

# EMPLOYER TERMS & CONDITIONS

## 1. DEFINITIONS

This section contains definitions related to the terms and conditions herein. **EMPLOYER:** Party directly managing some part of, or entire JOB, to which PROFORCE reports directly to and is directly responsible for payment of labor costs and expenses.

**PROFORCE:** Owners and managing partners or PROFORCE SOLUTIONS LLC, a contingent workforce management and crewing resource, including strategic partners, its affiliated companies, external stakeholders, employees, contractors, vendors and suppliers.

**CREW:** Two or more CREW MEMBERS known collectively as a group.

**CREW MEMBER:** Individuals that have been vetted, onboarded and active on PROFORCE roster including regular full-time, part-time, full-time seasonal, and part-time temporary employees, independent contractors, and independent, professional services providers.

**END-CLIENT:** Any corporation, organization or individual, including its partners, brands, franchises, and specified affiliates, for which the JOB is produced.

**JOB or SHOW:** Any event, show, party, exhibit, activation, concert, presentation, meeting or related activity for which EMPLOYER has engaged PROFORCE's services.

**SCOPE OF WORK:** Agreed upon goals and tasks to be completed for a specified JOB.

**SHOW DOCS:** Production documents, diagrams, schematics, blueprints, worksheets, checklists and illustrations prepared by, or on behalf of EMPLOYER containing detailed directions, descriptions, objectives, and instruction required to complete SCOPE OF WORK.

**STAGECRAFT:** Technical aspects of live and hybrid event production, which include audio, video, lighting, rigging, scenic design, staging, props, and costumes.

## 2. LABOR CLASSIFICATIONS

### a. GENERAL LABOR, UTILITIES, TECHNICAL ASSISTS, STAGEHANDS

Untrained or generally-trained utilities, technical assists and stagehands in pay grades 0, 1, 2 and 3 with little or no technical expertise, experience or advanced technical training.

### b. STAGECRAFT PROFESSIONALS, TECHNICIANS, OPERATORS

Skilled and experienced technicians and operators in pay grades 4 and 5, in a position for which he/she is reasonably trained and experienced with advanced technical expertise. It is generally accepted that CREW MEMBERS with this classification are capable of fulfilling the roles and responsibilities his/her position with no instruction or supervision; has invested into and comes prepared with the tools of his/her trade or craft or discipline; and/or has completed training in his/her trade or discipline.

### c. PRODUCTION MANAGEMENT, AUDIOVISUAL ENGINEERS, DIRECTORS AND DEPARTMENT HEADS

Skilled and experienced experts in live and hybrid event production and show operation in pay grades 6 and above such as engineers, directors, designers, producers and related expert specialists in a position for which he has completed advanced training, has earned degrees or certifications in his/her discipline, and demonstrated advanced technical expertise in his/her trade or discipline. It is generally accepted that CREW MEMBERS in this classification are capable of leading or managing his/her department and training subordinates in proper process and procedure to fulfill the roles and responsibilities, and require with no instruction or supervision.

## 3. EXPECTATIONS & LIMITATIONS

The Terms & Conditions set forth herein defines guarantees and limitations pertaining to PROFORCE's agreement to contingent workforce solutions, including but not limited to event staffing, production crewing, technical recruiting, employer of record payroll services, benefits administration, and union payroll processing for live events, and provide workforce management solutions, including binding terms, and provisions; and describe PROFORCE's standards for professional conduct, ethical business practices and professional courtesy.

### a. EMPLOYER acknowledges that while PROFORCE shall make every reasonable effort to meet EMPLOYERS requests and expectations, limiting factors include:

- Individual CREW MEMBERS training, experience, abilities and personal limitations,
- Inventory of CREW MEMBERS with better or broader skills and experience, which decreases inversely proportional to advance time to reserve CREW MEMBERS;
- EMPLOYER acknowledges that quality and value of CREW ROSTER may improve proportionate to the amount of advance time to reserve CREW MEMBERS.

## 4. SCOPE OF WORK

EMPLOYER understands that the responsibility of communicating the direction and operation of the event, and its production, including the roles and duties to be performed by any of PROFORCE's CREW, is the exclusive responsibility of the EMPLOYER. EMPLOYER acknowledges that the CREW's ability to prepare in advance for its roles and duties rely largely on an accurate and detailed understanding of the entire SCOPE OF WORK to be performed.

### a. EMPLOYER shall be asked to provide any SHOW DOCS or advance communication to help CREW prepare for the work to be performed. These details may include, but not limited to Production Schedule, Floorplans, Detail drawings, Engineering Schematics, Input Lists, Patch Lists, Signal Flow Worksheet, Com List, Show Flow.

