

Hire Terms and Conditions

1. Definitions

"Accepted Order" has the meaning given in clause 2.2.

"Australian Consumer Law" means schedule 2 of the *Competition and Consumer Act 2010* and any equivalent state or territory legislation.

"Business Day" means any day which includes Saturdays, Sundays and public holidays.

"CCA" means the *Competition and Consumer Act 2010*.

"Confidential Information" means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Equipment, the Services or OUTBACK BEATS's business.

"Contract" means the contract of hire (as the case may be) of Equipment and/or Services between OUTBACK BEATS and the Customer which comprises these Terms, any terms set out in the Credit Application and the Accepted Order for the Equipment and/or Services.

"Control" has the meaning given in section 50AA of the *Corporations Act 2001*.

"Credit Application" means a credit application submitted by a Customer in a form approved by OUTBACK BEATS.

"Customer" means the individual, body corporate, partnership or body politic (or any of them acting in the capacity as trustee of a trust) which hires the Equipment and/or acquires the Services (as applicable) from OUTBACK BEATS pursuant to these Terms, the details of which are as specified in any invoice, Credit Application or Accepted Order.

"Delivery" or "Delivered" has the meaning provided in clause 5.3.

"Dry Hire" means the hire of Equipment without an Engineer, Technician and/or relevant crew.

"Equipment" means any equipment (and each and every part of the equipment) supplied on hire by OUTBACK BEATS to the Customer under the Contract on a Wet Hire or Dry Hire basis.

"Hire Period" has the meaning given in clause 21.1(a).

"Insolvency Event" in relation to a person means the happening of any of the following events to that person:

- (a) they are (or state they are) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001*); or
- (b) they have had a controller (as defined in the *Corporations Act 2001*) appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver or a receiver and manager appointed to any part of their property; or
- (c) they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved, (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by OUTBACK BEATS); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to in paragraphs (a) to (c) inclusive above; or
- (e) they are taken (under section 459F of the *Corporations Act 2001*) to have failed to comply with a statutory demand or have committed an act of bankruptcy as defined in the *Bankruptcy Act 1966*; or
- (f) they are the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (or they make a statement from which OUTBACK BEATS reasonably deduces they are so subject); or
- (g) they are otherwise unable to pay their debts when they fall due; or
- (h) something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

"Intellectual Property Rights" means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) confidential information and trade secrets;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights under the Circuit Layouts Act 1989.

"Loss" means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise, including, in respect of OUTBACK BEATS, any liability to OUTBACK BEATS's hirers in connection with the on-hiring of Equipment to the Customer.

"Operator" means an operator or operators of Equipment hired to the Customer by OUTBACK BEATS under a Contract for Wet Hire.

"Price" means the Price payable for the Equipment (including the Operator) and/or Services in accordance with clause 4.

"Representatives" means officers, directors, employees, agents, representatives, contractors and / or subcontractors of the relevant party but a party to the Contract and its officers, directors, employees, agents, representatives, contractors and subcontractors are not

"Representatives" of the other party to the Contract.

"Services" means any services that OUTBACK BEATS supplies to the Customer as set out in the Accepted Order.

"OUTBACK BEATS" means SE Grosskopf (ABN 47 825 269 508) trading as OUTBACK BEATS, its successors and assigns.

"Terms" means these Hire Terms and Conditions.

"Wet Hire" means the hire of Equipment with an Engineer, Technician and/or relevant crew.

2. Order and Acceptance

2.1 Each order placed by the Customer will constitute an offer by the Customer to hire the Equipment on a Dry Hire or Wet Hire basis, as applicable, from OUTBACK BEATS and/or engage OUTBACK BEATS to provide the Services on and subject to these Terms.

2.2 OUTBACK BEATS may refuse to accept an order, or part of an order, placed by the Customer without giving reasons. On acceptance of an order by OUTBACK BEATS (**Accepted Order**), a separate Contract will be formed between OUTBACK BEATS and the Customer.

