



Terms & Conditions

1. DEFINITIONS

- 1.1. **"Agreement"** means this agreement, the Order Form and the attached Schedules.
- 1.2. **"Client"** means the person(s), corporate or unincorporated body (whether or not having separate legal personality), firm or other legal entity named on and confirmed by signature of the Order Form forming part of this Agreement and includes such person(s)'s, corporate or unincorporated body's, firm's or other legal entity's successors and assigns.
- 1.3. **"Supplier"** means OnBrand Group Ltd, registered in England 07010602 whose registered office is located at 201 Haverstock Hill, London, NW3 4QG and whose trading address is located at 12-14 Victoria Street, St Albans, Herts, AL1 3JB.
- 1.4. **"Commencement Date"** means the date of this Agreement.
- 1.5. **"Location"** means each of the site(s) set out in Schedule 3 and any which are set out in the Order Form (or as otherwise agreed in writing between the Parties) at which the Service(s) and/or any Equipment shall be provided.
- 1.6. **"Charges"** means the fees payable to the Supplier, for the provision of the Services at each Location as set out in the Order Form commencing as of the date that the Equipment is first installed at the applicable Location(s). Where priced in Euros, this amount is calculated as the Pound Sterling equivalent calculated from the spot rate of Foreign Exchange of Lloyds TSB Bank PLC on the date of invoice.
- 1.7. **"Minimum Term"** means an initial period of thirty-six (36) month commencing on the Commencement Date.
- 1.8. **"Services"** means the supply of pre-recorded messages and or music and services more particularly described in Schedules 1 and 2.
- 1.9. **"Equipment"** means all of the equipment listed in Schedule 1 to this Agreement (including such Equipment supplied on a sale basis and on a hire basis) along with any manuals, replacement parts, additions etc. provided to the Client by The Supplier. NB All Equipment is on a hire basis unless specifically stated otherwise.
- 1.10. **"Working Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.11. **"Working Hours"** means the period from 9.00am and 5.30pm on a Working Day.
- 1.12. **"Year"** means a period of one year, commencing on the Commencement Date.
- 1.13. **"Quarter"** means the following calendar quarter yearly periods: January 1st to March 31st; April 1st to June 30th;
- July 1st to September 30th; October 1st to December 31st.
- 1.14. **"Party"** means either the Client or the Supplier, as the case may be (together the **"Parties"**);
- 1.15. **"Intellectual Property Rights"** means any patents, rights to inventions, copyright and related rights, trade marks, service marks, trade names and domain names, rights in get-up, rights to goodwill and to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including all renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
- 1.16. **"Music Profile"** means a group of similar tracks reproducing music (each a **"Track"**) profiled to match specific criteria (e.g. to match the environment of the Locations and/or the Client's demographics etc).
- 1.17. **"Message"** means an audio recording of scripted content, recorded as a voice only file, edited and produced for the purpose only of broadcast through the Player at the Location(s).
- 1.18. **"Remote Access"** means a suitable broadband internet connection with suitable working and configured remote access to allow direct connection by the Supplier to the Player at the Location(s) at all times.
- 1.19. **"Standard Call Out"** means the despatch of the Supplier's representative to visit any of the Location(s) to attempt to remedy any technical or other faults or for the purposes of installation or reinstallation in accordance with the provisions of this Agreement of any equipment supplied by the Supplier, or its configuration or set up. This is charged to the Client by the Supplier at an initial call out fee of £200 plus VAT to include the first hour's (or part thereof) labour, and then at £75 plus VAT per subsequent hour (or part thereof) such fees being referred to in this Agreement as **"Standard Call Out Fee"**.
- 1.20. **"Contact Details"** means contact telephone number: 03333 220022, email address: voice@onbrand.co.uk;
- 1.21. **"Confidential Information"** means any confidential commercial and technical information relating to any of the existing or planned products, businesses, research and/or development activities, customers and suppliers of the Parties and all other confidential information relating to the Parties and/or to any of the activities or financial affairs of the Parties whether in written, verbal or any other form, which the disclosing Party may divulge to the other Party or to which the other Party may have access during or by virtue of the supply of the Services and includes the existence and contents of this Agreement.



- 1.22 **"Player"** means a delivery mechanism for the play out of Tracks, Messages and other audio.
- 1.23 **"Management Message"** means a type of Message for the exclusive use of the Client for the purposes of its own centre administration, facilities management & customer care e.g. announcements relating to opening & closing times, shopmobility, no smoking, public toilets etc. and includes general messages in respect of events and other generic activities of the Client, where the Client itself is the subject of the message and where no distinct mention or commercial gain is apparent for any other party than the Client itself.
- 1.24 **"Advertising Message"** means any Message (not being a Management Message) which Message advertises or sponsors or endorses any specific third party, product or service and which is sold or re-sold or commercial gain is otherwise derived from the production and/or delivery of the message content, airtime and/or airplay of such message (including any such messages for tenants, retailers, promoters, promotional space users, concessions at the Locations and all other third parties at the Locations).
- 1.25 **"Message Playlist"** means a playlist detailing the nature of airplay and/or order of play of Messages through a Player as requested and scheduled to the Client's requests and requirements by day, date, time or frequency specific parameters.
- 1.26 **"Scheduling Instruction"** means written (email, fax or post) instruction(s) from the Client to the Supplier detailing the parameters of airplay of a Message or Music Profile, including start and finish message play dates, times of the day, frequency or other day, date and time parameters.
- 1.27 **"Inactive Message"** means a Message which is produced, downloaded to a Player, but inactive due to the omission of Scheduling Instructions from the Client and therefore not scheduled to play, and thus dormant on the Player.
- 1.28 **"Active Message"** means a Message which is produced, downloaded to a Player, and active on the current Message Playlist as per the Scheduling Instructions and therefore capable of playing out through such Player.
- 1.29 **"Minimum Audible Volume Levels"** ("the MAVL") means the minimum volume levels that the Service should be played at, as defined by Service below:

