



## Deed of Guarantee and Indemnity and Acceptance of Terms of Use

### RECITAL

.....  
**Guarantor Name**  
(Hereafter known as "the Guarantor")

.....  
**Guarantor Address**

.....  
**Company Name**  
(Hereafter known as the "Company")

.....  
**Company ABN**

.....  
**Company Address**

The **Guarantor** has agreed with Show Support Pty Ltd ABN 42 112 726 833 of 152/10 Park Road, Hurstville NSW 2220 ("**Show Support Pty Ltd**") to guarantee to Show Support the due and proper performance by the **Company** of all the covenants, terms and conditions on the Company's part to be observed and performed pursuant to each Booking Contract entered into by the Company with Show Support. The Guarantor also wishes to confirm that the Company accepts, and agrees to be bound by and comply with, the enclosed Terms of Use.

### IT IS AGREED

#### 1. INTERPRETATION

- 1.1. In this Deed, unless otherwise indicated by the context:
- (a) *Booking Contract* has the meaning given in the Terms of Use;
  - (b) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;
  - (c) *GST* has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
  - (d) *Guarantor* means the Guarantor named in this Deed and includes the Guarantor's executors and administrators;
  - (e) *Terms of Use* means the enclosed Terms of Use, as amended from time to time.

#### 2. ACCEPTANCE OF TERMS OF USE

The Guarantor hereby confirms that the Company accepts, and agrees to be bound by and comply with, the enclosed Terms of Use.

#### 3. GUARANTEE

- 3.1. In consideration of Show Support granting or agreeing to enter into any Booking Contract with the Company, the Guarantor:
- (a) guarantees to Show Support the punctual payment of all fees and other money payable under the Booking Contract and the punctual observance by the Company of all other terms of the Booking Contract to be performed by the Company; and
  - (b) unconditionally indemnifies Show Support in respect of any failure by the Company to make any payment or to perform any obligation under the Booking Contract.

- 3.2. Show Support and the Guarantor agree that:
- (a) the guarantee and indemnity provided pursuant to clause 3.1 of this Deed is a continuing guarantee and indemnity which is absolute and unconditional in all circumstances and is irrevocable and will remain in force until all the Company's obligations under the Booking Contract are performed;
  - (b) the guarantee and indemnity provided pursuant to clause 3.1 will not be discharged by the payment at any time of any money on account or by any concession given by Show Support to the Company or to the Guarantor or to any other person or by any compounding, compromise, abandonment, waiver, variation, relinquishment or renewal of any of Show Support's rights against the Company or the Guarantor or any other person or by Show Support's neglect or omission to enforce any such rights or by any other thing whatsoever which but for this clause might abrogate, prejudice or affect this guarantee and indemnity or by any variation or addition to the Booking Contract;
  - (c) the guarantee and indemnity provided pursuant to clause 3.1 is in addition to any other rights which Show Support has under the Booking Contract and can be enforced against the Guarantor without Show Support first having recourse to any other rights and without taking any action against the Company;
  - (d) the guarantee and indemnity provided pursuant to clause 3.1 will not prejudicially affect or be prejudicially affected by any security held by Show Support for any moneys owing under the Booking Contract but such security will be collateral and the Guarantor will not as against Show Support in any way claim the benefit or seek the transfer of any security;
  - (e) the Guarantor warrants that the Guarantor has full power and authority to: (i) accept the Terms of Use on behalf of the Company; and (ii) provide the guarantee and indemnity provided pursuant to clause 3.1. The Guarantor further warrants that the Guarantor's obligations under the guarantee and indemnity provided pursuant to clause 3.1 are in no way diminished, fettered or controlled by any deed or instrument.

#### 4. GST

- 4.1. Unless otherwise provided in this Deed, any moneys payable under this Deed have been calculated without regard to GST.
- 4.2. Any amount which is payable on account of GST as a consequence of any supply made under this Deed is to be paid to the party making the supply at the same time as payment is made for the relevant supply.

#### 5. COSTS AND DISBURSEMENTS

- 5.1. The Guarantor must pay all the legal and other costs and disbursements of Show Support arising out of or associated with a default by the Guarantor under this Deed.
- 5.2. The Guarantor must pay all duty (including all fines, interest and penalties) in respect of this Deed.