2.3 The Customer may not, without OUTBACK BEATS's written consent, cancel an order after OUTBACK BEATS has accepted the order. If OUTBACK BEATS consents to the cancellation of an order, the Customer will be liable for all reasonable costs incurred by OUTBACK

BEATS up to the time of cancellation.

2.4 The Customer is taken to have accepted, and is immediately bound by, these Terms if:

- (a) the Customer accepts these Terms during the process of submitting its Credit Application (online or otherwise);
- (b) the Customer signs these Terms;
- (c) the Customer places an order for Equipment or Services after receipt of these Terms; or
- (d) the Customer accepts delivery of any Equipment or Services after receipt of these Terms.

3. Change in Control

3.1 The Customer shall give OUTBACK BEATS no less than seven (7) days prior written notice of:

- (a) any proposed change of Control of the Customer; or
- (b) any other change in the Customer's details most recently provided to OUTBACK BEATS (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s).

3.2 The Customer is liable for any Loss suffered or incurred by OUTBACK BEATS as a result of the Customer's failure to comply with this clause.

3. Price and Payment

4.1 The price payable by the customer in connection with any equipment hired (on a Dry Hire or Wet Hire Basis), or Services provided by OUTBACK BEATS, which will be equal to OUTBACK BEATS's final quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 OUTBACK BEATS reserves the right to change the Price:

- (a) if a variation to an Accepted Order is requested by the Customer, in which case OUTBACK BEATS will notify the Customer in writing of the amount of any variation to the Price resulting from the variation (**Price Variation**). If the Customer does not accept the Price Variation, the Customer may cancel the proposed variation by notifying OUTBACK BEATS in writing within 24 hours of receipt of the notice of the Price Variation. If the Customer neither accepts nor rejects the Price Variation, the Accepted Order will remain as is and OUTBACK BEATS will proceed to fulfil that order on the basis of the original pricing and scope; or
- (b) to reflect any actual increase in the costs and expenses incurred by OUTBACK BEATS to supply the Equipment (including Operator, where relevant) or Services to the Customer, including without limitation, fluctuations in the currency exchange rate, or increases to OUTBACK BEATS from suppliers in the cost of materials, goods, services, equipment and labour. OUTBACK BEATS will provide the Customer with reasonable documentation to substantiate such variations, on request.

4.3 Time for payment is of the essence. The Price will be payable by the Customer on the date/s determined by OUTBACK BEATS (and notified to the Customer), which may be:

- (a) for Customers who have not been approved for credit by OUTBACK BEATS, either before or on delivery of the Equipment or Services; and
- (b) for Customers who have been approved for credit by OUTBACK BEATS in writing, within thirty (30) days of the date of each tax invoice issued to the Customer, unless otherwise notified by OUTBACK BEATS to the Customer in writing.

4.5 Unless may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card excluding Diners Card (plus a surcharge of up to two percent (2%) of the Price on transactions made via American Express), or by any other method that OUTBACK BEATS reasonably directs.

4.6 Unless otherwise stated, the Price does not include GST or any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price. Such amounts will be payable by the Customer.

4.7 The Customer must pay all amounts payable to OUTBACK BEATS under these Terms without any deduction, withholding, counterclaim or set off.

5. Delivery of Equipment and provision of Services

5.1 OUTBACK BEATS will deliver the Equipment to the Customer's premises and to collect the Equipment from the Customer's premises at the end of the Hire Period, freight will be on the Customer's account and will be added to the Price. OUTBACK BEATS will endeavour to discuss and agree upon the freight cost with the Customer before such amounts are incurred, except in circumstances where the Customer requests an urgent or expedited delivery, in which case OUTBACK BEATS will use all reasonable endeavours to obtain a competitive price for the freight.

5.2 Delivery of the Equipment is taken to occur at the time that:

- (a) the Customer takes possession of the Equipment at OUTBACK BEATS's premises; or
- (b) if the Equipment is delivered to the Customer, at the time that the Equipment is unloaded at the Customer's premises,

(**Delivery or delivered**).

