



Downtown Development Authority

LAKE ODESSA

AGENDA

Regular Meeting
Tuesday, September 10, 2024 - 7:00 a.m.
Page Memorial Building
Lake Odessa, Michigan

1. Call to Order / Roll Call
2. Approval of Agenda
3. Public Comment on Agenda Items
Under the Open Meetings Act, any citizen may come forward at this time and make comment on items that appear on the agenda. Comments will be limited to three minutes per person. Anyone who would like to speak shall state his/her name and address for the record. Remarks should be confined to the question at hand and addressed to the chair in a courteous tone. No person shall have the right to speak more than once on any particular subject until all other persons wishing to be heard on that subject have had the opportunity to speak.
4. Approval of Minutes
 - a) 7/9/2024 Regular Meeting
 - b) 7/25/2024 Special Meeting
5. Finance Report
 - a) Revenue/Expense Report for Period Ending 8/31/2024
 - b) Check Register – July and August 2024
 - c) Bank Reconciliations – July August June 2024
6. Action/Discussion Items:
 - a) McKenna Kick-Off Presentation
 - b) Gregg Guetschow Memorandum – Sidewalk Occupancies
 - c) Mood Media - Sound System Quote and Scope of Work
7. Beautification Committee
 - a) None
8. Board Member Comments
9. Adjournment

Next Regular Meeting: Tuesday, November 12, 2024 - 7:00 a.m.

**VILLAGE OF LAKE ODESSA
DOWNTOWN DEVELOPMENT AUTHORITY**

MINUTES

Regular Meeting - Tuesday, July 9, 2024
Page Memorial Building, Lake Odessa MI

Present: Sarah McGarry, Marilyn Danielson, Karen Banks, Bill Rogers, Darwin
Thompson, Sue Dahms
Absent: Ben DeJong
Staff: Village Clerk/Treasurer Kathy Forman

- I. **Call to Order:** Meeting called to order by McGarry at 7:00 a.m.
- II. **Agenda:** Motion by Banks, supported by Dahms, to approve the amended agenda adding Action/Discussion Items c) McKenna Proposal and d) Decorative Tree Lighting. All ayes, motion carried, 6-0.
- III. **Public Comment:** None.
- IV. **Approval of Minutes:** Motion by Dahms, supported by McGarry, to approve minutes of 5/14/24 regular meeting. All ayes; motion carried, 6-0.
- V. **Finance Report:** The Revenue and Expense report for the period ending 6/30/24 was reviewed.
- VI. **Action/Discussion Items:**
- a) **Sidewalk Obstructions:** Questions have been raised about what should be allowed on the sidewalk in front of a business. This would be handled through our Street Regulations. This discussion should start with the DDA and then be taken to council. Banks will find sample language from other communities and forward the examples to DDA members for review.
 - b) **Sound System:** Martin Vipond came in and reviewed the current system. The DDA will research new equipment and licensing for playing music downtown. McGarry filled out an online inquiry for MUZAK to contact her.
 - c) **McKenna Proposal:** Discussed the proposal from McKenna to complete the new DDA Plan. There will be several meetings that the DDA will have to participate in over the course of the next six months. It was the consensus that McKenna would provide a very robust plan that would lead us into the future.

Motion by McGarry, supported by Dahms, to approve the McKenna Proposal for the DDA Plan. All ayes, motion carried, 6-0.

- d) **Decorative Tree Lighting:** Discussed the two sample trees on Fourth Avenue by the Page Building that have the trunks wrapped. There are two different types of wraps to look at. Most members have not seen them lit up. The question was raised that there should be some lights up in the tree limbs. Should more samples be ordered so there are several trees in one area lit the same way. Maybe that would help determine what would look the best.

Motion by McGarry, supported by Dahms, to purchase more sample lights, not to exceed \$200. All ayes, motion carried, 6-0.

VII. Beautification Committee:

- a) None

VIII. Board Member Comments:

Thompson – Would like to talk to Caledonia Elevator about their plans for the property at the corner of Fourth Avenue and First Street. Also, commented on how nice it is to have the new hardware store open.

Dahms – Asked about the property on Jordan Lake Avenue where the DPW is currently located. Wondered about plans to relocate the DPW. Banks explained that the Village is going to be working on the Master Plan. During that process facilities will be reviewed and a plan for the future use of all Village properties will be included.

McGarry – Asked if the parking spaces next to the Bistro on Second Street would be reopened. Bill Rogers is working on that plan with Interim Village Manager Gregg Guetschow.

IX. Adjournment: Without objection, meeting adjourned at 8:00 a.m.

Respectfully submitted,

Kathy Forman
Village Clerk/Treasurer

**VILLAGE OF LAKE ODESSA
DOWNTOWN DEVELOPMENT AUTHORITY**

MINUTES

Special Meeting - Thursday, July 25, 2024
Page Memorial Building, Lake Odessa MI

Present: Sarah McGarry, Marilyn Danielson, Karen Banks, Bill Rogers, Darwin Thompson, Sue Dahms
Absent: Ben DeJong
Staff: Village Clerk/Treasurer Kathy Forman

I. Call to Order: Meeting called to order by McGarry at 7:00 a.m.

II. Agenda: Motion by McGarry, supported by Banks, to approve the agenda. All ayes, motion carried, 6-0.

III. Public Comment: None.

VI. Action/Discussion Items:

a) Sound System: McGarry explained the service as described by the sales contact at Mood Media (MUZAK). There are many plans to choose from.

Motion by Dahms, supported by Danielson to approve the contract with Mood Media for 60 months at \$30 per month and to approve the tech survey cost of \$540. All ayes, motion carried, 6-0.

VII. Board Member Comments:

Banks – Updated DDA members on the mural project. The project grant that had been discussed was not completed. LOAAC decided to write a grant for Art In The Park since it will be the 50th Anniversary in 2025. The LOAAC would like to discuss a collaboration with DDA to complete the mural project. This should be discussed at the September meeting.

VIII. Adjournment: Without objection, meeting adjourned at 7:16 a.m.

Respectfully submitted,

Kathy Forman
Village Clerk/Treasurer

User: KATHY

DB: Lake Odessa Vil

PERIOD ENDING 08/31/2024


GL NUMBER	DESCRIPTION	2024-25		YTD BALANCE	ACTIVITY FOR		AVAILABLE		% BGD USED
		AMENDED BUDGET	NORMAL	08/31/2024 (ABNORMAL)	MONTH 08/31/2024 INCREASE (DECREASE)	NORMAL	(ABNORMAL) BALANCE		
Fund 248 - DOWNTOWN DEVELOPMENT AUTHORITY									
Revenues									
Dept 000 - BALANCE SHEET / GENERAL									
248-000-402.000	CURRENT REAL PROPERTY TAXES	38,000.00		18,684.25		0.00		19,315.75	49.17
248-000-665.000	INTEREST	300.00		470.20		80.33		(170.20)	156.73
248-000-674.000	DONATIONS-PRIVATE SOURCES	900.00		0.00		0.00		900.00	0.00
Total Dept 000 - BALANCE SHEET / GENERAL		39,200.00		19,154.45		80.33		20,045.55	48.86
TOTAL REVENUES		39,200.00		19,154.45		80.33		20,045.55	48.86
Expenditures									
Dept 275 - DDA									
248-275-727.000	OFFICE SUPPLIES	50.00		0.00		0.00		50.00	0.00
248-275-740.000	POSTAGE	20.00		0.00		0.00		20.00	0.00
248-275-750.000	DUES & MEMBERSHIPS	25.00		40.00		0.00		(15.00)	160.00
248-275-752.000	EDUCATION & TRAINING	500.00		0.00		0.00		500.00	0.00
248-275-801.000	CONTRACTED SERVICES	15,000.00		0.00		0.00		15,000.00	0.00
248-275-806.000	AUDIT SERVICES	150.00		142.50		142.50		7.50	95.00
248-275-881.000	ADVERTISING	1,000.00		750.00		0.00		250.00	75.00
248-275-967.000	BEAUTIFICATION	8,300.00		6,228.47		0.00		2,071.53	75.04
248-275-967.002	CHRISTMAS DECORATIONS	1,000.00		39.40		0.00		960.60	3.94
Total Dept 275 - DDA		26,045.00		7,200.37		142.50		18,844.63	27.65
TOTAL EXPENDITURES		26,045.00		7,200.37		142.50		18,844.63	27.65
Fund 248 - DOWNTOWN DEVELOPMENT AUTHORITY:									
TOTAL REVENUES		39,200.00		19,154.45		80.33		20,045.55	48.86
TOTAL EXPENDITURES		26,045.00		7,200.37		142.50		18,844.63	27.65
NET OF REVENUES & EXPENDITURES		13,155.00		11,954.08		(62.17)		1,200.92	90.87

