

385 Studios

Studio Hire and Post Production Hire Terms and Conditions

DEFINITIONS

“385 Studios”	Imran William Benjamin Griffiths as trustee for the Griffiths Family Trust ABN 62 194 909 593 trading as 385 Studios
“Agreement”	the agreement comprised in the Booking Form and these Conditions.
“Booking”	the hire of the Studio for the Period of Booking and subject to the other terms and conditions specified in the Booking Form.
“Booking Fee”	the fee payable by the Client to 385 Studios for the Booking as specified in the Booking Form or if not specified then calculated in accordance with 385 Studios’s published or usual scale of charges from time to time.
“Booking Form”	any written quotation given by 385 Studios and accepted by the Client (to be deemed accepted when work begins if no prior acceptance is received by 385 Studios) or the description of supply (but not any “terms and conditions”) contained in any written or verbal order of the Client accepted by 385 Studios (to be deemed accepted when work begins if no prior acceptance is received by the Client).
“Client”	the person or entity referred to as such in the Booking Form.
“Client’s Equipment”	equipment brought onto the Premises by the Client, or the Client’s Personnel or any servant, employee, agent or contractor for or on behalf of the Client.
“Client’s Own Part Recorded Media”	the Client’s own recording media incorporating pre-recorded material including without limitation multi-track recording tape and computer software.
“Client’s Personnel”	persons invited by the Client to enter the Studio or the Premises during the Booking.
“Client’s Recording”	a recording made before the period of Booking which is delivered to 385 Studios by the Client in connection with the Agreement.
“Conditions”	these terms and conditions.
“Fees”	the Booking Fee, the Post Production Work Fee and all other sums payable by the Client to 385 Studios under or in connection with the Agreement (including without limitation any costs incurred in respect of the Premises such as but not limited to accommodation and subsistence for the Period of the Booking). At 385 Studios’s discretion, a surcharge will be applied to the cost of goods bought or supplied by 385 Studios or its employees to cover costs. 385 Studios reserves the right to amend the surcharge from its current minimum of 10%.

“Mastering”	the processing by 385 Studios of Recordings in accordance with the description in the Booking Form or verbal instructions accepted by 385 Studios.
“Master Recording”	the original recording produced for the Client in the course of the Booking on the media and in the format described in the Booking Form.
“Maximum Liability”	the maximum liability of 385 Studios to the Client arising under or in connection with the Agreement (in the aggregate for all potential claims by the Client) being the total amount of the Booking Fee and Post Production Work Fee (if any) paid to 385 Studios by the Client for the Booking or Post Production Work giving rise to the liability.
“Operators”	the staff of 385 Studios named as such in the Booking Form
“Overtime Fee”	shall have the meaning set out in paragraph 5 of this Agreement.
“Period of Booking”	the period described as such in the Booking Form.
“Post Production Work”	the processing by 385 Studios of Recordings in accordance with the description in the Booking Form.
“Post Production Work Fee”	the fee payable by the Client to 385 Studios for the Post Production Work as specified in the Booking Form or if not specified then calculated in accordance with 385 Studios’s published or usual scale of charges from time to time.
“Pre-Production Master”	a Recording in a form intended for mass production without further material change.
“Premises”	all parts of the building and premises in which the Studio is contained and surrounding land owned or leased by 385 Studios (including without limitation the Studio itself).
“Recording”	means any single or multi-track audio and/or visual recording or data programming or derivative thereof or any one or more pieces of recorded sound or visual image recorded or used during the Booking or which is the subject of Post Production Work.
“Representatives”	the persons named in the Booking Form being authorised by the Client to instruct 385 Studios on behalf of the Client.
“Session Footage”	all audio and or audio visual material documenting the progress and/or making of the Recording in the Studio during the Booking Period.
“Studio”	the recording studios and the equipment specified in the Booking Form.

“Studio Breakdown” a failure or breakdown or unavailability for any reason of the Studio which prevents the Client’s use thereof in accordance with the terms of the Agreement.

“Trade Marks” all Company owned and/or controlled trademarks, logos and associated rights (whether registered or not).