5.4 If the Customer is unable to take Delivery of the Equipment as arranged, then OUTBACK BEATS may deliver the Equipment to a place of storage nominated by the Customer and, failing such nomination, to a place determined by OUTBACK BEATS, provided that such place is within reasonable proximity to the initial delivery point and provided that OUTBACK BEATS notifies the Customer of such location. Such action shall be deemed to be Delivery to the Customer. The Customer shall be liable for all reasonable costs, charges and expenses incurred by OUTBACK BEATS in connection with such action.

5.5 OUTBACK BEATS will use all commercially reasonable efforts to Deliver all Equipment or provide all Services for which there is an Accepted Order by the date (if any) specified in the Accepted Order and in the absence of any date, within a reasonable time.

5.6 The failure of OUTBACK BEATS to Deliver the Equipment or provide the Services by the date specified in the order does not entitle either party to treat an order or the Contract as repudiated.

5.7 The Customer must still accept Delivery of the Equipment or provision of Services even if after the estimated date and, except

where OUTBACK BEATS's liability may not be excluded under the Australia Consumer Law, OUTBACK BEATS will not be liable for any Loss incurred by the Customer as a result of the Delivery or provision of Services being after the estimated date, other than to refund any Price paid by the Customer where the Equipment is not delivered at all / Services are not provided at all.

5.8 The Customer must provide OUTBACK BEATS and its Representatives with access to the Customer's premises or any other location where the arrangement is a Wet Hire and/or where Services are to be provided. The Customer must ensure that it complies with all laws concerning occupational health & safety at such premises or site and must provide a safe working environment free from contamination and other hazardous materials to enable OUTBACK BEATS to safely and effectively provide the Services, and the Engineer, Technician and/or relevant crew to safely and effectively operate the relevant Equipment. OUTBACK BEATS may refuse to provide staff, and or services at any time if it determines, acting reasonably, that there is any risk of harm or danger to OUTBACK BEATS or its Representatives including any Engineer, Technician and/or relevant crew, without liability. The Customer must comply with any reasonable direction or request provided by OUTBACK BEATS or its Representatives (including Operators) concerning occupational health or safety at any premises on which the Services (and any Wet Hire) are provided.

6. Risk

6.1 Risk in the Equipment transfers from OUTBACK BEATS to the Customer at the time the Equipment is Delivered. Risk then transfers back to OUTBACK BEATS on the date that the Equipment is returned to OUTBACK BEATS at OUTBACK BEATS's premises (or collected by OUTBACK BEATS from the Customers' premises, as the case may be).

6.2 The Customer must insure all Equipment for its full replacement value on and from Delivery and for such time that the Equipment is on hire to the Customer.

6.3 If the Equipment, or any part of the Equipment, is damaged or destroyed during the Hire Period, the Customer agrees to make an insurance claim in respect of any loss or damage caused to the Equipment and pass through all insurance proceeds received to OUTBACK BEATS. The production of these Terms by OUTBACK BEATS is sufficient evidence of OUTBACK BEATS's right to receive the insurance proceeds without the need for any person dealing with OUTBACK BEATS to make further enquiries.

6.4 OUTBACK BEATS will refuse to leave any Equipment outside OUTBACK BEATS's premises for collection or deliver the Equipment to an unattended location. Such Equipment shall be left at the Customer's designated location or collected from OUTBACK BEATS premises and shall be a face-to-face transaction.

7. Title

7.1 OUTBACK BEATS and the Customer agree that title to the Equipment will remain with OUTBACK BEATS at all times during the Hire Period.

9. Defects & Limitation of Liability

The Customer must inspect the Equipment on Delivery and must within seven (7) Business Days of Delivery notify OUTBACK BEATS in writing of any defect, damage, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow OUTBACK BEATS to inspect the Equipment.