#### 6. NOTICES

- 6.1. A notice or other communication required or permitted to be given by one party to another must be in writing and is taken to have been given when (unless otherwise proved):
- (a) delivered personally, at the time it is delivered to the party;

- (b) sent by pre-paid mail to the address of the other party specified in the Terms of Use or any Booking Contract:
  - (i) from Australia to an address within Australia, on the sixth (6<sup>th</sup>) Business Day after posting;
  - (ii) from Australia to an address outside Australia or from outside Australia to an address within Australia, on the twentieth Business Day (at the address to which it is mailed) after posting; or
- (c) sent by email to the email address of the addressee or such other email address notified as being the email address to use for the purposes of this clause upon the return of a read or delivery receipt.

6.2. A party may change its address for service by giving notice of that change in writing to the other parties.

**7. WAIVER OR VARIATION**

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

7.2. The exercise of a power or right does not preclude:

- (a) its future exercise; or
- (b) the exercise of any other power or right.

7.3. The variation or waiver of a provision of this Deed or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

**8. GOVERNING LAW AND JURISDICTION**

8.1. This Deed is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

**9. FURTHER ASSURANCE**

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

**10. COUNTERPARTS**

10.1. This Deed may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document and the date of this Deed will be the date on which a counterpart is executed by the last party.

10.2. The exchange of executed counterparts by email will create a binding deed.

**11. WHOLE AGREEMENT**

In relation to the subject matter of this Deed:

- (a) this Deed is the whole agreement between the parties; and
- (b) this Deed supersedes all oral and written communications by or on behalf of any of the parties.

**12. NO RELIANCE ON WARRANTIES AND REPRESENTATIONS**

In entering into this Deed, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Deed made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Deed.

This clause does not apply to warranties and representations that this Deed expressly sets out.

**13. SEVERANCE**

If any part of this Deed is invalid or unenforceable, this Deed does not include it. The remainder of this Deed continues in full force.

**14. NO MERGER**

Nothing in this Deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

**15. CONSENTS AND APPROVALS**

Where this Deed gives any party a right or power to consent or approve in relation to a matter under this Deed, that party may

withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.

**EXECUTED AS A DEED.**

**SIGNED SEALED & DELIVERED** by **THE GUARANTOR** in the presence of:

.....  
Signature of Guarantor

.....  
Date

.....  
Signature of Witness

.....  
Name of Witness

.....  
Date

**EXECUTED** for and on behalf of **THE COMPANY**:

.....  
Signature of Director

.....  
Date

**EXECUTED** for and on behalf of **SHOW SUPPORT PTY LTD (ABN 42 112 726 833)** in accordance with Section 127(1) of the *Corporations Act 2001*:

.....  
Signature of Director

.....  
Name of Director

# Show Support Pty Ltd - Terms and Conditions

## 1. ABOUT SHOW SUPPORT

- 1.1 Show Support is a recruiter of Temporary Staff.
- 1.2 It is also a provider of Temporary Staff to clients in the event management industry.

## 2. APPLICATION OF THESE TERMS OF USE

- 2.1 Show Support is a recruiter of Temporary Staff.
- 2.2 It is also a provider of Temporary Staff to clients in the event management industry.

## 3. HOW TO READ THESE TERMS OF USE

- 3.1 Clause 20 contains definitions and interpretation provisions which apply to these Terms of Use.
- 3.2 Other definitions are set out in these Terms of Use, in the body of this Terms of Use, by the use of parentheses.

