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## SAMPLE DOCUMENTS CHECKLIST

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### Sample documents

The suite of legal information sheets and agreements for Creative Enterprise Hubs in New South Wales (**Suite**) includes the following sample documents:

- ☐ **Licence Agreement**
- ☐ **Participation Agreement** composed of:
  - ☐ **Participation Letter**; and
  - ☐ **Participation Agreement** (terms and conditions of participation in the Creative Enterprise Hub).

Those documents are based largely on documents provided to Arts NSW and Arts Law by Renew Newcastle (renewnewcastle.org) and their solicitors at Sparke Helmore. Arts NSW and Arts Law gratefully acknowledge and thank Renew Newcastle and Sparke Helmore for providing their documents and allowing their use.

### Purpose of the documents

- ☐ **Licence Agreement:** This agreement is between a property owner (the Licensor) and the Administering Body (the **Licensee**) for the use of buildings of the Licensor by the Licensee.
- ☐ **Participation Agreement:** The Participation Agreement is between the Administering Body and a Program Participant. It specifies the terms under which the Program Participant participates in the Creative Enterprise Hub run by the Administering Body.

It is composed of the Participation Letter and the Participation Agreement strictly speaking, which specifies the terms and conditions of participation in the Creative Enterprise Hub:

- ☐ **Participation Letter:** This letter is addressed by the Administering Body to a candidate to participate in the Creative Enterprise Hub run by the Administering Body to confirm that the candidate's project proposal has been accepted. It specifies the space which the Program

Participant can use, for how long the use is allowed, the fee as well as the Program Participant's principal obligations.

- ☐ **Participation Agreement:** The Participation Agreement specifies in more details the terms and conditions which apply to the Program Participant's use, under a sub-licence, of the space licensed by the Licensor to the Administering Body under the Licence Agreement.

## How to use the sample documents

### Licence Agreement

The Licence Agreement is drafted in a manner such that the Administering Body only has to insert the missing details in the Schedule and delete the square brackets and instructions. In doing so, the Administering Body should beware of the following points:

- **Commencement and Termination Dates (Items 3 and 4 of the Schedule):** Those dates determine the initial period for which the Licence is intended to last. This is a general indication only, as the parties have the right to terminate the Licence Agreement at any time by giving a notice respecting the notice period in Item 5 of the Schedule.
- **Notice Period (Item 5 of the Schedule):** This is the time between the sending of a notice to terminate the licence and the moment the notice takes effect. If the licence is understood to operate on a 30 days rolling period, the Notice Period should be 30 days. It can be longer if the Licensor agrees to the licence operating on a longer rolling period.
- **Permitted Use (Item 6 of the Schedule):** The Permitted Use should be described in general terms such as "use as a shop", "use as a gallery", "use as an artist studio", etc. to encompass a wide range of possible specific projects. The Permitted Use must be one which is possible in the space made available under the Licence Agreement (Licensed Area) as defined in Annexure A, and allowed by planning, local government and Building Code of Australia (BCA) regulations.

The parties must attach **Annexure A**, which contains a plan of the Licensed Area, to the Licence Agreement.

### Participation Agreement

#### Participation Letter

The Administering Body must complete the sample Participation Letter with all the details relevant to the project and Program Participant. The missing information is indicated by square brackets (such as [MISSING INFORMATION]).

The Administering Body must attach the following documents to the Participation Letter before sending it to the Program Participant:

- ☐ Copy of the Program Participant's project proposal (**Project Proposal**) as **Annexure A**. This is very important as the Project proposal determines the permitted use of the space made available under the Participation Agreement (**Licensed Area**).
- ☐ Copy of the policy wording of the Administering Body's public liability insurance policy as **Annexure B**.

- ☐ A copy of the Participation Letter for the program participant to sign and return to the Administering Body;
- ☐ Two signed copies of the Participation Agreement strictly speaking (see below).

### Participation Agreement strictly speaking

Like the Licence Agreement, the Participation Agreement is drafted in a manner such that the Administering Body only has to complete the details in the Schedule. In doing so, the Administering Body should beware of the following points:

- **Commencement and Termination Dates (Items 3 and 4 of the Schedule):** Those dates determine the initial period for which the Participation Agreement, including the sub-licence of the space made available to the program participant (**Licensed Area**) is intended to last. This is a general indication only, as the parties have the right to terminate the Participation Agreement at any time by giving a notice respecting the Notice Period in Item 5 of the Schedule.