Check Date	Bank	Check	Vendor	Vendor Name	Amount
Bank DDA 6015 DOWNTOWN DEVELOPMENT AUTHORITY					
07/11/2024	DDA	1240	CARDMEMBER	ELAN FINANCIAL SERVICES	138.00
08/22/2024	DDA	1241	WALKER	WALKER, FLUKE & SHELDON, PLC	142.50
DDA TOTALS:					
Total of 2 Checks:					280.50
Less 0 Void Checks:					0.00
Total of 2 Disbursements:					280.50

BANK RECONCILIATION FOR LAKE ODESSA VILLAGE
Bank DDA (6015 DOWNTOWN DEVELOPMENT AUTHORITY)
FROM 07/01/2024 TO 07/31/2024
Reconciliation Record ID: 2209
Finalized

GL Number	Description	Beginning Balance
248-000-001.024	CASH-DDA CHECKING	69,882.24
Beginning GL Balance:		69,882.24
Less: Cash Disbursements		(138.00)
Add: Journal Entries/Other		88.96
Ending GL Balance:		69,833.20

GL Number	Description	Ending Balance
248-000-001.024	CASH-DDA CHECKING	69,833.20
Ending GL Balance:		69,833.20
Ending Bank Balance:		69,833.20
Add: Deposits in Transit		0.00
Less: 0 AP Outstanding Checks		
Less: 0 PR Outstanding Checks		
Adjusted Bank Balance		69,833.20
Unreconciled Difference:		0.00

REVIEWED BY: 

DATE: 8/13/2024



VILLAGE OF LAKE ODESSA
 DOWNTOWN DEVELOPMENT AUTHORITY
 839 FOURTH AVENUE
 LAKE ODESSA MI 48849

Date 7/31/24 Page 1
 Account Number xxxxxxxxxxxx6015
 Enclosures 2

Bank from anywhere with our NEW Virtual Branch!
 Access the Virtual Branch via our website: UBMich.com

CHECKING ACCOUNTS

Effective September 1, 2024, our Canadian item fee will increase to \$25.00 per item. Additional items in the same deposit will be \$15.00. Our foreign currency order fee will be increasing to \$35.00 with an additional \$15.00 fee if the order is less than \$300.00. We appreciate your understanding as we adapt to market conditions. Contact us for any questions.
 Thank you for your continued trust - Union Bank

PUBLIC CHECKING		Number of Enclosures	2
Account Number	xxxxxxxxxxxx6015	Statement Dates	7/01/24 thru 7/31/24
Previous Balance	69,931.43	Days in the statement period	31
Deposits/Credits	.00	Average Ledger	69,832.61
2 Checks/Debits	187.19	Average Collected	69,832.61
Service Charge	.00	Interest Earned	88.96
Interest Paid	88.96	Annual Percentage Yield Earned	1.51%
Ending Balance	69,833.20	2024 Interest Paid	532.23

ACTIVITY IN DATE ORDER

Date	Description	Amount
7/31	Interest Deposit	88.96

CHECKS IN SERIAL NUMBER ORDER

Date	Check No	Amount	Date	Check No	Amount
7/09	1239	49.19	7/18	1240	138.00

*Indicates skip in Check Number

DAILY BALANCE INFORMATION

Date	Balance	Date	Balance
7/01	69,931.43	7/18	69,744.24
7/09	69,882.24	7/31	69,833.20

INTEREST RATE SUMMARY

Date	Interest Rate
6/30	1.500000%

GL Number	Description	Beginning Balance
248-000-001.024	CASH-DDA CHECKING	69,833.20
Beginning GL Balance:		69,833.20
Less: Cash Disbursements		(142.50)
Add: Journal Entries/Other		80.33
Ending GL Balance:		69,771.03

GL Number	Description	Ending Balance
248-000-001.024	CASH-DDA CHECKING	69,771.03
Ending GL Balance:		69,771.03
Ending Bank Balance:		69,771.03
Add: Deposits in Transit		0.00
Less: 0 AP Outstanding Checks		
Less: 0 PR Outstanding Checks		
Adjusted Bank Balance		69,771.03
Unreconciled Difference:		0.00

REVIEWED BY



DATE:

9/4/2024



VILLAGE OF LAKE ODESSA
 DOWNTOWN DEVELOPMENT AUTHORITY
 839 FOURTH AVENUE
 LAKE ODESSA MI 48849

Date 8/30/24 Page 1
 Account Number XXXXXXXXXXXXX6015
 Enclosures 1

Bank from anywhere with our NEW Virtual Branch!
 Access the Virtual Branch via our website: UBMich.com

CHECKING ACCOUNTS

PUBLIC CHECKING		Number of Enclosures	1
Account Number	XXXXXXXXXXXX6015	Statement Dates	8/01/24 thru 9/02/24
Previous Balance	69,833.20	Days in the statement period	33
Deposits/Credits	.00	Average Ledger	69,798.65
1 Checks/Debits	142.50	Average Collected	69,798.65
Service Charge	.00	Interest Earned	80.33
Interest Paid	80.33	Annual Percentage Yield Earned	1.28%
Ending Balance	69,771.03	2024 Interest Paid	612.56

ACTIVITY IN DATE ORDER

Date	Description	Amount
9/02	Interest Deposit	80.33

CHECKS IN SERIAL NUMBER ORDER

Date	Check No	Amount
8/26	1241	142.50

*Indicates Skip in Check Number

DAILY BALANCE INFORMATION

Date	Balance	Date	Balance	Date	Balance
8/01	69,833.20	8/26	69,690.70	9/02	69,771.03

INTEREST RATE SUMMARY

Date	Interest Rate
7/31	1.500000%
8/19	1.000000%

In case of errors or questions about your electronic transfers please contact
 Union Bank at 670 Cascade W Parkway SE Grand Rapids, MI 49546
 You may also contact us for a full Funds Availability Disclosure.



Agenda: DDA & TIF Plan Kick-Off

Tuesday, September 10, 2024 – 7:00am

LAKE ODESSA DEVELOPMENT AND TIF PLAN

1. Public Outreach Program

- a) Downtown specific questions to be incorporated into the Master Plan survey
- b) Downtown specific engagement during Master Plan visioning workshops

2. Draft Development Plan

- a) What specific projects or issues would you like the plan to address?
 - Marketing and branding
 - Sidewalks, bike paths, and bike infrastructure
 - Streetscape
 - Placemaking (e.g., lamp posts, banners, seasonal decorations, planters, etc.)
 - Public spaces (e.g., pocket parks, parklands, plazas, gathering space, etc.)
 - Property acquisitions
 - Façade improvements or mini grant programs
 - Business attraction and retention
- b) Is the DDA interested in a boundary change or adjustment?

TASKS	Month					
	1	2	3	4	5	6
1. Project Initiation						
2. Development Area Resident's District Council						
3. Lake Odessa 2024 - Identify, Quantify and Analyze						
4. Public Outreach						
5. Draft the Plan/DDA Review						
6. Public Review/Adoption						
MEETINGS (shown with an "x" for one meeting, unless otherwise noted with a meeting number)						
Working meetings with the DDA Board and Designees	x		x		x	
Stakeholder Visioning Sessions (outlined in Master Plan scope)		x (4)				
DACC Meeting (if required)		x				
Public Hearing with Village Council						x



NEXT STEPS

- a) Determine if a DACC will be needed (100 people or more living in Development Area)
- b) Public engagement (advertise survey, visioning workshops)
- c) Existing conditions analysis and review of previous plans
- d) Drafting the Development Plan and TIF Plan

GENERAL DDA PLAN PROCESS OVERVIEW (PA 57 OF 2018)