## 5. WHITELABEL SERVICE PROVIDER

CREW MEMBERS are instructed to perform and behave in a manner consistent with EMPLOYER's PROFORCE culture and to make reasonable effort to present themselves as professional and responsible representatives of EMPLOYER. CREW MEMBERS understand the delicate relationship between EMPLOYER and its END-CLIENT and are instructed to avoid engaging END-CLIENT in unnecessary discussions, debates, opinions or direction - unless directly instructed to do so by EMPLOYER.

## 6. ESTIMATES & INVOICES

### a. LABOR ESTIMATES

EMPLOYER reserves the right to request a comprehensive Labor Estimates or Proposal for any labor request. The Labor Estimate shall include:

- JOB instructions and defined as "JOB DETAILS"
  - Proposed list of CREW MEMBERS defined as "CREW ROSTER" describing assigned department, role, daily schedule and rate;
  - Estimated reimbursable expenses and travel expenses;
- Estimates will not be considered "accepted" without written acknowledgement, such as:
- Signed Labor Estimate;
  - Email confirming acceptance from authorized party.
  - Text Message confirming acceptance of specified estimate
  - Voice message or telephone call confirming acceptance of specified estimate

### c. EMPLOYER is solely and exclusively responsible for losses or damages resulting from failure to verify receipt of an unannounced labor request or estimate acknowledgement, or any such communication when submitted electronically without return receipt request.

## 7. COMPENSATION & PAY-RATE

PROFORCE agrees to provide general labor, specialists and experts and consultants consistent with the skills and training required of their position and the experience required to perform and/or manage tasks and goals typically required of their role, and as expressed by EMPLOYERS, and in accordance with the accurate detailing of SCOPE OF WORK.

### a. STANDARD CREW MEMBER PAY RATES BY CLASSIFICATION

Following rates are the base wage for CREW MEMBERS not inclusive of employer tax obligations, applicable fringe benefits required by law, applicable insurance coverages as required by law, processing fees, administration fees and/or service fees, as necessary.

- General Labor & Assists: Wage pay rate ranges from \$20-40/per hour, depending on role, experience and skill or experience required
- Stagecraft Professionals: Wage pay rate ranges from \$30-60/per hour, depending on role, experience and skill or experience required
- Production Management and Stagecraft Engineers: Wage pay rate ranges from \$50-100/per hour, depending on role, experience and skill or experience required

### b. RATE CONSIDERATIONS BY CLASSIFICATION

- Full-time, Part-time Temporary, Full-time Seasonal and other related W2 regular employees:
  - Standard day is 8 hours by law, and minimum Half-Day is four (4) hours, provided CREW MEMBER reported on time and released without cause.
  - Report time minimum is (2) hours, provided CREW MEMBER reported on time and released without cause.
  - Load-out minimum CREW CALL is five (5) hours
  - Overtime (1.5X) rate is charged after eight (8) hours up to the twelfth hour, or after forty (40) hours in one week;
  - Double-time (2X) rate is charged after twelve (12) hours, or as applicable by law.
- Freelance Stagecraft Professionals, Independent Contractors
  - Standard day is ten (10) hours guaranteed, no Half Days
  - Load-out minimum CREW CALL is ten (10) hours, no Half Days
  - Overtime (1.5X) rate is charged after ten (10) hours up to twelfth hour;
  - Double-time (2X) rate is charged after twelve (12) hours, or as applicable by law.
- Freelance Production Management Professionals and Engineers, Independent Contractors
  - Standard day is ten (10) hours guaranteed, no Half Days
  - Load-out minimum CREW CALL is ten (10) hours, no Half Days
  - Overtime (1.5X) rate is charged after ten (10) hours up to twelfth hour;
  - Double-time (2X) rate is charged after twelve (12) hours, or as applicable by law.

### c. WORK WEEK

The first day a CREW MEMBER begins work shall be the first day of CREW MEMBER's work week.

- For all work performed on the sixth (6th) day of a work week between the hours of 7:00 a.m. and 12:00 midnight, time and one half (1-1/2) times the base rate shall prevail.
- All work performed on the seventh (7th) consecutive day shall be paid at double time (2 times the base rate).

### d. SHORT TURN AROUND / FORCED CALL

If CREW MEMBERS require a minimum (8) hours off the clock between calls. If CREW MEMBER is released for the day and returns to work the following day, before a rest period of eight (8) hours has elapsed, CREW MEMBER shall be paid double their base wage until the end of that day's shift.

### e. HOLIDAY PAY

Work performed on New Year's Day, New Year's Eve (after 6pm), Easter, Memorial Day, Labor Day, Veteran's Day, Fourth of July, and Thanksgiving and/or Christmas shall be billed at the Overtime (1.5X) rate.