Music

Should be audible within the Location at what is considered as background level, that is to say loud enough for the individual tracks and lyrics to be heard distinctly and clearly, yet remaining as background to the centre atmosphere.

Messages

If music is defined as a 'background' ambience, then a Message is 'foreground', that is to say that the sound level for a Message should enable the Message to be prominently heard within the Centre, and be at a suitable

level to capture the necessary attention of the shoppers. A Message should be clearly definable as foreground and in contrast to the background level of music played.

This MAVL is set during the initial installation, but can be equally and easily be reset remotely via a telephone call to the Supplier with assistance from the Client or the Client's authorised delegated person(s).

- 1.30 **"Media Campaign"** means a campaign of Messages utilising the Media Channels
- 1.31 **"Media Channels"** means the use and audible reach of broadcast of any communication device (public address, speaker or other similar audible communication system) at the Location to be made exclusively available for use by Supplier, as detailed by in this Agreement.
- 1.32 **"Production Costs"** means the actual cost of production incurred by the Supplier specifically in respect of any Advertising Messages for any Media Campaign or part thereof or of any booking pertaining to any Media Campaign (including any agency or sales house commissions).
- 1.33 **"Licensing Costs"** the costs to the Supplier of any and all royalties, fees and other sums due to any third parties (including without limitation PRS and PPL (defined below)) in respect of the use of any Track(s), the musical and/or literary works reproduced in such Track(s) and/or other works pursuant to this Agreement.
- 1.34 **"Advertiser"** means a third party purchasing Advertising Messages to be broadcast using the Media Channels at the Centre.
- 1.35 **"Contact List"** means an alphabetically sorted list detailing company, name, position, address, telephone and fax numbers, and electronic mail addresses of persons specified.
- 1.36 **"Business Profile"** means a dated statement detailing footfall, customer demographic statistics spend statistics, dwell time statistics, trend analysis, promotional strategy and marketing strategy of the Client.
- 1.37 **"Gross Advertising Revenue"** means all gross monies and other sums actually received by the Supplier in respect of the AASS, any Media Campaigns and/or Advertising Messages, less VAT in any Quarter
- 1.38 **"Advertising Profit"** means Gross Advertising Revenue less all applicable Production Costs and Licensing Costs.

2. Interpretation

The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement. References to clauses, paragraphs, Schedules and subdivisions of them refer to the clauses, paragraphs, schedules and subdivisions of them in this Agreement. Unless the context requires otherwise, any reference(s) to any statute, statutory provision, order or regulation includes any consolidation, re-enactment, modification or replacement of the same and any subordinate legislation, orders or regulations in force under any of the same from time to time. The masculine, feminine



or neuter gender respectively includes the other genders, references to the singular include the plural (and vice versa) and references to persons include firms, corporations and unincorporated associations and other legal entities. This Agreement incorporates any Schedules to it and these form an integral part of it.

3. Assignment

- 3.1 The Client may at any time assign, its rights or obligations under this agreement or terminate with 30 days' notice.

Provided that it notifies the Supplier within 30 days of the date of any such assignment or termination as to the identity and address of the assignee and of any relevant invoicing information.

- 3.2 The Supplier shall be entitled to charge an administration fee in accordance with the Supplier's list price (which list prices are available on request from the Supplier).
- 3.3 The Supplier may assign its rights and obligations under this Agreement.

4. Addition and Withdrawal of Locations

- 4.1 If the Client requests, the Supplier may provide the Services and Equipment at additional or replacement sites on terms to be agreed (including without limitation as to the installation charge(s) which unless agreed otherwise shall be in accordance with the Supplier's list price (which list prices are available on request from the Supplier).
- 4.2 Each such additional site shall be deemed to be a Location for the purposes of this Agreement and the terms hereof shall apply mutatis mutandis from the date that the Equipment is first installed at the site(s) concerned.
- 4.3 This Agreement contemplates the Location(s) being situated within the United Kingdom. However, the Supplier may at its discretion deliver and install the Services and any Equipment to any site outside the United Kingdom requested by the Client for an additional fee to be determined by the Supplier. For the avoidance of doubt, the Supplier is under no obligation to provide any services or equipment under this Agreement in any territory where to do so might be unlawful and any arrangement to provide the Services to Location(s) outside of the UK shall be solely on the condition that the Client obtains and pays for the appropriate licences' and consents from the relevant licensing bodies for the territories in question.
- 4.4 Where there are in excess of fifty (50) sites listed at Schedule 3 as at the Commencement Date the Client may request that the Service ceases and the removal of any non-sale basis Equipment from up to 5% of such Locations during any Year after the first Year of the Term at no penalty provided that at least three months' prior written notice is given. The foregoing is subject to the removal of the Services and Equipment at a cumulative maximum cap of 15% of the Location(s) during the Term of this Agreement.