1. Determine if a Development Citizens Council is needed and ask that Village Council appoint members (DACC must be activated at least 90 days before public hearing on the Plan)
2. Document drafting and check-ins with Village Staff
3. Submit DDA and TIF Plan for review and revises draft based on comments received
4. McKenna presents final Plan, DDA recommends approval of the Plan, and submits to Village Council to set a date for a public hearing
5. Public hearing date is set
6. Notice of public hearing is advertised the first time (no later than 40 days before public hearing)
 - a) Village mails a copy of public hearing notice to all property taxpayers of record in the Downtown District
 - b) Village mails notice of public hearing by certified mail to the governing body of each taxing jurisdiction levying taxes subject to capture, and offers them an opportunity to meet with Village Council
 - c) Village sends copy of proposed DDA and TIF Plan to each of the taxing jurisdictions levying taxes subject to capture to fully notify them of the “fiscal and economic implications” of the Plan
 - d) Village posts copy of notice of public hearing in 20 conspicuous and public places within the Downtown District
7. DACC (if established) recommends approval of the DDA and TIF Plan to Village Council
8. Public hearing notice is advertised the second time (no later than 20 days before public hearing)
9. Public hearing is held by Village Council
10. Village Council holds first reading of Ordinance approving the DDA and TIF Plan
11. Second reading and adoption of Ordinance approving the Plan by Village Council
12. Adopted Ordinance filed with Secretary of State and published at least once in newspaper of general circulation



MEMORANDUM

TO: Downtown Development Authority Board Members

FROM: Gregg Guetschow, Village Manager

SUBJECT: Sidewalk Occupancies

DATE: August 27, 2024

I have been made aware of discussions at recent DDA meetings regarding merchandise, signs, street furniture, and similar obstructions and uses on sidewalks adjacent to businesses in the central business district. I have begun working on amendments to the Village's ordinance regulating uses in street right-of-way areas, including sidewalks. This is an opportune time, then, to consider whether changes in provisions related to sidewalk obstructions are warranted.

The municipal code contains several sections that address sidewalk obstructions and uses:

- Section 28-34 requires removal of snow, ice, dirt, rubbish and the like, and prohibits obstructions and other articles from sidewalks. Although this is a broad prohibition, it seems unlikely that it contemplated merchandise, signs, and tables when it was adopted. The section does not permit obstructions and articles to remain on the sidewalk for longer than 24 hours. It is conceivable, then, that a merchant could place items on the street when opening and remove them when the store closes while still complying with the code.
- Section 36-63 (i)(4)(d) prohibits locating any sign, except traffic control and Village identification signs, in the street right-of-way. Temporary signs, such as sandwich-board signs advertising hours and specials located on sidewalks in front of businesses violate this provision.
- Permits to allow for the use by sidewalk cafes adjacent to food service establishments are granted pursuant to Section 36.61(f)(9). Regulating this use in the zoning ordinance is not ideal. At a minimum, code provisions regulating uses in street rights-of-way should contain an exception for sidewalk cafes permitted under the zoning ordinance. It is important to note that this Section establishes a minimum 8-foot sidewalk width clear of furniture or other obstructions to allow for pedestrian travel. This width is greater than required in other municipalities – Hastings requires six feet,

for example – or by accessibility guidelines, but sets a standard that, until modified, should be applied throughout the central business district for the sake of consistency.

There are several considerations the DDA might wish to discuss as it evaluates what regulations it wishes to maintain, revise, or establish regarding sidewalk occupancies:

- Merchandise would be considered articles under Section 28-34 and is currently prohibited, subject to the 24-hour standard previously discussed. If the DDA wishes to continue the practice of prohibiting merchandise displays, an amendment should be adopted that always restricts merchandise. Some reasonable exceptions are probably warranted. Businesses that lack rear loading zones might need to stack deliveries on sidewalks for brief periods. In addition, an exception might be considered to allow for district-wide sidewalk sales or similar promotions.
- Like merchandise, there is currently no allowance for street furniture in the downtown. At a minimum, this prohibition should be loosened so that it does not apply to benches, planters, and the like installed and maintained by the Village or the DDA. Allowing individual merchants to place their own benches and planters next to their buildings presents the challenge of maintaining an appealing and consistent appearance throughout the district.
- The use of sandwich board signs in front of businesses is common in many downtowns. They serve to notify customers that a shop is open for business and to promote sales or specials they might be offering. As noted above, no such signs are currently allowed on downtown sidewalks. The DDA can consider asking that the prohibition be modified. There is one challenge with such a move about which the DDA should be aware. Although governments can regulate the time, place, and manner of sign displays, they cannot regulate the content. It is conceivable, then, that allowing sandwich board signs would result in some having messages not consistent with the intent of business promotion, perhaps detracting from the environment the DDA wishes to create.
- As noted earlier, there is a conflict between provisions related to sidewalk occupancies in the street ordinance and those that allow for sidewalk cafes in the zoning ordinance. This conflict is easily addressed. At the same time, however, the DDA might wish to consider whether there are additional standards that should be evaluated when granting sidewalk café permits. Present regulations do not necessarily ensure that cafes will be consistent with the image the DDA might like to create in the downtown area.

These items are noted for discussion purposes so I can receive input from the DDA before proceeding to draft the required amendments.

Quote For: LAKE ODESSA DDA

Corporate Entity: LAKE ODESSA DDA
839 4TH AVE
Billing Address: LAKE ODESSA, MI 48849-1001
United States

Billing Account: 1967605

Site Name: LAKE ODESSA DDA
839 4TH AVE
Site Address: LAKE ODESSA, MI 48849-1001
United States

Location Account: 1967605

Store:

Client Billing Contact Name: SARAH MCGARRY
Client Billing Contact Email: SBMCGARRY@GMAIL.COM
Client Billing Contact Phone: 6168896528

Client Contact Name: SARAH MCGARRY
Client Contact Email: SBMCGARRY@GMAIL.COM
Client Contact Phone: 6168896528

From: Carney, Teresa
Phone: (800) 345-5000
Email: teresa.carney@moodmedia.com

Site Number: 3021458
Reference: LAKE ODESSA DDA INSTALL

Equipment Purchase Quotation

Quantity	UOM	Item Description	Leased Lines	Total
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COMPLETED SURVEY FEE

Total Labor	\$ 540.00
Total COMPLETED SURVEY FEE	\$ 540.00

REPAIRS

500	FT	BELDEN (INCRMNT 250FT) MULTI-CONDUCTOR 16AWG 1PR UNSHIELDED PVC DIRECT BURIAL, BLACK
3	EA	KLIPSCH PSM-650-T 6.5" SURFACE MOUNT SPEAKER, 70V, 60W, BLACK

Total Equipment	\$ 1,385.22
Total Labor	\$ 2,430.00
Total REPAIRS	\$ 3,815.22

MUSIC PLAYER

1	EA	MOOD HARMONY ANDROID - AUDIO ONLY INCLUDES 32GB CARD	Yes
1	EA	ONE TIME ACTIVATION FEE	

Total Equipment	\$ 0.00
Total Labor	\$ 180.00
Total MUSIC PLAYER	\$ 180.00

Total Equipment	\$ 1,385.22
Total Labor	\$ 3,150.00
Net Total	\$ 4,535.22
Estimated Tax	\$ 272.11
Estimated Freight	\$ 127.52
Quote Total	\$ 4,934.85
Deposit (0%) Due	\$ 0.00

Invoice Delivery Options: Client elects: Paperless via Online Payment Portal - <https://cc6.ondemand.esker.com> or
 Automatic Email in PDF format sent by to: _____

Payment Options: By checking one of the automatic payment options below, Client hereby authorizes Provider to deduct payments due under this Agreement on the first business day of the month. If the total monthly service charge combined for all Serviced Premises is less than \$250.00, auto pay must

be selected.

automatic credit card charge (Visa, MasterCard or Discover) or automatic bank draft (EFT-ACH)

Client agrees to provide ACH or Credit Card information by:

Online entry - <https://cc6.ondemand.esker.com>, or Secure line phone call. Best time to contact: Morning Afternoon.

OR

Submit payment to remit address: Remit to address: P.O. Box 71070 Charlotte, NC 28272-1070, or other such address required by Mood from time to time.

MOOD MEDIA TERMS AND CONDITIONS OF BUSINESS FOR ORACLE QUOTATIONS (USA) (T&Cs)

CONFIDENTIALITY

- The recipient agrees not to disclose Confidential Information at any time during the Term of this Agreement and for a period of 3 (three) years after termination except to affiliates, employees and agents who have a need to know and have agreed in writing to keep the Confidential Information confidential. Only those parties may use the Confidential Information, and only to exercise the recipient's rights and fulfil its obligations under this Agreement, while using at least a reasonable degree of care to protect it. The recipient may also disclose Confidential Information to the extent required by law after reasonable notice to discloser. Unauthorized disclosure of Confidential Information could cause substantial harm to the disclosing party, for which damages alone would not be a sufficient remedy. Either party may seek injunctive or equitable relief in a court of competent jurisdiction to protect its Confidential Information and intellectual property rights.
- Upon discovery of any unauthorized disclosure of Confidential Information, the recipient shall immediately notify it the discloser.
- Upon termination or expiration of this Agreement, or upon written request of a Party at any time, the other Party will promptly return to the discloser or destroy all documents and other tangible materials containing Confidential Information and all copies thereof within 10 (ten) days of a request for such return or destruction.
- The Client agrees that the Provider may disclose the identity of the Client in connection with the marketing of its products and services to potential customers.
- The Client warrants and represents that it is not listed on any sanctioned party or restricted person list maintained by the United States Department of the Treasury, the United States Department of Commerce and/or the United States Department of State and that the Client is not procuring any Services or Equipment under this Agreement at the behest of, or for the benefit of, any individual or entity on such a list. The Client warrants and represents that it will not sell, ship or deploy any Equipment sold hereunder to or through any country subject to trade sanctions, embargoes and/or restrictions under the laws of the United States.