9.1 Limitation of liability – Non-Excludable Rights

- (a) The Customer may have rights under the Australian Consumer Law or other rights in relation to the hire of Equipment or provision of Services that cannot lawfully be excluded by OUTBACK BEATS (**Non-Excludable Rights**).
- (b) To the extent permitted by law, OUTBACK BEATS's liability in respect of any Non-Excludable Right is limited, at OUTBACK BEATS's option, in the case of goods, to repair or replacement of the goods or the cost of repairing or replacing the goods, and in the case of services, to supplying the services again or paying the cost of having the services resupplied.

9.2 Limitation of liability – other

- (a) OUTBACK BEATS excludes all liability to the Customer for the loss of use, production, profit, revenue, business, data, contract or anticipated saving, or for any financing costs or increase in operating costs or any economic loss or for any special, indirect or consequential loss or damage.

(b) Subject to any rights the Customer may have in respect of Non-Excludable Rights, OUTBACK BEATS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (i) the Customer failing to properly maintain or store the Equipment;
- (ii) the Customer using the Equipment for any purpose other than that for which it was designed;
- (iii) the Customer continuing to use the Equipment after any defect has become apparent or would have become apparent to a reasonably prudent operator or user; or
- (iv) the Customer failing to follow any instructions or guidelines provided by OUTBACK BEATS.

(c) Subject to any rights the Customer may have in respect of Non-Excludable Rights, OUTBACK BEATS's sole liability for any defect or damage caused to the Equipment is limited to the repair or replacement of the Equipment at its option.

10. Intellectual Property

10.1 OUTBACK BEATS remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by OUTBACK BEATS prior to the Contract.

10.2 The parties agree that any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Equipment and/or Services (including any Intellectual Property Rights in Equipment which are modified or updated or enhanced by OUTBACK BEATS) are owned by OUTBACK BEATS.

12. Termination

12.1 Either party (**Terminating Party**) may immediately terminate any Contract on foot by written notice to the other party if the other party (**Defaulting Party**):

(a) breaches these Terms or the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach:

- (i) cannot be remedied; or
- (ii) can be remedied, but is not remedied by the Defaulting Party within 7 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or

(b) suffers an Insolvency Event.

12.2 If a contract is terminated in accordance with clause 1, the customer must, within 7 Business Days after the date of termination:

- (a) pay OUTBACK BEATS all amounts owing to OUTBACK BEATS as at the date of termination (including, for the avoidance of doubt, any amounts owing in arrears which have accrued but have not yet been paid); and
- (b) return all Confidential Information to OUTBACK BEATS.

12.3 If a Contract is terminated in accordance with clause 1, OUTBACK BEATS will have an immediate right to possession of all Equipment on hire, and all amounts owing by the Customer in respect of the Equipment (together with all other amounts owing by the Customer to OUTBACK BEATS) will become due and payable and must be paid by the Customer on demand by OUTBACK BEATS. Further, OUTBACK BEATS will be entitled (without prejudice to any other right or remedy provided under these Terms or otherwise) to suspend indefinitely all further deliveries of Equipment in respect of any Accepted Orders, refuse to accept any further orders and cancel any credit facility provided to the Customer.

12.4 The Customer must immediately deliver to OUTBACK BEATS any Equipment on hire on termination (in good working order and condition). The Customer grants OUTBACK BEATS a right to enter any premises at which the Equipment is located in order to repossess the Equipment if the Customer fails to comply with this clause and must ensure that it has obtained a right of access in favour of OUTBACK BEATS from any landlord or other relevant third party where the premises is not owned by the Customer.

13. Indemnity

13.1 The Customer indemnifies OUTBACK BEATS and its Representatives against any Loss which OUTBACK BEATS and/or its Representatives suffer, incur or are liable for in connection with:

- (a) any negligent act or omission of the Customer or its Representatives;
- (b) any breach of these Terms or a Contract by the Customer; or
- (c) enforcing any security interest arising under a Contract.

13.2 OUTBACK BEATS holds the benefit of the indemnity in clause 1 on trust for its Representatives.

13.3 The indemnity in clause 1 will not apply to the extent that any Loss is caused or contributed to by OUTBACK BEATS's negligence or wilful misconduct.