### f. GRAVEYARD PAY, MIDNIGHT TO 6:00 AM SHIFTS

- Hours worked between midnight and 6am shall be charged at the next higher overtime rate, not to exceed two-times the rate.
- Overtime rate shall be charged only for actual hours worked. Remaining hours left on a call minimum shall be billed at regular rate.
- If CREW is already in overtime at 12:01, rates shall be charged at double overtime at two-times rates.

### g. VACATION PAY

All CREW MEMBERS classified as W2 regular or temporary employees shall receive not less than eight percent (8%) of all their gross wages for vacation pay, or as required by law..

### h. SPLIT SHIFTS

- Less than four (4) hour break between call times is invoiced:
- Between shifts, breaks will be billed at regular hourly rates, less one hour for a meal break.
  - Break hours paid at regular hourly rates will not be counted towards any hours worked when calculating overtime for the workday.

### i. PREVAILING WAGE

For facilities bound by municipal contracts requiring CREW MEMBERS are paid a prevailing wage, labor costs shall be calculated using the prevailing wage for that municipality.

- EMPLOYER shall be responsible for changes to billable pay rate required by law, which rate shall supersede any previously quoted rates or estimates.

### j. LAST MINUTE / AFTER-HOURS LABOR CALLS

5% service charge will be added to all rates when a request for labor is made less than 48 hours of call-time. Proforce shall not be liable for damages arising for CREW MEMBER's failure to report or reporting late when CREW CALL is made less than 24 hours from CREW CALL.

## 8. BILL RATES BY CLASSIFICATION

EMPLOYER billing costs are inclusive of CREW MEMBER wages, fringe benefits, insurance premiums, employer tax obligations, assessments, processing fees and services fees. EMPLOYER bill rates range according to role, qualification, training or experience required, inventory capacity and market conditions at time of transaction.

- General Labor & Assists: Bill rate ranges from \$35-65/per hour, depending on role, experience and skill or experience required
- Stagecraft Professionals: Wage pay rate ranges from \$45-85/per hour, depending on role, experience and skill or experience required
- Production Management and Stagecraft Engineers: Wage pay rate ranges from \$75-150/per hour, depending on role, experience and skill or experience required

## 9. EMPLOYER LIABILITIES & OBLIGATIONS

EMPLOYER agrees that all employer obligated expenses required in addition to CREW MEMBER'S pay rate is solely its responsibility. The bill rate charged to EMPLOYER is inclusive of the known fees, however the bill rate is subject to change if there is an increase, whether by changes to current or future legislation, court decision, revision to tax code or changes to company policy. EMPLOYER liabilities and obligations may include, but not limited to:

- EMPLOYER TAX OBLIGATIONS & WITHHOLDINGS**
  - Federal Income Taxes, Social Security & Unemployment Benefits
  - State Income Taxes, disability insurance
- INSURANCE PREMIUMS**
  - Compensation Insurance, as required by law
  - Liability Insurance
  - Commercial Auto Insurance, as required
- PROCESSING & OPERATIONS FEES**
  - Order processing fees, third party service charges, late fees and logistic and operational expenses,
  - Merchant processing, AFT, EFT and related fees

## 10. EXPENSE REIMBURSEMENTS

EMPLOYER may request PROFORCE or CREW MEMBER to incur expenses not included in the labor cost. Expenses for expendables or consumables, design costs or cross-rentals are reimbursable.

### a. REIMBURSABLE EXPENSES INCLUDE, BUT NOT LIMITED TO:

- Purchase or production of expendables and/or consumables;
- Will Calls, Cross-rentals, and dry-hire equipment;
- CAD or Graphic Design fees, large format printing costs, script writing or engineering design fees
- Permit Submissions and logistics management fees
- Engineering and wet stamp approval process fees
- Travel or Overnight Lodging
- Transportation, including vehicle rentals, fueling charges, parking fees & transit tolls

### b. CHANGE ORDERS / APPROVED EXPENSES

Change orders and approved on-site expenses paid for by PROFORCE and/or CREW MEMBERS shall be billed on final invoice, per terms agreed to on-site and subject to a 10% special handling fee for dry-hire or cross-rented equipment, as required.

### c. EMPLOYER agrees to remit full payment for all approved reimbursable expenses and shall provide a written change-order or valid authorization prior to delivery or start of additional service.