MISCELLANEOUS

- Client acknowledges and agrees that services to be provided by Provider hereunder may be provided by Provider, its agents, subcontractors or a Servicing Supplier identified in Exhibit A, as may be updated by Provider from time to time. Client further acknowledges that Provider is entering into and executing this Agreement on behalf of and as agent for each such Servicing Supplier, that it is the express intent of the Parties hereto to establish privity of contract between Client and each such Servicing Supplier with respect to each Site served by each such Servicing Supplier, and that photocopies of this Agreement provided to each such Servicing Supplier for each such Site shall be deemed for all purposes a counterpart original of this Agreement. Further, the Provider shall be permitted to assign and/or novate its rights and/or obligations under the Agreement and/or any document entered into pursuant to it, at any time, without the prior written consent of the Client to any holding company or subsidiary of the Provider from time to time (or any subsidiary of such holding company from time to time). References to a Party in the Agreement shall include its successors and permitted assignees.
- If a dispute arises in the scope of interpretation or performance of the Agreement, the Parties shall endeavour to reach an amicable settlement between the key contacts at each of the Client and the Provider within a period of 60 days following receipt of a notice from one Party to the other. If the issue has not been resolved within the period of 60 days, the matter shall be escalated to the most senior representative involved in managing the Client/Provider relationship for each Party to meet to resolve the issue. If the issue is not resolved at this representative level within the next 30 days, the dispute shall be settled solely and exclusively by binding arbitration in Austin, Texas according to the laws of the State of Texas, without regard to conflict of laws, and the arbitrator's judgement on the law of the jurisdiction shall be final and binding. Such arbitration shall be conducted by the American Arbitration Association under its then prevailing Commercial Arbitration Rules. Judgement on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to the costs of the suit including reasonable attorney's fees for having to compel arbitration or defend or enforce the award.
- This Agreement is governed by, and shall be construed in accordance with the laws of the State of Texas) and the courts of Austin, Texas shall have the non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation.
- No amendment of this Agreement shall be valid unless it is in writing and signed by both Parties.
- If any part of the Agreement is found to be invalid due to the application of any law or legal principle then that provision will, to the extent required, be severed from the Agreement and will be ineffective without modifying any other part of the Agreement which will remain in full force and effect.
- The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- All notices to be given hereunder shall be given by a nationally recognized overnight delivery service or certified mail, postage prepaid to the respective addresses set out in the Quotation and shall be deemed given 2 (two) Business Days after posting.
- The Parties shall consult each other prior to the publication of any press release concerning the Agreement, and shall not make any public statement or communication without the prior consent of the other Party, which may not be unreasonably withheld or delayed.
- No waiver by any Party of any breach or non-fulfilment by any other Party of any provision of the Agreement shall be deemed to be a waiver of any subsequent or other breach of the same or any other term or condition of the Agreement. No failure or delay in exercising any right or remedy under the Agreement shall constitute a waiver of that right or remedy.

BACKGROUND

- (A) The Provider is in the business of supplying equipment, music, voice messaging services, digital signage services and other similar ancillary services;
- (B) The Client owns, operates, franchises or controls the Sites and wishes to procure certain equipment and/or certain services from the Provider in accordance with these T&Cs.

DEFINITIONS AND INTERPRETATION

In these T&Cs, the following words and expressions shall have the following meanings. In certain instances, not all definitions shall be used in these T&Cs:

"Agreement" means the Quotation signed by the Client along with these T&C's and any and all Exhibits attached hereto and incorporated herein by reference;

"Additional System Equipment" means the system equipment goods leased to the Client by the Provider as detailed in the Quotation (if any);

"Assurance Plan" means one of the following:

Assurance Plan	Included
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Player Assurance	The Provider shall replace the Equipment without charge (excluding labor, inbound and outbound freight charges, telephone systems, microphones, televisions, monitors, dish alignments, wires, cables and network connectivity, each of which shall be paid by the Client) in exchange for the Client's return of the defective Equipment. The Client shall self-install the replacement Equipment.
Player Assurance Plus	The Provider shall replace the Equipment without charge (including inbound and outbound freight charges but excluding labor, telephone systems, microphones, televisions, monitors, dish alignments, wires, cables and network connectivity, each of which shall be paid by the Client) in exchange for the Client's return of the defective Equipment. The Client shall self-install the replacement Equipment.
Player Assurance Complete	The Provider shall replace the Equipment without charge (including labor and inbound and outbound freight charges but excluding telephone systems, microphones, televisions, monitors, dish alignments, wires, cables and network connectivity, each of which shall be paid by the Client) in exchange for the Client's return of the defective Equipment. The Client may elect to self-install the replacement Equipment or request that the Provider installs the replacement Equipment.
System Assurance Complete (for Additional System Equipment only)	The Provider shall replace the sound system Equipment without charge (including labor and inbound and outbound freight charges but excluding DMM device, telephone systems, microphones, televisions, monitors, dish alignments, and network connectivity, each of which shall be paid by the Client) in exchange for the Client's return of the defective Equipment. The Client may elect to self-install the replacement Equipment or request that the Provider installs the replacement Equipment.

"Audio Content" means the content provided by the Provider at a regular intervals to be played through the Equipment and provided as part of the Music Services (if any) and/or the Voice Messaging Services (if any) and/or the Digital Signage Services (if any);

"Business Day" means a day other than a Saturday, Sunday or public holiday in the relevant Territory;

"Business Hours" means hours between 9:00am to 5:00pm Eastern (as a minimum) inclusive on any Business Day;

"Client" means the legal entity identified on the attached Quotation under "Legal Name";

"Commencement Date" means the date of the Client's signature on the Quotation;

"Confidential Information" means information disclosed by one party to the other that is marked as confidential or proprietary or that ought reasonably be understood as confidential or proprietary. Confidential Information excludes information that the recipient already lawfully knew, becomes public through no fault of the recipient, was independently developed by the recipient or was rightfully obtained by the recipient from a third party;

"Digital Signage Content" means the visual records provided at regular intervals to be broadcast through the Equipment and provided as part of the Digital Signage Service; and

"Digital Signage Services" means the Digital Signage Content created by the Provider (unless otherwise agreed by the Provider and the Client) and uploaded by the Provider onto its server to allow the broadcasting at the Site through the Equipment.

"Drive Thru Maintenance Services" means the provision of maintenance services selected by Client and provided specifically for the Equipment used in drive-thru service;

"Drive Thru Platinum Rental" means the provision of Drive Thru Maintenance Services provided to Client using Rented Equipment;

"DTC means Drive-Thru Operations Center and telephone support line;

"Equipment" means the Purchased Equipment (if any), the Leased Equipment (if any) or Rented Equipment (if any) (as the context requires);

"Fees" means the relevant sums to be paid by the Client for the purchase of Purchased Equipment (if any), rental of Rented Equipment and/or Leased Equipment (if any) and Services (if any) provided by the Provider per the Quotation, including but not limited to any Unit Prices, Fees and Monthly Service Charge;

"Force Majeure" means any cause beyond the reasonable control of the Provider including, but not limited to acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, high winds or adverse weather conditions, lock-outs, strikes or other labor disputes;

"Initial Term" means (in relation to the Services only) the period from the Commencement Date for a consecutive period of the number of months stated under the section in the Quotation relating to Services under "Months". Unless otherwise agreed in writing by the parties, the term of the Agreement with respect to any Sites added after the Commencement Date shall be equal to the period of months within the definition of Initial Term from the later of (i) the date of the commencement of the Services for such additional Sites or (ii) the date of delivery of the Equipment for such additional Site(s), and such term shall be automatically renewed for successive 12 month periods thereafter, unless terminated as provided herein;

