

1 Definitions

Agreed Rate means amount equal to the Australian Financial Markets Association bank bill swap (BBSW) rate quoted on Reuters page "BBSW" for bank bills of a tenor of 90 days plus 2% per annum.

Agreement means the instrument of agreement executed by the parties to which these Conditions of Contract are annexed.

Agreement Details means the specific details of this Agreement set out in the section of the Agreement headed 'Agreement Details'.

Business Day means a day on which banks are open for business in Perth, Western Australia excluding a Saturday, Sunday or public holiday in that city.

Business Owner means the party so described in the Agreement.

Business Owner's Personnel means the Business Owner's officers, employees, agents and contractors (other than Xsights) and their respective employees and agents.

Conditions of Contract means these conditions of contract.

Consequential Loss means:

- a) any economic, indirect, special or consequential loss or damage; or
- b) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages); or
- c) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill,

even if a party is advised in advance of the possibility of any such losses or damages.

Contract is defined in clause 2.1.

Equipment means the equipment specified in the Agreement Details.

Fee means an amount equal to 25% of the Revenue.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to A New Tax System (Equipment and Services Tax) Act 1999 (Cth).

Insolvency Event means in respect of a party, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

Installation Date means the installation date specified in the Agreement Details.

Metcash means Metcash Trading Limited ACN 000 031 569 or a related body corporate of that entity within the meaning of the Corporations Act 2001 (Cth).

Metcash Agreement means an agreement between Metcash and Xsights pursuant to which Xsights grants Metcash the right to utilise, for advertising purposes, 40% of the advertising space available per day on the screens forming part of the Equipment.

PPSA means the Personal Property Securities Act 2009 (Cth).

Revenue means the revenue (exclusive of GST) actually received by Xsights from advertisers whose advertisements are displayed on the Equipment during the Term, but does not include:

- a) any monies received by Xsights from Metcash under the Metcash Agreement; or
- b) any revenue received by Metcash from advertisers whose advertisements are displayed on the Equipment pursuant to the exercise by Metcash of its rights under the Metcash Agreement

Tax Invoice means any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Term means the term of the Contract described in the Agreement Details.

2 Contract

2.1 The following documents together constitute the Contract:

- a) the Agreement; and
- b) these Conditions of Contract,

2.2 If there is any ambiguity, discrepancy or inconsistency between the above documents, the Agreement takes precedence.

3 Right to Install Equipment

3.1 In consideration for the Fee, the Business Owner grants Xsights the right to install the Equipment in the Premises for the Term on the terms and conditions set out in the Contract.

3.2 Xsights retains the sole right to utilise the Equipment during the Term for the purposes of:

- a) displaying advertisements; and
- b) fulfilling its obligations under the Metcash Agreement.

3.3 Without limiting the Business Owner's entitlement to the Fee, Xsights and Metcash will retain, and are solely entitled to, all revenue they respectively receive, or is payable in relation to, advertisements displayed on the Equipment.

3.4 The parties acknowledge and agree that, unless Xsights advises otherwise, Shoppen Pty Ltd ACN 615 677 846 will be engaged by Xsights to market, on behalf of Xsights, rights to have advertisements displayed on the Equipment to the extent those rights are held by Xsights.

4 Rent and Rebate

4.1 Subject to clause 4.2, the Business Owner must invoice Xsights for the Fee each calendar month in arrears in the form of a Tax Invoice issued within 7 days of receipt of the Revenue information from Xsights in accordance with clause 4.2. Xsights shall pay each such invoice within 14 days of receipt.

4.2 Within 7 days of the commencement of each calendar month, Xsights must advise the Business Owner of the Revenue for the preceding calendar month.

4.3 The Fee must be paid by electronic transfer into such account as is nominated by the Business Owner from time to time or as otherwise directed by the Business Owner.

5 Permits

The Business Owner must, at its cost, obtain and maintain all necessary approvals or consents from the persons and authorities whose or consent is requisite (or which it is usual to obtain) for the installation, maintenance or removal of the Equipment by Xsights.

