

# Contractual Terms and Conditions

## Connecting Southern Gold Coast Ltd

### GENERAL ARTISTS & PERFORMERS

#### - *Cooly Rocks On™ 2019* (Memorandum of Agreement)

ABN 63 133 678 841

Suite 206, Level 2 The Strand, 72-80 Marine Pde,  
Coolangatta, Qld, 4225

M : PO Box 728, Tugun, Qld, 4224

E : [artists@southerngoldcoast.com.au](mailto:artists@southerngoldcoast.com.au)

P : 07 5534 3500

W : [www.southerngoldcoast.com.au](http://www.southerngoldcoast.com.au)

Please read the following information carefully.  
We also recommend you print this information and bring it with you to the Festival for your reference.

The below Terms and Conditions and Schedules A, B, C, D and E, form part of the Memorandum of Agreement between the Artist (as defined in Schedule A) and Connecting Southern Gold Coast Ltd ABN: **63 133 678 841** ("the Company") and should be read carefully. If you are in agreement with the Terms and Conditions as set out below and attached Schedules, please sign and date both copies of this Agreement and return them to us. We will forward a countersigned copy for your records.

Detailed information can be found on the Connecting Southern Gold Coast website : [www.southerngoldcoast.com.au](http://www.southerngoldcoast.com.au)



By completing the form and agreeing to perform in this Festival, you enter into an agreement with Connecting Southern Gold Coast Ltd - **Cooly Rocks On™ 2019** upon these "Terms and Conditions" and agree all information provided with the application is true and correct.

*If you do not agree with the "Terms and Conditions" of Performance, you must not complete the application to participate in the Festival.*

Please note: ALL Performers and Artists perform at the owner's risk.

## TERMS AND CONDITIONS

### 1. Engagement

Subject to the terms and conditions below, the Company hereby engages the Artist to provide fully rehearsed performance(s) of the Production(s) as part of the **Festival** according to the performance schedule and special conditions listed in Schedule A.

## COMPANY'S RESPONSIBILITIES

### 2. Payment of Fee

- (a) In consideration of the performance by the Artist(s), the Company will pay the Artist(s) the Fee referred to in Schedule A plus GST where applicable. To enable payment, **the Artist(s) shall provide a Tax Invoice with an ABN number seven (7) days prior to the performance date. In the event that the Artist(s) does not provide an ABN number, the Company will withhold 47% tax.** Payment will be effected by EFT (if appropriate banking details are presented) within 7 days following the performance to the Company's satisfaction.
- (b) The Artist(s) shall not make claims for additional fees, Superannuation contributions or any other payments whatsoever, other than those specified in 2 (a) of this Agreement.

### 3. Transport

- (a) If applicable, return economy air travel shall be arranged and paid for by the parties in accordance with the arrangements specified in Item 2 of Schedule B. The Company shall not be responsible for excess baggage charges unless otherwise agreed.
- (b) Freight to and from the Gold Coast for the Artist's sets, props and costumes specified in Item 3 of Schedule B shall be arranged and paid for by the parties in accordance with the arrangements specified in Item 3 of Schedule B.

### 4. Local Transport

Local ground transport and road freight for the Artist(s) and its effects shall be as specified in Item 4 of Schedule B.

### 5. Accommodation

Suitable room only accommodation for the members of the Touring Party shall be arranged and paid for in accordance with the arrangements specified in Item 5 of Schedule B. The Artist(s) are responsible for all other costs and expenses associated with accommodation including (but not limited to) the cost of all meals, room service charges, internet and telephone calls.

### 6. Publicity/Merchandise

- (a) The Company shall be responsible for and shall arrange publicity, programs, bills and advertising associated with the Production. The extent and nature of publicity, programs, bills and advertising shall be at the discretion of the Company. The content of marketing materials shall be at the Company's discretion.
- (b) If applicable, the Company reserves the right to add a hyperlink from the Company's websites to the Artist's website from the date of the signing of this contract. The Artist(s) agrees to add a hyperlink from their website to [www.coolyrockson.com](http://www.coolyrockson.com) once the Festival programming has been launched and for the duration of this Agreement.
- (c) The Company shall retain the exclusive right to the production of printed programs and promotional merchandise for sale in relation to the Production(s).