"Intellectual Property Rights" means all patents, trademarks, service marks, design rights, rights to extract information from a database, rights to use software, know how, trade secrets and all rights of a similar nature which may subsist anywhere in the world whether or not registered and including applications for registrations of any of them;

"Leased Equipment" means the goods leased to the Client by the Provider as detailed in the Quotation;

"Maintenance Service" means an obligation by the Provider to repair or replace the Equipment in accordance with the Assurance Plan selected in the Quotation (if any)

"Music Profile" means the selection of music channel(s)/playlist(s) by the Client;

"Music Service" means the loading and updating of the Music Profile by the Provider on the Equipment and the playing of the Music Profile through the Equipment as background music in the Sites;

"Party" means either the Provider or the Client and the Provider and the Client collectively;

"Purchased Equipment" mean the goods sold to the Client by the Provider as detailed in the Quotation;

"Provider" means the Mood or Play Network legal entity referred to at the header of the Quotation, acting on its own behalf and as agent for the Servicing Suppliers listed on Exhibit "A";

"Quotation" means the front sheet to which these T&C's are attached;

"Quote Date" means the date of the Quotation;

"Rented Equipment" means the equipment rented from Provider by Client as identified in the Quotation in connection with Drive Thru Maintenance Services at the Site(s);

"Renewal Term" means the 12 month renewal periods following the Initial Term;

"Service(s)" means the Music Services (if any), and/or the Voice Messaging Services (if any), and/or Digital Signage Services (if any), and/or Drive Thru Maintenance Services (if any), Drive Thru Platinum Rental and/or Maintenance Services (if any) included in the Quotation as more particularly detailed in Schedule 2 (if any).

"Site" means each of the Client's stores and/or sites located in the Territory and any new site added under the Agreement during the term of the Agreement and "Sites" shall be construed accordingly;

"Software" means Provider's software provided on or in connection with the Equipment, together with all codes, techniques, software tools, format, design, concepts, methods, and ideas associated therewith for the specific purpose of receiving and/or playing the Service;

"Voice Messaging Services" means advertising and/or informative messages relating to the Client's products/services and to the Sites, whose text are scripted and/or recorded and/or uploaded and/or produced by the Provider on the Equipment in order to be broadcast at the Sites;

"Technical Pre-requisites" means the technical pre-requisites required for the proper execution of the Music Services (if any) and the Voice Messaging Services (if any) and the Digital Signage Services (if any) and the Maintenance Services (if any) as communicated to the Client by the Provider;

"Term" means (in relation to the Services) the Initial Term and any Renewal Term;

"Territory" means the place where the Sites are located in the United States;

"Third Party" means a Party other than either of the Provider or the Client;

1.2 In this Agreement, except where the context otherwise requires:

1.2.1 capitalized words and expressions shall have the meanings set out in clause 1.1;

1.2.2 The Schedules are part of the Agreement and in the event of any conflict between the Schedules and these T&Cs, these T&Cs shall prevail;

1.2.3 headings are for convenience only and shall not affect the interpretation of the Agreement;

SERVICES

To the extent that the Client is purchasing Services, the below provisions (if any) shall apply and the Client shall: (i) obtain any necessary landlord or governmental approvals or permits in relation to the installation of Equipment (if any); and (ii) supply all required and necessary conduit, electrical outlets, adequate power, Plenum backcans if required and suitable space with a controlled environment to allow for installation and operation of the Equipment. The Client agrees that the installation of the Equipment and the provision of the Services may require the Provider to drill or cut holes in the infrastructure of the Site and the Provider shall be under no obligation to repair, replace or otherwise restore the Site to its original condition after termination of this Agreement and/or the removal of the Equipment (if any).

1. The Provider will provide the Services to each Site located in the Territory during the Term of the Agreement.

2. All Intellectual Property Rights and all other rights in the Services are owned by the Provider or licensed to the Provider. The Provider hereby grants to the Client a non-exclusive, personal and non-transferrable license to broadcast the Audio Content in relation to the Music Services (if any) and/or Voice Messaging Services (if any) and/or Digital Signage Services (if any) in the Sites located in the Territory under conditions of the Agreement and during the Term of the Agreement only.

TERM AND TERMINATION

- The Agreement shall commence on the Commencement Date and shall continue until such time as the Purchased Equipment has been delivered, unless the Quotation includes Services in which case, the Agreement shall commence on the Commencement Date and shall continue for the Initial Term of 0 month(s). The Agreement will be automatically renewed for successive 12 month periods thereafter unless either party provides written notice of termination at least 90 days prior to the expiration of the then-current term. Unless otherwise agreed in writing by the parties, the term of the Agreement with respect to any Sites added after the Commencement Date shall be equal to the period of months within the definition of Initial Term from the later of (i) the date of the commencement of the Services for such additional Sites or (ii) the date of delivery of the Equipment for such additional Site(s), and such term shall be automatically renewed for successive 12 month periods thereafter, unless terminated as provided herein.
- The Provider shall be entitled to terminate the Agreement immediately by notice in writing to the Client in the event that the Client becomes the subject of a voluntary arrangement, is unable to pay its debts, has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its assets or income, has passed a resolution for its winding-up or has a petition presented to any court for its winding-up or for an administration order or its equivalent.
- The Provider may immediately terminate this Agreement, without liability to the Client, on giving notice to the Client if the Client fails to any of its obligations due under this Agreement and/or fails to pay on the due date for payment and remains in default not less than 15 (fifteen) days after being notified in writing to make such payment.
- Either Party shall have the right to terminate the Agreement in the event of a material breach by the other Party of any of its obligations pursuant to the Agreement, which is not remedied within 15 calendar days from the date of a formal demand letter, without prejudice to any compensation which may be claimed from the defaulting Party due to non-compliance with its contractual obligations.
- On termination of this Agreement for any reason, the Client shall: (i) immediately terminate all use of any of the Services; (ii) cease use of any Leased Equipment, any software and all broadcasting in connection with any of the Services.
- Client may seek to add a Site by giving Provider 30 days' prior written notice of the address, contact name and telephone number for such additional Site(s) via U.S. or Electronic Mail. Within 10 days of Provider's receipt of such notice, Provider will advise Client in writing if the addition is not acceptable. If accepted, Provider will promptly take steps to fulfil Client's request and start providing the Service at the added Site(s). In addition, Client agrees that regardless of whether Client provides Provider such notice, the additional Site(s) shall be deemed added to this Agreement at the time Client accepts delivery of any equipment or Provider commences installation of any equipment or Service at any additional Site(s), whichever occurs first. In the event Client wishes to delete a Site, it will give Mood 45 days' prior written notice of the deletion. Client will promptly remove all Leased Equipment from the deleted Site and return it to Provider. Client's obligations to pay recurring (monthly) Fees, as required herein, with respect to such deleted Site(s) shall not cease unless Provider is then providing the Service to at least 95% of Client's total Sites as of the date of the deletion notice and Client has (i) closed the deleted Site or (ii) sold the deleted Site to an unrelated and unaffiliated third party.

FINANCIAL TERMS

- In consideration of the provision of the Services by the Provider, the Client shall pay the Fees detailed in the Quotation in full and cleared funds to the bank account of the Provider by automatic credit card charge or ACH payment in advance (unless otherwise agreed in writing between the Parties), details of which are set out in the Quotation. The Prices stated in the Quotation are subject to taxes as stated in the Quotation (subject to any increases in such taxes due to changes in applicable law where the Site is located) and where relevant, do not include freight, permits, taxes, tariffs, lift rental charges or restocking fees which shall be payable by the Client. The Provider reserves the right to request and receive interim payments based on project value.
- The Fees stated in the Quotation in relation to the Services may be increased with effect from the anniversary of the Commencement Date based on the increase in the Consumer Prices Index, All Urban Consumers in the U.S.
- Any recurring Fees shall be invoiced each _____ in advance (unless otherwise agreed in writing between the Parties) with effect from the commencement of the Services.
- Each invoice for Purchased Equipment shall be paid by the Client within thirty (30) days from the date of invoice. To the extent that the Client has checked one of the automatic payment options, the Client hereby authorizes the Provider to deduct payments due under this Agreement the first business day of the month. To the extent that the recurring Fees are less than \$250.00 per month, automatic payment shall apply. Client understands that Provider may use merchant updater services to receive updated credit card information from participating providers; and Client therefore authorizes automatic billing by Provider for subsequent payments due hereunder.
- Time for payment shall be of the essence of this Agreement. Without prejudice to any other right or remedy if the Client fails to pay the Provider on the due date the Provider may charge interest on such sum from the due date for payment in accordance with the lesser of 2.5% or the highest contract rate permitted by law; and
 - the Provider may suspend all Services until payment has been made in full, after a written notice for payment remained uncured; and
 - the Client may be liable for any costs incurred in the collection of the overdue amounts including the use of collection agencies and any reasonable legal costs.
- On termination, all sums payable to the Provider under the Agreement shall become due immediately, notwithstanding any other provision.
- The Provider may, without prejudice to any other right or remedy, set off any liability of the Provider against any liability of the Client to the Provider.