## 4. TEMPORARY STAFF BOOKINGS

- 4.1 Bookings can be made with Show Support for the provision of Temporary Staff.
- 4.2 You must make all Bookings with Show Support using Show Support's nominated online booking system at [www.showsupport.com.au](http://www.showsupport.com.au) However, Show Support may elect in its absolute discretion to accept a Booking that is not made using Show Support's nominated online booking system.
- 4.3 In consideration for Your payment of the Fees, Show Support agrees, during the Contract Term, to procure the provision of the event support services specified in the Booking by Temporary Staff (the Services) for the events specified in the Booking each time You make a Booking which is accepted by Show Support.
- 4.4 Each time You make a Booking, You will be deemed to have made an offer to Show Support for Show Support to provide the Services specified in Your Booking in relation to the event specified in the Booking. Bookings are not binding upon Show Support until and unless accepted by Show Support. Show Support will notify You via email if it accepts Your Booking.
- 4.5 Each time Show Support accepts a Booking, a separate contract will be deemed to have been formed between You and Show Support consisting of the Booking for the provision of the Services in relation to the event specified in the Booking, any quotation that Show Support has provided to You with respect to the Booking, any email from Show Support to You containing the quotation and any attachments to the email (collectively, the Booking Contract). You cannot assign or otherwise transfer Your rights under the Booking Contract to any third party without Show Support's prior written consent.
- 4.6 You must make all requests for amendments, alterations and cancellations to Bookings by contacting Show Support directly via email to [ops@showsupport.com.au](mailto:ops@showsupport.com.au) You may not make any amendments, alterations or cancellations in any other way of any Booking, including via any Temporary Staff, without the prior written consent of Show Support.
- 4.7 Any amendments, alterations or cancellations agreed to between You and any Temporary Staff are null and void unless they are approved in writing by Show Support.
- 4.8 Each Booking must specify that You wish to engage Show Support to procure the provision of General Crew to the Site for a period of no less than 3 hours and that You wish to engage Show Support to procure the provision of a Crew Chief to the Site for the relevant event where 4 or more Crew (inclusive of the Crew Chief) are specified in a Booking.
- 4.9 Where Your Booking specifies that You wish to engage Show Support to procure the provision of a Rigger to provide Services at the Site, You must specify in the Booking that You require the Rigger for a period of no less than 4 hours and participate in a consultation process with Show Support as determined by Show Support.
- 4.10 Show Support reserves the right to refuse to procure the supply of the applicable Services or to suspend or terminate any Booking Contract if:
  - 4.10.1 You have a greater amount of weight to rig than the Rigger estimates the applicable points, beams or roof will allow;
  - 4.10.2 You do not supply Show Support with adequate engineering drawings of the Site with the load bearings clearly marked;
  - 4.10.3 The Rigger deems any of the rigging equipment supplied by You (including slings, chain blocks or motors) as incorrectly rated, not fit for purpose or unsafe;
  - 4.10.4 At any time during the provision of the Services, the Rigger is not provided with a permanent Groundie; or
  - 4.10.5 You do not supply Show Support with sufficient plans that specify the exact location of points, the estimated load to be rigged and the load bearing of the beams or points.
- 4.11 It is Your responsibility to ensure that the work site is safe and suitable for the provision of the Services.
- 4.12 If due to any of the circumstances described in clause 4.10 occur and/or the Rigger and/or any other Temporary

Staff has refused to perform the Services because one or more of them considers there to be any safety issue with respect to the Site, Show Support may suspend or terminate the Booking Contract and You agree to pay the Fees for the Services to Show Support as if the Services had been provided.

## **5. CANCELLATIONS**

5.1 If You cancel a Booking Contract and the Booking is only for General Crew and You cancel the Booking Contract 48 hours or more before any Temporary Staff is to provide the Services, You agree to pay Show Support 50% of the Fees that would have been payable under the Booking Contract had the Services the subject of the Booking Contract been performed.

5.2 If You cancel a Booking Contract and the Booking is only for General Crew, and You cancel the Booking Contract less than 48 hours before any Temporary Staff is to provide the Services, You agree to pay Show Support 100% of the Fees that would have been payable under the Booking Contract had the Services the subject of the Booking Contract been performed.

5.3 If You cancel a Booking Contract that involves one or more Temporary Staff who are not General Crew, You agree to pay Show Support 100% of the Fees that would have been payable under the Booking Contract had the Services the subject of the Booking Contract been performed, regardless of the amount of notice given for the cancellation. Temporary Staff who are not General Crew include EG Riggers, Audio Technicians, Lighting Operators, Heavy Vehicle Drivers, Forklift Operators and EWP Operators.

5.4 You agree and acknowledge that payment pursuant to clause 5.4 is not a penalty but is a reasonable estimate of the loss that we will suffer from Your cancellation of the Booking Contract.

## **6. PRICE AND PAYMENT**

6.1 You must pay Show Support the Fees in accordance with the Payment Terms, without setoff, counterclaim or deduction.

6.2 The Payment Terms are as follows:

6.2.1 All invoices issued by Show Support to You must be paid within 7 days of receipt either by Electronic Funds Transfer (EFT) to the account which appears on the bottom of the invoices, or by sending a cheque made out to Show Support and posted to PO BOX 50 BARDWELL PARK NSW 2207;

6.2.2 All EFT payments must have the invoice number specified and if the invoice number is not specified on the EFT transaction, a \$105.00 administration fee shall also be payable by You to Show Support within 7 days of demand by Show Support.

6.3 Any queries regarding any Show Support invoice concerning dates/times/crew numbers/breaks/skills/rates etc. must be made within 24 hours of Your receipt of the invoice. After 2 Business Days following receipt of the invoice, the invoice will be deemed to be true and correct in all respects and shall no longer be subject to any requests for amendment. Show Support is not obligated to accept any requests for any amendment to any invoice.