5. Intellectual Property Rights

Each Party will retain all right, title and interest in and to their

respective Intellectual Property Rights, including but not limited to, those relating to or used in connection with this Agreement. Except as provided for in this Agreement, no licence or other rights are hereby granted in respect of any Intellectual Property Rights owned by either Party. If during the Term the Supplier shall commission any material for use in providing the Services, then as between the Client and the Supplier, the Client acknowledges and agrees that any and all Intellectual Property Rights relating to, in respect of or arising from such material, shall vest in the Supplier. Each Party

permits the other to use the other's trade marks, service marks or trade names only as specifically provided by or required for the purpose of this Agreement. Neither Party shall use the others' name, logo, slogan or service mark made or prepared for, commissioned or belonging to the other without prior written consent from the other Party (such consent not to be unreasonably withheld or delayed). On termination of this Agreement, howsoever caused, each Party shall cease using the others' trade marks, service marks, trade names, logo, slogan or service marks and other Intellectual Property Rights. The Intellectual Property Rights in all and any Message(s) produced by the Supplier vest in the Supplier.

6. Confidentiality

Both Parties agree that all Confidential Information supplied or issued in connection with this Agreement, is private and must be kept confidential between them and may only be disclosed to a Party's employees, agents, subcontractors and advisers or to any third party as required by law or regulatory body or with the specific written consent of the other Party.

7. Grant of Rights

- 7.1 The Client grants to Supplier the exclusive right to provide the Services and Equipment at the Locations during the Term and the Supplier agrees to carry out the Services at the Locations for the Client during the Term in accordance with the provision of this Agreement.
- 7.2 During the Term the Client will not engage or permit anyone other than Supplier to render any services at the Locations which are identical or similar to or in any way substitutional for the Services (or any part or parts of the Services).
- 7.3 Nothing in this Agreement shall prevent the Supplier from carrying out any services (including those which are identical or similar to the Services) for any other person(s).

8. Term

The "Term" of this agreement shall be for a period equal to the Minimum Term and continuing thereafter in full force and effect unless and until terminated in accordance with the Termination clause below.

9. Termination

- 9.1 Either Party may terminate the Term of this Agreement as at any time by giving not less than 90 days written notice of termination to the other Party. If the Term is not so terminated then it shall continue on a rolling basis for successive additional periods each of twelve (12) months (each such period being an "Additional Period") unless and until either party terminates the Term by giving not less than 90 days written notice of termination to the other Party.



- 9.2 Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may terminate this Agreement without liability to the Client immediately on giving notice to the Client if:
- 9.2.1 the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
 - 9.2.2 the Client commits a breach of any material term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the Client being notified in writing of the breach; or
 - 9.2.3 the Client repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - 9.2.3 the Client suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
 - 9.2.4 the Client commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies, or the solvent reconstruction of the Client; or
 - 9.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Client; or
 - 9.2.6 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the Client; or
 - 9.2.7 a floating charge holder over the assets of the Client has become entitled to appoint, or has appointed, an administrative receiver; or
 - 9.2.8 a person becomes entitled to appoint a receiver over the assets of, or a receiver is appointed over the assets of the Client; or
 - 9.2.9 a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - 9.2.10 any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.3 to clause 9.2.9 (inclusive); or
- 9.2.11 the Client suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 9.3 On termination of this Agreement for any reason:
- 9.3.1 the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
 - 9.3.2 the Client shall, within a reasonable time, return all of the Supplier's non-sale basis Equipment (including without limitation the Player(s)). If the Client fails to do so, then the Supplier may enter each of the Location(s) and the Client's other premises and take possession of them. The Client will be liable for charges for this at the current rates of the Supplier at the time. The Supplier will try to do this work as tidily as possible, but will not be liable for any repairs that may be necessary. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;
 - 9.3.3 the accrued rights, remedies, obligations and liabilities of the Parties as at termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination; and clauses which expressly or by implication have effect after termination shall continue in full force and effect.
 - 9.3.4 Upon the termination of this Agreement the Supplier shall cease to market and sell Media Campaigns across the Media Channels and shall withdraw all references to the Client from its promotional material.
- If the Client cannot return the Equipment supplied by the Supplier upon termination, the Client agrees to pay the Supplier upon demand reasonable and proper replacement costs up to the value of the £1,500 plus VAT per Location.
- 9.4 Notwithstanding the foregoing, in respect of any Media Campaign (or any part of or booking pertaining to any Media Campaign) which has not been completed prior to any termination of this Agreement, at the Supplier's election, the Client shall permit any Services to continue and any termination of the Term to be suspended and shall pay the Charges so as to honour such Media Campaign (or any part of or booking pertaining to any such Media Campaign) agreed prior to termination, until such the same has/have been completed via the applicable Player. The payment of any Advertising Profit that may be due to the Client upon the fulfilment of any such Media Campaign (or any part of or booking pertaining to any such Media Campaign) shall at the Supplier's election be made: (a) via the reduction of any outstanding invoices from the Supplier to the Client; (b) by paying the relevant amount of the Client's share of any Advertising Profit to the Client in accordance with this



Agreement; or (c) the compulsory sale by the Supplier of such Media Campaign (or any part of or booking pertaining to any such Media Campaign) at contract value to any newly appointed agent directly replacing the Supplier, and which shall thereafter release the Supplier of any further liability to the Client of any outstanding payment. The Client shall fully indemnify the Supplier in respect any liability it may have to any third party in respect of any failure of Supplier to honour any such

Media Campaign (or any part of or booking pertaining to any such Media Campaign).

