

Membership Terms of Service

Date September 2023

Parties

[Enter showground/land provider] (ABN #) (Head-Licensor)

The Showmen's Guild of Australasia (ABN 751 346 648 16) (Sub-Licensor)

[Member] (ABN #) (Sub-Licensee)

Recitals

- A The Head-Licensor is the registered proprietor of the Premises.
- B The Sub-Licensor is the Head-Licensee of the Premises.
- C The Sub-Licensor has negotiated with the Head-Licensor, for the benefit of the Sub-Licensee, Licence Fees to use and occupy the Licensed Area.
- D The Sub-Licensee has requested the Sub-Licensor's permission to use and occupy the Licensed Area for the Sub-Licence Fee.
- E The Sub-Licensor has agreed to permit the Sub-Licensee to use and occupy the Licensed Area on the terms and conditions set out in this agreement.

THE PARTIES AGREE:

1 Definitions and interpretation

1.1 Definitions

In this sub-licence:

Approvals means all approvals (including development approvals, building approvals and approval to sue copyright material), authorisations, permits, standards, consents, licences, exemptions and the like which are required to be issued by or obtained from any Authority in connection with the Permitted Use, or the performance by the sub-licensee of its obligations under this Sub-Licence.

Authority means any government department, local government council, government or statutory authority, or other body, which imposes a requirement or whose consent is required in connection with the Permitted Use.

Claim means a claim, action, proceeding, judgment, suit or demand of any nature made or brought by or against a party, however arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

Commencement Date means the date set out in item **Error! Reference source not found.** of the schedule.

Expiry Date means the date set out in item **Error! Reference source not found.** of the schedule.

GST has the meaning given by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in relation to a body corporate, a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme or arrangement with creditors, or in relation to an individual, becoming bankrupt or entering into a scheme or arrangement with creditors or, in relation to a body corporate or an individual, the occurrence of any event that has a substantially similar effect to any of the above events.

Liability means any liability, loss, cost (including fees, costs, charges and expenses for legal and other advisers on a full indemnity basis), damage, charge, penalty, fine, outgoing or payment, however arising and present or future, fixed or unascertained, actual or contingent.

Sub-Licence Fee means the fee set out in item **Error! Reference source not found.** of the schedule.

Licensed Area means the area described in item **Error! Reference source not found.** of the schedule.

Permitted Use means the use described in item **Error! Reference source not found.** of the schedule.

Premises means the premises described in item **Error! Reference source not found.** of the schedule.

Risk Management Checklist means the risk assessment checklist provided by the Sub-Licensors and available at:

<https://www.showmensguild.com.au/members/>

Term means the period described in clause 3.

1.2 Interpretation

In this sub-licence, headings are inserted for convenience only and do not affect the interpretation of this sub-licence and unless the context otherwise requires:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) a reference to a party is to a party to this sub-licence and includes the party's successors and permitted transferees and assigns and if party is an individual, includes executors and personal legal representatives;
- (c) unless otherwise stated, a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars; and
- (e) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day.

2 Grant of sub-licence

2.1 Grant of sub-licence

The Sub-Licensors grants to the Sub-Licensee a limited, nonexclusive, non-transferable sub-licence to occupy and use the Licensed Area during the Term for the Permitted Use.

2.2 Sub-Licensee's acknowledgements

The Sub-Licensee acknowledges that:

- (a) it has not been given exclusive possession of, or any other possessory rights in relation to, the Licensed Area under clause 2.1 or otherwise; and
- (b) nothing in this sub-licence, whether express or implied, confers on it any rights as a tenant of the Licensed Area or creates the relationship of landlord and tenant between the Sub-Licensors and the Sub-Licensee.

3 Term

This agreement commences on the Commencement Date and ends on the Expiry Date, unless terminated earlier under clause 9.