1. AGREEMENT

The Agreement alone applies to all facilities hired and work done by 385 Studios for the Client and prevails over any terms and conditions put forward by the Client.

2. STUDIO FACILITIES

- 2.1. 385 Studios shall make the Studio and the Operators available to the Client for the Period of Booking and shall produce the Master Recording at the direction and subject to the monitoring and approval of the Client or the Representatives. The Client shall only permit people directly involved in the Recording, as stated on the Booking Form, to enter the Premises and only during the Booking Period. 385 Studios reserves the right to require any person to leave the Premises.
- 2.2. The Client is responsible for:
 - 2.2.1. ensuring the suitability of the Studio for the Client’s purpose;
 - 2.2.2. ensuring that the Client’s Equipment is compatible with the Studio;
 - 2.2.3. the technical quality of any recording engineered by personnel provided by the Client;
 - 2.2.4. any problem or damage caused by any use of Clients Own Part Recorded Media and plug-in software (including any virus damage); and
 - 2.2.5. any acts or omissions of the Representatives or the Client’s Personnel as if those acts and omissions were its own, and 385 Studios gives no warranty, undertaking or representation as to any of the foregoing.
- 2.3. If (a) the Client fails to use the Studio for any or all of the Period of Booking, (b) the Client cancels the Booking or (c) 385 Studios terminates the Booking or any or all of its obligations under the Agreement pursuant to paragraph 8.3 below, 385 Studios may at its sole discretion and without any obligation whatsoever, make the Studio and Operators available for an alternative booking (in each case without having to refund the Fees or any part thereof to the Client).

3. POST PRODUCTION WORK

- 3.1. 385 Studios shall carry out the Post Production Work with due care and diligence using suitable equipment and competent engineers.
- 3.2. The Client and the Representatives shall be entitled at all reasonable times to monitor 385 Studios’s performance of the Post Production Work and 385 Studios shall carry out the Post Production Work at the direction of and subject to the monitoring and approval of the Client or the Representatives.
- 3.3. The Client, at its request, shall be entitled and shall be given all reasonable opportunity to evaluate by any reasonable means the content and quality of the Recording.

- 3.4. The Client shall ensure that the Pre-Production Master meets with its full satisfaction before proceeding to mass production of the recording thereon. The Client shall be deemed to have accepted and approved the Pre-Production Master if it does not notify 385 Studios in writing of any concerns with it before the expiry of 14 days following the end of the Period of Booking.

4. FEES

- 4.1. The Client shall pay the Fees in cleared funds to such bank account as 385 Studios may nominate in writing. All Fees shall be paid in full without any set-off, counterclaim, deduction or withholding.
- 4.2. 385 Studios may raise invoices in respect of the Fees at any time.
- 4.3. Unless 385 Studios agrees otherwise in advance and in writing, all invoices raised by 385 Studios prior to the commencement of the Period of Booking shall be payable by the Client as follows:
 - 4.3.1. A deposit of \$125.00 shall be payable immediately at the time of the Booking; and
 - 4.3.2. the remaining balance of such Fees shall be payable no later than 24 hours prior to the commencement of the Period of Booking.
- 4.4. All invoices raised by 385 Studios on or after the commencement of the Period of Booking shall be payable by the Client immediately.
- 4.5. The Client shall be liable to pay interest on any sums overdue and payable to 385 Studios from time to time at the rate of four per cent (4%) per annum above 385 Studios's bank's base rate.
- 4.6. The Fees shall not be reduced as a result of the following but reserves the right to apply the cancellation policy in paragraph 22:
 - 4.6.1. the Client's failure to use the Studio for any or all of the Period of the Booking;
 - 4.6.2. the Client's cancellation of the Booking or any part thereof (excepted noted in the cancellation policy); or
 - 4.6.3. 385 Studios's termination of any or all of its obligations under the Agreement pursuant to paragraph 8.3 below.
- 4.7. Notwithstanding any other provision of the Agreement, if the Client fails to pay any Fees (or part thereof) when due 385 Studios may terminate the Booking immediately without notice and without any obligation to refund any Fees already paid by the Client.
- 4.8. No part of the Master Recording will be released to the Client, and 385 Studios may suspend all or part of the services to be provided by it under the Agreement, until all outstanding Fees have been received by 385 Studios.
- 4.9. In the recovery of any outstanding fees 385 Studios may add to the amount due from the Client any costs incurred such as, but not limited to, debt collectors, solicitors.