10 Payment

- 10.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the Charges as and at the times set out in the Order Form.
- 10.2 Where prices are not stated in the Schedule, the Supplier's list price shall apply (which list prices are available on request from the Supplier).
- 10.3 The Supplier may increase the Charges at any time after the first year of this Agreement (but each such increase shall not exceed 10% of the then immediately preceding applicable Charge).
- 10.4 All charges (including the Charges) quoted to the Client shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 10.5 The Supplier shall invoice the Client annually in advance for its Charges (together with VAT where appropriate) for the Year (or part thereof) concerned.
- 10.6 The Client shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 10.7 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the due date, the Supplier may:
 - 10.7.1 charge interest on any overdue sum from the due date for payment at the annual rate of 8% over the base lending rate from time to time of Lloyds Bank PLC accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay such interest immediately on demand; and
 - 10.7.2 suspend all Services and withdraw from any maintenance obligations until payment has been made in full.
- 10.8 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision.
- 10.9 All amounts due to Supplier under this Agreement shall be paid in full without any deduction or withholding other than as required by law. The Client shall not be entitled to assert any credit, set-off or counterclaim

against the Supplier in order to justify withholding payment of any such amount in whole or in part.

- 10.10 Without prejudice to the remaining terms of this Agreement, in the event that the Services shall no longer be provided to such number of Locations (including any additional Locations and/or replacement Locations) as is equal to 75% or more of the aggregate number of Locations listed in Schedule 3, then the Charges will be increased to reflect reduced economies of scale by an amount to be determined by The Supplier (acting reasonably) but which shall in any event be no more than the charges that would be applicable if the services had been provided to 75% of the Locations listed in Schedule 3.

- 10.11 The Supplier retains title to all Equipment provided on a sale basis until payment has been received. The Supplier retains title to all other Equipment.

11 Responsibilities and Obligations of the Supplier

The Supplier shall use reasonable endeavours to provide the Services in accordance with the Schedules in all material respects. The Supplier shall use reasonable endeavours to meet any performance date or response time specified in the Schedules but any such date shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement. The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonably security requirements that apply at the Locations that have previously been communicated to the Supplier by the Client provided that the Supplier shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

12 Responsibilities and Obligations of the Client

- 12.1 The Client shall pay the Charges in accordance with provisions of this Agreement.
- 12.2 The Client shall use all reasonable endeavours to ensure that the Supplier, its servants, agents and sub-Suppliers have free and full access to the Locations for the purpose of providing the Service, or for the purpose of ensuring the provision or maintenance of the Service, the Supplier shall use its reasonable endeavours to carry out the installation as tidily as possible, but will not be liable to the Client in respect of any damage so caused or any disturbance to the Locations or the tenants of their Locations, their agents or invitees.
- 12.3 The Client shall at all times maintain and pay for any and all licenses, consents and permissions required in respect of the public performance/playing in public and other exploitation of the Track(s) (and the music and lyrics reproduced in the Tracks) and any Message(s) provided by Supplier at the Locations (whether or not through the Equipment) including but not limited to Performing Right Society Limited ("PRS") and Public Performance Limited ("PPL") licences (or (where applicable) the local equivalent), consents and permissions. The Client will indemnify The Supplier against any claim arising from the non payment, default of or lack of applicable or failure to obtain any