FORCE MAJEURE

1. The Provider shall not be deemed to be in breach of the Agreement or be liable for any delay or non-performance or for the consequences of any delay or non-performance which is due to Force Majeure. If the Provider is prevented or delayed in the performance of any of its obligations under the Agreement by Force Majeure, the Provider shall:

- 1.1 forthwith serve notice in writing on the Client specifying the nature and extent of the circumstances giving rise to Force Majeure and the measures it is taking to remedy and/or mitigate the effects; and
- 1.2 use reasonable endeavours, without being obliged to incur any expenditure to mitigate the effects of Force Majeure, to bring the Force Majeure to a close.

2 In the event that the Force Majeure event continues for 90 days or longer, the Provider may terminate the Agreement with immediate effect by written notice to the other Party.

Exhibit - Servicing Suppliers

The cities and states outlined below represent the primary territory where each Servicing Supplier of Provider has a principal place of business.

<p>ALASKA Sound Tech LLC, Anchorage, AK Alaska Satellite Internet Corp., Fairbanks, AK</p> <p>ARIZONA Business Music, Inc., Tucson, AZ</p> <p>ARKANSAS Audio Acoustics, Inc., Fayetteville, AR Audio Acoustics, Inc., Harrison, AR</p> <p>CALIFORNIA Environmental Sound Solutions, Bakersfield, CA 5 North Media, San Diego, CA Muzicraft, Santa Barbara, CA</p> <p>COLORADO Commercial Audio Video Front Range, LLC, Greeley, CO</p> <p>FLORIDA Melody, Inc., Miami, FL</p> <p>GEORGIA Carolina-Georgia Sound, Inc., Augusta, GA Carolina-Georgia Sound, Inc., Columbus, GA Georgia Sound Communications, Savannah, GA</p> <p>HAWAII Hawaii Sound Systems, Honolulu, HI Hawaii Sound Systems, Hilo, HI</p> <p>IOWA D.B. Acoustics, Inc., Cedar Rapids, IA Iowa Audio Video, Des Moines, IA</p> <p>KANSAS McClelland Sound, Inc., Wichita, KS</p> <p>LOUISIANA Metro Communications, Baton Rouge, LA Metro Communications, Lafayette, LA Metro Communications, Alexandria, LA Beaumont Business Music, Inc., Lake Charles, LA TimeComet Corporation, Shreveport, LA</p>	<p>MISSISSIPPI Melody Music Company, Columbus, MS Metro Communications, Inc., Greenwood, MS Metro Communications, Inc., Jackson, MS</p> <p>MISSOURI Towner Communications Systems, Jefferson City, MO Audio Acoustics, Inc., Joplin, MO Audio Acoustics, Inc., Poplar Bluff, MO Audio Acoustics, Inc., Springfield, MO</p> <p>MONTANA Eastman Sound & Music, Inc., Billings, MT Eastman Sound & Music, Inc., Kalispell, MT Eastman Sound & Music, Inc., Butte, MT</p> <p>NEBRASKA Great Plains Sound & Technology, Kearney, NE</p> <p>NEW MEXICO Business Music, Inc., Albuquerque, NM</p> <p>NEW YORK Functional Communications Corp., Albany, NY Functional Communications Corp., Binghamton, NY NCC Systems, Inc., Potsdam, NY Accent Communications Systems, Poughkeepsie, NY Functional Communications Corp., Rochester, NY Functional Communications Corp., Syracuse, NY</p> <p>OHIO Ohio Musicue, Canton, OH Miami Valley Audio, Dayton, OH Zaiser Communications, Inc., Toledo, OH</p> <p>OKLAHOMA Business Music, Inc., Lawton, OK Business Music, Inc., Oklahoma City, OK Business Music, Inc. Tulsa, OK</p> <p>SOUTH CAROLINA Carolina Sound Communications, Charleston, SC Carolina Sound Communications, Myrtle Beach, SC Carolina-Georgia Sound, Columbia, SC</p>	<p>SOUTH DAKOTA Eastman Sound & Music, Inc., Rapid City, SD</p> <p>TEXAS Business Music, Inc., Amarillo, TX AVCOM Communications, Inc., Austin, TX Beaumont Business Music, Inc., Beaumont, TX Gulf Business Music, Inc., Corpus Christi, TX Business Music, Inc., Abilene, TX Business Music, Inc., Brownwood, TX Business Music, Inc., San Angelo, TX Business Music, Inc., Wichita Falls, TX Muzicom, Inc., El Paso, TX ProSound, Inc., Harlingen, TX Business Music, Inc., Lubbock, TX Pioneer Music Company, Midland, TX Texas Wired Music, Inc., San Antonio, TX TimeComet Corporation, Texarkana, TX</p> <p>VERMONT Music Services of Vermont, Inc., Burlington, VT</p> <p>WASHINGTON Sousley Sound, Inc., Yakima, WA</p> <p>WISCONSIN Northern Musicast, Inc., Appleton, WI Wisconsin Audio Video, Eau Claire, WI Wisconsin Audio Video, Madison, WI Wisconsin Audio Video, Wausau, WI</p> <p>WYOMING Commercial Audio Video Front Range, LLC, Cheyenne, WY</p>
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<p>MINNESOTA Business Music, Ltd., Duluth, MN Sound & Media Solutions, Rochester, MN Sound & Media Solutions, Winona, MN</p>	<p>Georgia Sound Communications, Beaufort, SC Georgia Sound Communications, Hilton Head, SC</p>	
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WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

- PROVIDER'S PERFORMANCE OF THE SERVICES IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT IS IN LIEU OF ALL WARRANTIES, EXPRESS OR IMPLIED. PROVIDER MAKES NO WARRANTIES CONCERNING THE OPERATION OR CONDITION OF THE EQUIPMENT OR ANY REPAIR PARTS OR ANY SERVICES PROVIDED BY PROVIDER UNDER THE AGREEMENT, AND HEREBY DISCLAIMS ALL WARRANTIES IMPLIED BY LAW, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. IN NO EVENT SHALL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST SAVINGS) EVEN IF CLIENT HAS ADVISED PROVIDER OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.
- PROVIDER'S ENTIRE LIABILITY TO CLIENT FOR ANY LOSS OR DAMAGES WHATSOEVER ARISING UNDER THE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO AN AMOUNT NOT EXCEEDING TWELVE (12) MONTHS OF THE FEES PAID TO PROVIDER BY CLIENT IN CONNECTION WITH THE PARTICULAR SITES WHERE THE EVENT GIVING RISE TO THE CAUSE OF ACTION OCCURRED. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES EXPRESSLY AGREE THAT THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS OF DAMAGES SET FORTH IN THIS AGREEMENT ARE AGREED TO ALLOCATIONS OF RISK AND A PART OF THE CONSIDERATION FOR PROVIDER'S PERFORMANCE OF THE SERVICES FOR CLIENT AND CLIENT'S PURCHASE OF THE SERVICES AND/OR EQUIPMENT FROM PROVIDER.
- Nothing in the Agreement shall exclude or limit the liability of either Party for:
 - death or personal injury caused by negligence;
 - fraudulent misrepresentation; or
 - any other liability which is not permitted to exclude or limit as a matter of law.
- The Client shall indemnify the Provider for all liabilities, costs, claims and damages that arise directly or indirectly out of or from the Client's negligence, wilful misconduct and/or breach of its obligations as set out in the Agreement. The Client shall provide, at its own cost, all assistance to enable the Provider to defend any claim, action or proceedings brought against the Provider as a consequence of the breach and will bear all direct costs incurred by the Provider to defend such a claim, action or proceedings as well as all sums due by the Provider in connection therewith.