### 7. Marketing and Publicity

The Company shall be responsible for marketing the Festival and the Artist(s) shall provide base marketing materials of a suitable standard at no charge to the Company. Base marketing materials may include but are not limited to; Transparencies/Imagery's; Photographs; Electronic Artwork; Disks of Logos; Video Footage; CD's; Contractor History; Artists Biographies; Past Reviews; examples of previous Artwork; Posters; Flyers; Programmes. Billing and credits for the Production shall be as specified in Schedule E.

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#### 8. Media Calls

In further consideration of the Fee the Artist(s) shall be available at reasonable times and upon reasonable notice for all media interviews (including but not limited to interviews on the Internet) required by the Company for publicity and promotional purposes and sponsorship events, in a manner consistent with the Actors (Theatrical) Award Australia (1998).

#### 9. Sponsorship

The Company is permitted to seek, obtain and give credit to any Sponsors it desires for the Performance(s) of the Production(s). The Company may after advising the Artist(s), incorporate Sponsor acknowledgment into the billing of the Production(s) or otherwise into promotional material issued in connection with the Production(s).

#### 10. Venue Costs

- (a) The Company shall provide and bear the cost of the venue, including electricity and such sundry charges, for the bump-in and performance(s).
- (b) The Company shall provide and bear the cost of all front-of-house staff and production staff for the performance of the Production(s).
- (c) The Company shall provide and bear the cost of the technical equipment for the performance(s) of the Production(s) as described in Schedule C.

#### 11. APRA Royalties

The Company shall be responsible for the payment of APRA royalties, which shall be paid on the basis of the information supplied by the Artist(s). **The Artist(s) will provide the Company with a list of songs for the performance(s) of the Production(s) seven (7) days prior to the performance date(s).**

#### 12. Company Discretion

The Company may make any decision and give any direction it considers necessary to ensure the safety, security and reputation of the Company and its staff. The Artist(s) shall comply with any direction issued in relation to this clause and releases the Company against any claims whatsoever in relation to decisions or direction made under this clause.

#### THE CONTRACTORS RESPONSIBILITIES

#### 13. Licence and Royalties

- (a) The Artist(s) warrants that all necessary rights, consents and licences have been obtained for the selection of material to be performed by the Artist(s); that the Artist's Production(s) does not violate or infringe upon the copyright, right of privacy or any other right of any third party; and that the Company is indemnified by the Artist(s) against any claims arising out of any breach of copyright arising from any element of the Artist's performance(s). **The Artist(s) shall advise the Company of any recorded copyrighted music that shall be used in the Artist's performance(s).**
- (b) The Artist(s) warrants and represents that it has been fully empowered and authorised by the Artist(s) to execute this Agreement on its behalf insofar as any obligations in this Agreement that apply to the Artist(s). The Artist(s) indemnifies the Company against any loss, expense, claim or liability arising from a breach of this warranty.

#### 14. Wages and Living Away Allowances

- (a) The Artist(s) shall be responsible for all payments due to the performers and other personnel connected to the performance(s) of the Production(s) and shall also be responsible for all associated wage and salary on-costs.
- (b) The Artist(s) is responsible for the payment of any living away allowances or per diems which are required to be paid to the members of the Touring Party.
- (c) The Artist(s) is responsible for complying with the requirements of Australian taxation legislation in respect of the Artist's employees, performers and other members of the Touring Party. The Artist(s) indemnifies the Company against any cost or expenses arising from a breach of this clause by the Artist(s) (including any PAYE or PAYG payments the Artist(s) may be required to make in respect of this Agreement).

#### 15. Recording and Reproduction

The Artist(s) agrees: -

- (a) To the recording, broadcasting, televising, reproducing, transmitting, playing or showing of by any medium any rehearsal or performance of the Production(s) ("the Company's Reproduction") by the Artist(s) provided:
  - i) Such use is for the purposes of promoting the Production(s), the Company or for the archival purposes of the Company, and
  - ii) The length of the Company's reproduction is no more than five (5) minutes.