4 Sub-Licensee's covenants

The Sub-Licensee covenants and agrees with the Sub-Licensor:

- (a) to pay the Sub-Licence Fee;
- (b) to use the Licensed Area only for the Permitted Use;
- (c) that it must not carry out any works on the Licensed Area without the prior written consent of the Sub-Licensor;
- (d) that the expiry or termination of this sub-licence, it will, at its own cost and within a reasonable time, restore the Licensed Area, as is reasonably practicable, to a condition similar to that immediately prior to the commencement of this licence; and
- (e) to comply with all laws and regulations in connection with the Permitted Use;
- (f) that it will obtain all Approvals necessary to enable the Permitted Use and to keep all such Approvals current during the Term and must adhere to any conditions contained in the Approvals;
- (g) to ensure that the Licensed Area is clean and tidy at all times;
- (h) that it must not leave or expose electrical cables across major thoroughfares without safety covers or wraps;
- (i) that its employees, agents or representatives must not smoke at or near or when operating amusements, rides, food or entertainment;
- (j) that it is the Sub-Licensee's responsibility to manage and identify hazards, risks and incidents within the designated Licensed Area;
- (k) to comply with the requirements of the Work Health and Safety legislation and relevant codes of practice and standards;
- (l) that it must complete the Risk Management Checklist for the Licenced Area, if required by the Sub-Licensor.
- (m) to immediately notify the Sub-Licensor of any circumstance of which the Sub-Licensee is aware that might compromise the safety, security or operation of the Licenced Area.
- (n) to comply with Sub-Licensor's Rules and Code of Conduct, available to be viewed at the Sub-Licensor's website:
<https://www.showmensguild.com.au/members/>

5 Covenants of Sub-Licensor

The Sub-Licensor covenants and agrees with the Sub-Licensee:

- (a) if the Sub-Licensee performs its obligations under this licence, to at all times allow the Sub-Licensee to quietly hold and enjoy the Licensed Area during the Term and any Further Term without any interruption from the Sub-Licensor or any person claiming through the Sub-Licensor;
- (b) the registered proprietor will pay all rates, taxes, assessments and outgoings of every description payable in respect of the Licensed Area;
- (c) other than in an emergency, to not enter the Licensed Area without reasonable prior written notice to the Sub-Licensee;
- (d) the registered proprietor will maintain and keep any structure, buildings or improvements within the Licensed Area in good repair and condition; and

6 Insurance

6.1 Insurance

In addition to any other covenants contained in this sub-licence, the Sub-Licensee must:

- (a) in connection with its use of the Licensed Area for the Permitted Use, take out and maintain with insurers, on terms approved by the Sub-Licensor, in the name of the Sub-Licensee and noting and protecting the Sub-Licensor's interests as licensor / landlord or contract principal in respect of this Sub-Licence:
 - (i) public and products liability insurance for the amount set out in item **Error! Reference source not found.** of the schedule or such other amount as nominated by the Sub-Licensor from time to time that accords with prudent commercial practice; and
 - (ii) property insurance;
 - (iii) workers compensation insurance, if the Sub-Licensee has engaged any employees, agents, representatives or sub-contractors;
 - (iv) other insurances that are required by law or required by the Sub-Licensor;
- (b) on request, promptly give to the Sub-Licensor:
 - (i) copies of the policies effecting the insurances required under clause 6.1(a);
 - (ii) the receipt for the last premium; and
 - (iii) a certificate of currency in respect of any of the insurances required under clause 6.1(a);
- (c) name the Sub-Licensor as an interested party for the duration of the Licence;

- (d) not do anything that may affect rights under any of the insurances required under clause 6.1(a) or that may increase a premium payable in connection with the insurances required under clause 6.1(a);
- (e) notify the Sub-Licensor immediately if an insurance policy required under clause 6.1(a) is cancelled or an event occurs which may allow a claim or affect rights under any of those insurance policies; and
- (f) may not enforce, conduct, settle or compromise claims under any insurance policy required under clause 6.1(a), even if that policy also covers other property, unless authorised in writing by the Sub-Licensor.

6.2 Proceeds

Proceeds from the insurance policies required under clause (even if, in breach of clause 6.1(a), they are in the Sub-Licensor's name only) must be used to settle claims in connection with the event insured against or to restore, replace or reinstate the insured item.

7 Indemnity and release

7.1 Sub-Licensor's indemnity

The Sub-Licensor indemnifies the Sub-Licensor in relation to all Claims against the Sub-Licensor and its officers, employees and agents arising from or in connection with this licence except to the extent that a Claim is caused by or contributed to by any act, omission, negligence or default of the Sub-Licensor.

7.2 Continuing obligation

The indemnity in clause 7.1 is a continuing obligation.

7.3 Release

The Sub-Licensor releases the Sub-Licensor from, and agrees that the Sub-Licensor is not liable for, any Liabilities incurred by the Sub-Licensor arising from or in connection with this sub-licence except to the extent that a Liability is caused by or contributed to by any act, omission, negligence or default of the Sub-Licensor.

