

Date / /202

Magnify: Artists in Residence Licence and Funding Agreement

**Facility:
Kingston Arts Centre
979-985 Nepean Highway
Moorabbin
Victoria VIC 3189**

**Kingston City Council
1230 Nepean Hwy
Cheltenham VIC 3192**

**FIRST NAME SURNAME
ADDRESS
SUBURB STATE POSTCODE**

Schedule

1.	Date of this Agreement:	The day of
2.	Licensor: (Clause 1)	Kingston City Council ABN 80 640 377 247 1230 Nepean Highway CHELTENHAM VIC 3192 Contact Officer: Howard Nicklas Community Arts & Culture Coordinator
3.	Licensee: (Clause 1)	FIRST NAME SURNAME ADDRESS SUBURB STATE POSTCODE
4.	Facility: (Clause 1)	The area shown outlined in yellow on the Plan attached to Schedule 1 of this Agreement, being part of the building known as Kingston Arts Centre, 979-985 Nepean Highway, Moorabbin Victoria VIC 3189
5.	Hire Fee: (Clauses 1 & 2.2)	\$0 plus GST
6.	Occupation Date: (Clause 1)	Block x: xx xxx 20xx to xx xxx 20xx
7.	Permitted Hours: (Clauses 1 & 5.2.1)	7.00 am to 11.30 pm
8.	Permitted Use: (Clauses 1 & 5.1)	Ceramic studio, workshop, exhibition and/or retail space to create, display and trade
9.	Licensee's Equipment: (Clauses 1 & 4.1)	As set out in Schedule 4
10.	Number of Keys or Key Cards Issued to the Licensee: (Clause 8)	One Key
11.	Stipend / Funding Amount (Clause 1)	\$1,500 plus GST
12.	Public Liability Insurance	\$20 Million (AUD)

This Hire Agreement is made on:

Dated / /

Parties

Name	Kingston City Council
Address	1230 Nepean Hwy, Cheltenham Vic 3192
Contact	Howard Nicklas, Community Arts & Culture Coordinator
Phone	0461 396 634
Short name	Licensor

Name	
Address	
Contact	
Phone	
Short name	Licensee

THE PARTIES AGREE

2. Definitions

In this document unless expressed or implied to the contrary:

Agreement means this Licence and Funding Agreement.

Building means the Kingston Arts Centre, 979-985 Nepean Highway, Moorabbin, Victoria VIC 3189

Council means Kingston City Council of 1230 Nepean Highway, Cheltenham VIC 3192 and where consistent with the context includes Council's officers, employees, agents and invitees.

Facility means the facility described in Item 4.

Funding Amount means the amount described in Item 11 payable to the Licensee.

Hire Fee means the Hire fee specified in Item 5.

Licensee means the Licensee specified in Item 3, and where consistent with the context includes the Licensee's employees, agents and persons directly invited by the Licensee into the Facility.

Licensee Equipment means any equipment owned by the Licensee which is brought into the Facility as described in Item 9 and Schedule 4.

Licensor means the Manager of the Facility appointed by the Council from time to time (if any), or in the absence of a Manager, the responsible Council Officer, specified in Item 2.

Item means an item in the Schedule.

Occupation Date means the occupation date specified in Item 6, and if more than one occupation date is specified, each of those dates.

Permitted Hours means the permitted hours of use specified in Item 7.

Permitted Use means the Licensee permitted use of the Facility specified in Item 8.

Residency means the sums of all the activities to be undertaken in the Facility under this Agreement.

Rules means the rules for the Facility attached as Schedule 3.

Schedule means the Schedules attached to this Agreement.

3. Grant, Hire Fee, and Licensee Rights

3.1 Grant of Licence

The licensor grants to the Licensee a Licence to use the Facility on the Occupation Date subject to the terms and conditions of this Agreement.

3.2 Hire Fee

The licensor waives all hire fees for use of the Facility for the period of the Occupation Date.

3.3 Rights of Licensee

The Licensee may exercise the following rights during the period of access or occupation under the Hire Agreement:

- 3.3.1 the right to use the Facility during the Occupation Date for the Permitted Use; and
- 3.3.2 the right of the Licensee and their employees, authorised agents, servants, contractors, and invitees to enter and leave the Facility during the Permitted Hours.