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- (b) To the photographing of any rehearsal or performance(s) of the Production(s) by the Artist(s) for the purposes of promotion of the Production(s), the Company or for the archival purposes of the Company.
- (c) That it will not record for any purposes the performance(s) of the Production(s) without the prior approval of the Company.
- (d) That the reason of recording shall be provided in writing a minimum of two (2) weeks prior to the Festival opening. Recording fees and any additional equipment charges may apply.
- (e) To the Company, at its discretion, and with prior approval of the Artist(s), using no more than 30 seconds of audio and/or video recording of the Artist(s) on the Festival website for promotional purposes only.
- (f) All other recording and reproduction rights shall remain with the Artist(s).

#### 16. Insurance

- (a) The Company recommends that the Artist(s) shall effect and maintain at its cost with a reputable insurance Contractor all insurances which a responsible and prudent person would consider appropriate to fulfil the terms and conditions as outlined herein and in respect of the Artist's Festival performance(s) of the Production(s). Insurances include but may not be limited to, all personal medical insurances for the employees or contractors of the Artist(s), public liability insurance for the Artist(s) and any employees or contractors of the Artist(s), and other insurances required for the properties, equipment and personal effects of the Artist(s) of any of the employees or contractors of the Artist(s).
- (b) The Company maintains its own insurances, inclusive of public liability insurance, for its staff, own properties, equipment and effects. The Artist(s) is advised that these insurances do not extend to the Artist(s) or any employees or contractors of the Artist(s) and that the Artist(s) and all employees or contractors of the Artist(s) indemnify the Company against any liability caused by the Artist(s) or any employees or contractors of the Artist(s).
- (c) **A copy of your Certificate of your Current Public Liability Policy with a minimum of \$10,000,000 cover must be forwarded with your application.**

**No Public Liability Policy ensures no performance at the Festival.**

#### 17. Occupational Health, Safety and Welfare & Noise Control

The Artist(s) agrees that it will, and will ensure that its personnel, abide by the obligations of the Queensland Work, Health and Safety Act 2011 and will follow and abide by such additional occupational health and safety, and noise control instructions and policies issued by the Company from time to time.

#### 18. Exclusivity

The Artist(s) agrees not to perform in Queensland within the period commencing *29<sup>th</sup> May 2019* to and ending *10<sup>th</sup> June 2019* for the Performance(s) as specified in **Schedule A without the prior written approval of the Company.**

#### 19. No Substitution

The Artist(s) agrees that the provision of the Key Personnel ("Key Personnel") as identified in Schedule B, Item 1 is a fundamental condition of this Agreement and there shall be no substitution.

#### 20. Damage to Venue

The Artist(s) are responsible for and must pay for any costs, expenses or liabilities arising from any damage to the Venue and its contents and equipment caused by the Artist(s) or any employee, agent, contractor or invitee of the Artist(s) (including members of the Touring Party).

### OPERATION OF AGREEMENT

#### 21. Injury and Damage

The Company will not be responsible to pay the Artist(s) compensation in respect of:

- (a) Bodily injury (which expression includes death or illness)
- (b) Damage to property (which expression includes loss of property)

Unless such bodily injury or damage to property occurs as the result of a negligent act on the part of the Company.

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#### 22. Suspension or Cancellation of Performances

- (a) In the event of the Artist(s) being unable to perform for any reason beyond the reasonable control of the Artist(s), including injury, illness or unavoidable travel delays, the Artist(s) must provide the Company with satisfactory evidence of the reason it is unable to perform. If the performance(s) of the Production(s) are suspended or cancelled as a result of the Artist's inability to perform, the Company is not required to pay the Fee as listed in Schedule A. Should a portion of this Fee have already been paid to the Artist(s), the Artist(s) must refund this amount to the Company in full as soon as practicable and in any event within 30 days of the cancellation.
- (b) The Company shall be at liberty to suspend or cancel the performance(s) of the Production(s) if in its reasonable opinion the staging of the Production(s) would pose a risk to the safety, security or reputation of the Company, its venues, staff, patrons or any other thing or person or for any other legitimate reason otherwise. Should suspension or cancellation occur prior to the Artist(s) departing for the Gold Coast, the Artist(s) reserves the right to retain the first payment of the Fee specified in Schedule D. Should suspension or cancellation occur at late notice and after the Artist's arrival for the Festival, the Artist(s) will be paid the full fee specified in Schedule A.
- (c) The Artist(s) shall not be entitled to any further payment in respect of the suspension or cancellation of the performance pursuant to this clause 23 (a) or (b). The Artist(s) shall make no further claim or demand against the Company in respect of suspension or cancellation.