5. OVERTIME FEES

- 5.1. If the Period of Booking is exceeded for any reason, the Client shall be charged an overtime fee equal to a minimum 10% of the Fees ("Overtime Fee").
- 5.2. 385 Studios reserves the right to amend the Overtime Fee prior to the commencement of the Booking. 385 Studios shall inform Client of the applicable Overtime Fee prior to the commencement of the Period of Booking.
- 5.3. The Overtime Fee shall accrue on an hourly basis for every hour exceeding the Period of Booking.

- 5.4. The terms of paragraph 4 (Fees) shall apply to the payment of the Overtime Fee. Any reference to Fees in this Agreement shall be construed as including the Overtime Fee (as applicable).

6. CLIENT'S OWN MEDIA, PERSONNEL AND EQUIPMENT

- 6.1. 385 Studios will supply blank media for recording if required.
- 6.2. The Client will be responsible for the integrity of the Client's own media, including without limitation the Client's Own Part Recorded Media, and 385 Studios shall not be liable or responsible for any deficiency in or caused by such media.
- 6.3. The Client shall procure that each of the Client's Personnel shall abide by 385 Studios's and the Studio's rules, regulations and health and safety and other policies and the Client shall be responsible for:
 - 6.3.1. the actions of the Client's Personnel on the Premises;
 - 6.3.2. any and all injury, loss or damage to any person's equipment or premises caused by any act or omission of the Client's Personnel, or as a result of any defect in or inappropriate specification of the Client's Equipment or the Client's own media;
 - 6.3.3. the cost of the hire of any Client's Equipment;
 - 6.3.4. any costs and expenses incurred by 385 Studios on behalf of the Client at the Client's request; and
 - 6.3.5. any and all loss or damage to the Client's Equipment (which shall be at the sole risk of the Client).
- 6.4. 385 Studios reserves the right to refuse installation of the Clients plug-in software to any of 385 Studios's computer hardware.
- 6.5. The Client shall vacate the Studio and the Premises and remove all Client's Equipment forthwith at the end of the Period of Booking or, if 385 Studios so elects in writing, on 385 Studios's termination of the Booking or some or all of its obligations under the Agreement pursuant to paragraph 8.3 below. 385 Studios shall be entitled by two weeks' notice to the Client to require the Client to collect the Client's Equipment and in default of collection on or before the expiration of such period of notice, 385 Studios shall be entitled to destroy or otherwise dispose of the Client's Equipment without further notice or warning.

7. SOUND LEVELS

- 7.1. The Client acknowledges that prolonged exposure to high noise levels may cause damage to hearing and that both 385 Studios and users of the Studio are required by law to keep exposures as low as reasonably practicable and that accordingly:
 - 7.1.1. the Client shall be responsible for noise levels within the Studio;
 - 7.1.2. high noise levels shall not be sustained for long periods; and
 - 7.1.3. 385 Studios reserves the right to take such action as it may deem appropriate to maintain tolerable noise levels and that no claim shall lie against 385 Studios in respect of inconvenience or time lost in the event of such action.

8. RECORDINGS AND MATERIALS

- 8.1. The Client shall procure the collection of the Recordings and all ancillary materials (if any) ("the Materials") immediately upon payment in full of 385 Studios's invoice(s) applicable thereto ("the Collection Date").