6 Installation and Access

6.1 Subject to the Business Owner complying with its obligations under clauses 6.2 and 7, Xsights must install the Equipment at the Premises on or before the Installation Date or such other date as the parties agree,

6.2 The Business Owner must permit and enable Xsights and its agents at all reasonable times during the Term to enter upon the Premises to view, inspect, repair, maintain, service, operate and remove the Equipment.

7 Wiring, Electrical Current and Wifi

- 7.1 The Business Owner must, at its sole cost, ensure the availability of:
- the supply of electricity to the Equipment; and
 - WiFi at the Premises for use by Xsights and its representatives in connection with the use of the Equipment.
- 7.2 The Business Owner is solely responsible for ensuring the availability of, and must pay for, all electricity and power used by the Equipment and is responsible for the continuance of availability of the electric current to the Equipment.
- 7.3 Xsights shall not be responsible for radio or television interference with the Equipment.

8 Maintenance and Other Services

- 8.1 Xsights must maintain and service (and if necessary replace) the Equipment to ensure the Equipment remains in full operating condition during the Term.
- 8.2 Xsights obligations under this clause 8 do not cover maintenance, services or parts necessitated by the negligence of, or misuse of the Equipment by, any person other than Xsights or its agents or employees, or the malfunction of the Equipment due to the electricity supply to the Equipment or parts or attachments not installed by Xsights or any cause other than normal use.

9 Possession of Equipment

- 9.1 The Business Owner must, during the Term, keep the Equipment in the Business Owner's own custody at the Premises.
- 9.2 In the event that the Business Owner's right to occupy the Premises (as licensee or lessee or otherwise) is revoked or terminated for any reason whatsoever, the Contract will terminate.

10 Removal of Equipment

Upon the expiry or sooner termination of the Contract, Xsights shall have and retain the right to remove the Equipment from the Premises at Xsights' cost.

11 Goods and Services Tax (GST)

- 11.1 If GST is imposed on any supply made connection with the Contract, the party making the supply (Supplier) may recover from the recipient of the supply (Recipient), in addition to the consideration payable for the supply, an amount equal to the GST payable in respect of that supply.
- 11.2 The Supplier must first provide the Recipient with a Tax Invoice before the Recipient is required to pay the GST amount to the Supplier.

12 Confidential Information

Each party must keep confidential, and not use or disclose, the terms of the Contract except:

- to the extent necessary for the performance of their obligations under the Contract; or
- where the disclosure is:
 - to a party's legal or professional advisers who are under a duty of confidence; or
 - required by law (including any order of a court of competent jurisdiction), the rules of any stock exchange or statutory duty

13 Title, Risk and Insurance

- 13.1 The Equipment shall at all times remain the property of Xsights, and the Business Owner shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms of the Contract).
- 13.2 Without limiting clause 13.1, the Equipment will at all times be deemed personal property and shall not by reason of attachment or connection to any realty become or be deemed a fixture or appurtenant to such realty, and shall at all times be severable therefrom and remain at all times the property of Xsights free from any claim or right of the Business Owner or any person claiming by or through the Business Owner.
- 13.3 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Business Owner on its installation at the Premises and will cease upon the Equipment being removed by Xsights. The Equipment shall remain at the sole risk of the Business Owner during the Term. During the Term, the Business Owner shall, at its own expense, obtain and maintain, in the joint names of Xsights and the Business Owner, the following insurances:

- insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Xsights may from time to time specify in writing;
 - insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Xsights may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Xsights may from time to time consider reasonably necessary and advises to the Business Owner.
- 13.4 If the Business Owner fails to effect or maintain any of the insurances required under these Terms, Xsights shall be entitled to immediately terminate the Contract.
- 13.5 The Business Owner shall, on demand, supply to Xsights in respect of the insurances required under this clause:
- copies of the relevant insurance policies or other insurance confirmation acceptable to Xsights; and
 - proof of premium payments to confirm the insurance arrangements.

