at least 30 days prior to the day the User requires the 'change' to take effect or 30 days prior to the day the User requires the 'cancellation' to take effect.

- (d) This Agreement is governed by, and must be construed in accordance with, the law in force from time to time in Victoria and the parties submit to the jurisdiction of the courts of Victoria, Australia,
- (e) Any individual executing this Agreement on behalf of a party represents and warrants that he or she has been fully empowered to execute this Agreement and that all necessary action to authorise the execution of this Agreement has been taken.
- (f) This Agreement is accepted electronically (includes email) by the User. If, you do not agree with the terms of this Agreement, please contact ACMI in accordance with clause 39.
- (g) If the User consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly.
- (h) Where the User is entering into this Agreement in its capacity as a trustee of a trust, the User is bound both personally and as trustee of that trust.
- (i) A party may only waive a breach of this Agreement in writing signed by that party and a waiver is limited to the instance referred to in writing.
- (j) Each party shall bear its own expenses of and incidental to the preparation and execution of this Agreement.
- (k) Each party acknowledges that it has had an opportunity to obtain legal advice in relation to this Agreement.

47. Definitions

Acceptable Use means the User is able to use **Emporium Creative Hub** to carry on its business: as a creative enterprise; as a small to medium arts organisation; for arts and cultural audiences and events; and/or for education and studio spaces. **Emporium Creative Hub** must not be used for retail purposes.

ACMI means the Australian Centre for Moving Image (ABN 37 375 237 222) an entity established under the *Film Act 2001* (Vic) and having its registered office at the Alfred Deakin Building, Federation Square, corner of Swanston and Flinders Streets, Melbourne, Victoria 3000.

ACMI's Policies means any of ACMI's code of conduct, policies and procedures accessible on www.emporiumcreativehub.com.au or otherwise made available to the User, as amended or added by ACMI from time to time.

Agreement means this agreement, the Application Form and includes all schedules, appendices, annexures and exhibits (if any) to it.

Application Form means the form the User completes which includes but is not limited to, their full legal name, address for service, fees and type of tenancy arrangement for **Emporium Creative Hub**.

Building means the premises located at 23-25 Mitchell Street, Bendigo.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in anyway related to, ACMI or other users of **Emporium Creative Hub**, including any information designated by ACMI or other users of **Emporium Creative Hub** as confidential, which is disclosed, made available, communicated or delivered to the User, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) which the User can demonstrate was in its possession prior to the date of this Agreement; or
- (c) which is lawfully obtained by the User from another person entitled to disclose such information.

Code of Conduct means the code of conduct referred to in the Application Form or made available upon request to hello@emporiumcreativehub.com.au and that is amended from time to time.

Force Majeure Event means any unforeseen event or circumstance arising after the date of this Agreement which is outside the reasonable control of the parties and which prevents a party from being able to meet its obligations under this Agreement, including without limitation, natural disasters, war, terrorism, fire and strikes by public servants.

Period of Use means the date specified in the Application Form.

Emporium Creative Hub means the ground floor of 23-25 Mitchell Street, Bendigo.

User means the user specified in the Application Form; and

User Fee means the fee specified in the Application Form.