6.4 The Fees are exclusive of GST. You shall, on receipt of a valid tax invoice from Show Support, pay to Show Support such amounts in respect of GST as are chargeable on the supply of the Services. You must pay any applicable GST at the same time as the Fees, in accordance with the Payment Terms.

6.5 If You fail to make any payment due to Show Support in accordance with the Payment Terms, Show Support may, without prejudice to any of its other rights, suspend the Services and/or terminate these Terms of Use and/or charge You interest on the overdue amount at the rate of 9% per month (compounding) or the highest rate of interest permissible by law (whichever is higher). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You must, on demand by Show Support, pay the interest together with the overdue amount.

6.6 You must indemnify Show Support from and against any costs including debt recovery and legal costs (on a full indemnity basis) incurred by Show Support in the course of enforcing the Payment Terms.

## **7. BREAKS AND PENALTIES**

7.1 A You agree to ensure that Temporary Staff are given a half hour break every 4 hours unless their shift is due to finish in the 5th hour (Break).

7.2 You must pay a penalty rate to Show Support (of 1.5 times the standard hourly Fees) if a Temporary Staff has worked more than 10 hours (not including a Break).

7.3 You must pay a penalty rate to Show Support (of 2 times the standard hourly Fees) if a Temporary Staff has worked more than 12 hours (not including a Break).

7.4 You must pay a penalty rate to Show Support (of 2 times the standard hourly Fees) if a Temporary Staff is called back to work after a 10 hour or longer shift without being given a 10 hour break.

7.5 You agree to ensure that where Services are to be performed on a Public Holiday, Bookings are made for a period of no less than 4 hours and You must pay a penalty rate (of 2 times the standard hourly Fees) in such circumstances.

7.6 You agree to ensure that where Services are to be performed on a Sunday, a penalty rate charged in accordance with the Fair Work Act 2010 is paid and the Booking is for a period of no less than 4 hours.

7.7 Show Support may choose not to charge You the penalty rates referred to in clauses 7.2 to 7.6 in order to remain competitive.

## **8. TEMPORARY STAFF**

8.1 You must contact Show Support immediately via telephone in the event of an accident and/or injury to Temporary Staff.

8.2 Show Support will use its reasonable endeavours to ensure that Temporary Staff providing the Services in a corporate environment wear appropriate attire, namely neat long black pants, jeans or cargo pants in winter, black shorts in summer, black safety boots with steel caps and the Show Support grey (or black for Crew Chiefs) short sleeved 100% cotton polo shirt.

8.3 You agree to ensure that Temporary Staff are able to reasonably and safely return to their residences after providing Services. Without limiting the foregoing provisions:

8.3.1 You must ensure that the Temporary Staff finish each event at the same place that they started working on the event, or provide the Temporary Staff with a taxi fare or safe transport home;

8.3.2 You cannot leave Temporary Staff stranded at the end of a job.

8.4 Notwithstanding clause 8.3(a), if You wish for Temporary Staff to return to Your factory or other premises outside of Business Hours:

8.4.1 You must advise Show Support of this at the time of the Booking;

8.4.2 Show Support will endeavour to get someone on the bump out that has transport for the crew to transport the Temporary Staff back to the residences of those Temporary Staff. If Show Support is unable to do so You must provide the Temporary Staff with a taxi fare or safe transport to their residences.

8.5 You agree that the following is prohibited:

8.5.1 Treating Temporary Staff in a hostile, threatening or derogatory manner;

8.5.2 Yelling at, screaming at or speaking down to Temporary Staff;

8.5.3 Refusing Temporary Staff their allocated Breaks.

8.6 You must ensure that Temporary Staff are treated with respect and with at least the same level of due respect that Your own employees are treated with, including in relation to the provision of meals and breaks. Without limiting the foregoing provisions, during any event the subject of a Booking, if You provide Your employees with meals or catering You must also provide Temporary Staff with meals and catering.

8.7 You must not use the word "loader" in a derogatory way when referring to Temporary Staff.

8.8 You must permit any Temporary Staff to have a 10 minute rest break in the case of any disputes, arguments or ugly incidents occurring.

8.9 You must ensure, encourage, and adopt a culture of promoting, a safe working environment at each event the subject of a Booking.

## **9. RECRUITMENT SERVICE**

9.1 You may engage Temporary Staff to work directly or indirectly for You (as either an employee or contractor) other than by engaging Show Support to procure the Temporary Staff to provide Services pursuant to a Booking Contract. However, by making a Booking of Temporary Staff pursuant to a Booking Contract, You have the benefit of being able to work with potential recruits on a long or short term basis prior to You recruiting those Temporary Staff to work directly or indirectly for You (other than pursuant to a Booking Contract).

