

Performing Arts Connections Australia ("PACA") Interactive Dashboard

TERMS OF USE

1. Purpose. The Performing Arts Connections Australia ("PACA") Interactive Dashboard ("Dashboard") is a digital platform for the dissemination of information to the performing arts industry and allied services to assist in strategic planning, business development and advocacy. The Dashboard comprises software and associated services ("Platform"), together with all documentation, materials and information ("Content") made available via the Platform. PACA licenses the Dashboard to current PACA members and third parties who have purchased a licence to use the Dashboard ("Licensed Users") for the Permitted Purposes only as set out in item 2a.
2. Voluntary Use; Binding Authority. As a Licensed User, you acknowledge that use of the Dashboard is voluntary and does not create a partnership, agency, or other relationship between you and PACA, other than that created by membership of PACA (for Licensed Users being PACA members).
 - a. Content provided on the Dashboard is for the use of the Licensed User, solely for the purposes of strategic planning, internal business development, and advocacy to support the performing arts industry ("Permitted purposes").
 - b. Content provided is, and remains, the intellectual property of PACA, and is not to be shared or distributed for the use of a third party except for Permitted purposes.
 - c. By accessing the Dashboard you agree to take all necessary precautions to keep the Dashboard secure. You will inform PACA if at anytime you believe that your sign in details have been inappropriately accessed or used, or the Platform has been compromised.
3. License. This agreement constitutes a personal, limited, non-exclusive, non-transferable, non-assignable use of the Dashboard. This license does not grant you the right to use or access the Platform, or to disclose, reproduce, distribute, modify or create derivative works of, the Platform for any purpose other than Permitted Purposes.
4. Certain Restrictions. You shall not, directly or indirectly through others:
 - a. license, grant, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Platform or Content for any purpose other than Permitted Purposes.
 - b. make any copies of any Content to provide to third party (other than a Licensed User) except for the Permitted Purposes.
 - c. You agree to use the Dashboard only for the growth and benefit of your organisation or for Permitted Purposes, and not in any manner capable of causing reputational damage to PACA.
 - d. PACA retains ownership of all intellectual property in the Content, and except as expressly set forth herein, no other rights or licenses are granted or to be implied.
5. Payment Terms. You agree to pay to PACA the Fees as specified by invoice for a license to access the Dashboard. Fees paid by you are non-refundable, except as provided in these Terms or when required by law.

6. Ownership; Proprietary Rights.

- a. PACA retains all intellectual property in the Content. All modifications, improvements, enhancements, adjustments, error corrections or updates thereto will become and shall remain the exclusive property of PACA, and you hereby assign to PACA all right, title and interest therein.
- b. No right or license is granted to use the PACA name, logo and branding associated with the Dashboard except with the consent of PACA. You acknowledge that, except as specifically provided under this Agreement, no right, title or interest in any property, intellectual property or other materials or information is granted to you.

7. Confidential Information; Non-Disparagement.

- a. You agree that any information concerning the Dashboard and any other information disclosed by PACA to you in connection with the Dashboard is "Confidential Information."

Confidential Information shall not include information:

- (i) that is generally available to the public other than through breach of this Agreement;
 - (ii) that is rightfully disclosed to you by a third party without any associated obligation of confidentiality; or
 - (iii) that can be proven was independently developed by you without use of any Confidential Information.
- b. You agree to keep all Confidential Information confidential and to take all necessary precautions to prevent any unauthorised use, disclosure, publication, or dissemination of Confidential Information, including preventing access to or display of the Dashboard to third parties (other than Licensed Users).
 - c. You confirm and acknowledge that all information provided by survey participants and included in Content is treated as commercial in confidence and has had identifying information removed. You agree that all information identifying a participant – either directly from the Content, or indirectly through third party information – is treated as commercial in confidence and will not be used or disseminated to parties other than Licensed Users, except with the consent of the participant, and that PACA's privacy policy will apply in respect of personal information.
 - d. You will promptly notify PACA of any unauthorised disclosure of or access to Confidential Information and hereby acknowledge that unauthorised disclosure or use of Confidential Information could cause irreparable harm and significant injury to PACA, or other party, that may be difficult to ascertain.
 - e. The terms of the PACA Privacy Statement are located at www.paca.org.au. Both PACA and the dashboard complies with federal and state privacy legislation. PACA reserves the right to change this, and any other relevant policy, in line with legislative and best-practice requirements.

8. Third Party Materials, Interactions and Links.

- a. Portions of the Platform may include third party software and other copyrighted material. This Agreement does not provide any license or agreement that may be required by such third-party. PACA shall have no responsibility with regard to the selection, performance, or use of these vendors or products.

9. Warnings, Disclaimers and Limitations.

- a. PACA is not responsible for any delays, failures, losses or other damage resulting from such problems inherent in the use of the Internet and electronic communications.
- b. The Dashboard is provided to you as-is and you assume all risks and all costs associated with testing, installation, and access of use of the Dashboard. PACA disclaims, except to the extent permitted by law, that the Dashboard will be uninterrupted or error-free.
- c. Except to the extent permitted by law, in no event will PACA be liable for any indirect, special, incidental or consequential damages. In no event will PACA's total liability to you for all damages exceed the amount of PACA's membership fee (for Licensed Users being PACA members) or the licence fee (for Licensed Users who have purchased a licence).

10. Miscellaneous.

- a. Notices. All notices required to be sent shall be in writing and shall be deemed to have been given upon (i) if to you, the date sent to the email address provided by you in establishing your account, or (ii) if to PACA, the date sent to PACA to the following email address admin@paca.org.au
- b. Governing Law; Venue; Rules for Certain Government Agencies and Accredited Institutions. This Agreement will be governed by and construed in accordance with the laws of the State of Western Australia, without regard for conflicts of laws. The parties further submit to the courts of Western Australia and waive any objections to jurisdiction and venue.
- c. Severability. If any provision or clause in this Agreement shall be found or held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be deemed amended to conform to applicable laws so as to be valid and enforceable, or, if it cannot be so amended without materially altering the intention of the parties, such provision shall be stricken, and the remainder of this Agreement shall remain in full force and effect.
- d. Waiver. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought.
- e. Assignment. The provisions of this Agreement shall be binding on and inure to the benefit of each party's successors and assigns. PACA may assign this Agreement with notice to you. You may not assign this Agreement without the prior written consent of PACA.
- f. Entire Agreement. This Agreement and the terms in the Interactive Dashboard Project Proposal consists of the entire understanding and agreement of the parties and supersedes any and all prior agreements of the parties with respect to the subject matter

hereof.

- g. Headings. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
- h. Acknowledgement. When citing source data when using the interactive dashboard, PACA must be acknowledged as PAC Australia and include a link to the PAC Australia website: www.paca.org.au.

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