- license(s), consents or permissions in respect of the Service.
- 12.4 The Client shall ensure all of the provisions of any applicable licenses, consents and permissions in respect of the exploitation of the Tracks (and the music and lyrics reproduced in the Tracks) including those from PRS and PPL are complied with including without limitation that no more than four (4) Tracks from the same record (other than a compilation album) are played through any Player in any period of sixty (60) minutes and no more than four (4) Tracks by the same artist are played consecutively and that no Advertising Message(s) are played at the same time as (i.e. over) any Track.
- 12.5 The Client shall ensure at all times that it shall not make any recording or copy or permit any recording or copy to be made (including without limitation by means of tape recording or making digital copies) of any Tracks or any Messages supplied by Supplier or mix, remix, edit or change or otherwise manipulate any Tracks or any Messages supplied by the Supplier. On request the Supplier may (in its discretion) quote (including any in respect of any additional licensing costs where appropriate) for any further usage rights of either any Track(s) or Message(s).
- 12.6 The Client shall ensure at all times that all manual microphones and automated evacuation systems override the Supplier's connection to the Client's public address or evacuation systems. The Client is responsible that in the event of urgent or emergency situations or other similar incidents at the Locations (e.g. evacuation, fire, bomb threat etc) where immediate broadcast of information or communication is required, for the broadcast of that information itself by having alternative methods to communicate, than to request changes by the Supplier or utilise the Service for these purposes.
- 12.7 The Client agrees that only permitted devices approved in writing by the Supplier will be plugged in or interfaced with the Equipment and the Client shall not engage the services of any other party to fulfil any function or service of the Supplier, including in relation to any maintenance or support of the Equipment, nor will it connect to, copy or manipulate any part of the Supplier's Equipment (including without limitation any software or hardware supplied).
- 12.8 The Client shall not at any time alter, modify, adapt or translate the whole or any part of any software supplied in any way whatsoever nor to decompile, disassemble or reverse engineer the same except to the extent and in the circumstances expressly permitted by law.
- 12.9 The Client also agrees to cooperate with the Supplier in support of the Service and assist where necessary in restarting any Equipment and/or confirming all cables are correctly connected or facilitating collection of any equipment by courier, where reasonable and proper to do so.
- 12.10 The Client shall keep the Equipment and any additional equipment supplied insured (including against damage) to the value of the £1,500 in respect of each Location.
- 12.11 The Client agrees to ensure that the power source to which the Equipment is connected is both compliant to the relevant British Standards certification and adequately spike and surge protected.
- 12.12 All materials, non-sale basis Equipment, tools and data supplied by the Supplier to the Client shall, at all times, be and remain the exclusive property of the Supplier but shall be held by the Client in safe custody as the Supplier's bailee at its own risk and maintained and kept in good condition by the Client until returned to the Supplier and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 12.13 The Client shall mark all non-sale basis Equipment as The Supplier's property and shall ensure that it is stored in satisfactory conditions and separately from all the Client's other equipment or that of a third party, so that it remains readily identifiable as the Supplier's property.
- 12.14 The Client shall not at any time permit any third party to interrupt the Service or deface, or remove the Equipment.
- 12.15 The Client agrees to ensure that the Supplier is notified with immediate effect of any changes, maintenance or other such work to any public address system, amplifiers or its speakers.
- 12.16 The Client agrees to pay the Supplier its reasonable costs (including parts and labour) for reasonable and proper repairs and maintenance of the Supplier's Equipment default where the damage or want of repair has been caused by the Client's intervention, negligence or negligent use of the Equipment
- 12.17 The Client shall be responsible for the acts and omissions of each of its officers, employees, staff, agents, consultants and sub-contractors (each a "Connected Person") in connection with this Agreement, to the same extent as if such activities were performed directly by the Client. The Client shall ensure that each and every Connected Person is in compliance with all of the terms and conditions of this Agreement and the Client agrees that any violation of such terms and conditions by any Connected Person shall be treated as a breach by the Client.
- 12.18 The Client agrees to maintain or hold an appropriate and effective maintenance contract for the Client's public address system at the Locations and to ensure that the public address system is operational and in all regards suitable for the supply of the Services
- 12.19 The Client agrees to ensure that Minimum Audible Volume Levels are maintained at all times
- 12.20 The Client accepts that whilst every care is taken to configure each Player to the optimum achievable MAVL, each Player is at the behest of the input it is plugged into (i.e. the quality of the public address system and its speakers). In such cases we can recommend third parties to tune up or quote for remedial works, but it is highly recommended and it is the Client's responsibility to ensure that these issues are addressed.



13. Indemnity & Insurance

13.1 The Supplier will insure and keep itself insured up to a minimum sum of £5,000,000 (five million pounds sterling) in respect of its liability for all and any loss or damage (including death or personal injury) caused to any third party (including without prejudice to the generality of the foregoing the Suppliers own employees, agents and permitted sub-Suppliers) arising from the performance of the Suppliers obligations hereunder.

13.2 Whilst every care is taken in the creation of a Music Profile, the Supplier will not be held liable by any party for the airplay of any track of Music which contains profanity or other lyrics deemed to be offensive.

14. Notices

Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, sent by pre-paid first-class post or recorded delivery, to the party required to receive the notice at their address set out above or as otherwise specified by the relevant party by notice in writing to each other party. Any notice shall be deemed to have been served: (a) if delivered personally, when left at the address and for the party referred to in this clause; or (b) if sent by pre-paid first-class post or recorded delivery, on the second business day after posting.

15. Limitation of liability

15.1 This clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:

- 15.1.1 any breach of this Agreement however arising;
- 15.1.2 any use made by the Client of the Services, and the Equipment or any part of them; and
- 15.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

15.3 Nothing in this Agreement limits or excludes the liability of the Supplier for:

- 15.3.1 death or personal injury resulting from negligence; or
- 15.3.2 any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Supplier.

15.4 Subject to clause 15.2 and clause 15.3, the Supplier shall not under any circumstances whatever be liable for:

- 15.4.1 loss of profits; or
- 15.4.2 loss of business; or
- 15.4.3 depletion of goodwill and/or similar losses; or
- 15.4.4 loss of anticipated savings; or
- 15.4.5 loss of goods; or

- 15.4.6 loss of contract; or
- 15.4.7 loss of use; or
- 15.4.8 loss of corruption of data or information; or
- 15.4.9 any special, indirect or consequential loss, costs, damages, charges or expenses;

15.5 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to the price paid for the Services during the period of one (1) year prior to the date that such liability first arose.

16. Law

16.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

16.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

17. General

17.1 This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or Agreements between them, whether written or oral, relating to the subject matter of this Agreement.