## 11. TRAVEL EXPENSES

Projects requiring CREW MEMBERS to travel to another geographic area, outside their home area, shall require any travel accommodations, including airfare, hotel accommodations, local ground transfers, and daily per diem, based on the GSA per diem table for current calendar year.<sup>1</sup>

### a. TRAVEL RATES

- CREW MEMBER travel time shall be compensated and charged to EMPLOYER as a TRAVEL DAY(S).
- Half Day rate shall apply for travel time equal to, or less than six hours of actual travel time from door-to-door;
- Full Day rate shall apply for travel time exceeding six hours of actual travel time from door to door;

### b. TRAVEL ON WORK DAYS

- If traveling, then working, on the same day, the work day starts at the originating airport until the end of the scheduled work period.
- If working then traveling, on the same day, the work clock begins at the start of the work period, and ends at the destination airport arrival time.
- Travel time does not count against overtime.

### c. ADDITIONAL TRAVEL EXPENSES

- EMPLOYER is required to provide a separate hotel room for each CREW MEMBER working two or more days on a program;
- Per diem shall be paid for each night spent away from home area, including Travel Days. Per diems are payable directly to CREW MEMBERS in Cash or other negotiable tender and shall be calculated using GSA per diem table for current calendar year.
- Ground transportation, parking, tolls, permits, licenses, visas or other travel-related expenses or miscellaneous expenses are reimbursable.

### d. LOCAL EXTENDED DISTANCES

- CREW MEMBERS required to travel more than fifty (50) miles from their home area shall be compensated for drive time, mileage or both.
- Mileage shall be compensated at the current IRS Standard Mileage Rate (<https://www.irs.gov/tax-professionals/standard-mileage-rates>)<sup>2</sup>.

## 12. PAYMENT TERMS

### a. PROJECT AGREEMENT TERMS

All Per-Project payroll invoices for crewing services shall be prepaid and due immediately upon receipt. Personnel shall not be reserved or guaranteed without receipt of deposit as described in Sec 12(c) and personnel shall not be dispatched to a job prior to receipt of the remaining balance.

### b. MASTER SERVICE AGREEMENT TERMS

All payroll invoices for crewing services bound by the terms of a Master Service Agreement ("MSA") shall be invoiced and due according to the terms of that agreement and/or the terms and conditions set forth in the JOB'S Scope of Work amendment to that MSA.

### c. PAYROLL DEPOSITS

- All JOBS require a deposit of 100% of the estimated total JOB cost and must be received by PROFORCE prior to the start of the JOB.
- Payment of 50% deposit must be received within 7 days of accepting the estimated production budget in order to confirm the JOB and reserve or secure personnel or equipment. Personnel and/or gear may not be reserved prior to receiving the initial deposit and availability of personnel or gear is subject to change without notice without an accepted and confirmed JOB order.
- Payment of deposit balance is due no later than 5 business days prior to start of the JOB and shall be held in escrow until completion of the job.

### d. APPLIED PAYMENTS

Upon completion of the job, any deposit payments received by PROFORCE shall be applied to the final invoice. Any monies remaining shall be returned to EMPLOYER within 5 business days. Any balance due remaining shall be due upon receipt of final invoice.

- Failure to receive a deposit may result in the non-refundable cancellation of your labor.
- Credit card payments shall be assessed a merchant processing fee of 4%, which will be added to the invoice.

### e. LATE FEES & COLLECTIONS

- A 5% late fee will be charged on overdue invoices each month past net 30
- EMPLOYERS shall be liable for all collection costs associated with recovering past due invoices. Other terms may be arranged in advance, as required.

### f. LIABILITY FOR FAILURE TO PAY WAGES

EMPLOYER acknowledges and understands the legal responsibility to pay employee wages and recognizes independent contractors have similar rights and legal protections as employees in certain states and territories, and CREW MEMBERS may have the right to remedy late payments by legal action that would result in punitive damages;

- EMPLOYER agrees to accept liability and shall be wholly liable for damages and expenses awarded, and shall indemnify and hold harmless PROFORCE and its affiliates.
- ### g. UNION PAYROLL LIABILITIES & DEADLINES
- Union Payroll wages, fringe benefits and associated costs are 100% prepaid prior to load-in;
  - Union deposit advances must be remit to union escrow account prior to submitting work order;
  - Any deposit received after 12 noon PST shall be credited to any provision herein that is not functional shall not sever the authority or enforceability of these terms in whole.

## 13. CANCELLATION

JOBS canceled less than 24 hours prior to JOB's start time shall result in a minimum charge, per CREW MEMBER canceled.

### a. CANCELLATION MINIMUMS

- General labor and technical assists cancellations shall be charged a 5-hour minimum or half-day rate for every CREW MEMBER affected by the cancellation.