- 8.2. After the Collection Date:
 - 8.2.1. notwithstanding any other provision of the Agreement, the Materials shall be held by 385 Studios solely at the risk of the Client;
 - 8.2.2. the Client shall be liable to 385 Studios for such reasonable charges as 385 Studios may raise against the Client for the continued storage of the Materials; and
 - 8.2.3. 385 Studios shall be entitled to serve notice on the Client requiring the Client to collect the Materials within two weeks of the date of such notice failing which 385 Studios shall be entitled to destroy or otherwise dispose of the Materials without further notice of warning.
- 8.3. Notwithstanding any other provision of the Agreement, until such time as 385 Studios is in receipt of cleared payment of all Fees, (a) 385 Studios shall retain legal title to the Materials (which shall remain the property of 385 Studios), (b) 385 Studios shall retain possession of all of the Materials and (c) the Client is not entitled to sell, manufacture, license or distribute the Master Recordings.
- 8.4. Notwithstanding any other provision of the Agreement the Client acknowledges and agrees that all risk in the Materials when in transit or otherwise off the Premises shall vest in the Client.
- 8.5. 385 Studios retains a general lien on any property of the Master Recordings and/or Materials in its possession for any unpaid sums the Client may owe to 385 Studios.

9. COMPLIANCE WITH LAWS and client's obligations

GENERAL

- 9.1. In performing its obligations under the Agreement, the Client shall and shall procure that the Client's Personnel (a) comply with all applicable laws, statutes and regulations from time to time in force and (b) obtain and maintain all necessary licences and consents to enable 385 Studios to provide its services under the Agreement.
- 9.2. The Client shall:
 - 9.2.1. co-operate with 385 Studios in all matters relating to the services to be provided by 385 Studios under the Agreement; and
 - 9.2.2. provide to 385 Studios in a timely manner all documents, information, items and materials in any form (whether owned by the Client or third party) reasonably required by 385 Studios in connection with the services to be provided by 385 Studios under the Agreement.

UNAUTHORISED ACCESS

- 9.3. The Client's access to the Studio shall be limited to such areas of the Premises that are necessary for the Booking or as directed or permitted by 385 Studios.
- 9.4. 385 Studios, in its sole discretion, reserves the right to refuse entry by the Client or any Client Personnel to any area of its Premises at any time.
- 9.5. Entry into or use of the lake on the Premises by the Client any Client Personnel is strictly prohibited at all times.

SMOKING

- 9.6. Subject to paragraph 9.7, smoking anywhere on the Premises is strictly forbidden. This applies to anything that can be smoked and includes but is not limited to, cigarettes, pipes, cigars and herbal cigarettes. This is in the interest of hygiene, safety and the

health of other users of the Studio, 385 Studios's employees and in compliance with legal requirements.

- 9.7. Any Client or Client Personnel wishing to smoke must do so strictly within a designated outside area on the Premises.

DRUGS & ALCOHOL

- 9.8. 385 Studios is committed to providing a safe, healthy, and productive working environment for all employees, contractors, Clients, Client Personnel and visitors involved in its operation.
- 9.9. The use of drugs on the Premises by the Client or Client Personnel is strictly forbidden.
- 9.10. Any Client or Client Personnel found using, supplying, under the influence, or in the possession of, an illegal substance whilst on the Premises will be required to leave the Premises immediately and may face prosecution under the law.
- 9.11. It is the sole responsibility of the Client and the Client Personnel to ensure that any alcohol is consumed in a responsible and appropriate manner and does not cause a breach of any other term of this Agreement.
- 9.12. 385 Studios reserves the right to refuse entry to the Premises to any Client or Client Personnel or require that any Client or Client Personnel leave the Premises if 385 Studios considers that, in its sole discretion, the Client or any Client Personnel is behaving in an inappropriate manner. For the avoidance of doubt, this shall include where 385 Studios considers that the Client or any Client Personnel has consumed alcohol pursuant to clause 9.11 in an inappropriate or irresponsible manner. In such circumstances, 385 Studios reserves the right to terminate the Booking, regardless of whether such Booking has commenced or not, and any Fees paid or owing to 385 Studios by the Client shall be non-refundable.

