

**PHOENIX BENEDICT MUSIC ACADEMY  
STANDARD TERMS AND CONDITIONS FOR MUSIC TUITION**

Entered into between

**PHOENIX BENEDICT AESTHETICS CLOSE CORPORATION**

And

**THE CLIENT**

**SCHEDULE OF ANNEXURES TO THIS AGREEMENT**

**SCHEDULE A – CLIENT'S DETAILS**

**ANNEXURE – RATES**



**SCHEDULE A – CLIENT’S DETAILS AND CREDIT INFORMATION**

<b>1. NAME OF CLIENT:</b>	
<b>2. IDENTITY NUMBER:</b>	
<b>3. PHYSICAL ADDRESS:</b>	<hr/> <hr/> <hr/> <hr/>
<b>4. POSTAL ADDRESS:</b>	<hr/> <hr/> <hr/> <hr/>
<b>5. DOMICILIUM ADDRESS:</b>	<hr/> <hr/> <hr/> <hr/>
<b>6. CONTACT DETAILS:</b>	Name: _____ Business Tel. No: _____ Cellular: _____ Fax No: _____ Email: _____
<b>7. ANNUAL GROSS TURNOVER OF THE CLIENT:</b> <i>(Please note this is for the purposes of compliance with the Consumer Protection Act – please tick the appropriate box)</i>	<input type="checkbox"/> Asset or annual turnover is greater than R 2 million <input type="checkbox"/> Asset or annual turnover is less than R 2 million  The Consumer Protection Act, 2008 does not apply to transactions where the client/consumer has an annual turnover in excess of 2 million Rand per annum at the time of this transaction

**THE CLIENT warrants in favour of PHOENIX that the information provided herein is accurate in all material respects.**

**WHEREBY IT IS AGREED AS FOLLOWS:**

**1. INTERPRETATION**

- 1.1 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below will, when used in this AGREEMENT, bear the meanings ascribed to them and cognate words and expressions will bear corresponding meanings:
- 1.1.1 AGREEMENT – this agreement together with all annexure and addenda hereto.
  - 1.1.2 CLIENT – the party described in Schedule A hereto.
  - 1.1.3 COMMENCEMENT DATE – the date upon which this AGREEMENT comes into effect as envisaged in the RATES SCHEDULE.
  - 1.1.4 DESIGNATED BANK ACCOUNT – the bank account of PHOENIX with the following details: Bank: Nedbank Limited, Account holder: Phoenix Benedict Aesthetics CC; Type of Account: Current Account; Account number: 1913417514; Branch number: 191305.
  - 1.1.5 EXPLOITATION PERIOD – as defined in clause 7.1.
  - 1.1.6 FEES – the monthly rates for the MUSIC LESSONS, exclusive of VAT as envisaged in the RATES SCHEDULE.
  - 1.1.7 MUSIC LESSONS – the music lessons described in the RATES SCHEDULE in accordance with the options selected therein by the CLIENT, which tuition will be provided by PHOENIX and its designated TUTORS to the CLIENT on the terms and conditions envisaged herein.
  - 1.1.8 PHOENIX – Phoenix Benedict Aesthetics Close Corporation, registration number 2003/07581/23, a close corporation duly registered and incorporated under the laws of the RSA having its principal place of business at 79, 9<sup>th</sup> Street, Linden, Johannesburg, 2195.
  - 1.1.9 PRIME RATE - the prime bank overdraft rate per annum calculated daily and compounded monthly in arrears as charged by First National Bank Limited from time to time, unsecured and on overdraft to its first class corporate customers in the private sector, as certified by a manager of that bank whose authority will not be necessary to prove.
  - 1.1.10 RATES SCHEDULE - the schedule attached hereto marked Annexure A.
  - 1.1.11 REGISTRATION FEE – the fee designated in the RATES SCHEDULE.
  - 1.1.12 RSA – the Republic of South Africa.
  - 1.1.13 SIGNATURE DATE – the date of signature of this AGREEMENT by the last signing of its signatories.
  - 1.1.14 TUTORS – the music instructors designated by PHOENIX to provide the CLIENT with the designated MUSIC LESSONS.
  - 1.1.15 TERM – the period for which the SERVICES will be provided by PHOENIX to the CLIENT which period will commence on the COMMENCEMENT DATE and will endure until 31 December of the calendar year in which it was signed.
  - 1.1.16 VAT – Value Added Tax as envisaged in the Value Added Tax Act, 89 of 1991.
- 1.2 Clause and paragraph headings are for purposes of reference only and will not be used in interpretation.
- 1.3 Unless the context clearly indicates a contrary intention, any word denoting any gender includes the other gender, the singular includes the plural and vice versa, natural persons includes artificial persons and vice versa and insolvency includes provisional or final sequestration, liquidation or judicial management.
- 1.4 When any number of days is prescribed such number will exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the RSA, in which case the last day will be the next succeeding day which is not a Saturday, Sunday or a public holiday in the RSA.