14. Force Majeure

14.1 If there is any delay or failure in the hire or Delivery of Equipment or provision of any Operator or the Services by OUTBACK BEATS due to weather, fire, community unrest, labour dispute, strike, government direction or order, pandemic, epidemic or any other cause whatsoever beyond OUTBACK BEATS's reasonable control:

- (a) OUTBACK BEATS is not in breach of these Terms or any Contract by reason of that delay or failure;
- (b) OUTBACK BEATS's obligation to hire or Deliver the Equipment or to provide the Operator or Services is suspended for the period of that delay or failure;
- (c) if the delay or failure continues for in excess of 30 days, OUTBACK BEATS may terminate any Contract by notice in writing to Customer; and
- (d) OUTBACK BEATS is not liable for any Loss incurred by the Customer by reason of such suspension or termination.

15. Building and Construction Industry Security of Payments Act 1999

15.1 At OUTBACK BEATS's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Building and *Construction Industry Security of Payments Act 2002* may apply.

15.2 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payments Act 2002* of Victoria, except to the extent permitted by that Act where applicable.

16. Insurance

16.1 The Customer must prompt and maintain, from a reputable insurance company, an insurance policy for the replacement value of the Equipment for the duration of the Hire Period.

16.2 The Customer must provide OUTBACK BEATS with a copy of a certificate of currency for each insurance policy required by the Customer under clause 1 prior to the Equipment leaving OUTBACK BEATS's premises and at any other time requested by OUTBACK BEATS.

16.3 In the case of a "dry-hire", the customer shall be 100% responsible for Outback Beats' equipment for the entire duration of the hire.

16.4 In the case of a "wet-hire", the customer shall only be responsible for damage or mishandling caused by the customer and its employees, sub-contractors, artists, spectators, and the general public.

17. Hire Terms

17.1 Period of Hire

- (a) The period of hire for the Equipment on hire (**Hire Period**) commences on Delivery of the Equipment and concludes when the Equipment is returned to OUTBACK BEATS's premises.
- (b) The Customer acknowledges and agrees that, unless otherwise agreed by OUTBACK BEATS, the Price for the hire of the Equipment is based on the length of the Hire Period, and not the actual amount of time that the Equipment is used by the Customer.

17.2 Pre-Hire Inspection

- (a) The Equipment will be inspected by OUTBACK BEATS prior to its Delivery to the Customer to ascertain and record the condition of the Equipment at the commencement of the Hire Period (**Pre Hire Inspection**).
- (b) The Customer acknowledges and agrees that OUTBACK BEATS's record of the Pre Hire Inspection is sufficient evidence of the condition of the Equipment at the commencement of the Hire Period unless it is proven to be false.

17.3 Operator

- (a) The Operator is under the sole direction and control of the Customer. The Customer is responsible for any Loss suffered or incurred by OUTBACK BEATS or the Operator in connection with or as a result of the operation of the Equipment by the Operator while under the direction of the Customer. The Customer agrees to indemnify OUTBACK BEATS and the Operator for any such Loss on demand. OUTBACK BEATS holds the benefit of this clause on trust for each Operator.
- (b) Where the Contract specifies that the Equipment will be supplied on Wet Hire to the Customer, the Price will include an allowance for payroll tax, superannuation and workers compensation at the appropriate rates required by law.
- (c) OUTBACK BEATS will locate another Operator if the nominated Operator is unwell or unfit to operate the Equipment on the agreed date or dates. The Customer acknowledges and agrees that OUTBACK BEATS will do so as promptly as possible but that, subject to clause 1, OUTBACK BEATS will not be liable for any delay in locating a replacement Operator.