SCOPE OF T&Cs

- These T&Cs apply to any Quotation issued by the Provider. The signature of the Quotation by the Client demonstrates (i) the full, unconditional and unreserved acceptance of the T&Cs by the Client; and (ii) constitutes the legally binding Agreement.
 - These T&C's may be used either as stand-alone terms or read together with a previously signed master services agreement between the Provider and the Client which remains in full force and effect and which is incorporated herein by this reference ("Master Services Agreement"). In the event of any inconsistency between the provisions of these T&C's and any Master Services Agreement, the Master Services Agreement shall prevail. No provision(s) of any purchase order or other agreement from Client shall alter the terms and conditions of this Agreement, and in the event of a conflict, this Agreement shall prevail.
- The Agreement constitutes the entire agreement between the Parties relating to the subject matter thereof and supersedes all prior written or oral agreements, representations or understandings between the Parties save for any Master Services Agreement.

- An order is placed when the Quotation is signed by the Client and received by the Provider and/or a purchase order is received from the Client. The Quotation is addressed to the Client and the Client is not entitled to assign in whole or in part, its rights and obligations under the Agreement without the prior consent of the Provider.

EQUIPMENT PURCHASE

To the extent that the Client is purchasing the Purchased Equipment, the below provisions (if any) shall apply.

- The Quotation in relation to Purchased Equipment is valid for a period of 90 days from the Quote Date. The Provider reserves the right to reject a Quotation which is signed by the Client after the period of 90 days from the Quote Date.
- For Purchased Equipment exceeding \$25,000, or where such installation exceeds ninety (90) days in length from the Commencement Date, Client agrees: (i) a 50% deposit shall be payable to the Provider in advance before any installation can proceed; and (ii) to monthly progress billing by Provider.
- Any changes, alterations or deviations from the Purchased Equipment and installation obligations specified herein involving extra cost for labor or material will be executed only on written orders for the same duly executed by Client and Provider (each a "Change Order"). The cost of any added labor or material included in a Change Order will become an extra charge over and above the total specified in this Agreement. The total specified in this Agreement is based upon installation by employees of Provider or its authorized agents. The Provider reserves the right to make any change in relation to the Purchased Equipment specifications prior to delivery without having the obligation to modify the Purchased Equipment already ordered and/or delivered.
- Title to and risk of loss in the Purchased Equipment shall pass to the Client upon shipment of the Purchased Equipment to Site. Client shall keep the Purchased Equipment insured for its full replacement value and against all risks from the time of shipment. The Client shall verify the state the Purchased Equipment delivered and shall notify the Provider of any defects within 48 (forty eight) Business Hours after delivery.
- The Provider retains a purchase money security interest on and in all Equipment until the Provider receives payment in full, and the Client will cooperate with the Provider to perfect any such interest as deemed reasonably necessary by the Provider. In the event that the Provider is compelled to obtain payment through legal or other professional services, then all such legal and collection fees, whether or not a suit is filed, shall be paid by the Client, including but not limited to all attorneys' fees and costs incurred in the prosecution and/or appeal of any legal or equitable action. In addition to, but not by way of limitation, if the Client defaults in payment, the Provider may (without prior demand, legal process or waiver of any other remedies) declare all payments hereunder immediately due and payable. The Equipment may be sold if the Provider so desires and the Provider may apply the proceeds less any expenses for sale, retaking, repair or collection against the unpaid balance. The Client hereby authorizes the Provider, its agent or assigns, to sign and execute on the Client's behalf any and all necessary UCC-1 forms to perfect the Purchase Money Security Interest granted to the Provider.
- The Provider shall use its reasonable endeavours to deliver the Purchased Equipment to the Sites (at the delivery address(es) referred to in the Quotation) and in accordance with any time schedule agreed between the Parties. Purchased Equipment delivery may be carried out in one or several installments, by mail services of by an external carrier to the delivery address specified in the Quotation.
- The Provider accepts no liability for late delivery due to custom formalities, error with address(es) communicated by the Client or due to a Force Majeure event. For deliveries outside

the Territory, the Client shall handle any custom formalities and shall bear the delivery and custom costs and any costs relating to the export and transit of the Purchased Equipment.

8. In the event that the Client has any specific requirements in relation to the installation of the Purchased Equipment, such requirements shall be agreed by the Parties prior to installation, and any such requirements shall be charged at the rate agreed in advance between the Parties.

9. Any transport of Purchased Equipment from its initial place of installation shall be subject of a prior request submitted to the Provider with all information relating to the intended transport. Subject to quotation and feasibility, the Provider will arrange the visit of a Provider appointed technician on Site for proceeding to the relocation of Purchased Equipment.

10. All warranties provided for Purchased Equipment hereunder exclude coverage for the following equipment: plasma and LCD televisions, flat panel screens, microphones, foot switches, paging handsets, batteries, and other ancillary items. Repair or replacement of defective Purchased Equipment shall be Provider's sole liability regarding any fulfillment of warranty. For plasma and LCD televisions and flat panel screens ("Flat Screens"), Provider will upon request pass along the manufacturer's warranty and contact information to Client, unless Client purchases a warranty management service from Provider ("Warranty Management Service"). Warranty coverage for Flat Screens is at the sole discretion of the manufacturer, and Provider will not provide advance replacements for Flat Screens. Client understands that manufacturer warranty processing may delay restoration of service to Flat Screens. Beginning ninety (90) days after initial installation, Provider will charge standard labor rates for removal of Flat Screens from mounts. Client is also responsible for shipping charges applicable to the repair of any Flat Screens. Warranties provided hereunder do not cover repair or replacement which may be required by reason of misuse, abuse, theft, vandalism, accident, or negligence of Client, its employees, agents or invitees, or damage by flood, fire, earthquake, lightning, tornado or any Force Majeure event.

11. The Client shall ensure the continual provision of all utilities and shall ensure that any and all permission, consents and authority to enable the Provider to supply the Purchased Equipment are in place at the time of delivery.

12. The Fees payable by the Client include a 12 month warranty provided by the Provider in relation to the repair or replacement of Purchased Equipment. The Provider warrants installation labor for a period of ninety (90) days following installation.

13. The installation of Purchased Equipment will be under the following conditions:

13.1 In case of self-install of Purchased Equipment, the Client shall (i) be solely responsible for the installation of the Purchased Equipment; (ii) comply with the guidelines of the installation and user manual provided by the Provider; (iii) call the Provider's support center upon installation of the Purchased Equipment so that the Provider may confirm the connection, if the Purchased Equipment is to be connected.

13.2 In case of Purchased Equipment installation by the Provider:

13.2.1 If required, prior to installation, a pre-visit will be undertaken by the Provider's appointed technician, at the Client's cost as set out in the Quotation or as communicated in writing by the Provider to the Client.

13.2.2 Purchased Equipment installation on Site will be performed by the Provider's appointed technician at a Fee set out in the Quotation. A minimum of 10 (ten) Business Days' notice is required for an installation to be carried out.

13.2.3 In the event the Provider appointed technician is not able to complete the installation on the scheduled date or at the scheduled time due to an act or omission on the part of the Client or a Third Party (including failure to provide access to the Site), any revised installation arranged for a future date will incur additional cost for the Client.

13.2.4 The Client shall provide full access to its premises and/or equipment, including any access authorization, site rules, company rules, security rules and any documentation applicable to works to be undertaken on Site.

13.2.5 The Client warrants that its premises are suitable for the Purchased Equipment installation, including but not limited to all facilities being clean, dust-free, unfettered and secured.

13.2.6 Unless otherwise agreed between the Parties, the disposal of waste caused by the installation of Purchased Equipment by the Provider will be the responsibility of the Client.

PERSONAL DATA

1. Each Party may process personal data conveyed by the other Party within the course of this Agreement.

2. For the purposes of this clause, the meaning of the terms shall be construed as per the applicable definition in the relevant piece of personal data protection legislation which may include: (i) EU Regulation 2016/679 ("GDPR"); (ii) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR; (iii) US data privacy laws (CCPA, CDPA etc. as applicable); and (iv) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC, as amended by 2009/136/EC (including, in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003); in each case, as updated, amended or replaced from time to time.

3. If the data processing involves an international transfer, and if the data importer is situated outside the EU/EEA in a country for which the EU Commission has not issued an adequacy decision, based on art. 45 of the GDPR,

4. the Parties undertake to observe and apply the provisions of: (i) the contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council; and/or (ii) in respect of UK Personal Data, the international data transfer addendum to the European Commission's standard contractual clauses for international data transfers adopted pursuant to or permitted under the UK GDPR.