- 1.5 A reference to a business day is a reference to any day excluding Saturday, Sunday and a public holiday in the RSA. A reference to days (other than to a business day), months or years will be a reference to calendar days, months or years, as the case may be. In the event that the day for payment of any amount due in terms of this AGREEMENT falls on a day which is not a business day, then the relevant date for payment will be the following business day. When any time or date is referred to in this AGREEMENT same will be deemed to be a reference to such time and/or date, as the case may be, in the RSA.
- 1.6 Where figures are referred to in numerals and in words and there is any conflict between the numerals and words, the words will prevail.
- 1.7 No provision herein will be construed against or interpreted to the disadvantage of any party by reason of such party having or being deemed to have structured, drafted or introduced such provision. The use of the word "including" followed by specific examples will not be construed so as to limit the meaning of the general wording preceding it. Any reference to any statute, regulation or legislation is a reference to such statute, regulation or legislation as at date of signature hereof and as amended or substituted from time to time. If any provision in a definition is a substantive provision confirming any right or imposing any obligation on any party, then notwithstanding that it is only in the definition clause, effect will be given to it as if it was a substantive provision in this AGREEMENT.
- 1.8 Unless any annexure provides otherwise, any annexure to this AGREEMENT will be deemed to be incorporated in and form part of this AGREEMENT.
- 1.9 Any provision of this AGREEMENT which contemplates performance or observance subsequent to any termination or expiration of this AGREEMENT will survive any termination or expiration of this AGREEMENT and continue in full force and effect notwithstanding that the clauses themselves do not expressly provide for this.

## **2. COMMENCEMENT AND DURATION**

- 2.1 PHOENIX is in the business of providing the MUSIC LESSONS to the CLIENT in exchange for the FEES. The CLIENT wishes to procure the MUSIC LESSONS from PHOENIX and PHOENIX hereby agrees to provide the CLIENT with the MUSIC LESSONS on the terms and conditions envisaged in this AGREEMENT.
- 2.2 Save for those clauses in this AGREEMENT which will survive termination of this AGREEMENT, this AGREEMENT will commence on the COMMENCEMENT DATE and will terminate automatically at the end of the TERM.

## **3. TERMINATION AND PENALTY**

- 3.1 **The CLIENT may cancel this AGREEMENT upon 20 (twenty) business days written notice to PHOENIX prior to the expiration of the TERM and in such event the CLIENT will be liable to PHOENIX for a penalty of 50% (fifty per centum) of the FEES remaining for the remainder of the TERM calculated with effect from the cancellation date.**
- 3.2 **The CLIENT acknowledges that the aforementioned penalty is reasonable and constitutes pre-estimated liquidate damages to be paid by the CLIENT to PHOENIX, immediately upon providing written notice of cancellation.**
- 3.3 **PHOENIX may cancel this AGREEMENT upon 20 (twenty) business days written notice to the CLIENT for any reason whatsoever. The acceptance of payments in advance by PHOENIX will not prejudice PHOENIX'S right to cancel this AGREEMENT or any other rights which PHOENIX might have in law or in terms of this AGREEMENT.**

## **4. MUSIC LESSONS**

- 4.1 PHOENIX will provide the SERVICES to the CLIENT at the premises of PHOENIX in terms of scheduled timeslots with the TUTOR in accordance with the option selected in the RATES SCHEDULE.
- 4.2 In the event of the CLIENT wishing to reschedule their MUSIC LESSON, the following will apply:
- 4.2.1 The CLIENT must provide the relevant TUTOR with at least 7 (seven) days advance notice of such request;
- 4.2.2 The MUSIC LESSON may only be rescheduled with the mutual consent of the TUTOR.
- 4.3 In the event of the CLIENT being absent from a MUSIC LESSON without notice as requested, the MUSIC LESSON will be forfeited and the CLIENT will remain liable for the FEE.