NON-COMPLIANCE

- 9.13. The Client shall be responsible for the actions of the Client Personnel and shall ensure that the Client Personnel are made aware of the obligations in this paragraph 9 and shall ensure that the Client Personnel comply with these obligations at all times.
- 9.14. To the extent 385 Studios so elects in writing, 385 Studios's obligations under the Agreement shall terminate with immediate effect if the Client commits a breach of any provision of this paragraph 9 or any other provision of the Agreement.
- 9.15. To the extent permissible by law, the Client shall keep 385 Studios fully indemnified against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by 385 Studios arising out of, or in connection with, any breach of this paragraph 9 or any other provision of this Agreement by the Client or any Client Personnel.
- 9.16. In the event that a Booking is terminated as a result of a breach of this paragraph 9, 385 Studios shall not be required to refund any Fee to the Client and reserves the right to charge the full Fee to the Client in the event that a Booking is cancelled by 385 Studios, regardless of whether such Booking has commenced or not.

10. INDEMNITY

- 10.1. The Client shall indemnify 385 Studios and keep 385 Studios indemnified in full against any injury, loss, damage, costs and/or expenses suffered by 385 Studios arising from or attributable to:

- 10.1.1. the Client's cancellation of the Booking including without limitation any costs or expenses incurred by 385 Studios in connection with the Booking;
- 10.1.2. the Client's making, use or exploitation of the Recordings;
- 10.1.3. the Client's breach of the Agreement;
- 10.1.4. the Client's media including without limitation the Clients Own Part Recorded Material; or
- 10.1.5. the Client's own plug-in software.
- 10.1.6. the Client's breach of 385 Studios's health and safety policy either written or verbal.

11. CONTENT OF RECORDING AND RESTRICTIONS

- 11.1. The Client undertakes that nothing whatsoever shall be included in the Recording (or any software introduced by the Client) which constitutes a breach or infringement of any intellectual property rights or which shall be in any way illegal, scandalous, obscene or libellous and the Client will indemnify 385 Studios and keep 385 Studios indemnified in full against any injury, loss, damage, costs and/or expenses in respect thereof and shall pay all costs, fees and expenses which may be incurred by 385 Studios in reference to any such claim.
- 11.2. The Client may acknowledge that the Recording, Mastering or Post-Production Work took place at 385 Studios. Notwithstanding the foregoing, the fact that the Recording is recorded, mastered or subject to Post-Production Work in the Studio does not imply an "endorsement" as between 385 Studios and the Recording or the Client. If 385 Studios becomes aware that the Client is implying such an endorsement 385 Studios shall notify the Client and the Client shall immediately cease the relevant activity.
- 11.3. 385 Studios shall not be required to reproduce any matter which in its opinion is or may be of an illegal, scandalous, obscene or libellous nature.
- 11.4. The Client undertakes that, unless otherwise agreed by 385 Studios in writing, the Recording will not be used to create software or hardware audio products including, but not limited to, plug-ins or sample instruments. Further the Client undertakes that it will not use 385 Studios's name, logo or Trade Mark to promote, endorse or otherwise advertise non-Company audio products without the express prior written permission of 385 Studios.
- 11.5. The Client undertakes to 385 Studios that in all Materials recorded, mastered or post-produced at the Premises:
 - 11.5.1. it shall credit 385 Studios as the location of such work; and
 - 11.5.2. if the Client credits any of its employees, agents or contractors, it shall also credit the Operators.
- 11.6. 385 Studios reserves the right to restrict usage of any parts of the Studio depending on the nature of the recording in the other Studios. This includes but not limited to restricting usage of the "Back Booth".

12. STUDIO BREAKDOWN WARRANTY

In the event of Studio Breakdown 385 Studios shall at its option either replace (as soon as can reasonably be arranged) the Studio facilities to which the Client was entitled by the terms hereof and which have been lost as a result of such Studio Breakdown or credit or refund to the Client the Booking Fee in respect of the Booking and shall have no liability or obligation to the Client beyond these remedies.

