

EQUIPMENT HIRE AGREEMENT

PARTIES

Natalie Calvani and Aldo Calvani trading as Happy Days Jukebox and Party Hire (“**Happy Days**”)

Equipment Hire Customer (“**Customer**”)

BACKGROUND

- A. Happy Days has, at the request of the Customer, agreed to hire out the Equipment to the Customer.
- B. In consideration of Happy Days hiring out the Equipment to the Customer, the Customer agrees to pay Happy Days the Hire Fee.
- C. The Parties agree that the relationship between Happy Days and the Customer is governed by the terms of this Agreement.

OPERATIVE CLAUSES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, words in the particulars have the meaning given adjacent to them.
- 1.2 In this Agreement:
 - (a) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
 - (b) **Commencement Date** means the date this Agreement is signed by the Customer and received by Happy Days.
 - (c) **Credit Card Security** means the retention of the Customer’s credit card details by Happy Days as security and used in accordance with clause 5.
 - (d) **Customer** means the person listed on page 1 of this Agreement as the Customer.
 - (e) **Damage** means any aesthetic, electronic, physical or other kind of damage to the whole or part of the Equipment, or any of its accessories that was not made known to Happy Days by the Customer at the time of the delivery of Equipment to the Customer.
 - (f) **Delivery Address** means the address provided by the Customer where the Equipment is to be delivered.
 - (g) **Deposit** means 20% of the Hire Fee.
 - (h) **Equipment** means the equipment set out in the equipment table of the schedule to this Agreement.
 - (i) **GST** means:
 - i. the same as it does in the GST Law;
 - ii. any other goods and services tax, applying to this transaction in a similar way; and
 - iii. any additional tax, penalty tax, fine interest or other charge under a law for such a Tax.
 - (j) **GST Law** has the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999 (Cwlth)*.
 - (k) **Hire Fee** means the fee payable to Happy Days for hiring out the Equipment to the Customer.
 - (l) **Hire Period** means the period outlined in clause 3.
 - (m) **Interest Rate** means 10% per annum.
 - (n) **Late Fee** means the fee charged by Happy Days for late payment of moneys due under this Agreement, which at the date of this Agreement is \$30.00.
 - (o) **Particulars** means the particulars set out in the schedule to this Agreement including the Customer and Equipment details.
 - (p) **Parties** means Happy Days and the Customer, and Party means either one of them.
 - (q) **Recipient** means the recipient of any Supply under this Agreement.
 - (r) **Related Entity** has the meaning it has in the *Corporations Act 2001 (Cwlth)*.

- (s) **Representative** of a Party includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer or sub-contractor of that Party.
- (t) **Supply** means any supply (as defined in the GST Law) made by a Party under this Agreement.
- (u) **Supplier** means any Party making a supply under this Agreement.
- (v) **Termination Date** means the date this Agreement is terminated in accordance with clause 11.

- 1.3 In this Agreement, reference to:
 - (a) the singular includes the plural and the plural includes the singular;
 - (b) a person includes a body corporate;
 - (c) a Party includes the Party’s executors, administrators, successors and permitted assigns;
 - (d) money is to Australian dollars, unless otherwise stated;
- 1.4 “Including” and similar expressions are not words of limitation.
- 1.5 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.6 If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

2. EQUIPMENT HIRE

- 2.1 Happy Days will hire the Equipment to the Customer for the Hire Fee.
- 2.2 Happy Days does not warrant the Equipment requested by the Customer will be available and in a working condition for the Hire Period. In the event where it is not, Happy Days will notify the Customer as soon as practicable and will make all reasonable efforts to organise an alternative.

3. HIRE PERIOD

- 3.1 On booking, the Customer must advise Happy Days the date the Customer wants delivery of the Equipment (“**Start Date**”) and the date the Customer wants Happy Days to collect the Equipment (“**End Date**”).
- 3.2 The Hire Period commences when the Equipment is actually delivered to the Address.
- 3.3 The Hire Period ends when the Equipment is actually collected by Happy Days.