#### 23. Indemnity

- (a) The Company shall indemnify the Artist(s) from and against any claim, action, suit, damage, cost, loss, expense or liability of any kind however suffered or incurred in respect of any loss of life, personal injury, loss or damage to property or other loss whatsoever arising as a result of
  - i) any breach of this Agreement by the Company;
  - ii) any breach of the law by the Company; or
  - iii) any negligent or wrongful act or omission of the Company occurring in connection with the performance(s) of the Company's obligations pursuant to this Agreement;

except to the extent that such loss of life, injury loss of or damage to property, or other loss is caused or contributed to by the negligent or wrongful act or omission of the Artist(s).

- (b) The Artist(s) shall indemnify the Company from and against any claim, action, suit damage, cost, loss, expense or liability of any kind however suffered or incurred in respect of any loss of life, personal injury, loss or damage to property or other loss whatsoever arising as a result of
  - i) any breach of this Agreement by the Artist(s);
  - ii) any breach of the law by the Artist(s); or
  - iii) any negligent or wrongful act or omission of the Artist(s) occurring in connection with the performance of the Artist's obligations pursuant to this Agreement;

except to the extent that such loss of life, injury, loss of or damage to property, or other loss is caused or contributed to by the negligent or wrongful act or omission of the Company.

#### 24. Nature of Relationship

- (a) The parties agree that the Artist(s) are an independent contractor and not an employee of the Company and as an independent contractor the Artist(s) has no entitlement to any benefits, payments or allowances (including, but not limited to, annual leave, sick leave, long service leave or any other leave and workers compensation) to which the Artist(s) might otherwise have been entitled if the Artist(s) was an employee and not an independent contractor to the intent and with the effect that the benefits, payments and other allowances prescribed to the Artist(s) pursuant to this Agreement comprise the entirety of the Artist's entitlements to the exclusion of all others.
- (b) The Artist(s) shall not represent itself, and shall ensure that their employees do not represent themselves, as being employees or agents of, or in partnership with, the Company.

#### 25. Interpretation / Dispute

- (a) For the purpose of this Agreement it is agreed that any provisions or arrangements made between the Company and the Artist(s) after the execution of this Agreement and set down in writing and signed by or on behalf of the Company and the Artist(s) shall become part of this Agreement.
- (b) All attached riders, addenda, schedules and specifications are to be considered an integral part of the Agreement and are to be adhered to accordingly.
- (c) This Agreement shall not constitute a partnership between the parties hereto or render them liable to or for the debts of the other.

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- (d) This Agreement shall be construed in accordance with the laws of the State of Queensland and shall be deemed to have been made in Queensland and any dispute arising hereunder or in any way relating to this Agreement or its performance shall be justiciable in the Courts of the State of Queensland.
- (e) Headings are for reference purposes only and shall not affect the interpretation of this Agreement.

#### 26. Termination

If either party fails to perform any of its respective obligations herein the other party may serve a notice in writing specifying the default and requiring that it be remedied within two (2) business days of service of the notice on the defaulting party, failing which, the Agreement shall terminate at the expiry of the notice period at the option of the notifying party. The party so terminating the Agreement shall thereafter be relieved of its obligations herein, without prejudice to any right to seek damages or such other redress as it may have at law.

#### 27. Confidentiality

The Artist(s) and the Company shall not during or after the term of this Agreement disclose the terms of this Agreement to any other person or persons (except to their accountants and/or legal advisers) whether directly or indirectly except as and when required by law or in the case of the Company in accordance with its responsibilities as a statutory authority.

#### 28. Severability

Part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of the Agreement.

#### 29. Assignment

The Artist(s) must not assign or charge this Agreement or any licence or authority granted under this Agreement except with the prior written consent of the Company.