9.2 If You engage any Temporary Staff to work directly or indirectly for You (as either an employee or contractor other than pursuant to a Booking Contract), You must pay to Show Support a recruitment fee in the amount specified in clause 12.4 (Recruitment Fee), within 7 days of demand by Show Support, subject to and where required pursuant to, the provisions of that clause 12.4

9.3 You must notify Show Support if You engage or employ, or intend to engage or employ any Temporary Staff (other than pursuant to a Booking Contract).

## **10. WORK ENVIRONMENT**

10.1 You agree to ensure that Occupational Health and Safety requirements are met from the time Temporary Staff arrive on Site until the Temporary Staff finish providing the Services with respect to the event the subject of the Booking.

10.2 You must conduct and prepare safety assessments including site inductions, work method statements, job safety analysis and risk assessments on Site prior to any Temporary Staff arriving on Site and You must ensure that all such matters take into account the Services to be provided by any Temporary Staff on Site together with ingress and egress to the Site and transport home from the Site. You acknowledge that Temporary Staff cannot be expected to perform safety assessments on Site.

10.3 You assume full responsibility for the occupational health and safety of each Temporary Staff from the time that he or she arrives on Site until he or she arrives at his or her residence after leaving the Site and that during all such times You must ensure that all Temporary Staff are working in a safe working environment.

10.4 You agree to ensure a safe working environment for all Temporary Staff (including in relation to the health, safety and welfare of the Temporary Staff) and to comply with all applicable Commonwealth and state legislation, laws and regulations including legislation, laws and regulations regarding anti-discrimination and sexual harassment.

10.5 You hereby warrant and guarantee that all equipment that You will supply at any time for use by Temporary Staff will be safe when used and will satisfy any occupational health and safety regulations (including by ensuring that any documentation and log books required by the occupational health and safety regulations are up to date).

10.6 You must regularly service all equipment to be used by Temporary Staff in providing the Services and must not request any Temporary Staff to perform Services:

10.6.1 That they are not physically capable of performing; or

10.6.2 That are against occupational, health and safety laws or regulations.

10.7 You must supervise all Temporary Staff during the provision of the Services and supply any equipment required to protect Temporary Staff during the provision of the Services, including personal protective equipment (PPE). For example, You must supply hard hats and safety vests where necessary to protect Temporary Staff.

10.8 You agree to ensure that Temporary Staff wear steel capped safety boots at all times. You agree that at any time if a Temporary Staff does not wear steel capped safety boots You will not allow them to provide the Services and You will contact Show Support immediately to report any such matters.

10.9 You agree and acknowledge that You will not ask Temporary Staff to operate machinery that they are not qualified and/or experienced to operate.

10.10 You must ensure that all Temporary Staff have the correct ticket and/or drivers licence and/or other applicable licence to operate any equipment and/or vehicles during any event the subject of a Booking. If Temporary Staff do not have the correct ticket and/or license to operate the relevant equipment and/or vehicles, You must not request or direct those Temporary Staff to operate the equipment and/or vehicle.

10.11 If You book any truck driver pursuant to any Booking Contract, You agree and acknowledge that the truck driver shall not be required to load or unload any truck and that the unloading or loading of any truck must be carried out by a separate Temporary Staff or other persons.

10.12 You agree and acknowledge that You will not request or direct any Temporary Staff to operate a vehicle and/or equipment if it is faulty and/or does not function to its full capacity and/or where the vehicle and/or equipment becomes faulty and/or does not function to its full capacity.

10.13 You must not request or direct Temporary Staff to operate a vehicle and/or use equipment in a manner that exceeds the capability and/or capacity of the vehicle and/or equipment. You must plan the amount of weight going into any vehicle.

10.14 Any complaints made by any of Your staff with respect to any Temporary Staff must be notified to Your senior management and then notified to Show Support management during Business Hours.

10.15 Show Support reserves the right to require You to ensure that any of Your staff are not in attendance at any Site at the same time as one or more Temporary Staff, where any dispute or complaint has been made by Temporary Staff with respect to those of Your staff.

10.16 You are responsible for the work, health and safety of all Temporary Staff while they are at any site and while You are transporting them to any location. You must cooperate with Show Support to ensure that all legal requirements, including without limitation, any applicable laws, regulations and codes of conduct are complied with at all times. You must not do anything or fail to do anything in relation to any Temporary Staff while they are on Site or being transported to any location by You that would result in either You or Show Support being in breach of any occupational health and safety laws, regulations or codes.