4. HIRE FEE AND DEPOSIT

- 4.1 The Customer must pay the Hire Fee in the manner specified by Happy Days.
Deposit
- 4.2 The Customer must pay the Deposit at the time of making a booking when a booking to hire Equipment from Happy Days.
- 4.3 Payment of the Deposit indicates the Customer’s intention to hire the Equipment. The booking is secured on the Commencement Date and the deposit is paid.
- 4.4 The Deposit is non-refundable under any circumstances.
- 4.5 The balance of the Hire Fee is payable prior to, or on delivery of the Equipment to the Delivery Address.
- 4.6 The Customer may authorise Happy Days in writing to charge the credit card, which they provided at booking, with the balance of the Hire Fee. Until Happy Days receives such authorisation, clauses 4.7 to 4.9 will apply.
Late Payment
- 4.7 If the Customer breaches clause 4.5, the Customer must pay the Late Fee and Happy Days will charge interest at the Interest Rate on the outstanding amount calculated on a daily basis from, but excluding, the day payment is due to, and including, when payment is received by Happy Days.
- 4.8 If the Customer does not pay the balance, on or prior to delivery, Happy Days may, at their sole discretion:
 - (a) not deliver the Equipment until the balance is paid;
 - (b) terminate this Agreement and keep the deposit; or
 - (c) deliver the Equipment and charge the Late Fee and interest until the balance is paid.
- 4.9 Interest will be charged by Happy Days at the Interest Rate on the outstanding balance calculated on a daily basis, from but excluding the day payment is due, to and including, the

date the outstanding balance, Late Fees and interest are paid in full.

5. CREDIT CARD SECURITY

5.1 On booking, the Customer must provide Happy Days with their credit card details.

5.2 No payment will be charged to the Customer's credit card unless one of the following applies:

- (a) the Customer has authorised Happy Days to charge the credit card with the balance of the Hire Fee including any Late Fees and Interest that is owing;
- (b) the Customer makes a cancellation in accordance with clause 6.3;
- (c) clause 9.4 applies; or
- (d) any other circumstance where it is reasonable for Happy Days to charge the credit card, including if the Customer has not paid the Hire Fee fourteen days following the end of the Hire Period, in which case a payment will be charged to the credit card to satisfy the amount outstanding, including the Hire Fee, Interest and Late Fees which may be charged in accordance with this Agreement.

5.3 Following the Hire Period and provided Happy Days is satisfied the Customer has met all its obligations under this Agreement, the Customer's credit card details will be destroyed by Happy Days.

6. CANCELLATION

6.1 If the Customer wishes to cancel its booking, it must give written notice to Happy Days ("the Notice").

6.2 If the Notice is given more than thirty days prior to the Start Date, Happy Days will retain the Deposit.

6.3 If the Notice is given within thirty days prior to the Start Date, Happy Days is entitled to the full Hire Fee.

6.4 The amount payable under clause 6.3 is due at the time of cancellation, after which the Customer must pay the Late Fee and Happy Days will charge Interest on the outstanding amount calculated on a daily basis from, but excluding, the day payment is due to, and including, when payment is received by Happy Days.

7. USE OF EQUIPMENT

7.1 The Customer agrees that the Equipment must be used:

- (a) in a skilful and proper manner;
 - (b) for the purpose and within the capacity for which it was designed;
 - (c) by suitably responsible person;
 - (d) safely, and strictly in accordance with all laws;
 - (e) under direct supervision of adults at all times; and
- if there is any doubt to the Equipment's use, it is the responsibility of the Customer to ask for assistance from Happy Days, and Happy Days will use all reasonable efforts to be of assistance.

7.2 The Customer must not, under any circumstances, attempt to move, reposition or rotate the Equipment.

8. DELIVERY

8.1 Happy Days will deliver the Equipment to the Customer at the Delivery Address on the Start Date at a time agreed between the Parties.

8.2 The Customer acknowledges that delivery may occur within one hour either side of the agreed time ("Delivery Window").

- (a) Happy Days will call the Customer prior to arriving at the Address for delivery.
- (b) If delivery is to occur outside the Delivery Window Happy Days will notify the Customer as soon as reasonable practicable.

8.3 The Customer or a representative of the Customer must be present at the Delivery Address on delivery.

8.4 Failure to be present at the Delivery Address on delivery will be treated as the Customer cancelling the booking with less than thirty days' notice and clause 6.3 applies.

8.5 If the Delivery Address advised by the Customer at booking is to be changed, the Customer must give Happy Days 24 hours' notice.

8.6 The Customer agrees that on delivery of the Equipment, the Customer will direct Happy Days where the Equipment is to be positioned.

8.7 The Customer takes full responsibility for any Damage that is incurred if the Customer moves or attempts to move the Equipment from its delivered position and clause 9.4 applies.