17.2 Each party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

17.3 Nothing in this clause shall limit or exclude any liability for fraud.

17.4 A person who is not a party to this Agreement shall not have any rights under or in connection with it.

17.5 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

17.6 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

18. Cancellation

This Agreement can be cancelled without penalty anytime within the first fourteen (14) days of the Commencement Date.



SCHEDULE 2 (Details of the Services to be provided by the Supplier & Terms of Supply & Use)

1. The Equipment and the Services are provided to the Client strictly on a rental/hired basis (as set out above), unless otherwise stated. The Supplier retains ownership of the hire basis Equipment and all Tracks and Message content supplied by the Supplier at all times.
2. **Delivery and Installation of Equipment**
 - 2.1 Subject to the provisions of this clause and the Schedules the Supplier shall deliver and install the Equipment at the Locations and shall use reasonable endeavours to supply on any date(s) stated in the Schedules, if any. If access to any Location at the agreed time is denied to the Supplier, the Client shall pay any additional expenses incurred for any subsequent delivery.
 - 2.2 Delivery and installation shall take place during normal business hours and in the event that the Client requires delivery or installation outside of these hours, the Supplier may make reasonable additional charges.
 - 2.3 The Client is responsible for ensuring the Locations are suitably prepared for delivery and installation (including suitable provision for access). Any specific requirements in relation to the Locations are to be agreed in advance and in the event that any additional equipment becomes necessary for the installation, this shall be paid for by Client.
 - 2.4 The Client shall be deemed to have accepted the Equipment two days following delivery unless the Supplier is informed otherwise.
 - 2.5 Following installation, The Supplier shall provide such training for the Client's staff in the proper use of the Equipment as the Supplier shall determine to be appropriate and shall provide a manual to be kept at the Location. Should the Client require the Supplier to return to any Location at a later date to provide any further training, the Supplier may make an additional charge for this.
3. **Music Services**
 - 3.1 The Supplier will supply up to seven hundred and fifty (750) Tracks at any time to the Player(s) to include up to twenty (20) Track updates per month to the Music Profile(s) as appropriate. The Supplier will quote reasonable and proper additional costs to the Client if the Client wishes to increase the number of Tracks supplied in excess of the foregoing.
 - 3.2 The Supplier shall update the Service in accordance with the relevant provisions of Schedule 1.
 - 3.3 Updated Tracks and/or new Messages will be sent by post, satellite, ISDN or modem according to the level of service shown in this Agreement. Delivery of tapes, CD's, CD Rom's, DVD's is dependent on the post service. The Supplier is not liable for any losses or damage caused by postal delays.
 - 3.4 The Supplier may at any time supply new Tracks and/or Messages by way of SD or other memory card(s) or storage media ("**Storage Media**"). Where Supplier does so, Client shall be responsible for returning any previously supplied Storage Media to the Supplier in accordance with the Supplier's reasonable instructions. If the Client fails to return any such Storage Media, the Supplier shall be entitled to require the Client to pay the Supplier's reasonable replacement costs for such Storage Media and the Client shall pay such costs on demand.
 - 3.5 The Supplier will on installation provide a Music Profile, as pre-agreed with the Client. Thereafter excluding the updating and refreshing content in line with this Music Profile, any additional sourcing of Tracks to generate a unique, new and non previously used Music Profile for the Client will be subject to an administration fee of £150 + VAT per 75 Tracks profiled.
 - 3.6 Additional production services can be requested of the Supplier where sound effects, idents, jingles, stings or other background music or other audio production work is required. This will be subject to availability and costs, and may be subject to additional licensing requirements which will be quoted and advised to the Client on request.
4. **Message Services**
 - 4.1 **Content Management**
 - 4.1.1 The Supplier will supply (as requested by the Client) the applicable quantity of Management Messages during each Quarter. These Management Messages can be requested at any time during the Quarter. All Management Messages will be set up as Inactive Messages, unless or until Scheduling Instructions are duly given to the Supplier by the Client.
 - 4.1.2 The Supplier requires 10 working days from the receipt of Client approved instructions of a required new Management Message before the Management Message is to be available through the Player. A premium service exists where shorter timescales are required but this is subject to availability and additional costs, which will be quoted on request. Equally a post production service can be requested where sound effects or other audio production



work is required. This too, will be subject to availability and costs, which will be again quoted on request.

- 4.1.3 Unused Management Messages from this allocation cannot be carried over from one Quarter to the next.
- 4.1.4 All Active Messages will be put on a Message Playlist which will be sent to the Client on initial installation and on subsequent request of the Client.
- 4.1.5 Any amendment to the Scheduling Instructions of all Active Messages and their removal, and the activation of Inactive Messages will be during Working Hours, conditional upon successful and operational Remote Access. Outside of Working Hours the Supplier will use its reasonable endeavours to do the same.
- 4.1.6 The Supplier will accept audio content produced by other parties such as radio advertisements, or other similar audio messages, providing they are supplied in a suitable quality and file format, and that the Client shall be responsible for ensuring that any reproduction, public performance, communication to the public and any other licence(s) (including without limitation from Phonographic Performance Limited and the Performing Right Society Limited) in respect of any musical composition(s), lyric(s), audio recording(s) and/or other content reproduced in any such advertisements and/or messages are obtained and paid for. These messages will be considered and categorised as either Management or Advertising Messages only and treated as such accordingly (i.e. taken from allocations where applicable).
- 4.1.7 Should the Client require further Management Messages in excess of their Quarter's allocation, these Management Messages will be charged at an additional cost of £150 plus VAT for up to 5 Management Messages, £250 plus VAT for between 5 and 10 Management Messages, provided they are recorded together at one time.