#### 30. Entire Agreement

This Agreement is the whole Agreement between the parties about the subject matter of this Agreement. This Agreement supersedes any prior Agreements or obligations between the parties about the same subject matter.

#### 31. Force Majeure

- (a) Definition
- For the purpose of this clause an "Event of Force Majeure" means an event or circumstance which is in the nature of force majeure, including but not limited to: fire, flood, storm, accidents, plague, earthquakes, riots, explosions, wars, hostilities, labour disputes and industrial actions which prevent a party from complying with its obligations under this Agreement, and which that party: -

- i) did not cause,  
ii) can not control or influence, and  
iii) could not have prevented or avoided through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source and work around plans.

(b) Effect

The obligations of a party directly affected by an Event of Force Majeure and any corresponding entitlement of another party will be suspended to the extent and for so long as the performance of the affected party's obligations are prevented or delayed by the Event of Force Majeure. This clause does not operate to allow the Artist(s) to conduct the performance(s) of the Production(s) on any date or at any time other than those specified in this Agreement. Permission to conduct the Performance(s) on any date or at any time other than those specified in this Agreement may be granted by the Company at its absolute discretion.

(c) Notification

The affected party must notify the other party if the Event of Force Majeure prevents (or is likely to prevent) it from complying with any of its obligations under this Agreement as soon as it becomes aware of the Event of Force Majeure.

(d) Obligation to Recommence Performance(s)

The affected party must: -

- i) use its best endeavours to work around or overcome the effect of the Event of Force Majeure,  
ii) keep the other party informed of the continuation and expected duration of the Event of Force Majeure and of measures taken to comply with this clause; and  
iii) recommence performance of its obligations as soon as possible after the Event of Force Majeure has ceased to exist.

#### PLEASE NOTE:

***TO CONFIRM YOUR PARTICIPATION AT THE FESTIVAL YOU ARE REQUIRED TO RETURN PAGES 7 TO 13 (SCHEDULES "A-E" Incl. THE CONTRACTUAL AGREEMENT) SIGNED (and or INITIALED where applicable) TOGETHER WITH A COPY OF YOUR CURRENT PLI INSURANCE TO:***

***CONNECTING SOUTHERN GOLD COAST :  
[artists@southerngoldcoast.com.au](mailto:artists@southerngoldcoast.com.au)***

***FOR ATTENTION: The Festival Entertainment Coordinator***

***SHOULD WE NOT HAVE THE ABOVE RECEIVED PRIOR TO THE FESTIVAL THE PERFORMER AND/OR ARTIST WILL NOT BE ALLOWED TO PERFORM AT THE FESTIVAL.***

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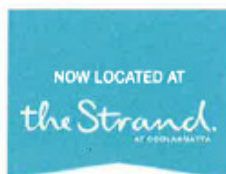
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30 September 2017

Dear Business Operator,

As a courtesy, the Finance Team at Connecting Southern Gold Coast Ltd ("CSGC") would like to let you know that from 1 July 2017 we will be obliged to report to the Australian Taxation Office (ATO) all payments we make to businesses for providing services or for payments of funding.

All government entities - including statutory bodies - will be required to provide the ATO with a Taxable Payments Annual Report (TPAR), which may include information such as:

- registered business name
- Australian Business Number (ABN)
- business telephone number
- business address
- gross amount paid
- total of GST paid on gross amount.

The ATO has advised that this information may be used for pre-filling purposes to help individual businesses, such as sole traders, lodge their tax returns. It also may be used to identify businesses that have not lodged tax returns, omitted income from their returns or have not met their GST obligations.

The definition of "funding" incorporates payments made to Event Organisers pursuant to CSGC Funding Agreements. Our obligation to report this information is a legislative requirement and confidentiality provisions in Funding Agreements do not preclude the obligation. However, the information is not disclosed on a public record and is subject to the ATO's privacy and confidentiality obligations.

Should you have any queries regarding TPAR and our reporting obligations, we recommend that you seek your own professional advice or refer to the ATO website at:

<https://www.ato.gov.au/business/reports-and-returns/taxable-payments-annual-report/>

We value the businesses with which we deal and remain committed to ensuring you are kept informed of changes which may affect you.

Yours sincerely

Chrisna Westerveld  
Manager – Finance & Governance