<sup>1</sup> (<https://www.gsa.gov/travel/plan-book/per-diem-rates>)

<sup>2</sup> (<https://www.irs.gov/tax-professionals/standard-mileage-rates>)

- ii. Stagecraft Professionals and Production Management cancellations shall be charged a 10-hour minimum or a full-day rate for every CREW MEMBER affected by the cancellation.
- b. Any CREW MEMBER arriving and reporting on-site without incident or cause for punitive action, shall be paid a minimum no less than 2 hours, as required by law.
- c. EMPLOYER agrees to reimburse PROFORCE for any and all expenses incurred by PROFORCE that result from cancellation of a confirmed JOB or order.

#### 14. NON-CIRCUMVENTION

- a. **PRIMARY SERVICE OFFERING & PROFORCE VALUE**  
EMPLOYER understands and acknowledges that PROFORCE's operational purpose is recruiting, training and managing a skilled and experienced work workforce specializing in the installation, production and operation of live events, providing contingent workforce solutions for live events, and providing workforce management solutions to its EMPLOYER and EMPLOYER's END-CLIENTS. EMPLOYER acknowledges PROFORCE's employees and independent contractors are its primary service offering and primary revenue source. PROFORCE invests considerable resources into the search, recruitment, development, marketability, and reputation of its employees and contractors.
- b. **CAUSE OF INJURY & DAMAGE TO PROFORCE**  
EMPLOYER acknowledges that initiating direct contact with PROFORCE's employees and independent contractors with the intention of circumventing PROFORCE and hiring CREW MEMBERS, either as contractors or part-time temporary employees, directly will injure PROFORCE and result in measurable damages to PROFORCE.  
Damages suffered by PROFORCE shall be measured based on potential lost revenue, lost opportunity, recoupment of initial investment from recruiting, onboarding, training, developing and marketing CREW MEMBER, potential lost revenue resulting from impact on reputation from inaction and immediate lost revenue from EMPLOYER.
- c. **DIRECT ACCESS TO CREW MEMBERS IN GOOD FAITH**  
PROFORCE shall provide EMPLOYER direct, unsupervised and unrestricted contact with CREW MEMBERS for the purpose of communicating SCOPE OF WORK and JOB-specific details, expectations and objectives.
- d. **NO DIRECT OR INTENTIONAL RECRUITMENT**  
EMPLOYER shall not recruit or solicit CREW MEMBERS or encourage or induce CREW MEMBERS to solicit direct employment from EMPLOYER for no less than one year from the date of last JOB CREW MEMBER was assigned to for EMPLOYER.  
i. PROFORCE reserves the right to waive NON-CIRCUMVENTION of EMPLOYER and CREW MEMBER, if EMPLOYER notifies PROFORCE prior to soliciting CREW MEMBER or its intention to make full-time employment offer and EMPLOYER provides reasonable compensation to PROFORCE:  
1. The value of the CREW MEMBERS marketability and resale value of his/her services, including recoupment value of PROFORCE's investment into recruitment, development, and stewardship of CREW MEMBER, and PROFORCE's surrender of future gains and return on investment or lost opportunity costs and lost access to indirect opportunities; or  
2. A recruiting fee equal to Ten (10) percent (%) of the total annual compensation including salary, draws or bonuses.
- e. No actions or agreements shall be construed as a waiver of PROFORCE's rights to pursue damages.
- f. **VIOLATION OF PROVISION**  
EMPLOYER understands that PROFORCE reserves the right to invoice EMPLOYER for technical recruiting services, based on the nature of the violation and the similarity of the final result. In absence of an approved and accepted offer for such services, PROFORCE shall calculate damages and bill for 110% of that amount or \$5000, whichever is greater.

#### 15. CONFIDENTIALITY

- CREW MEMBERS and duly-appointed PROFORCE representatives may be exposed to or have access to sensitive business information of PROFORCE, EMPLOYER or its business partners. PROFORCE instructs CREW MEMBERS to keep such privileged, proprietary and/or confidential or sensitive information in strictest confidence and not to disclose it under any circumstances, except as allowed or required by law.  
Information of this nature may include, but is not limited to:  
i. Information regarding PROFORCE or EMPLOYER's business model, products, services, customer lists, pricing, wholesale costs, agency partnerships, marketing plans, and PROFORCE staff database and CREW ROSTER  
ii. Technical information, methods, processes, database information, and project details.  
iii. Financial information, payroll, PROFORCE profits, agency billing, and EMPLOYER billing rates.  
iv. Any other information not generally known to the public which, if misused or disclosed, could reasonably be used to injure or cause loss of opportunity to parties involved.