14 Indemnity and Limits of Liability

- 14.1 The Business Owner indemnifies Xsights for any losses suffered or incurred by Xsights arising out of, or in connection with, any wrongful act or omission of the Business Owner or the Business Owner's Personnel and claims made by third parties in connection with the Business Owner's performance or non-performance of the Business Owner's obligations under the Contract. This indemnity will be reduced to the extent that the loss is caused, or contributed to, by Xsights or Xsights' officers, employees or agents (which, for the avoidance of doubt, do not include the Business Owner or the Business Owner's Personnel).
- 14.2 Neither party is liable to the other for Consequential Loss in relation to the Contract.

14.3 The exclusion of liability in clause 14.2 does not apply to:

- a) liability in relation to fraud, property damage, death, personal injury or any other loss which cannot be restricted by law; or
- b) any liability of Xsights to Metcash under the Metcash Agreement.

15 Termination

15.1 Except to the extent that the notice or termination pursuant to the notice may be prohibited or stayed under the Corporations Act 2001 (Cth), a party may terminate the Contract by notice to the other party:

- a) if the other party commits a breach of the Contract and fails to remedy that breach within 5 Business Days of being given notice of the breach; or
- b) immediately if an Insolvency Event occurs in relation to the other party.

15.2 Xsights may terminate the Contract by notice in writing to the Business Owner if the Metcash Agreement is terminated for any reason.

15.3 Termination of the Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

16 Notices

16.1 Subject to clause 16.3, a notice must be in writing and:

- a) delivered by hand or sent by post, to the address of the party set out in the Agreement; or
- b) sent by email, as an attachment to an email, to the email address of the party set out in the Agreement,

or as otherwise notified to the party giving the notice.

16.2 A notice is deemed to be given and received:

- a) if delivered by hand, on the day of delivery;
- b) if sent by post, on the sixth Business Day after posting; or
- c) if sent by email, four hours after it is sent, unless the sender receives notification from its or the recipient's email server that the email is undeliverable, was not delivered or the recipient is out of the office.

16.3 A notice under clause 15 may only be delivered by hand or sent by post.

17 PPSA

17.1 Words and phrases used in the Contract that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.

17.2 If Xsights determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Business Owner agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Xsights asks and considers necessary for the purposes of:

- a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- b) enabling Xsights to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that Xsights' security interests have the priority required by it; or
- c) enabling Xsights to exercise rights in connection with the security interest.

17.3 Xsights does not need to give the Business Owner any notice required under the PPSA (including, without limitation, a notice of a verification statement under section 157 of the PPSA) unless the requirement for the notice cannot be excluded.

17.4 Notwithstanding clause 12, neither Xsights nor the Business Owner will disclose information of the kind mentioned in section 275(1) of the PPSA and the Business Owner will not authorise, and will ensure that no other party authorises, the disclosure of such information.

17.5 Clause 17.4 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

18 General

18.1 The Business Owner must not assign any right, benefit or interest under the Contract to any person or entity without the prior written consent of Xsights.

18.2 The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

18.3 The Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understandings and agreements in respect of its subject matter.

18.4 Nothing in the Contract gives a party authority to bind the other party in any way. Nothing in the Contract imposes any fiduciary duties on a party in relation to the other party.

18.5 No waiver of a breach of any term of the Contract or of a default under the Contract will be effective unless in writing, signed by, or on behalf of, the parties and expressed to be such a waiver.

18.6 The rights and remedies contained in the Contract are cumulative and not exclusive of any rights or remedies provided by Law.

18.7 Without limiting or impacting upon the continued operation of any clause which as a matter of construction is intended to survive the termination or expiry of the Contract, clauses 1, 6.2, 10, 12, 14, 15.3, 17 and this clause 18 will survive the termination or expiry of the Contract.

18.8 In the Contract:

- a) The singular includes the plural and the plural includes the singular.
- b) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- c) A reference to a clause, party or schedule is a reference to a clause of, and a party or schedule to, the Contract.
- d) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- e) A reference to a party to a document includes that party's successors and permitted assignees.
- f) A promise on the part of 2 or more persons binds them jointly and severally.
- g) No provision of the Contract will be construed adversely to a party because that party was responsible for the preparation of the Contract or that provision.
- h) Specifying anything after the words 'include' or 'for example' or similar expressions does not limit what else is included.