9. EQUIPMENT STATE OF REPAIR

9.1 The Customer is responsible for the Equipment during the Hire Period.

9.2 The Equipment must be returned in the same working condition and good state of cleanliness and repair, as it was when the Customer took delivery of the Equipment.

9.3 If the Equipment breaks down or stops working, the Customer must:

- (a) immediately stop using the Equipment;
- (b) immediately notify Happy Days;
- (c) take all steps required to prevent injury to any person or any damage to any property; and
- (d) not attempt to repair the Equipment.

9.4 If the Equipment is damaged through the Customer's negligence, lost, incurs Damage or stolen, the Customer will be responsible for the repair or replacement of the Equipment, and Happy Days will charge the credit card with the reasonable cost to repair or replace the Equipment as determined by Happy Days.

10. INDEMNITIES

10.1 Happy Days is not liable to the Customer for any costs, loss or damage, incurred by the Customer, relating to this Agreement.

10.2 The Customer indemnifies Happy Days against all liability, claims, costs, loss or damage (including legal fees on a full indemnity basis) in respect of any personal injury, damage to property or a claim by a third party, relating to or stemming from the Customer's hire or use of the Equipment.

10.3 The Customer releases Happy Days from, and indemnifies Happy Days against any cost, loss or damage incurred or deemed against Happy Days, resulting from any person attempting to move, fix, re-position, rotate or otherwise deal with the equipment in any way.

10.4 This indemnity is a continuing obligation which survives termination or expiry of this Agreement.

11. TERMINATION

11.1 Happy Days Termination: Happy Days may terminate this Agreement with 24 hours' written or verbal notice, for any reason.

11.2 Customer Termination: The Customer may terminate this Agreement by providing written notice to Happy Days and clause 6 applies.

12. CUSTOMER WARRANTIES

12.1 The Customer warrants that:

- (a) it has a suitable and safe location for the Equipment to be positioned at the Delivery Address;
- (b) it has the capacity and/or authority to enter into and be bound by this Agreement; and
- (c) it has the capacity to meet all of its obligations under this Agreement in full on time.

13. GST

13.1 If any Supply made in accordance with this Agreement is a taxable Supply, the Supplier may, in addition to the consideration for the Supply, recover an additional amount on account of GST from the Recipient.

13.2 The additional amount on account of GST referred to in clause 13.1:

- (a) is equal to the consideration payable by the Recipient for the relevant Supply multiplied by the prevailing GST rate; and
- (b) is payable 10 Business Days from the day the Supplier gives Notice to the Recipient.

14. BREACH

14.1 If the Customer, in Happy Day's sole opinion, is in breach of any of the terms and conditions of this Agreement, the Customer will be liable for liquidated damages based on the reasonable loss or damage incurred by Happy Days arising from the Customer's breach.

15. NOTICES

15.1 Unless expressly stated otherwise in this Agreement, all notices and other communications in connection with this Agreement must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and marked for the attention of the recipient (**Correspondence**).

15.2 Correspondence must be:

- (a) left at the address set out or referred to at the front of this Agreement;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Particulars;
- (c) sent by fax to the fax number each Party nominates to the other;
- (d) sent by e-mail to the address each Party nominates to the other; or
- (e) given in any other way permitted by law, however, if the intended recipient has notified a changed postal address or changed fax number, then the Correspondence must be sent to that address or number.

15.3 Correspondence sent in accordance with this clause takes effect from the time it is received unless a later time is specified.

15.4 If sent by post, Correspondence sent in accordance with this clause is taken to be received three Business Days after posting (or five Business Days after posting if sent to or from a place outside Australia).

15.5 If sent by fax, Correspondence sent in accordance with this clause is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

15.6 Despite clauses 15.4 and 15.5, if Correspondence is received after 5.00 pm in the place of receipt or on a non-Business Day, it is to be taken to be received at 9.00 am on the next Business Day.

16. MISCELLANEOUS PROVISIONS

16.1 Time is of the essence of the Customer's obligations under this Agreement.

16.2 This Agreement is governed by the law in force in the Australian Capital Territory and each Party submits to the exclusive jurisdiction of the courts of that place.

16.3 No Party may assign or otherwise deal with its rights under this Agreement without the consent of the other Party.

16.4 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

16.5 This Agreement:

- (a) forms the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
 - (b) supersede any prior agreement or understanding on anything connected with that subject matter; and
- all prior or contemporaneous representations, statements and agreements (if any) made by Happy Days are merged in this Agreement.

16.6 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

16.7 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.8 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

16.9 A waiver is not effective unless it is in writing.

16.10 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.