13. MASTER RECORDING AND POST PRODUCTION WORK WARRANTY

- 13.1. The Client shall promptly notify 385 Studios in writing of any defect in or loss of or damage to the Master Recording or the Post Production Work of which it is made aware whether as a result of any test carried out by the Client pursuant to paragraph 3 or these Conditions or otherwise. The Client shall be deemed to have accepted and approved the Master Recording and the Post Production Work if it does not notify 385 Studios in writing of any concerns with either or both of them before the expiry of 14 days following the end of the Period of Booking.
- 13.2. 385 Studios shall use its reasonable endeavours to correct any such defect and to effect replacement of such lost or damaged materials so notified to it or of which it is aware only to the extent they are directly attributable to faulty materials or workmanship or the negligence of 385 Studios.
- 13.3. If 385 Studios is unable reasonably to effect such rectification or replacement its liability in respect of any Master Recording or Post Production Work shall be limited to the Maximum Liability.

14. CLIENT'S RECORDINGS

It is a condition of the Agreement that all Client's Recordings shall have been copied by the Client before delivery to 385 Studios, and that 385 Studios's liability for loss of or damage to a Client's Recording shall be limited to the lower of the value of the media on which it is recorded and the Maximum Liability.

15. INTELLECTUAL PROPERTY and non-solicitation

- 15.1. The Trade Marks are the property of 385 Studios and the Client shall not use the Trade Marks unless expressly authorised in writing by 385 Studios to do so.
- 15.2. The Client:
 - 15.2.1. warrants that the receipt and use of the Client's Recording and the Client's own media (including without limitation the Client's Own Part Recorded Media), in the performance of the Agreement by 385 Studios, its agents, subcontractors or consultants shall not infringe the rights, including without limitation any intellectual property rights, of any third party; and
 - 15.2.2. shall indemnify 385 Studios and keep 385 Studios indemnified in full against any injury, loss, damage, costs and/or expenses awarded against or incurred or paid by 385 Studios as a result of or in connection with any claim brought against 385 Studios, its agents, subcontractors or consultants for actual or alleged infringement of a third party's rights, including without limitation intellectual property rights arising out of, or in connection with, the receipt or use in the performance of the Agreement of the Client's Recording and the Client's own media (including without limitation the Client's Own Part Recorded Media).
- 15.3. The Client shall not, at any time during the Period of Booking and for 3 months after the Period of Booking, solicit or entice away from 385 Studios or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of 385 Studios in the provision of any services contemplated by the Agreement (including without limitation the Operators).

16. FILMING AND PHOTOGRAPHY RESTRICTIONS

- 16.1. The Client shall not and shall procure that the Client's Personnel shall not photograph or film any part of the Premises save as expressly provided in the remainder of this paragraph 15.
- 16.2. The Client shall be permitted to photograph and/or record Session Footage within the Studio solely for non-commercial personal purposes provided that:
 - 16.2.1. unless otherwise agreed in writing by 385 Studios, the copyright and all related rights in and to the Session Footage (excluding the copyright and all related rights in and to any underlying music composition) shall vest in Company and to the extent any such rights vest in the Client, the Client hereby assigns all rights in the Session Footage to 385 Studios, whether vested, contingent or future;
 - 16.2.2. the Client hereby waives, and shall procure the waiver from the Representatives and the Client's Personnel of any and all moral and/or so-called "Performer's" rights in the Session Footage; and
 - 16.2.3. the Client shall provide 385 Studios with a copy of the Session Footage.
- 16.3. If the Client, the Representatives or the Client's Personnel either:
 - 16.3.1. wish to use the Session Footage for purposes not expressly permitted hereunder; and/or
 - 16.3.2. wish to photograph and/or film the whole or part of the Premises, then the Client shall put such request in writing to Company and 385 Studios's decision on such matter shall be final.

17. CONFIDENTIALITY

- 17.1. The Client undertakes that it shall not at any time disclose to any person any confidential information relating to 385 Studios, except as permitted by paragraph 17.2.
- 17.2. The Client may disclose 385 Studios's confidential information:
 - 17.2.1. to the Representatives who need to know this information for the purposes of carrying out the Client's obligations under the Agreement, provided that the Client takes all reasonable steps to ensure that the Representatives comply with the confidentiality obligations contained in this paragraph 17 as though they were a party to the Agreement. The Client shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this paragraph 17; and
 - 17.2.2. as may be required by applicable law, a court of competent jurisdiction or any governmental or regulatory authority with competent jurisdiction.
- 17.3. 385 Studios reserves all rights in its confidential information. No rights or obligations in respect of 385 Studios's confidential information other than those expressly stated in the Agreement are granted to the Client or to be implied from the Agreement.