4.2 **Audio Advertising Sales Service**

- 4.2.1 The Supplier shall during the Term have the exclusive and unlimited right to sell audio advertising, endorsement and sponsorship via the Media Channels (the "**Audio Advertising Sales Service**" or "**AASS**"). The Supplier shall (subject as follows and subject to clause 9.4) make no separate charges to the Client in respect of the provision of the AASS.
- 4.2.2 All rights to the sale of advertising and all monies which may arise by virtue of the provision of the AASS shall remain the property of the Supplier subject only to the obligation to account to the Supplier for the Client's share of any Advertising Profit in accordance with Schedule 4.
- 4.2.3 The Supplier agrees with the Client to:
 - a) market and sell Media Campaigns to advertisers;
 - b) liaise with all such incumbent third party media sales suppliers to the Client to ensure that the Media Campaigns sold by the Supplier can be facilitated – subject to the Client agreeing to instruct these parties to do so, and to cooperate with the Supplier.
 - c) use all reasonable endeavours to enter into contracts for value with Advertisers for the sale of Media Campaigns in accordance with this Agreement;
 - d) obtain licences for the reproduction, public performance and communication to the public of any musical compositions, lyrics, audio recordings and/or other content on Advertising Messages where applicable, notwithstanding that it is the Client's responsibility to ensure that all relevant licenses for the public performance, broadcast and communication to the public of Advertising Messages at the Locations remain in effect throughout the Term; and
- 4.2.4 The Client shall:
 - a) make the Media Channels available for the exclusive use of the Supplier and shall do all such things reasonably required by the Supplier to facilitate the setting up of Media Campaigns on the Media Channels and to enable The Supplier to fulfil its obligations to Advertisers;
 - b) provide to the Supplier upon request a Business Profile for the purpose of agreeing contracts for value with Advertisers for the sale of Media Campaigns and shall inform the Supplier of any amendments to the same within the duration of this Agreement.
 - c) provide to the Supplier upon request, subject to any confidentiality agreements or arrangements with third parties, a Contact List of retailers, promoters, commercial partners and other parties deemed suitable as potential Advertisers of the Client that will be contacted by employees or agents of the Supplier for the purpose of agreeing contracts for value with Advertisers for the sale of Media Campaigns and shall inform the Supplier of any amendments to the same within the duration of this Agreement.
 - d) not sell any Media Campaigns themselves, but refer all interested parties directly to the Supplier to ensure consistency of sale, and to coincide with any planned Media Campaigns.



- 4.2.5 The Supplier shall exclusively be entitled to collect all Gross Advertising Revenue (defined in Schedule 4 below). If, notwithstanding the foregoing, the Client shall receive any Gross Advertising Revenue directly, it shall promptly forward 100% of such Gross Advertising Revenue to the Supplier without deduction.
- 4.2.6 The Supplier will not be held liable, in the event that the Advertiser defaults on the payment, for the loss or default of the Client's share of any Advertising Profit projected or otherwise presented to the Client. The Client's share of Advertising Profit paid as per Schedule 4 is entirely separate from any other payments and exchange of monies between the Parties and shall not be set off any such monies due.
- 4.2.7 In conjunction with the Client, the Supplier will administer and manage the Message Playlist and Media Campaigns. In doing so, the Supplier will not exceed, unless by written authority of the Client, six (6) thirty (30) second Advertising Messages per hour.
- 4.3 Veto
- 4.3.1 The Supplier will be responsible for ensuring that all Media Campaigns comply with all legal and regulatory requirements and shall have final sign off of all such material in respect of such requirements.
- 4.3.2 On booking of any Media Campaign the Client will be notified and will have 24 hours to exact a veto if required on the message. Otherwise, all Media Campaigns will be typically live and 'on air' within 24 hours of booking.
- 4.3.3 Unless otherwise stipulated in writing to the Supplier the approval and acceptance of each Message shall be conducted between the Supplier and the Centre Manager of the Client's Location.
- 5 Maintenance, Warranty and Support**
- 5.1 The Supplier will provide unlimited telephone support to the Client for all Equipment supplied by the Supplier during the Term.
- 5.2 All faults should be reported by the Client to the Supplier using the Contact Details provided. Outside of Working Hours, the Supplier will only accept and provide response to telephone enquiries as referred to in the Contact Details. The Supplier shall use its reasonable endeavours to ensure that all other communication methods will be dealt with on the next Working Day.
- 5.3 Unless stated otherwise in the Schedule(s), The Supplier shall provide no maintenance or repairs service on weekends or bank holidays.
- 6 Sale Basis Equipment**
- 6.1 All Equipment sold by the Supplier to the Client shall be subject to the Supplier's standard terms of business. Unless otherwise stated this is a one (1) year return to base warranty. The Supplier will, however, provide loan or replacement equipment during the first year of this Agreement subject to a Standard Call Out Fee to install if required and/or cost of two way courier costs if the Client elects to swap out the Equipment themselves. After the first Year, the Supplier will charge replacement Equipment costs at the Suppliers list price, plus Standard Call Out Fees for installation.
- 6.2 The Client will be charged for all repairs to Sold Equipment after the first contract year that is not covered by an extended warranty agreement.
- 7 Hire Basis Equipment – Maintenance Service**
- 7.1 For hire basis Equipment, the Supplier shall provide a Maintenance Service to the Client during the initial Minimum Term. The Maintenance Service covers all parts and labour necessary for the repair of the hired Equipment. For the first Year this Maintenance Service will include all courier costs for the return or collection of hire basis and such other Equipment. Thereafter the Client will be invoiced by the Supplier for reasonable postage and courier and administration costs.
- 7.2 The above maintenance for Equipment is supplied except where this is caused by any:
- 7.2.1 Client or third party interference with the Equipment including changes to the wiring;
- 7.2.2 Client or third party equipment being connected to the Equipment;
- 7.2.3 neglect, misuse or deliberate acts of damage against the Equipment by the Client or a third party;
- 7.2.4 acts outside the control of the Supplier including, but not limited to, acts of God, fire, explosion, flood, war and riot.
- 7.3 In these circumstances, the Client will be liable for Standard Call Out Fees, replacement Equipment charges as per the Supplier's list price, courier and admin charges where applicable.
- 7.4 The Supplier reserves the right to recover (and the Client agrees to pay upon presentation of the Supplier's invoice with respect thereto) reasonable and proper courier and administrative costs in accordance with the Supplier's list price (which list prices are available on request from the Supplier), where at any time
- 7.4.1 collection is arranged with the Client and the applicable Equipment is not made ready for collection by the Client; or