#### 16. SOCIAL MEDIA

- a. **POLICY**  
PROFORCE instructs CREW MEMBERS on PROFORCE's Social Media Policy and enforces that policy, which includes general and specific guidelines preventing accidental or intentional injury or damage to PROFORCE and/or EMPLOYER, including but not limited to:  
i. Inaccurate or fraudulent misrepresentation of information  
ii. Unauthorized or Fraudulent misrepresentation of PROFORCE opinions  
iii. Disclosure of confidential sensitive information  
iv. Disclosure of private personal information  
v. Unauthorized or other misuse of logos, brand elements of positioning statements  
vi. Improper or illegal reproduction of copy protected assets  
vii. Inappropriate, terrorizing or threatening behavior  
viii. Unlawful or vindictive slander or libel.  
EMPLOYER acknowledges receipt of Social Media Policy and may access the most current revision on PROFORCE website<sup>3</sup>.
- b. **ENFORCEMENT**  
PROFORCE agrees to make reasonable effort to monitor and enforce Social Media Policy, within legal boundaries and EMPLOYER shall indemnify and hold harmless PROFORCE from any injury or damages resulting in CREW MEMBERS unauthorized or unlawful violation of this policy or related EMPLOYER policy.

#### 17. REPLACEMENT, REASSIGNMENT, SUSPENSION OR TERMINATION OF CREW MEMBERS

- a. **REASSIGNMENT**  
EMPLOYER may request CREW MEMBERS to be reassigned for the following reasons:  
i. CREW MEMBER is unfit to perform or unqualified for the role to which he/she is assigned;  
ii. CREW MEMBER is unprepared, unrepresentable, or lacking professional appearance or presentation required for the role to which he is assigned;  
iii. CREW MEMBER is unable or unwilling to cooperate with the EMPLOYER's team or support personnel required of his/her role.  
iv. CREW MEMBER is more qualified or effective at another role on the JOB.
- b. EMPLOYER shall inform PROFORCE prior to assigning CREW MEMBER to another role.
- c. EMPLOYER shall not discuss or negotiate new compensation arrangements or payment terms resulting from reassignment without prior approval from PROFORCE.

- d. EMPLOYER shall make no offers of direct compensation to CREW MEMBERS for services outside the scope of JOB without informing PROFORCE prior to making any such offer.
- e. PROFORCE reserves the right to approve or disapprove CREW MEMBER reassignment based on working conditions or CREW MEMBER'S ability to safely and effectively perform the new role.  
1. In the event EMPLOYER fails to notify PROFORCE of CREW MEMBER reassignment, EMPLOYER accepts all liability for accidents, injuries, or damage to property resulting from CREW MEMBER'S lack of training.
- f. **REPLACEMENT**  
EMPLOYER may request CREW MEMBERS to be replaced for the following reasons:  
i. CREW MEMBER willfully and knowingly violates EMPLOYER PROFORCE policies;  
ii. CREW MEMBER is witnessed committing a crime  
iii. CREW MEMBER is under the influence of drugs or alcohol  
iv. CREW MEMBER threatens or exhibits any form of harassment, violence, or discrimination, in accordance with state and federal laws.  
EMPLOYER acknowledges its duty to comply with state and federal labor laws, including equal opportunity employment and anti-discrimination laws, and accepts any liability resulting from its failure to comply.
- g. **TERMINATION OR SUSPENSION**  
EMPLOYER shall not terminate, suspend or take punitive actions against CREW MEMBERS without notification or approval from PROFORCE:  
i. EMPLOYER shall be fully and wholly responsible for violations or labor laws or regulations, and solely liable for any and all penalties and/or damage awards resulting from its failure to notify PROFORCE for approval and proper legal procedure.
- h. **GOOD FAITH NEGOTIATIONS**  
EMPLOYER and PROFORCE agree to renegotiate, in good faith, a discounted rate for any CREW MEMBER alleged to be inadequate.

#### 18. ATTIRE, TOOLS & PROTECTIVE GEAR

- a. **WORK ATTIRE**  
PROFORCE shall instruct and require industry-standard dress and equipment for all CREW MEMBERS:  
i. **SETUP BLACKS:** To be worn on work days during installation, reset or dismantle of gear. Appropriate attire includes black polo shirts or t-shirts without logos or insignias, black denim or other durable material pants  
ii. **SHOW BLACKS:** To be worn on show days during rehearsals, shows and any other audience-facing opportunities. Appropriate attire includes black collared shirts and black slacks or trousers; Pressed black pants, black shoes, black belt and socks;
- b. **TRADE TOOLS**  
PROFORCE shall instruct and require CREW MEMBERS be adequately and properly prepared with the trade tools required to perform the normal tasks associated to their role.  
i. EMPLOYER shall provide any large power tools or equipment required to perform specialized tasks.  
ii. EMPLOYER acknowledges that it cannot and will not provide instruction or training to Stagecraft Professionals, Stagecraft Engineers, Production Management personnel or any CREW MEMBERS classified as Independent Contractors in accordance with IRS Regulations as described in IRS Publication 22 Pub 15a<sup>4</sup>
- iii. **PERSONAL PROTECTIVE EQUIPMENT**  
iv. CREW'S shall wear protective face covering or approved masks while on duty or in public areas, when requested by EMPLOYER or as required by law.  
v. CREW'S shall come prepared with basic protective gear such as gloves and steel toe boots;  
vi. CREW MEMBERS are required to wear high-visibility vest when unloading or loading trucks in high traffic areas or operating heavy machinery.  
vii. CREW MEMBER are required to provide safety harness, helmet or hard-hat when working beneath anyone working overhead, according to role or duty, or as requested;
- c. **OTHER CONSIDERATIONS**  
i. Upon reasonable request, CREW MEMBERS may be requested to wear role-appropriate, properly fitting and safe EMPLOYER-provided apparel or uniforms.