4. Shared Access and Areas

The Licensee acknowledges and agrees that:

- it is not entitled to exclusive use of the Facility.
- the licensor may use or permit other parties to use the Facility.
- the Licensee will facilitate access to the Facility by the Licensor's Contractors if required from time to time.
- the Licensor, the Licensor Contractors or the Council may enter and remain in the Facility at any time and will require intermittent access to the amenities are shared with other users of the Building, and;
- no other areas of the Buildings outside the Facility and shared amenities are to be occupied at any time without permission from the Licensor. A hire fee may apply to use other areas in the Building.

5. Licensee Equipment, Induction and Risk Assessment

5.1 Licensee Equipment

The parties acknowledge that Schedule 4 sets out the details of the Licensee Equipment which the Licensee is permitted to bring into the Facility.

5.2 Induction

- 5.2.1 Within a week of the commencement of the Occupation Date, the Licensee must attend a Facility induction session with the Licensor for the purpose of instructing the Licensee as to:
 - (a) the Licensee obligations under this Agreement, including its obligations under the Rules at the end of any Occupation Date; and
 - (b) any safety and security procedures or requirements in respect of the building of which the Facility forms part (if applicable).

5.3 Risk Assessment

Led by Council, the Licensee agrees to participate in a risk assessment of the proposed activities to be conducted in the Facility and abide by any controls put in place by Council to reduce or eliminate risks deemed unacceptable.

6. Termination

6.1 Termination by the Licensor

Where the Licensee is in breach of this Agreement, the Licensor may terminate this Agreement at any time with immediate effect by giving written notice of termination to the Licensee.

6.2 Effect of Termination

Upon termination of this Agreement, the parties shall be released from any further obligations under this Agreement, however nothing in these clauses releases either party from any breach of this Agreement arising prior to the date of termination.

7. Use of the Facility

7.1 Permitted Use

The Licensee must use the Facility:

- 7.1.1 in accordance with the Rules, which may be amended by the Council from time to time by notice in writing to the Licensee.
- 7.1.2 for the Permitted Use and not for any other use.
- 7.1.3 in accordance with the reasonable requirements and directions of the Licensor;
and
- 7.1.4 in a responsible manner, must not do anything on or in connection with the Facility which the Licensor considers may bring the Council into disrepute.

7.2 Access and Security

The Licensee must:

- 7.2.1 only use the Facility during the Permitted Hours, unless with the prior written approval of the Licensor.
- 7.2.2 at its own cost, make all arrangements for the supervision of the Facility.
- 7.2.3 ensure that all exits within the Facility remain unobstructed at all times; and
- 7.2.4 secure and alarm the Facility when leaving the building, ensuring all heaters, fans, air conditioning and lights at the Facility are turned off.

7.3 Good Order and Public Safety

The Licensee must:

- 7.3.1 maintain and preserve good order in the Facility and its environs during the Occupation Date and comply with any reasonable directions issued by the Licensor.
- 7.3.2 promptly notify the Licensor if it becomes aware of the existence of a potential occupational health and safety issue in relation to the Facility or adjoining areas, including a material risk of injury.

7.3.3 not do anything in connection with the Facility which may cause a nuisance or interfere with any other person.

7.3.4 ensure that its invitees enter and leave the Facility in a manner which does not adversely impact on adjoining residential areas; and

7.3.5 not damage, or allow any other person to damage, any part of the Facility.

7.4 Alcohol

7.4.1 The Licensee must not sell or allow the sale of alcohol in the Facility, unless with the prior written consent of the Council and in accordance with a Temporary Limited Liquor Licence (**Liquor Licence**).

7.4.2 Subject to clause 7.1.4 the Licensee must obtain and comply with the Liquor Licence in accordance with the requirements of the Victorian Commission for Gambling and Liquor Regulation, as set out at [Apply for a temporary limited licence | vic.gov.au \(www.vic.gov.au\)](http://www.vic.gov.au), and as amended from time to time.

7.5 Compliance with Laws

The Licensee must comply with all laws in connection with the Facility and the Licensee's use of the Facility, including without limitation, complying with any occupational health and safety requirements and obtaining any necessary licences, registrations, approvals, permits and authorisations which may be necessary with respect to the Licensee's use of the Facility.