18. COMPANY'S OVERALL LIABILITY

- 18.1. 385 Studios's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the Maximum Liability.
- 18.2. 385 Studios shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection

with the Agreement for any or all of the following: loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage to goodwill, loss of use or corruption of software, data or information and any indirect or consequential loss.

- 18.3. 385 Studios's liability under the Agreement shall be to the exclusion of all other liability to the Client whether contractual, tortious or otherwise. All other conditions, warranties, stipulations or other statements whatsoever concerning the Agreement, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded.
- 18.4. The Client accepts as reasonable that 385 Studios's total liability to the Client shall be as set out in the Agreement. In fixing that limit the Client and 385 Studios have had regard to the price and nature of the Booking and the Post Production Work and the terms hereof, and the level of expenses expected to be incurred by the Client in respect thereof and the resources available to each party including insurance cover, to meet any liability.
- 18.5. Where the booking is made by a consumer as defined in section 3 of the Australian Consumer Law under schedule 2 of the *Competition and Consumer Act 2010* (Cth) the statutory rights of the client are not affected by these conditions.
- 18.6. Nothing in the Agreement excludes or limits liability for fraud, fraudulent misrepresentation, death or personal injury cause by negligence or any other liability which cannot be limited or excluded by applicable law.

19. ASSIGNMENT

The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of 385 Studios.

20. FORCE MAJEURE

- 20.1. Notwithstanding any other term of the Agreement 385 Studios shall not be under any liability for any failure to perform any of its obligations under the Agreement due to "Force Majeure". Following notification by 385 Studios to the Client of such cause, 385 Studios shall be allowed a reasonable extension of time for the performance of its obligations. For the purpose of the Agreement, 'Force Majeure' means any matters beyond the reasonable control of 385 Studios, including without limitation:
 - 20.1.1. Act of God, explosion, flood, tempest, fire or accident;
 - 20.1.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 20.1.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 20.1.4. import or export regulations or embargoes;
 - 20.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of 385 Studios or of a third party);
 - 20.1.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery; and
 - 20.1.7. power failure or breakdown in machinery.

21. MISCELLANEOUS

- 21.1. The Client shall procure that neither the Client nor any of the Client's Personnel shall be held out as an agent of or pledge the credit of 385 Studios.

- 21.2. The Agreement constitutes the entire agreement between 385 Studios and the Client and neither party shall be bound by any other statement or representation made to the other.
- 21.3. No variation or amendment to the Agreement shall be effective unless made in writing and signed by 385 Studios and the Client.
- 21.4. If any part of the Agreement shall be held to be void, voidable or otherwise unenforceable by a court of competent jurisdiction then the balance thereof shall remain in full force and effect.
- 21.5. All notices required to be given hereunder shall be in writing and deemed properly served if delivered by hand or sent by fax or email (provided that proof of transmission can be produced) to the address or fax number respectively of the applicable party specified on the Booking Form on the date of delivery or transmission or if sent by recorded delivery post to such address within two (2) working days of posting.
- 21.6. The Agreement shall be construed in accordance with the laws of Australia and is subject to the exclusive jurisdiction of the Australian Courts.
- 21.7. The Client shall be deemed to accept the provisions of this Agreement (and any email from 385 Studios relating to this Agreement) upon the commencement of the Booking, notwithstanding the absence of written confirmation of acceptance by the Client of this Agreement and any terms contained in any relevant email from 385 Studios.

22. CANCELLATION POLICY

- 22.1. If a session is cancelled by the Client for any reason, 385 Studios reserves the right to charge the following:
 - 22.1.1. At least 3 days before session start date – Nil
 - 22.1.2. Less than 3 days before session start date – \$125.00 will be due to 385 Studios and the deposit will be forfeited.
- 22.2. Any costs incurred by 385 Studios, including but not limited to, external hires or purchases, will also be due from the Client.