

## STANDARD TERMS AND CONDITIONS

### 1. SERVICES

- 1.1. The services set out in this Service Agreement ("Services") shall be provided by Shop Beat Pty Ltd ("Shop Beat") at each of the premises of the customer ("Customer") set forth in this Service Agreement which may be expanded to additional premises by addendum to this Service Agreement.
- 1.2. The Services shall be delivered via on-premises equipment ("Equipment") provided and installed by Shop Beat to the premises and at no other place.
- 1.3. Shop Beat shall for the term of this Service Agreement provide telephonic support to the Customer during regular business hours.
- 1.4. Shop Beat shall not be obliged to render any services other than the specific Services set forth in this Service Agreement and any such additional services requested by the Customer may be performed at Shop Beat's sole and unfettered discretion and subject to the payment of such additional fees as Shop Beat may determine.
- 1.5. The Services shall be updated periodically either via physical attendance at the Premises or remotely via the internet or other telecommunications means and the Customer shall ensure that it provides reasonable access to representatives of Shop Beat at all Premises and maintains the required connectivity to the Equipment provided that any such failure to provide such access or connectivity shall not constitute a breach of this Service Agreement on the part of Shop Beat.
- 1.6. Should Shop Beat, through no fault of its own, be denied access to any Premises (whether during installation, undertaking repairs or for updates) it shall be entitled to charge for its costs incurred in subsequent return visits.

### 2. EQUIPMENT

- 2.1. Shop Beat shall supply and install the Equipment that Shop Beat reasonably determines to be required for operation of the Services.
- 2.2. All Equipment shall remain the sole and exclusive property of Shop Beat and shall be returned to Shop Beat in good working order and condition on termination of this Service Agreement.
- 2.3. The Customer is granted a non-exclusive, non-transferable and non-assignable to use the software associated with the Equipment.
- 2.4. Shop Beat shall maintain the equipment for the Term of the Service Agreement and the Customer may not undertake any repairs or any re-engineering of the Equipment itself or contract/instruct any third party to do so.
- 2.5. All repairs to and maintenance of the Equipment shall be undertaken by Shop Beat during normal working hours and Shop Beat shall be responsible for repairing any faulty workmanship or operating defects that results in a substantial failure of the Equipment to function according to specifications.
- 2.6. Shop Beat shall undertake repairs at the cost of the Customer where the such repairs are a result of negligence or misuse by the Customer, rewiring of the Premises or changes to the connectivity to the Equipment or force majeure.
- 2.7. The Customer shall ensure that all necessary permissions have been obtained prior to installation of the Equipment and shall furthermore take all such steps as may be required to ensure that the Equipment is at all times excluded from any lien, pledge or hypothec over goods stored at the leased premises and the Customer hereby indemnifies Shop Beat against any damages it may suffer as a result its failure to comply strictly with the provisions of this clause including,

but not limited to, special, incidental and consequential damages and loss of profit.

- 2.8. All risk of loss or damage to the Equipment shall pass to the Customer on installation thereof and any risk or loss or damage shall remain the Customers until such Equipment is removed from the Premises by Shop Beat and the Customer shall have and maintain in force sufficient insurance in respect of the Equipment in its possession and, on request, provide a copy of such insurance policy to Shop Beat.
- 2.9. The Customer shall not be entitled to move the Equipment from one Premises to another Premises without the prior written consent of Shop Beat.

### 3. ROYALTIES AND INTELLECTUAL PROPERTY

- 3.1. Shop Beat shall pay in respect of the Services, the mechanical rights associated with them and their exploitation through the provision of the Services.
- 3.2. The Customer shall be obliged to register all Premises with SAMRO and SAMPRO for performance fees and to make all necessary payments based on the size of the Premises for the performance of royalty bearing music in public.
- 3.3. The Customer acknowledges the copyright embodied in the Equipment and the Services and undertakes to comply with any lawful terms imposed by the holders of such copyright including, if required, displaying notices that may be required by such copyright holders.
- 3.4. All intellectual property rights in the Equipment or arising in the course of, or as a result of, the provision of the Services shall vest exclusively with Shop Beat provided further that Shop Beat shall, subject to the payment of all fees in respect thereof, license the Customer to exploit such for the duration of this Agreement.

### 4. TERM AND FEES

- 4.1. This Agreement shall become binding on acceptance in writing by the Customer and the Services shall be rendered from the Activation Date and shall endure for a period of 12 months thereafter.
- 4.2. Additional Premises added to the Services shall be subject to the same term notwithstanding that they were added after the Activation Date.
- 4.3. Either party shall be entitled to 3 months written notice of termination of this Service Agreement unless otherwise terminated in accordance with the provisions of clause 8 of this Service Agreement.
- 4.4. This Service Agreement shall automatically be renewed for a further period of 12 months subject to the increase in the monthly fee unless any one of them gives 3 months written notice to the other on each anniversary of the Activation date.
- 4.5. The Customer shall pay Shop Beat the monthly fee payable on the first day of each calendar month (pro rata for the first month from the Activation Date) whether the Customer accesses the Services or not together with any other fees becoming payable in terms of this Service Agreement without any deduction or set-off. The monthly fee, other than any additional fees, shall be by way of a debit order as provided for in this Service Agreement.
- 4.6. The fees becoming chargeable shall automatically be increased by an amount equal to the Consumer Price Index ("CPI") of the preceding year on each anniversary of the Activation Date provided that Shop Beat shall be entitled to increase the fees payable over and above the CPI by the same percentage increases imposed by the rights holders of the mechanical rights associated with the Service.