17.4 Use of the Equipment

- (a) During the Hire Period, the Customer must ensure that its Representatives:

- (i) use or operate the Equipment strictly in accordance with OUTBACK BEATS's and any manufacturer's instructions;
- (ii) use the Equipment only in the operating conditions, for the purpose and within the capacity for which they are designed;
- (iii) ensure the Equipment is used only by suitably trained and certified persons;
- (iv) wear suitable clothing and protective equipment when operating the Equipment;
- (v) maintain the Equipment in good condition and in accordance with applicable legislation, Australian Standards and industry best practices;
- (vi) store the Equipment securely;
- (vii) maintain all licences, consents, permits and approvals required in connection with the possession and use of the Equipment; and
- (viii) allow OUTBACK BEATS or its nominee to inspect the Equipment at any time during the Hire Period.

- (b) During the Hire Period, the Customer must not, and must ensure that its Representatives do not, without the prior written consent of OUTBACK BEATS:

- (i) undertake any modifications or additions to the Equipment;
- (ii) deface, cover up or remove any identifying marks on the Equipment;
- (iii) reverse engineer the Equipment;
- (iv) allow the Equipment to become affixed to land or to become an accession to any other Equipment;
- (v) sell, assign, lend, lease, sub-hire, bail, give a 'security interest' (as that term is defined in the PPSA) in or otherwise deal with the Equipment;
- (vi) use the Equipment in an area where contaminants or materials that present a risk of harm to human health or the environment (including asbestos) are present; or
- (vii) move the Equipment from the Customer's premises to any other location approved by OUTBACK BEATS for storage and/or use of the Equipment.

18. Breakdown and repair

18.1 The Customer must promptly notify OUTBACK BEATS if any Equipment on hire breaks down or requires repair.

18.2 OUTBACK BEATS will only be responsible for the cost of replacing parts and components of the Equipment required to be replaced due to normal wear and tear.

18.3 The Customer will be responsible for the cost of any replacement parts, damaged components, and/or equipment deemed as a write-off either directly or indirectly by:

- (a) the misuse, mishandling, negligent use or operation of the Equipment by the Customer or any other person whilst the Equipment is on hire to the Customer, including use of the Equipment in extremely adverse environments causing premature failures to any parts or components; or
- (b) the Customer failing to comply with its obligations pursuant to clause 20 of these Terms,

and OUTBACK BEATS will not be liable for any delay in the Customer's work, business, or operations as a result of any of the above circumstances.

19. Return of Equipment

19.1 At the end of the Hire Period, the Customer must return the Equipment to OUTBACK BEATS's premises during OUTBACK BEATS's normal business hours (unless otherwise agreed).

19.2 The Equipment must be returned to OUTBACK BEATS in a clean, undamaged and unaltered condition, fair wear and tear excepted.

19.3 OUTBACK BEATS may agree to collect the Equipment from the Customer if it receives a written request from the Customer to do so at least 24 hours before the end of the Hire Period (**Pick Up Request**). OUTBACK BEATS will indicate its acceptance of a pick-up request by providing pick-up number to the Customer.

19.4 OUTBACK BEATS is entitled to charge the Customer a fee on a "costs incurred basis" in each of the following circumstances:

- (a) the Customer provides a Pick Up Request;
- (b) the Customer returns the Equipment to OUTBACK BEATS other than at its premises or outside OUTBACK BEATS's normal business hours; or
- (c) OUTBACK BEATS collects the Equipment from the Customer, either at the request of the Customer or because the Customer fails to return the Equipment to OUTBACK BEATS.

20. Post Hire Inspection

20.1 Upon the return of the Equipment to OUTBACK BEATS's premises, an inspection of the Equipment will be conducted by OUTBACK BEATS to ascertain and record the condition of the Equipment at the end of the Hire Period.

20.2 The Customer acknowledges and agrees that OUTBACK BEATS's record of the Post Hire Inspection is sufficient evidence of the condition of the Equipment at the end of the Hire Period unless it is proved to be false.

20.3 The Customer acknowledges and agrees that the costs of repairing any damage to the Equipment occurring during the Hire Period (whether identified during or subsequent to the Post Hire Inspection), cleaning the Equipment and replacing any components, consumables and worn parts will be borne by the Customer and must be paid by the Customer to OUTBACK BEATS within 7 days after the Customer receives a tax invoice from OUTBACK BEATS for those costs.