10.17 You must ensure that the Site is a safe work environment and that You have and enforce policies and procedures ensuring safe work by all Temporary Staff and that You comply with all relevant safety standards and maintain all plant and equipment that any Temporary Staff is required to use at any time while on Site. You must notify all Temporary Staff of any relevant workplace, health and safety policies and procedures in relation to the Site and provide them with all

necessary induction, training and personal protective clothing and equipment to ensure their safety while on Site.

## **11. CONTACTING SHOW SUPPORT**

11.1 Show Support's hours of operation are 9:30am – 12:30pm on Business Days and 1:15pm – 5pm on Business Days (collectively, Business Hours).

11.2 Show Support will be available by telephone during Business Hours for the purposes of receiving enquiries from You about Bookings and Booking Contracts and so that You can call Show Support to request amendments to shifts and assistance with locating Temporary Staff.

11.3 Show Support is not obliged to accept any request for amendments to shifts.

11.4 Show Support will use its reasonable endeavours to assist You with the location of Temporary Staff, when requested by You.

11.5 You agree and acknowledge that Temporary Staff contact details will not be provided to You.

11.6 Show Support is available to be contacted by telephone on a 24 hour, 7 day per week basis to be notified of any accidents or injuries suffered by any Temporary Staff. You must notify Show Support immediately if any such accidents or injuries occur.

## **12. CONTACTING SHOW SUPPORT**

12.1 You must not at any time during the period in which any Temporary Staff is employed or engaged by Show Support and/or during the Relevant Period employ or engage directly or indirectly and whether on Your own behalf or on behalf of any person, company or other entity, any Temporary Staff who has been:

12.1.1 Introduced to You by Show Support; or

12.1.2 Who has provided Services to You.

12.2 Except where you engage them pursuant to a Booking Contract. For the purposes of clause 12.1, the "Relevant Period" means:

12.2.1 The 12 month period following termination of the employment or engagement of the relevant Temporary Staff by Show Support;

12.2.2 or if clause 12.2.1 is deemed by a court of competent jurisdiction to be unenforceable, in the 9 month period following termination of the employment or engagement of the relevant Temporary Staff by Show Support;

12.2.3 or if clause 12.2.2 is deemed by a court of competent jurisdiction to be unenforceable, in the 6 month period following termination of the employment or engagement of the relevant Temporary Staff by Show Support.

12.3 You will not be in breach of clause 12.1 unless you employ or engage Temporary Staff to fulfil the same role that you engaged us to procure them to provide pursuant to a Booking Contract.

12.4 You agree to pay Show Support \$10,000 for each contravention by You of clause 12.1, irrespective of whether, in relation to the Temporary Staff the subject of the contravention:

12.4.1 You approach the Temporary Staff for work directly;

12.4.2 The Temporary Staff approaches You directly looking for work;

12.4.3 The Temporary Staff gives You their resume at any time (even where the resume was given to You before Show Support procured the Temporary Staff to provide the Services);

12.4.4 The Temporary Staff responds to a job advertisement posted by You; and/or

12.4.5 The Temporary Staff previously worked for You when You were at a different company or did work for You personally.

12.5 The reference to \$10,000 in clause 12.4 only applies where You employ or engage the Temporary Staff (directly or indirectly) on a full time basis (other than pursuant to a Booking Contract). If You employ or engage the Temporary Staff (directly or indirectly) on a part time or casual basis (other than pursuant to a Booking Contract) the reference to \$10,000 in clause 12.4 shall be deemed to be \$5,000.

### **13. CONFIDENTIALITY**

13.1 Each party (receiving party) shall keep in strict confidence all information of a confidential nature disclosed to the receiving party by the other party (disclosing party). The receiving party shall only disclose such confidential information to those of its employees, agents, representatives and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under these Terms of Use, and shall ensure that such employees, agents, representatives and subcontractors comply with the obligations set out in this clause as though they were a party to these Terms of Use. The receiving party may also disclose such of the disclosing party's confidential information that it receives from the disclosing party as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

13.2 A party must not make any public disclosure, communication, media release or announcement (including via social media or any reviews or ratings websites) about these Terms of Use, any Booking, any Booking Contract or any Temporary Staff, without the prior written consent of the other party.

13.3 This clause 13 shall survive termination of these Terms of Use.

### **14. LIABILITY**

14.1 All Temporary Staff the subject of a Booking will be under Your direction and control for the period of the event the subject of a Booking Contract while the Temporary Staff are on Site. You shall be solely responsible for all acts, errors and omissions whether wrongful, negligent or otherwise of such Temporary Staff while on Site.