#### 19. CREW BREAK & MEAL PERIODS

- a. **BREAK PERIODS**  
EMPLOYER shall permit CREW to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of fifteen (15) consecutive minutes for each four hour work period, or major fraction thereof.  
i. If EMPLOYER fails to provide CREW MEMBERS with a rest period, EMPLOYER shall pay one additional hour of pay at the CREW MEMBERS regular rate of pay for each workday that the rest period is not provided.  
ii. Water and/or other beverages should be provided for technicians, operators and engineers on show calls.
- b. **MEAL PERIODS**  
CREW MEMBERS shall be provided a Meal Period during any shift over six (6) hours at the midpoint of the shift, and shall be as follows:  
i. One (1) hour meal period, off the clock, with no meal provided and adequate food vendors are located in the immediate area.  
ii. Half (½) hour meal period, on the clock, with EMPLOYER-provided meal.  
iii. If CREW MEMBERS are not able to leave the JOB site, or if adequate food vendors are not located in the immediate area, or if the JOB is after hours, EMPLOYER shall provide meals.
- c. **MEAL PENALTY**  
Meal penalties will be billed as a one-hour flat penalty at regular time rates. A meal penalty will be charged if working more than 6 hours without a break. If work continues with no break, PROFORCE will charge an additional ½ hour (30 minutes) for every hour beyond the 7th hour worked (starting at the beginning of the 7th hour).

#### 20. CREW MEMBERS' SAFETY, HEALTH & WELFARE

- a. **SAFETY MEETING**  
EMPLOYER shall provide a reasonable amount of time at the start of the CREW CALL for the CREW lead or designated CREW MEMBER to conduct a brief safety meeting on the clock. EMPLOYER shall reserve at its discretion the option to host or conduct the safety meeting, but shall conduct a thorough meeting consistent with OSHA best practices and regulations.
- b. **SUPERVISED WORK**  
EMPLOYER or duly-appointed representative shall supervise the unloading, loading or cross-loading of trucks or transports, including the pushing of cases and equipment from location to location. For any task that a CREW MEMBER has identified himself or herself as not having adequate training or experience required to safely complete that task, CREW MEMBER shall not be compelled or expected to carry out that task without supervision or assistance.  
i. Tasks requiring specialized, technical or advanced training shall not be compelled or expected of a CREW MEMBER that does not possess adequate training or experience without supervision or assistance. Such tasks or responsibilities may include, but not limited to:  
1. Arena rigging, high rigging or basket rigging;  
2. Installing or operating any pyrotechnic instruments or incendiary devices, or any kind;  
3. Connecting high-voltage electrical feeder cables to house power or portable generators;  
4. Operating heavy machinery such as scissor lifts, fork lifts, reach forks, articulating boom lifts, earth movers, etc.

- 5. Installing any electronic devices or cabling that are not UL Listed;
- 6. Any other high-risk or increased-risk JOBS requiring specific training and experience, or which the CREW MEMBER has expressed a reasonable uncertainty for their safety or security;

#### c. COMPLIANCE

Compliance and enforcement is the role and responsibility of the EMPLOYER. Failure to observe or comply with this provision does not constitute the acceptance of responsibility or liability by the CREW MEMBER or PROFORCE; nor shall CREW MEMBER or PROFORCE share responsibility or liability for any near-miss, mishap, accident or catastrophic event that should result. In such an event as described, PROFORCE shall be held harmless by EMPLOYER and EMPLOYER agrees to release PROFORCE from any liability, and will assume any and all liability for damage or injury that may result.