20.4 If the Equipment is not returned to OUTBACK BEATS (including where the Equipment has been destroyed) or is returned to OUTBACK BEATS in a condition that OUTBACK BEATS determines, acting reasonably, renders it unsuitable for future use and/or rehire, OUTBACK BEATS may charge the Customer the full cost of replacing the Equipment.

20.5 The Customer must:

- (a) keep the Equipment in its own possession and control and must not on-hire, assign the benefit or the use of the Equipment or create any encumbrance (including a security interest for PPSA purposes) over the Equipment;
- (b) not alter or make any additions to the Equipment including, but without limitation, altering, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and
- (d) comply with any maintenance schedule as advised by OUTBACK BEATS to the Customer.

20.6 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self-insure, OUTBACK BEATS's interest in the Equipment and agrees to indemnify OUTBACK BEATS against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further, the Customer will not use the Equipment, nor permit them to be used, in such a manner as would permit an insurer to decline any claim.

20.7 The Customer acknowledges and agrees that some of the Equipment supplied by OUTBACK BEATS for hire may be supplied to OUTBACK BEATS by a third party under a hire or lease arrangement. The Customer agrees to pay any costs or charges that OUTBACK BEATS incurs or is liable to pay to that third party in connection with the use of the Equipment by the Customer, except where such costs or charges are caused by an act or omission of OUTBACK BEATS.

21. GST

21.1 If any supply by OUTBACK BEATS to the Customer under or in connection with these Terms is subject to GST, the Customer must pay to OUTBACK BEATS, in addition to the consideration for that supply (unless it expressly includes GST), an amount (additional amount) equal to the amount of the consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Customer must pay the additional amount to OUTBACK BEATS at the same time as the consideration for the supply is payable.

21.2 In these Terms, the terms 'tax invoice', 'GST', and 'GST exclusive market value' have the respective meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

22. DISPUTES

22.1 Any dispute relating to these Terms (**Dispute**) will be dealt with in accordance with this clause.

22.2 The party claiming the Dispute will give notice of the Dispute to the other party which will include all facts on which that party relies in relation to that Dispute (**Dispute Notice**).

22.3 Within five Business Days after service of a Dispute Notice, each of the parties' Representatives will meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.

22.4 If the Dispute has not been resolved within 15 Business Days after the service of the Dispute Notice, either party may start mediation by serving a written notice setting out the nature of the dispute, the proposed mediator, venue and attendees (**Mediation Notice**).

22.5 Within 30 days of the Mediation Notice, the parties must use best endeavours to agree on the mediator, venue and attendees.

22.6 If the parties cannot reach agreement about the mediator, either party may refer the matter to the Australian Disputes Centre for the appointment of a mediator.

22.7 Each party must pay an equal share of the mediator's fees and the mediation venue costs.

22.8 Each party must be represented at the mediation by a person with authority to settle the dispute.

22.9 Any information disclosed in connection with mediation remains confidential and is privileged from disclosure to third parties or in evidence, except to enforce a settlement agreement reached at the mediation.

22.10 Any agreement reached at mediation will not be binding unless it is reduced to writing and signed by the parties.

- 22.11 A party may not start court proceedings in relation to a Dispute until it has complied with the procedures in this clause, unless it commences legal proceedings to preserve any rights it may have.
- 22.12 Nothing in this clause prevents a party seeking urgent injunctive or interlocutory relief.
- 22.13 Notwithstanding the existence of a Dispute, both parties will continue to perform their respective obligations under these Terms.

23. CONFIDENTIAL INFORMATION

23.1 Each party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other party (**Discloser**) except:

- (a) as permitted under these Terms;
- (b) with the prior written consent of the Discloser;
- (c) where the Recipient is compelled to do so by law, provided that it gives the other party written notice prior to disclosure.

23.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with these Terms.