14.2 To the maximum extent permitted by law, neither party will have any liability to the other for fines, penalties, taxes (except GST), and any exemplary, aggravated or punitive damages, liquidated damages or any indirect or consequential loss (including but not limited to loss of business, loss of revenue, loss of contract, loss of production or lost opportunity costs), legal costs and expenses (except reasonable legal costs awarded by a court) except where such losses are covered by an insurance policy held by the party.

14.3 To the full extent possible by law, Show Support shall have no liability to You for any non-performance of any Temporary Staff, and for any other acts or omissions of any Temporary Staff, and You hereby irrevocably release Show Support from all such liability.

14.4 To the full extent possible by law, You acknowledge and agree that Show Support is not liable for any parking fines incurred by any Temporary Staff on any Site. Any parking fines will be deemed the result of instructions given by You to the Temporary Staff and You must pay all such parking fines.

14.5 To the full extent possible by law, You acknowledge and agree that Show Support is not liable for any driving infringement fines (including speeding fines or red light camera fines) incurred by any Temporary Staff while performing any Services the subject of a Booking Contract.

14.6 If either party holds an insurance policy covering its civil liability for third party personal injury or property damage, in the event that an insurance policy held by that party does not cover the loss or liability of that party under any Booking Contract, each party's total aggregate liability to the other under these Terms of Use and all Booking Contracts will be limited to \$10,000.00.

14.7 Show Support does not accept any liability for loss, expense or damage arising from any wrongful act, omission or negligence of any temporary staff and You release Show Support from all liability for any loss, wrongful act or omission and or negligence of any Show Support temporary staff except You are not required to release Show Support from the proportion of liability that is has at law in the absence of this Agreement.

14.8 For any loss or damage of a party not otherwise excluded by these Terms of Use, each party's aggregate liability in relation to that loss or damage will be limited to the amount of Fees paid by You to Show Support.

14.9 All conditions, warranties and guarantees implied in these Terms of Use are excluded, to the extent possible by law. If any services supplied by Show Support to You are supplied to You as a 'consumer' of services within the meaning of that term in the Australian Consumer Law as amended You will have the benefit of certain non-excludable rights and remedies in respect of the services and nothing in these Terms of Use excludes or restricts any condition, warranty, guarantee, right or remedy which pursuant to the Competition and Consumer Act 2010 (Cth) is so conferred. However, if the services are subject to a non-excludable condition, warranty, guarantee, right or remedy implied by the Australian Consumer Law and the services are not ordinarily acquired for personal, domestic or household use or consumption, then pursuant to s 64A of the Australian Consumer Law, Show Support limits its liability for breach of any such non-excludable warranty, guarantee, right or remedy implied by the Australian Consumer Law (other than a guarantee implied by sections 51, 52 or 53 of the Australian Consumer Law) or expressly given by Show Support to You, in respect of each of the services, where it is fair and reasonable to do so, at the option of Show Support, to one or more of the following:

14.9.1 the supplying of the services again; or

14.9.2 the payment of the cost of having the services supplied again.

## **15. INDEMNITY AND RELEASE**

15.1 You must indemnify Show Support and its officers, agents and employees and all Temporary Staff with respect to all and any losses, damages, costs (including solicitors and barristers' costs), expenses and claims incurred by all or any of them as a result of Your breach of these Terms of Use and/or any Booking Contracts.

## **16. DIRECTOR'S GUARANTEE**

16.1 If You are a company, Show Support is not required to perform any Services or any of its other obligations under these Terms of Use until and unless it receives an executed personal guarantee, in a form approved by Show Support, from each of Your directors.

## **17. TERMINATION**

17.1 Either party may terminate a Booking Contract with immediate effect by giving written notice to the other party if the other party suffers an Insolvency Event.

17.2 A party may terminate a Booking Contract if the other party is in breach of these Terms of Use or a Booking Contract and the breach is not capable of remedy, or where the defaulting party fails to remedy a remediable breach of these Terms of Use or of a Booking Contract within 7 days of notice demanding that it be remedied from the other party.

17.3 Termination of these Terms of Use or any Booking Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

17.4 Clauses which expressly or by implication survive termination of these Terms of Use or termination of any Booking Contract shall continue in full force and effect.

## **18. FORCE MAJEURE**

18.1 Show Support shall not be in breach of these Terms of Use or any Booking Contract nor liable for any delay in performing, or failure to perform, any of its obligations under these Terms of Use or any Booking Contract if such delay or failure results from a Force Majeure Event. If a Force Majeure Event prevents, hinders or delays Show Support's performance of its obligations for a continuous period of more than 20 Business Days, either party may terminate these Terms of Use immediately by giving written notice to the other party.