7.6 Animals

The Licensee must not permit any animals to be brought on to the Facility, other than a recognised service animal.

7.7 Smoking

The Licensee must not permit any person to smoke:

- in the Facility;
- within any part of the building in which the Facility is located; or
- within 4 metres of any entrance to the Facility.

7.8 Licensors' Consent

If the Licensee is required to obtain the Licensors' consent or approval pursuant to this Agreement, the Licensor may grant or withhold its consent or approval in its absolute discretion.

- The Licensee must obtain written consent from the Licensor before taking any action requiring the Licensors' approval;
- The Licensor's consent may be granted or withheld at its absolute discretion and is not to be unreasonably withheld;
- Any consent or approval given by the Licensor may be subject to conditions determined by the Licensor;

8. Insurance

8.1 Public Liability Insurance

The Licensee must hold public liability insurance cover to the value as outlined in Item 12.

8.2 Contents Insurance

The Licensee must obtain adequate Contents insurance for loss or damage from risks including theft, fire, and water damage for its full replacement value while in the Facility.

8.3 Insurance Application Process

If the Licensee does not have adequate insurance, they may apply to be covered under the Licensor's policy by applying to the Contract manager in writing seeking insurance coverage under Council's policy. The request must itemize all items requiring coverage. Council will provide a response to this request prior to commencement of any work under the contract.

8.4 Transit Insurance

All insurance to cover damage to or theft of artworks and equipment while in transit to or from the Facility is the responsibility of the Licensee.

8.5 Compliance with Insurance Requirements

The Licensee must not do anything which may make any insurance effected by the Licensor invalid or which may increase the insurance premiums.

8.6 Provision of Insurance Documents

Copies of the Contents and Public Liability certificates of currency must be provided on request.

9. Keys or Keycards

9.1 If a key or key card is required to access the Facility, the Licensor will provide the Licensee with the keys or key cards in the amount specified in Item 10.

9.2 The Licensee acknowledges and agrees that the Licensor has absolute discretion to decide upon the number of keys or key cards that are issued to the Licensee.

9.3 The Licensee must:

9.3.1 not make any copies of the keys or key cards;

9.3.2 notify the Licensor as soon as possible after becoming aware of any lost or stolen keys or key cards; and

9.3.3 not install, remove or tamper with any key cylinders, padlocks or electronic or magnetic reading heads at the Facility.

10. Licensee Obligations at End of the Occupation Date

At the end of the Occupation Date, the Licensee must:

10.1 vacate the Facility and return the Facility to the Licensor in the same condition it was in prior to the Occupation Date, including cleaning the Facility and removing all rubbish and anything belonging to the Licensee from the Facility;

10.2 return the keys or key cards to the Facility to the Licensor on the next business day after the Occupation Date; and

10.3 notify the Licensor of any injuries to any parties at the Facility, or damage that has occurred to the Facility, during that Occupation Date.

11. Working with Children Checks

11.1 This Special Condition applies if the Licensee's activities at the Premises involve persons engaged in 'child-related work' within the meaning of the *Worker Screening Act 2020* (Vic) (WSA).

11.2 Without limiting the Licensors' obligations concerning compliance with all laws and requirements of any authority in connection with the Facility and the Licensee's use and occupation of the Facility, the Licensee must:

11.2.1 ensure that all the Licensee's employees, contractors, agents and volunteers over the age of 18 years undertaking 'child-related work' within the meaning of the WSA hold a valid working with children check under the WSA (**Check**) before entering onto the Premises;

11.2.2 ensure that any employee, contractor, agent or invitee who is required to hold a Check under the WSA and does not hold a valid Check does not enter the Facility; and

11.2.3 provide the Licensor with such evidence of the Licensee's compliance with this Special Condition 11 as may be required by the Council, within 5 Business Days of a request being made by the Council.

11.3 This Special Condition 11 is an essential term of this Licence Agreement.

12. Electrical Equipment

The Licensee must ensure that all electrical equipment and appliances brought into the Facility by the Licensee are inspected, tested and tagged in accordance with, and as often as required by, the standards contained in the Standard Inspection and Testing AS/NZS 3760:2010, as amended from time to time.