- 7.4.2 Equipment returned to the Supplier is found not to be in perfect working order save for fair wear and tear.
- 7.5 In all other circumstances, therefore, unless as described and covered above, all maintenance, repair or renewal will be charged at the Supplier's list price.
- 7.6 It is the Supplier's policy to try to resolve any faults initially with telephone support and asking the Client to check the applicable Equipment and its connections. Thereafter, it is usual that any replacement equipment required is couriered overnight to the Client and this is swapped out locally onsite by the Client. If this does not resolve the matter the Supplier will send an engineer to site. The Supplier will respond to service calls quickly and in most cases will have an engineer on site no more than five (5) working days after a fault is reported, subject to the above steps being completed in reasonable time.
- 7.7 The Client will be charged for all repairs to hire basis Equipment that is not covered by an extended warranty agreement with the Supplier after the initial Minimum Term.

Extended Warranty

Additional extended warranties are available for purchase that will provide next working day swap out equipment and installation for the period of the Term (in addition to the maintenance services set out in paragraphs 4, 5 and 6 of this Schedule 2 above). These are subject to a minimum of fifty (50) Locations being installed for the Client and operational and charged at 10% of the Equipment sale value in accordance with the Supplier's list price (which list prices are available on request from the Supplier) in Year 1; 25% of the Equipment sale value in Year 2; 30% for each subsequent Year thereafter. An Extended Warranty can only be purchased within thirty (30) days of the installation of the Equipment and must be taken on all installed Locations.

SCHEDULE 3 – LOCATION

The list of stores below are the sites that the Services & Equipment are to be supplied to.

SCHEDULE 4

(Profit Share Arrangements)

1. Subject to paragraph b) of this Schedule 4 below, the Supplier shall pay the Client, or its nominee one third (1/3) of Advertising Profit (defined below). Such share of Advertising Profit, will be due 60 days after the end of the applicable Quarter.
2. Where the Client can demonstrate to the reasonable satisfaction of the Supplier that the Client is responsible for the solicitation and sale of any particular audio advertising messages (as opposed to the Supplier being so responsible), then the Supplier shall pay the Client, or its nominee one half (1/2) of Advertising Profit. Such share of Advertising Profit, will be due 60 days after the end of the applicable Quarter.
3. Notwithstanding the provisions of clause 9, during the Minimum Term the Charges that would normally be applied for the Services will be set aside and deducted from the Client's share of Advertising Profit as when the applicable Gross Advertising Revenue is generated and received.



SUPPLIERS LIST PRICES

Effective from September 2019, valid for 6 months

Suppliers List Price			Suppliers List Price		
Item	Sale Value (per item)	Qty	Item	Sale Value (per item)	Qty
PLAYER			COURIER CHARGES		
HDD Music Player	£450.00	1	<i>Next day pre 5.30pm</i>		
ROUTER			Up to 5kg	£8.75	1
Standard 4 port Router	£50.00	1	Up to 10kg	£12.95	1
CABLING			Over 10kg	+ £0.45p per kg	1
Per 100 metres	£80.00	1			
MUSIC PROFILING			<i>Pre 12 delivery</i>		
Per 75 tracks	£150.00	1	Up to 10kg	£16.50	1
4 PORT NETWORK SWITCH	£32.00	1	Over 10kg	+£0.65 per kg	1
			LABOUR		
			Standard Call Out Fee	Initial call out fee of £200 plus VAT to include the first hour's (or part thereof) labour, and then at £75 plus VAT per subsequent hour (or part thereof)	1
			ADMIN		
			Standard Charge	£50.00	1
			Assignment Charge (per site)	£15.00	1

All prices subject to VAT at prevailing rate