- 4.4 No MUSIC LESSONS will be provided in December and accordingly no FEES are payable in December, unless PHOENIX advises otherwise in writing.
- 4.5 PHOENIX reserves the right to change TUTORS at any time, subject to the TUTOR being within the graded tuition selected as an option by the CLIENT.
- 4.6 Music books are excluded from the FEES and must be paid for when ordering. Photocopying and redistribution of music books is prohibited and constitutes copyright infringement.

## 5. FEES AND PAYMENT TERMS

- 5.1 The CLIENT must pay the REGISTRATION FEE immediately upon signature of this AGREEMENT into PHOENIX'S DESIGNATED BANK ACCOUNT.
- 5.2 For specialized tuition, which includes O Level Music, A Level Music & Film Scoring, the REGISTRATION FEE and all FEES for the entire course are payable in advance of the COMMENCEMENT DATE.
- 5.3 PHOENIX will provide the CLIENT with a monthly tax invoice.
- 5.4 All FEES, excluding specialized tuition, must be paid monthly in advance into PHOENIX'S DESIGNATED BANK ACCOUNT either by cash or EFT, free of deduction, set-off and/or bank charges. The CLIENT will not be entitled to apply set-off of any amount against any amount owing to the CLIENT by PHOENIX. The CLIENT must email proof of each payment to [info@phoenixbenedict.com](mailto:info@phoenixbenedict.com). PHOENIX is entitled to appropriate any monies received from the CLIENT in terms of this AGREEMENT to any amounts owing by the CLIENT to the PHOENIX. PHOENIX does not accept cheques for payment of FEES.
- 5.3 PHOENIX may increase the FEES at any time during the TERM in the event that it provides 30 (thirty) calendar days written notice to the CLIENT. Any adjustment to the FEES will take effect upon the next calendar month following the date of such change.
- 5.4 Any amount payable in terms of this AGREEMENT which is not paid on the due date for payment (without prejudice to any other rights and remedies of the payee) will bear interest at a rate equal to the PRIME RATE.
- 5.5 A certificate issued by the accountants of PHOENIX certifying any amount due by the CLIENT in terms of this AGREEMENT will constitute *prima facie* proof of the CLIENT'S indebtedness for the purpose of obtaining default judgment, summary judgement or provisional sentence against the CLIENT in any competent court for the amount so certified.

## 6. INDEMNITY

Save for PHOENIX'S gross negligence, PHOENIX, its employees and/or agents will not be responsible for public liability, loss of life, or personal injury to any party whatsoever or howsoever arising, caused by the attendance of the CLIENT at the premises of PHOENIX and the CLIENT hereby indemnifies and holds harmless PHOENIX, its employees and/or agents against any claims (whether in contract or in delict), for damages (consequential and otherwise), legal fees and expenses which may arise now or in the future as a result thereof.

## 7. COPYRIGHT, MORAL RIGHTS AND ROYALTY

- 7.1 The CLIENT acknowledges that during the TERM with PHOENIX, the CLIENT may create original musical works, compositions, scores and the like ("MUSICAL WORKS") in conjunction with PHOENIX. In the circumstances, the CLIENT hereby expressly agrees that ownership of the MUSICAL WORKS will vest in the CLIENT. Notwithstanding that ownership of the MUSICAL WORKS vests in the CLIENT, PHOENIX will be entitled to exploit the following rights worldwide in respect of the MUSICAL WORKS within a period of 1 year of the expiration of this AGREEMENT ("EXPLOITATION PERIOD"), where after all such rights will revert exclusively to the CLIENT including mechanical copyrights; the composition; the synchronisation rights; any derivative rights, such as adaptations into other media-forms like literary work; any commercial exploitation, such as compact disc distribution; publishing rights and recording rights.
- 7.2 The CLIENT grants PHOENIX the right to use his or her name and likeness in any advertising or exploitation of the production during the EXPLOITATION PERIOD. This is also the case for any product based on the MUSICAL WORKS in a production, which is manufactured and distributed.
- 7.3 In the event of a lapse of the EXPLOITATION PERIOD, PHOENIX will nevertheless be entitled to financial compensation from the CLIENT in the amount of 10% (ten per centum) of all revenue, exclusive of VAT derived from exploitation of the MUSICAL WORKS during the lifetime of the CLIENT and for a period of 50 years after the client's lifetime, it being understood that this AGREEMENT is binding upon the CLIENT'S successors in title.
- 7.4 The CLIENT will be entitled to credit title compensation at all times in relation to any MUSICAL WORK of the CLIENT.