23.3 The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of these conditions by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

24. TRUST

24.1 If the Customer is the trustee of a trust:

- (a) the Customer is bound by these Terms and grants any security interest (for PPSA purposes) in the Equipment in its personal capacity and in its capacity as trustee of the trust;
- (b) the Customer warrants that at all times while these Terms apply:

- (i) all transactions it undertakes with OUTBACK BEATS (including those under which security interests arise) pursuant to the terms of these Terms are permitted by the terms of the trust;
- (ii) it has the right to be fully indemnified out of trust property for obligations owed to OUTBACK BEATS pursuant to the terms of these Terms and the trust property is sufficient to satisfy that right of indemnity and all other obligations for which it is entitled to be indemnified out of trust property; and
- (iii) no action has been taken or proposed to terminate the trust nor has any event for the vesting of trust property occurred;

(c) the Customer agrees to notify OUTBACK BEATS promptly whenever anything happens which would cause any of the warranties in clause 1(b) to be untrue.

25. PARTNERSHIP

If the Customer is a partnership, its partners must:

- (a) not do anything, or permit anything to be done or fail to do anything, which may affect or facilitate the variation or dissolution of the partnership;
- (b) immediately notify OUTBACK BEATS if the partnership is varied (including by a partner dying, leaving or joining the partnership) or dissolved; and
- (c) if OUTBACK BEATS so requests, use their best endeavours to ensure all partners of any successor partnership sign and deliver to OUTBACK BEATS a document (in form and substance satisfactory to OUTBACK BEATS) by which they agree the successor partnership is bound by these Terms and by which arrangements satisfactory to OUTBACK BEATS are made for the performance by the successor partnership of any obligations outstanding to OUTBACK BEATS at the time the partnership was varied or dissolved.

26. NOTICES

26.1 Any notice, demand, approval, request or other communication in relation to these Terms (**Notice**) will:

- (a) be in writing in English;
- (b) be marked for the attention of the Customer or OUTBACK BEATS (as applicable); and
- (c) be given at the recipient's address by being:

- (i) hand delivered;
- (ii) or sent by email.

26.2 A Notice is given if it is:

- (a) hand delivered, on the date of delivery;
- (b) sent by email, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

26.3 If a Notice is regarded as being given and received on a day that is not a Business Day or after 5:00pm on a Business Day, then the Notice will be deemed as given and received at 9:00am on the next Business Day.

27. General

27.1 The failure by OUTBACK BEATS to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect OUTBACK BEATS's right to subsequently enforce that provision. If any provision of these Terms is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

27.2 These Terms are governed by the laws of the State of Victoria, and are subject to the jurisdiction of the courts in that State.
27.3 OUTBACK BEATS may assign or novate all or any part of its rights and obligations under these Terms without the Customer's consent.
27.4 The Customer must not without OUTBACK BEATS's prior written consent assign or novate all or any part of its rights and obligations under these Terms, which consent will not be unreasonably withheld.
27.5 OUTBACK BEATS and the Customer acknowledge and agree that these Terms take precedence over all other conditions of hire and apply to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written, or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed, delivered with or referred to in any order or other documents delivered by the Customer to OUTBACK BEATS.
27.6 The Customer agrees that OUTBACK BEATS may amend these Terms on thirty 30 days' notice to the Customer and the altered Terms will then:

- (a) apply to orders placed by the Customer after such notice period has elapsed; and
- (b) supersede all previous terms imposed by OUTBACK BEATS regarding such orders.

27.7 The Customer acknowledges and agrees that:

- (a) it has satisfied Outback Beats that the Equipment and/or Services are suitable for the Customer's purposes;
- (b) it has not entered into these Terms or any Contract in reliance upon any warranty or representation given by OUTBACK BEATS in relation to the Equipment and/or Services; and
- (c) it has the power to enter into these Terms and each Contract and has obtained all necessary authorisations to allow it to do so.

28. Subcontracting

OUTBACK BEATS may subcontract the provision of any part or whole of the Services to a related party, associate or third party.

29. Rental Terms & Conditions Agreement

I, _____,

of _____,

hereby acknowledge that I have read, understood, and accept the rental terms offered to me within this document.

Dated this _____ Day of _____, 20_____