#### 21. LOST, STOLEN OR DAMAGED PROPERTY

- a. In the event that personal property or EMPLOYER property is stolen, damaged or lost, EMPLOYER acknowledges that PROFORCE employees, independent contractors and affiliates are trained to report such incidents, including accidents, accidental damage, near-miss situations, injuries, acts of vandalism, negligent behavior and/or any other potential danger immediately and without coercion.
- b. PROFORCE employees and independent contractors are instructed to follow basic, mandatory safety and security protocols, and have the right and authority to refuse and/or report unsafe and/or hazardous conditions, illegal instructions or unreasonable demands.  
i. EMPLOYER nor its affiliates, associates or END-CLIENT may inhibit or interfere with these protocols.  
1. EMPLOYER agrees to notify PROFORCE if CREW MEMBER resists or refuses to comply so that PROFORCE may determine whether instruction or demand is safe and reasonable.  
2. CREW MEMBER retains the sole last right of refusal to perform a task which he/she deems reasonably unsafe or hazardous.
- c. PROFORCE shall take any reasonable measure necessary to provide for the safety and well-being of its CREW MEMBERS.
- d. EMPLOYER acknowledges and agrees that PROFORCE may not be held responsible for lost, stolen, damaged or destroyed equipment resulting from PROFORCE's actions to provide such security for CREW MEMBERS and shall indemnify PROFORCE and its CREW MEMBERS of any and all liability, action, complaint, or cross-complaint related to incidents or conflicts that are not caused by PROFORCE negligence or willful malicious behavior.

#### 22. INDEMNIFICATION

EMPLOYER hereby releases, waives, discharges and covenants not to sue PROFORCE, its officers, employers or representatives, and shall release and indemnify from any and all liability, claims, demands, actions and causes of action whatsoever arising out of or relating to any loss, damage or injury, including death, that may be sustained by EMPLOYER, or to any property belonging to EMPLOYER, whether caused by the negligence or otherwise, while performing the JOB, or while in, on or upon the premises where the JOB is being conducted, while in transit to or from the premises, or in any place or places connected with the JOB

#### 23. FORCE MAJEURE

Except as otherwise expressly provided in this Agreement, neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of any acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, service provider failures or systems not within PROFORCE's possession or reasonable control.

#### 24. JURISDICTION & APPLICABLE LAW

This Agreement will be governed by and construed in accordance with the laws of the State of California. For any disputes arising from Agreement, PARTIES hereby consent to personal and exclusive jurisdiction and venue in the State and Federal Courts located in the City and County of San Francisco, California.

#### 25. ATTORNEY'S FEES & COSTS

If PARTIES breach this Agreement, the breaching party will pay all costs and attorneys' fees incurred by the other parties in connection with such breach, whether or not any arbitration or litigation is commenced.

#### 26. ENTIRE AGREEMENT

This Agreement and the Schedules attached or incorporated herein constitute the entire agreement and understanding between the parties with respect to the subject matters herein, and supersede and replace any prior agreements and understandings, whether oral or written, between and among them with respect to such matters. The provisions of this Agreement may be waived, altered, modified, amended or repealed in whole or in part only upon the written consent of all parties to this Agreement.

#### 27. NO IMPLIED WAIVERS

The failure of any party at any time to require performance by any other party of any provision hereof will not affect in any way the right to require such performance at any time thereafter, nor will the waiver by any party of a breach of any provision hereof be taken or held to be a waiver of any subsequent breach of the same provision or any other provision.

#### 28. NO ASSIGNABILITY

Neither this Agreement, nor any interest herein, will be assigned, transferred, hypothecated, or otherwise conveyed by any party without the prior written consent of the other party.

#### 29. SEVERABILITY

If for any reason any provision of this Agreement shall be determined to be invalid or inoperative, the validity and effect of the other provisions hereof shall not be affected thereby, provided that no such severability shall be effective if it causes a material detriment to any party.

#### 30. ACCEPTANCE OF TERMS & CONDITIONS

- a. EMPLOYER acknowledges that he/she has been provided a copy of the Employer Terms & Conditions during the CLIENT onboarding process, along with PROFORCE's IRS Form W-9 and PROFORCE's Rate Card. PROFORCE reserves the right to update and amend the Terms & Conditions without notification, but PROFORCE agrees to sending updates via email and shall make the most up-to-date publication on PROFORCE's website<sup>5</sup>.
- b. EMPLOYER acknowledges that acceptance of a labor estimate, confirming a labor order, and/or receiving PROFORCE's service shall be considered acceptance of PROFORCE's Terms & Conditions and EMPLOYER shall be bound by all provisions as legally require

<sup>3</sup> <https://www.proforcesolutions.net/stagehand-technician-social-media-policy>

<sup>4</sup> IRS Publication 22 Pub 15a

<sup>5</sup> <https://www.proforcesolutions.net/employer-terms-and-conditions>