- 7.5 The CLIENT'S sole legal remedy in the case of a dispute shall be to claim damages and waive all rights to have the agreement rescinded or interfered with by any court application and interdict. This is designed to ensure the safe continuance of the production.

## 8. BREACH

- 8.1 Should the CLIENT commit any material breach and:

- 8.1.1 Fail to pay any amount owing by the CLIENT on due date therefore in terms of this AGREEMENT and fail to remedy such breach within 20 (twenty) days after receipt of written notice from the PHOENIX requiring such breach to be remedied; and/or
- 8.1.2 Commit any other breach of the terms and conditions of this AGREEMENT and fail to remedy such breach within 20 (twenty) days after receipt of written notice from the PHOENIX requiring such breach to be remedied;

Then and in such event, PHOENIX will be entitled (without prejudice to any other rights and remedies which it may enjoy in law) to claim specific performance or to cancel this AGREEMENT and to claim all damages which it has suffered from the CLIENT.

- 8.2 The CLIENT will be liable for all costs, charges and expenses on the scale as between attorney-and-own-client in the amount of R1500 (fifteen hundred Rand) per hour, exclusive of VAT and collection commission, incurred by the PHOENIX in giving any notice to the CLIENT in connection with this AGREEMENT and/or in pursuing any claim against the CLIENT (whether in respect of damages or otherwise) in terms of the AGREEMENT, which charges will include any expert required by the PHOENIX in pursuance of its claim. Such costs, charges and expenses will be payable by the CLIENT to the PHOENIX on demand.

## 9. CREDIT BUREAU

- 9.1 The CLIENT hereby grants PHOENIX permission to check the CLIENT'S credit record at any registered credit bureau in the RSA.
- 9.2 In the event that the CLIENT is in breach of the payment terms of this AGREEMENT, the CLIENT hereby gives PHOENIX permission to list the CLIENT with a registered credit bureau as being in default of payment with PHOENIX and PHOENIX will not be liable for any consequences which may arise from such listing. The CLIENT hereby indemnifies and holds harmless, PHOENIX, its employees and/or agents from any claims, which may arise now or in the future as a result of PHOENIX listing the CLIENT on the credit bureau, whether the negligently or otherwise.

## 10. NOTICES

- 10.1 The parties choose *domicilium citandi et executandi* at the following address in the RSA, at which address all notices, legal processes and other communications must be delivered for the purposes under this AGREEMENT:
- 10.1.1 CLIENT: The physical address and/or domicilium address provided for in Schedule A hereto.
- The email address in Schedule A hereto may also be used as the domicilium address.
- 10.1.2 PHOENIX: - the physical address provided for in clause 1.1.8.
- 10.2 Any party is entitled to change its *domicilium* to another street address within the RSA, fax number or email address by written notice to the other party. Such change of *domicilium* will take effect upon receipt of notice in writing by the addressee of such change. All notices in terms of this AGREEMENT may be delivered by hand at the *domicilium citandi et executandi* of the addressee (in which case it will be deemed to have been received when delivered) or by facsimile or any other electronic means (in which case it will be deemed to have been received on the day of dispatch). Such receipt is deemed notwithstanding that neither the addressee nor any other person is present at such address at the time. Notwithstanding anything to the contrary herein contained, a written notice actually received by a party will be adequate written notice to it, notwithstanding that it was not delivered as envisaged herein.
- 10.3 Any communication required to be in writing in terms of this Agreement may be sent by data message, as defined in the Electronic Communications and Transactions Act, No. 25 of 2002, as amended.

## 11. JURISDICTION

In respect of any litigation arising out of this AGREEMENT the parties hereby consent to the jurisdiction of any Magistrate's Court having jurisdiction over their respective persons, notwithstanding that any action or proceeding may otherwise be beyond the jurisdiction of such Court, provided that either party will have the right to institute action in any other competent court of jurisdiction.