## **19. GENERAL**

19.1 Assignment. A party may not assign or novate any of its rights or obligations under these Terms of Use without the prior written consent of the other party (not to be unreasonably withheld).

19.2 Notices. Any notice or other communication given to a party under or in connection with these Terms of Use shall be in writing, addressed to that party at its address or email address specified in a Booking or such other address as that party may have specified to the other party in writing, and shall be delivered personally, or sent by pre-paid post or email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address of the recipient; if sent by pre-paid post, at 9.00 am on the fifth Business Day after posting; or, if sent by email, upon the sender's receipt of a read or delivery receipt or upon the sender's receipt of a reply to the email from the recipient.

19.3 Severance. If any provision of these Terms of Use is deemed invalid by a court of competent jurisdiction, the remainder of these Terms of Use shall remain enforceable.

19.4 Waiver. A waiver of any right or remedy under these Terms of Use or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under these Terms of Use or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 Variation. Except as set out in these Terms of Use, no variation of these Terms of Use, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by You and Show Support.

19.6 Jurisdiction. These Terms of Use will be interpreted in accordance with the laws in force in New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts situated in New South Wales.

19.7 Relationship. You and Show Support are independent contracting parties and these Terms of Use does not create any fiduciary relationship or any relationship of agency, partnership, employer and employee or otherwise between Show Support and You.

19.8 Counterparts. These Terms of Use may be executed in counterparts provided that no binding agreement shall be reached until the executed counterparts are exchanged. A counterpart of a document exchanged by email shall constitute evidence of the execution of the original.

19.9 Publication. Both parties agree that no public disclosure, communication or announcement about these Terms of Use will be made except with the prior written consent of the other party.

## **20. DEFINITIONS AND INTERPRETATION**

20.1 In these Terms of Use, the following definitions apply:

*Bookings*: an offer by You to Show Support for Show Support to procure Temporary Staff to provide Services.

*Business Day*: a day (other than a Saturday, Sunday or public holiday) when banks in Sydney are open for business.

*Crew*: a specific type of Temporary Staff designated by Show Support as "Crew".

*Crew Chief*: a specific type of Temporary Staff designated by Show Support as "Crew Chief".

*Fees*: Show Support's fees as specified on the Show Support website at [www.showsupport.com.au](http://www.showsupport.com.au) and any amendment to those fees agreed in writing as notified to You by Show Support from time to time.

*Force Majeure Event*: any event beyond the reasonable control of Show Support.

*General Crew*: a specific type of Temporary Staff designated by Show Support as "General Crew".

*Groundie*: a person whose purpose is to clear space for a Rigger, keeping other people out of the way or preparing barricades.

*GST*: has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

*Insolvency Event*: (a) the relevant party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business; (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the relevant party; (c) the relevant party enters into, or resolves to, enter into, a scheme or arrangement, compromise or composition with any class of creditors; (d) a resolution is passed or an application to a court is taken for the winding up, dissolution or administration of the relevant party; (e) any liquidator, receiver or manager enters into possession of any of the assets of the relevant party; (f) the relevant party applies for, consents to, or acquiesces in the appointment of a trustee or receiver; or (g) except to reconstruct or amalgamate while solvent on terms approved by the other party to these Terms of Use, the relevant party enters into or resolves or proposes to enter into a scheme of arrangement, compromise or re-construction with any of its creditors or members.

*Payment Terms*: as specified in clause 6.2.

*Rigger*: a specific type of Temporary Staff designated by Show Support as "Rigger".

*Show Support*: Show Support Pty Ltd ABN 42 112 726 833 of 152/10 Park Road, Hurstville NSW 2220.

*Site*: the location where Temporary Staff are to provide the Services, as specified in the Booking.

*Temporary Staff*: any Crew, Crew Chief, General Crew, Groundie, Rigger and/or other person engaged by Show Support to provide Services to You.

*Terms of Use*: the terms and conditions set out in this document as amended from time to time in accordance with clause 19.5.

*You or you*: as specified in the Schedule. Your and your has a corresponding meaning.

20.2 In these Terms of Use, unless the context requires otherwise, the following rules apply:

20.2.1 A person includes a natural person, corporate or unincorporated body.

20.2.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

20.2.3 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words following those terms.

20.2.4 A reference to currency is to Australian dollars.

20.2.5 A provision of this Terms of Use or any Booking Contract shall not be interpreted against a party merely because the party prepared or its solicitors prepared the provision.