13. Intellectual Property

13.1 The Licensee grants the Licensor permission to reproduce and use exhibition artwork images and any other artist materials provided to the Licensor under this Agreement (e.g., Artist statement) for the purposes of promotion and marketing as contemplated by Schedule 5, including but not limited to use on the Kingston Arts website, in media releases and in events programs.

- 13.2 The Licensee warrants that they are authorised to grant the permissions to the Licensor pursuant to clause 13.1 and that reproductions and use by the Licensor in accordance with this Agreement will not infringe the rights of any third party.

14. Not to create tenure

This is an agreement for short term occupation of the Facility and will not be deemed to provide any lasting rights of possession or other tenure over the Facility to the Licensee.

15. Release and indemnity

The Licensee:

- 15.1 hires and uses the Facility at the Licensee's own risk, and releases the Licensor and the Council to the extent permitted by law from all liability and loss in connection with the Facility (including where Licensor terminates this Agreement for any reason whatsoever); and
- 15.2 indemnifies the Licensor and the Council against all loss and liability in connection with the Licensee's occupation of the Facility, including any damage caused to the Facility or any loss, injury or death to any person in or about the Facility, except to the extent to which the Licensor is negligent.

16. Liability of person signing Agreement

Where a person signs this Agreement on behalf of the Licensee, the person signing the Agreement:

- 16.1 warrants that they are authorised to sign the Agreement on behalf of the Licensee; and
- 16.2 guarantees that the Licensee will strictly observe and perform its obligations in this Agreement; and
- 16.3 agrees to pay to the Licensor on demand any money for any loss suffered by the Licensor due to a breach of this Agreement by the Licensee.

17. GST

The parties acknowledge that the Hire Fee and any other amounts payable by the Licensee under this Agreement are exclusive of GST.

18. No Dealing with Interest

The Licensee must not in any way deal with its interest in the Facility or this Agreement including assigning or hiring out the Facility to another party.

19. No Warranty

- 19.1 The Licensee acknowledges and agrees that the Licensor makes no warranty or representation to the Licensee about the condition of the Facility or its suitability for the Permitted Use.
- 19.2 The Licensee acknowledges that they have inspected the Facility and warrants that the facility is suitable for the Permitted Use.

20. Disputes

In an event of any dispute or difference arising as to the interpretation of this Licence Agreement, or any matter contained therein, the decision of the Council's Chief Executive Officer shall be final and conclusive.

21. General

21.1 Notices

Any notice required to be served under this Agreement must be in writing and must be served by post, email or hand delivered to:

21.1.1 The Licensee at its address set out in the Agreement, or the last known addresses of the Licensee; and

21.1.2 The Licensor at its address set out in the Agreement or any other address notified in writing to the Licensee.

21.2 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations, and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

21.3 Waiver

If the Licensor accepts this signed Agreement or does not exercise or delays exercising any of the Licensors' rights under this Agreement, it will not be a waiver of the breach of this Agreement by the Licensee or of the Licensors' rights under this Agreement.