**12. GENERAL PROVISIONS**

- 12.1 This document constitutes the whole agreement between the parties in regard to the matters regulated by this AGREEMENT. No addition to, variation of, or agreed cancellation of this AGREEMENT will be of any force or effect unless in writing and signed by or on behalf of the parties. No cession, delegation or assignment of any rights or obligations in terms of this AGREEMENT will be of any force or effect unless in writing and signed by or on behalf of the parties. No relaxation or indulgence which any party may grant to the other will constitute a waiver of the rights of that party and will not preclude that party from exercising any rights which may have arisen in the past or which might arise in the future.
- 12.2 Any provision of this AGREEMENT which contemplates performance or observance subsequent to any termination or expiration of this AGREEMENT will survive any termination or expiration of this AGREEMENT and continue in full force and effect notwithstanding that the clauses themselves do not expressly provide for this.
- 12.3 Each provision of this AGREEMENT is severable, the one from the other and, if at any time any provision is, or becomes, or is found to be invalid, illegal or otherwise unenforceable for any reason, by a court of competent jurisdiction, the remaining provisions of this AGREEMENT will continue to be of full force and effect. This AGREEMENT may be signed in as many counterparts as may be needed, each of which together will constitute one and the same AGREEMENT.
- 12.4 This AGREEMENT will be governed by the laws of the RSA and all matters or things arising out of or in respect of this AGREEMENT will be decided in terms of the laws of the RSA.
- 12.5 Each party will bear its own costs of and incidental to the negotiation, preparation and execution of this AGREEMENT.
- 12.6 Should either party be declared insolvent or be placed in liquidation (whether provisionally or finally) or be placed under judicial management (whether provisionally or finally) or should either party commit an act of insolvency, the other party may forthwith terminate this AGREEMENT by giving written notice to the other.

**13. WARRANTIES ON CAPACITY**

Each party warrants that:

- 13.1 It has the legal capacity and has taken all necessary corporate action required (where applicable) to empower and authorise it to enter into and implement this AGREEMENT on the terms and conditions herein set out.
- 13.2 This AGREEMENT constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms.

Date	Place	Signatory
_____	_____	_____
		The CLIENT, the signatory warranting that he is duly authorised thereto /Parent or legal guardian if the student is under the age of 21 years
Date	Place	Signatory
_____	_____	_____
		WITNESS NAME: ID NO:
Date	Place	Signatory
_____	_____	_____
		PHOENIX, the signatory warranting that he is duly authorised thereto.
Date	Place	Signatory
_____	_____	_____
		WITNESS NAME: ID NO:

**ANNEXURE A**

**RATES SCHEDULE**

(Please tick the appropriate box and complete the details where applicable)

<b>COMMENCEMENT DATE:</b>			
<b>TERM:</b>		From: _____ 2012 (dd/mm/yyyy)	
		To: 31 December 2012	
<b>REGISTRATION FEE:</b>		R 550 (Fee <u>waived</u> for 2010 and 2011 CLIENTS)	
<b>GRADED TUITION SYSTEM 2012</b>	<b>30 MINUTE SESSION</b>	<b>45 MINUTE SESSION</b>	<b>1 HOUR SESSION</b>
<p><i>Option 1</i></p> <p><i>ONLY CLIENTS who joined PBMA in 2010</i></p> <p>(Applicable Tutors: Ms Harrison [Guitar/Theory], Mr Mogotsi [Piano/Theory/Voice/Saxophone/Flute/PreSchool], Mrs Kritzinger-Siegel MMus [Theory/Ear Training/Piano/PreSchool], Mr de Lange [Improvisation/Theory/Piano/PreSchool])</p>	R 110	R 165	R 220
<p><i>Option 2</i></p> <p><i>ONLY CLIENTS who joined PBMA in 2011</i></p> <p>(Applicable Tutors: Ms Harrison [Guitar/Theory], Mr Mogotsi [Piano/Theory/Voice/Saxophone/Flute/PreSchool], Mrs Kritzinger-Siegel MMus [Theory/Ear Training/Piano/PreSchool], Mr de Lange [Improvisation/Theory/Piano/PreSchool])</p>	R 165	R 220	R 275
<p><i>Option 3</i></p> <p><i>2010 and 2011 CLIENTS</i></p> <p>Mr Bezuidenhout MMus (Principal) [Piano/Keyboard/Theory/Song Writing/Composition/Film Scoring/Music Production/BMus Support/Improvisation/Ear Training/Voice/CIE O Level Music/CIE AS Music/CIE A Level Music]</p>	R 200	R 300	R 400

**Select your Option for Graded Level:**

- Option 1  Option 2  Option 3

**Select the Number of Sessions per Week:**

- 1 session  2 sessions  3 sessions

**Select the Duration of the Session:**

- 30 minutes  45 minutes  1 hour