The Commencement Date in Item 3 of the Schedule must be a later date than the Commencement Date specified in Item 3 of the Schedule relating to the Licence Agreement applying to the Licensed Area under the Participation Agreement. For example, if the Licence Agreement for the Licensed Area “Ground floor, 3 Little Street” begins on 1 July 2010, the Commencement Date of the Participation Agreement allowing the use of “Ground floor, 3 Little Street” by the program participant cannot be before 1 July 2010.

- **Notice Period (Item 5 of the Schedule):** This is the time between the sending of a notice to terminate the Participation Agreement and the moment the notice takes effect.

The Notice Period in Item 5 of the Schedule must be no longer than the Notice period specified in Item 5 of the Licence Agreement Schedule. It can be the same period or shorter. For example, if the Licence Agreement can be terminated with 30 days notice, the Participation Agreement must operate with a maximum 30 days rolling period.

- **Participation Fee (Item 6 of the Schedule):** This is the fee the program participant pays to the Administering Body for the use of the Licensed Area.

As the Administering Body also pays a fee (**Licence Fee**) to the Licensor, the Administering Body might want to ensure that the amount paid by the program participant at least covers the Licence Fee to avoid any financial shortfall.

The Administering Body should send two signed copies of the Participation Agreement to the program participant. One copy is for the program participant to keep, the other copy should be signed and returned by the program participant to the Administering Body.

The Administering Body must attach a plan of the space made available to the program participant (**Licensed Area**) as **Annexure A** to the Participation Agreement.

If the *Retail Leases Act 1994* (NSW) (**Act**) applies to the participation Agreement, the Administering Body should also send the necessary documents under the Act (see below).

## Retail Leases Act

The *Retail Leases Act 1994* (NSW) (**Act**) applies if there is ‘any agreement under which a person grants or agrees to grant another person for value a right of occupation of premises for the purpose of the use of the premises as a retail shop. For more information see the Information Sheet *Suite of legal information sheets and agreements for Creative Enterprise Hubs in NSW*.

As there is potential for the Act to apply to a Participation Agreement if the Licensed Area are used as a shop as defined by the Act, the Administering Body should provide the following additional documentation (available at [www.retail.nsw.gov.au/onlineforms.aspx](http://www.retail.nsw.gov.au/onlineforms.aspx)) to program participants with the Participation Agreement:

- ☐ Lessor’s Disclosure Statement and Annexure (including an estimate of outgoings/utilities);
- ☐ Lessee’s Disclosure Statement. The program participant must complete and return the Lessee’s Disclosure Statement to the Administering Body within 7 calendar days of receiving it;
- ☐ NSW Retail Tenancy Guide;
- ☐ Certificate under section 16(3) of the Act; and
- ☐ Estimate of utility expenses.

It is very important that the parties understand their rights and obligations under the Act. It is essential that program participants understand the meaning and effect of a section 16(3) certificate. Program participants who need advice on these issues as well as a section 16(3) certificate can contact Arts Law for advice.

## Checklist summary

### Agreement between the property owner and the Administering Body

- ☐ **Licence Agreement**

### Agreement between the Administering Body and the Program Participant

The Administering Body should send the Program Participant the following documents:

- ☐ **Participation Letter** with:
  - ☐ A copy of the signed Participation Letter for the Program Participant to countersign and return to the Administering Body;
  - ☐ **Annexure A: Project Proposal**
  - ☐ **Annexure B: Policy Wording**

- ☐ 2 signed **Participation Agreements** with:
  - ☐ **Annexure A: Plan of Licensed Area**

If the *Retail Leases Act 1994* (NSW) (**Act**) applies:

- ☐ Lessor's Disclosure Statement and Annexure (including an estimate of outgoings/utilities);
- ☐ Lessee's Disclosure Statement;
- ☐ NSW Retail Tenancy Guide;
- ☐ Certificate under section 16(3) of the Act; and
- ☐ Estimate of utility expenses.

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