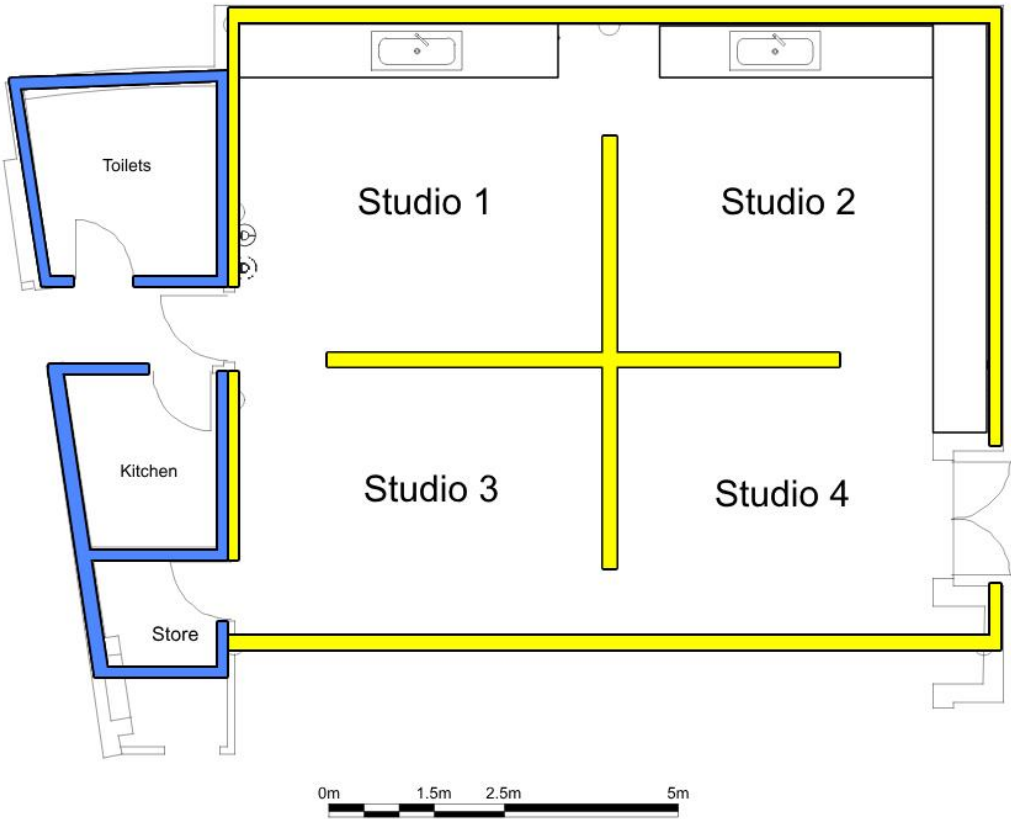
Schedule 1

Plan of Facility

WORKSHOP 1

kingston**arts**

Artist Studio Floor Plan



Schedule 2

1. Residency Agreement

In addition to the waiver of the Hire Fee, the Licensor will provide the Licensee with a Stipend, as outlined in Item 11 of the Schedule, to assist with the costs associated with the Residency.

In return, the Licensee agrees to:

- Be available for an Open Studio day at an agreed time with the other artists to showcase the space and the works being created.
- the Licensee is permitted to have visitors in their studios but any greater public access including events or public programs or workshops is not authorised unless prior written consent has been obtained from the Community Arts & Culture Coordinator given issues of planning, site security and OH&S etc.
- workshops and other public programs may be organised and delivered in negotiation with the Community Arts & Culture Coordinator; and
- All AIR artists must be on the Licence and hold Public Liability Insurance to \$20 million (AUD) in addition to holding adequate Contents Insurance (see 8. Insurance).
- Maintain an active presence, dedicating 80 hours per month to their creative practice.

The Licensee cannot:

- Open the Facility to the public unless agreed with Community Arts & Culture Coordinator.

2. Stipend Payment:

Payment will be made within 30 days of receipt of a valid tax invoice of \$1500 plus GST (if applicable)

The Licensee must:

- Use the Funding only for the Activity in accordance with this Agreement or as otherwise agreed in writing by Council.

The Licensee must let the Licensor know in writing within five (5) Business Days from when the Licensee becomes aware that:

- The Licensee no longer meet the eligibility requirements for the Funding;
- There is an actual or perceived conflict of interest that may impact on the Licensee's ability to deliver the Activity;
- The Licensee will not complete the Activity;

The Licensee requires the Licensor's written consent to:

- Use any of the Funding for anything other than the Activity or in any way that is not in accordance with this Agreement;
- Change the Deliverables/Milestones, Start Date or End Date of the Activity; or
- Change the reporting requirements, if there are any.

The Licensee agrees to repay all or part of the Funding, in according with any written request from the Licensor to do so if;

- The Licensee does not use the Funding in accordance with this Agreement.

The Licensee may also be asked to repay part of the Funding should the Licensee terminate the Licence early.

3. Reporting

The Licensee is required to:

- Provide a list of additional activities delivered in association with the Residency;
- Provide sales report within 7 days of the conclusion of the tenure;
- Provide a report on publicity and engagement through their social media platforms and other public communications within 7 days of the conclusion of the tenure; and
- Provide anecdotal feedback with the Community Arts & Culture Coordinator;

Engage in an acquittal process through an exit interview conducted by the Community Arts & Culture Coordinator.