- 4.7. Any outstanding payments of fees and any additional charges shall attract interest at the rate of 2% per month calculated daily and compounded monthly in arrears.

#### **5. ADDITIONAL OBLIGATIONS OF THE CUSTOMER**

- 5.1. The Customer shall ensure that it has an adequate, uninterrupted electrical supply to the Premises in order to power the Equipment.
- 5.2. The Customer shall provide the duly authorized representatives of Shop Beat access to the Premises upon reasonable notice during normal business hours to perform any and all tasks relating to the provision of the Services.
- 5.3. The Customer shall comply with all applicable laws, rules, regulations including any public broadcasting license required of it in respect of the Premises along with any applicable codes of conduct to which it may be subject.
- 5.4. The Customer undertakes to comply with all acceptable usage policies of Shop Beat and report any Shop Radio Station performance problems or interruptions via the support channels designated by Shop Beat for such purposes.

#### **6. WARRANTIES**

- 6.1. The Customer warrants that it owns, leases or lawfully occupies the Premises and has all necessary permissions to install and operate the In-store Audio and Video Equipment at the Premises.
- 6.2. Shop Beat warrants that it is authorised to supply the Equipment and the Services and that shall function in accordance with the manufacturer's hardware description and hardware specifications.
- 6.3. No warranty is given nor is to be implied as to the suitability of the Equipment or the Services for any particular purpose notwithstanding that any such purpose may be known or ought reasonably to have been known by Shop Beat.
- 6.4. Shop Beat supplies and provides all Equipment and Services "as is" and does not warrant that the operation thereof will be uninterrupted or error free or that the content will be suitable for any particular purpose notwithstanding its knowledge of any such purpose.

#### **7. LIMITATION OF LIABILITY AND INDEMNITY**

- 7.1. Shop Beat shall not be liable to the Customer for any loss due to interruption of the Services.
- 7.2. Shop Beat shall not under any circumstances arising out of or as a result of any act or omission of Shop Beat (or its representatives) and irrespective of whether such act or omission is negligent be liable to the Customer or its customers, patrons or occupants for any indirect, special, penal, punitive or consequential loss or damage of any kind whatsoever and whether or not such loss was foreseen or reasonably foreseeable including any loss of profits, contracts, loss of information or data or loss of opportunities, loss of goodwill or any other indirect loss or damage.
- 7.3. No liability of Shop Beat shall under any circumstances exceed the total amounts paid by the Customer to Shop Beat.
- 7.4. The Customer hereby indemnifies Shop Beat and shall keep Shop Beat indemnified at all times against any liability, penalty, claim, loss, cost or damage suffered by Shop Beat resulting from any action, proceeding or claim made by any person against Shop Beat arising out of or attributable to any wrongful act or omission of the Customer or any of its personnel or representatives or resulting from a breach of the provisions of this Agreement by the Customer and such indemnity shall extend to the reasonable costs that may be incurred in defending any action instituted against Shop Beat.

#### **8. TERMINATION**

- 8.1. Shop Beat shall be entitled, on the delivery of written notice to the Customer, to forthwith terminate the provision of the Services to any particular or individual Premises in the event of breach by the Customer of any of its obligations insofar as any such Premises is concerned, without prejudice to any claim that Shop Beat may have, including any claim for specific performance or for damages as a result of any such breach.
- 8.2. In the event that either party commits a breach of any of the material terms and conditions of this Service Agreement and, in the case of a remediable breach, remains in default for a period of 7 days after receipt of a written notice from the other party calling for such breach to be remedied, then the other party shall be entitled, without prejudice to any other rights it may have hereunder or in law, to claim specific performance or to cancel and terminate this Agreement.
- 8.3. Either party may forthwith terminate this Service Agreement at any time by giving the other party written notice of such termination if the other party commits any act of insolvency; or makes any arrangement or composition with its creditors generally or ceases or threatens to cease trading.
- 8.4. Shop Beat shall be entitled to forthwith terminate the provision of the Services to any individual Premises on the delivery of written notice to the Customer in the event that the Customer ceases trading or the Customer or its personnel or contractors make use of the Equipment for any purpose which violates the terms and conditions of this Agreement or which Shop Beat reasonably determines to be detrimental to its good name and reputation.
- 8.5. Any termination shall be without prejudice to any claim that either party may have against the other, including for damages, in respect of any breach or any prior breach of the terms and conditions of this Service Agreement.
- 8.6. Upon the expiration or earlier termination of this Service Agreement for any reason whatsoever, the Customer shall immediately return all the Equipment in its possession to Shop Beat and at the Customer's expense.

#### **9. GENERAL**

- 9.1. The Customer chooses the addresses set out in this Service Agreement for the purposes of receiving all notices and processes
- 9.2. Shop Beat may, by the giving of notice at any time to the Customer, cede any of its rights or assign, delegate, transfer, make over or sub-contract any of its obligations in terms of this Service Agreement.
- 9.3. This Service Agreement constitutes the whole agreement between the parties and no addition to, variation, modification or agreed cancellation of this Agreement shall be of any force or effect unless recorded in writing and signed by duly authorized representatives of both parties.
- 9.4. No indulgence or extension of time which Shop Beat grants the Customer may in any way prejudice Shop Beat or preclude it from exercising any of its rights in the future.
- 9.5. All costs and disbursements, including legal costs on an attorney and own client scale incurred by Shop Beat in enforcing its rights under this Service Agreement, collecting any amounts payable and all collection charges shall be payable by the Customer on demand.
- 9.6. Any provision of this Service Agreement which is or may become illegal, invalid or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability and shall be severed from the balance of this Service Agreement and shall not invalidate the remaining provisions.