5. The data processed by the Parties as independent data controllers consist of the contact details of the Parties' representatives and employees. The processing occurs for the purpose of performing the contractual obligations undertaken hereunder by the Parties, in particular for the proper communication between the Parties. The legal basis of such Personal Data processing: (i) the conclusion and performance of the contract and (ii) for compliance with a legal obligation (such as accounting and taxation formalities).

6. Personal Data collected comprises first name, last name, job position, professional phone number (fixed line and mobile), professional email, professional postal address of each Party's employees and representatives and any other similar contact data which identifies an individual.

7. Personal Data is only intended to include the employees and representatives of the recipient Party (subcontractors or technical providers) and is retained to the extent required for the proper performance of that Party's obligations pursuant to the Agreement.

8. Each Party shall comply with its obligations with regard to personal data under any applicable laws relating to data protection and data privacy in connection with its activities under this Agreement:

8.1 Each Party shall fulfil its legal obligations related to their own personal data processing and they shall support each other reasonably to that effect.

8.2 Each Party undertakes to respect the rights of the data subject including the right to oppose, access rights, right to correction, rights to erasure if the Personal Data is not necessary for the proper performance of the Agreement, portability rights to a Third Party and the right to make a complaint.

8.3 In the event that the employees or representatives of the other Party contact Mood Media by phone, the provisions of the privacy notice available at <https://moodmedia.com/gb/company/privacy-notice-call-center/> shall apply.

8.4 Each Party undertakes to transparently inform its representatives and employees regarding the data processing undertaken in the context of this Agreement.

Equipment Rental

1. The Client shall hire from the Provider the Leased Equipment for the Services for the duration of the Term. The Client shall only use the Leased Equipment for broadcasting the Services at Sites. The Fees include the lease of one device per Site unless otherwise specified in the Quotation.

2. The Provider shall provide the Leased Equipment at the Sites (at the delivery address(es) referred to in the Quotation) and in accordance with any time schedule agreed between the Parties. The Provider accepts no liability for late delivery due to custom formalities, error with address(es) communicated by the Client or to a Force Majeure event.

3. The Client is not entitled to move the Leased Equipment in a site other than the Site initially agreed between the Parties, without prior written approval of Provider. In the event that the

Equipment is moved by a person other than a representative of the Provider, the Provider reserves the right to charge for any work necessary as a result of the Leased Equipment being moved.

4. The Client shall ensure the continual provision of all utilities and shall ensure that any and all permission, consents and authority to enable the Provider to supply the Leased Equipment and to provide the Services are in place at the time of delivery.
5. The installation of Leased Equipment will be under the following conditions:
 - 5.1. In case of self-install of Leased Equipment, the Client shall (i) be solely responsible for the installation of the Leased Equipment ; (ii) comply with the guidelines of the installation and user manual provided by the Provider; (iii) call the Provider's support center upon installation of the Leased Equipment so that the Provider may confirm the connection, if the Leased Equipment is to be connected.
 - 5.2. In case of Leased Equipment installation made by the Provider:
If required, prior to the installation, a pre-visit will be made by the Provider's appointed technician at the Client's cost as set out in the Quotation or as communicated in writing by the Provider to the Client.
6. A minimum of 10 (ten) Business Days' notice is required for an installation to be carried out.
7. In the event the Provider's technician is not able to complete the installation on the scheduled date or at the scheduled time due to an act or omission on the part of the Client or a Third Party (including failure to provide access to the Site), any revised installation arranged for a future date will incur additional cost for the Client.
8. The Client shall provide full access to its premises and/or equipment, including any access authorization, site rules, company rules, security rules and any documentation applicable to works to be undertaken on Site.
9. The Client warrants that its premises are suitable for the Leased Equipment installation, including but not limited to all facilities being clean, dust-free, unfettered and secured.
10. Unless otherwise agreed between the Parties, the disposal of waste caused by the installation of Leased Equipment by the Provider will be the responsibility of the Client.
11. The Client does not have any right of ownership of the Leased Equipment. Consequently, the Client shall (i) refrain from assigning or sub-leasing, in whole or in part, the rights and obligations arising from the Agreement relating to Leased Equipment to any Third Party; (ii) hold the Leased Equipment on a fiduciary basis as the Provider's bailee and not create or allow any liens or adverse claims of any kind with respect to the Leased Equipment; (iii) mark the Leased Equipment as the Provider's property; (iv) store the Leased Equipment separately from all other products of the Client or a Third Party, in such a way that it remains readily identifiable as the Provider's property and in a satisfactory condition; (v) not destroy, deface or obscure any identifying mark or packaging on or relating to the Leased Equipment; and (vi) keep the Leased Equipment insured on the Provider's behalf for its full replacement value and against all risks.
12. In the event of termination of the Agreement by the Provider, the Client shall uninstall and return the Leased Equipment in good working order, ordinary wear and tear excepted, at the Client's cost within 30 (thirty) days (unless the Client has paid for such Leased Equipment in full by the date of termination). Upon the Client's request and at the Client's own cost, the Provider may send a Provider appointed technician to the Sites to uninstall and collect the Leased Equipment. Until the Leased Equipment has been returned and repossessed, the Client shall be solely responsible for its safekeeping. In the event that the Client fails to return the Leased Equipment to the Provider in accordance with the above provisions, (at the Provider's discretion) Provider may charge the Client for the Leased Equipment at its full replacement value.
13. If a Maintenance Service is included in the Quotation, the Maintenance Service covers all parts and for the repair or replacement of the Leased Equipment during the initial 12 month period from the Commencement Date and all installation labor in relation to the Leased Equipment during the initial 90 days from the Commencement Date, except to the extent caused by any: (i) external damage to the Leased Equipment (including but not limited to flooding, lightning, power cut, internet network failure); (ii) Client or Third Party interference with the Leased Equipment including changes to the wiring; (iii) non-compliance with the Technical Pre-requisites and the Provider's operating instructions; (iv) Client or Third Party equipment/materials being connected to the Leased Equipment; (v) neglect, misuse or deliberate acts of damage in relation to the Leased Equipment by the Client or a Third Party; (vi) Force Majeure event and (vii) any use of Leased Equipment which would not comply with the current user guide provided by the Provider and/or used for a purpose other than the Services on Site. The Provider will not cover repair or replacement of telephone systems, microphones, televisions, monitors, dish alignments, wires or cables. In addition, the Provider will not be responsible for damage caused by (a) the negligent or wilful acts of the Client; or (b) Force Majeure including where a 24 hour power supply is interrupted causing damage.
14. For the purpose of the Maintenance Services, the Provider shall operate a support center to be used by the Client in the event of difficulties with the Leased Equipment, available during Provider's usual Business Hours. The Provider agrees to provide immediate troubleshooting and/or technical help and assistance to the Client by remote troubleshooting through the support center.
15. The Client shall report to the support center any fault with the Leased Equipment without undue delay. In the event that remote troubleshooting fails and subject to the decision from the Provider, new Leased Equipment will be sent to the Site within 24 (twenty four) Business Hours from the decision from Provider.
16. The Client shall (i) accept responsibility for the installation of the new Leased Equipment and (ii) return to the Provider the faulty Leased Equipment within 30 (thirty) days from receipt of the replacement. Should the Client fail to return the faulty Leased Equipment, the Provider shall charge for the replacement Leased Equipment. In the event that the Provider makes the decision that a Provider appointed technician must attend the Site and the Leased Equipment cannot be repaired on Site, the Provider appointed technician shall endeavour to leave replacement Leased Equipment on Site until such time as the faulty Leased Equipment has been repaired and replaced.

Subscriber:	LAKE ODESSA DDA	Muzak LLC d/b/a Mood Media
By: _____ <i>Signature</i>	_____	By: _____ <i>Signature</i>
Date: _____	_____	Date: _____
PO: _____	_____	_____

8.22.24

Project Name: LAKE ODESSA DDA

Location: LAKE ODESSA, MI

RE: Sound System – Repairs & Music Source

SCOPE OF SYSTEM:

Existing location that needs sound system repaired and a source added.

Tech SOW:

- Replace and or repair (2) speakers on the Carl's block. Client to assist with access to the junction boxes.
- Replace (1) speaker at 1st & 4th street.
- Install a Wifi connected Harmony A1 player and connect to the existing Atlas amplifier.

TECH NOTES:

- Take pictures of installed equipment and return to Mood PM. Pictures to include:
 - Headend
 - Speaker(s)
 - VCs
- Train POC how to use system (adjust volume, change music program channel, etc.) and show where the 800 service sticker is located.

Tech Abe Fayling (Advanced Business) to do this installation as he completed the site survey.

Regards,

Rick Goodman
Systems Engineer