Schedule 3

Rules

1. Inspections

The Parties will jointly undertake pre and post Commencement Date inspections to agree on the condition of Facility.

2. Cleaning

Without limiting the Licensee's obligations under clause **Error! Reference source not found.**, throughout the Occupation, the Licensee must:

- 2.1 place all rubbish in the external garbage and recycling bins at the Facility and replace the bin liner of any bins within the Facility.
- 2.2 if the external garbage and recycling bins are full, remove any rubbish from the Facility;
- 2.3 clean all floors, including vacuuming and mopping. Materials and equipment is available for use in the cleaner's cupboard; and
- 2.4 maintain kitchen and office areas in the Facility and ensure food is not left out that may attract vermin.
- 2.5 The Licensee must reimburse the Licensor for any costs incurred by the Licensor in cleaning the Facility as a result of the Licensee's failure to comply with the Licensee's cleaning obligations under clause **Error! Reference source not found.** or Rule 2.

3. Restrictions to Use of Facility

The Licensee must not:

- 3.1 use any gas or electrical appliances (including portable ovens) other than those provided by the Licensor in the Facility, unless with the Licensor's prior written consent;

- 3.2 duplicate any keys or key cards for, or change any locks at, the Facility;
 - 3.3 permit any gambling or lotteries to be conducted in the Facility which would require a permit from the Victorian Commission for Gambling & Liquor Regulation;
 - 3.4 erect any mounted sign or notices in the interior or exterior of the Facility without the Licensors' prior written consent.
 - 3.5 bring any heavy equipment or inflammable substances into the Facility without the Council's prior written consent;
 - 3.6 attach nails, screws, or adhesive of any kind to walls, floors or furniture in the Facility.
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4. Communication with Licensor

The Licensee must:

- 4.1 not less than 7 days prior to the Occupation Date, advise the Licensor if it will not use the Facility on any date within the Occupation Date period;
- 4.2 promptly advise the Licensor of:
 - 4.2.1 any change to the Licensee's contact details;
 - 4.2.2 any damage to the Facility or any fixtures or equipment at the Facility; and
 - 4.2.3 any health and safety incidents which occur at the Facility on any Occupation Date; and
- 4.3 attend meetings with the Licensor upon request by the Licensor (acting reasonably).
- 4.4 Council contacts for the Occupation Date period are:
 - 4.4.1 An after-hours contact will be provided at the commencement of the tenancy.
 - 4.4.2 Building related queries (business hours only): Jake Maynard, Coordinator Facilities, Systems and Logistics, jake.maynard@kingston.vic.gov.au, 0487 443 112.
 - 4.4.3 Programming & Licence enquiries (business hours only) Howard Nicklas, Community Arts & Culture Coordinator, Howard Nicklas, 0461 396 634.

Schedule 4

Licensee's Equipment

[##Licensee to provide list of equipment which it will bring on to the Facility]

Schedule 5

Promotion and Marketing

1. Deliverables:

a. Joint Marketing Efforts: The Parties will take joint responsibility for the marketing and promotion of the Residence including any public programs such as artist talks, workshops etc.

b. Social Media: Licensee agree to publish at least three promotional Instagram posts or stories throughout the residency. Licensee agrees to tag the following in social posts: @kingstonartsau,

c. Acknowledgements: Kingston Arts and City of Kingston logos and associated sponsors must be included on all promotional material.

2. Usage

Videos and photos will be used across various platforms to promote gallery visits and reach remote audiences.

3. Content Approval

All residency-related content including artwork, media releases, statements and promotional images produced by the Licensee related to the Residency must be approved by Council prior to distribution.

Execution and Acknowledgement

Signed on behalf of the Licensee:

Signed by XXXXXX the presence of:)
)
)

.....
Witness

Signed on behalf of the Licensor:

SIGNED by and on behalf, and with the authority, of the)
Kingston City Council by **##Council to advise name**)
and title of delegated officer] in the exercise of a)
power conferred by an Instrument of Delegation dated)
[Council to advise date of delegation]_)
)
)

.....
Witness