8 GST

8.1 Interpretation

In this clause 8, words and expressions defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the meaning given to them in the GST Act.

8.2 Consideration does not include GST

All amounts payable or consideration to be provided under or in connection with this licence do not include an amount for GST.

8.3 Recovery of GST

If GST is or becomes payable on any supply made under or in connection with this licence, the party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.

8.4 Reimbursements

Where a party is required under this sub-licence to reimburse or indemnify another party for any loss or amount, the amount to be reimbursed or paid will be reduced by any input tax credit that the other party is entitled to claim GST.

9 Termination

9.1 Termination for breach

A party may terminate this sub-licence with immediate effect by written notice to the other party at any time during the Term if:

- (a) the other party commits any material breach of any of the provisions of this licence and the breach is incapable of remedy or, where the breach is capable of remedy, fails to remedy that breach within 20 Business Days of notice from the first party requesting that the other party do so; or
- (b) the other party is subject to an Insolvency Event.

9.2 Termination by Sub-Licensor

The Licensee may at any time and for any reason terminate this sub-licence by giving three months' written notice to the Sub-Licensor.

9.3 Effect of termination

If this sub-licence is terminated, then in addition to any other rights or remedies provided by law:

- (a) the Sub-Licensor must vacate the Licensed Area and must deliver any keys, security codes or other access devices to the Sub-Licensor;
- (b) each party is released from its obligations under this sub-licence, other than those in 4(d) and 8; and
- (c) each party retains any rights, entitlements or remedies it has accrued before termination.

10 Costs

Each party must pay its own costs of negotiating, preparing and executing this sub-licence and performing its obligations under this sub-licence.

11 Notices

11.1 General

Unless this agreement expressly states otherwise, any notice, consent, approval, waiver or other communication (**notice**) in connection with this agreement must be in writing and signed by the sender or a person authorised by the sender. A notice may be given by hand delivery, prepaid post, facsimile transmission or by electronic communication to the address set out in clause 11.4.

11.2 When effective

A notice given under clause 11.1 will be deemed to be received:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by regular prepaid post, five Business Days after the date of posting if posted to or from a place within Australia;
- (c) if sent by priority post, three Business Days after the date of posting if posted to or from a place within Australia;
- (d) if sent by express post, the next Business Day after the date of posting if posted to or from a place within Australia;
- (e) eight Business Days after the date of posting if posted to or from a place outside Australia;
- (f) if sent as an electronic communication, one hour after the electronic communication is recorded as being sent by the device from which the sender sent that electronic communication, unless the sender knows or could reasonably be expected to know that an electronic communication system has failed and as a result, the electronic communication was not received,

unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

11.3 Electronic notices

Despite clause 11.2(f), the following notices must not be sent by electronic communication:

- (a) a notice of breach of this agreement;
- (b) a notice terminating this agreement.

11.4 Addresses for notices

Any notice given in connection with this agreement must be given to the registered office of the relevant party or to any other address as that party may notify to the other party.

12 Assignment

The Sub-Licensee may not assign or otherwise deal with any of its rights, interests or obligations under this sub-

licence without the prior written consent of the Sub-Licenser.

13 Amendment

This sub-licence may only be amended or varied by a document in writing signed by each party.

14 Waiver

14.1 No waiver

No failure to exercise or delay in exercising any right given by or under this sub-licence to a party constitutes a waiver and the party may still exercise that right in the future. No single or partial exercise of any right precludes any other or further exercise of that or any other right.

14.2 Waiver must be in writing

Any waiver of any provision of this sub-licence or a right created under it must be in writing signed by the party giving the waiver and is only effective to the extent set out in that written waiver.

15 Counterparts

This sub-licence may be signed in any number of counterparts. All counterparts executed separately when taken together constitute one sub-licence and counterparts executed separately may be consolidated into a single document.

16 Severability

If any provision of this sub-licence is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this sub-licence without affecting the validity or enforceability of the remaining provisions of this sub-licence.

17 Entire agreement

This sub-licence constitutes the entire agreement between the parties about its subject matter and supersedes all previous communications, representations, understandings or agreements between the parties on the subject matter.

18 Governing law and jurisdiction

18.1 Governing law

This sub-licence is governed by the laws in force in Queensland.

18.2 Jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia and any courts that may hear appeals from those courts about any proceedings in connection with this sub-licence.

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