

# **TERMS AND CONDITIONS**

## **1. INTRODUCTION**

- 1.1 ODM provides digital signage equipment and maintenance and related services throughout South Africa.
- 1.2 You require ODM to supply, install and/or maintain the software and hardware (collectively "the Equipment") listed in the Quote.
- 1.3 ODM agrees to supply, install and maintain the Equipment on the terms and conditions of this agreement.

## **2. DURATION, CANCELLATION AND RENEWAL**

- 2.1 This agreement commences on the date on which it is signed by the last party signing ("the Signature Date"), and subject to its other provisions, continues for a period of 36 months ("the Term").
- 2.2 If you are renting the Equipment from ODM, unless you give ODM a written notice cancelling this agreement at least 3 calendar months prior to expiry of the Term, this agreement will automatically be renewed for a period of 4 years ("the Renewal Period") on the same terms and conditions except that at the commencement of the Renewal Period:
  - 2.2.1 ODM must replace the Equipment with new equipment of at least the same quality; and
  - 2.2.2 the maintenance fees payable in respect of the new Equipment shall be at least equivalent to the average maintenance fees paid by ODM's other clients at that time.

## **3. DEPOSIT AND PAYMENT FOR EQUIPMENT**

- 3.1 On the Signature Date, ODM will:
  - 3.1.1 if you are purchasing the Equipment, invoice you for the Equipment and installation costs (if applicable); or
  - 3.1.2 if you are renting the Equipment, invoice you for the installation costs.
- 3.2 On receipt of the invoice, you must pay 50% of the quoted amount to ODM (if applicable) as a non-refundable deposit, and the balance thereof in full, without deduction or set-off, into ODM's bank account specified on the invoice:
  - 3.2.1 within 7 days after the Equipment is installed, if you are renting the Equipment from ODM or otherwise require ODM to do the installation; or
  - 3.2.2 on delivery of the Equipment to you, if you do not require ODM to do the installation for you.
- 3.3 If you do not pay the deposit within 7 days after the date of ODM's invoice, ODM may immediately cancel this agreement without further notice to you.

## **4. SECURITY DEPOSIT**

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- 4.1 If you are renting the Equipment from ODM, in addition to the payment referred to in clause 3.2, within 7 days after receipt of ODM's invoice, you must pay ODM the refundable security deposit specified in the Quote in respect of the Equipment.
  - 4.2 For the duration of, and until you have complied with all of your obligations in terms of, this agreement, ODM may hold the security deposit and may use it in whole or in part, for the payment of any liability of any nature for which you are responsible, including repairs to the Equipment. If the whole or any part of the security deposit is so used by ODM, ODM will notify you thereof in writing and you must immediately reinstate the security deposit to its original amount.
  - 4.3 You may not at any time set off against the security deposit, any rental or other amounts which you owe to ODM. ODM may at its election, hold the security deposit in an interest bearing account, which interest shall be added to the security deposit.
  - 4.4 The security deposit does not in any way limit any claim which ODM may have against you. If you breach this agreement, ODM may retain the security deposit in respect of its damages.

## **5. DELIVERY OF THE EQUIPMENT**

If ODM is not installing the Equipment for you, unless ODM agrees otherwise in writing, you must collect the Equipment from ODM's premises.

## **6. VARIATIONS IN THE QUOTE**

- 6.1 If the Equipment is not available for any reason, ODM may provide you with an amended Quote substituting those items of Equipment which are not available with substantially similar items, and may terminate this agreement on written notice to you if you fail to accept the amended Quote within 7 days after receipt thereof.
- 6.2 The items in the Quote will change in direct proportion to exchange rate fluctuations and changes in the customs duty or tariff headings which apply to the Equipment prior to its importation.
- 6.3 The Quote might exclude the cost of any additional consumables required for the installation and ODM's travel costs per kilometre (at the prevailing AA rates).
- 6.4 Any variation costs relating to the installation will be invoiced by ODM within 7 days of the installation.
- 6.5 After the date on which the Equipment has been installed at the Site or delivered to you, ODM will provide you with an amended invoice including the items in clauses 6.3 and 6.4.
- 6.6 You agree to pay in full, the amount of any invoice amended in terms of this clause 6.

## **7. THE INSTALLATION PERIOD**

- 7.1 If you rent the Equipment from ODM, the Equipment must be installed by ODM at the specified installation address ("the Site").

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7.2 If you rent the Equipment from ODM or ODM is otherwise doing the installation for you, on receipt of the deposit, ODM will contact you to arrange the date/s ("the Installation Period"), a minimum of 4-6 weeks from receipt of said deposit, during which ODM can install the Equipment at the Site.

7.3 The preferred installation dates must be supplied to ODM a minimum of 10 working days prior to the installation.

## 8. SUPPLYING AND INSTALLING THE EQUIPMENT

8.1 ODM will at its cost, procure the Equipment listed in the Quote.

8.2 If ODM installs the Equipment for you, prior to the Installation Period, you must meet with ODM at the Site to agree the final placement of the Equipment, melamine bulkheads, support beams, electricity plug points and data points, and to determine whether any additional consumables are required for the installation.

8.3 You must, at your cost, prior to commencement of the Installation Period:

8.3.1 install the melamine bulkheads, support beams, electricity plug points and data points at the agreed places at the Site, all of which must be suitable to accommodate the requirements of the Equipment;

8.3.2 ensure that the Site has an available and working internet connection that can be utilised by ODM to enable ODM to gain access to the internet when at the Site; and

8.3.3 arrange for ODM to have access to the servers and other computer systems in respect of the Site to the extent required by ODM to install the Equipment.

8.4 You must inform ODM at least 48 hours prior to commencement of the Installation Period if any of the items in clause 8.3 have not been installed or made available at the Site, as the case may be, failing which ODM may change the Installation Period and charge you a cancellation fee of 50% of the applicable installation costs set out in the Quote, which cancellation fee is payable on written demand.

8.5 The installation costs in the Quote are for installing the Equipment between the hours of 8am to 5pm, Monday to Friday. If you require ODM to install the Equipment at any other time, ODM may charge you an additional fee per hour or part thereof.

8.6 ODM is not liable for any loss, damages or costs which you incur if for any reason other than the gross negligence or an intentional and unlawful act or omission of ODM or its officers, employees, subcontractors or agents (collectively "Personnel") the Equipment is not completely installed, or installed at all, during the Installation Period.

8.7 Once the Equipment has been installed at the Site, you must check that it is working to your satisfaction and sign ODM's installation document/s to acknowledge that the Equipment has been installed and is in good working order.

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8.8 A duly authorised representative must be available to sign off the installation. If someone is not available, the installation is deemed to be complete.

8.9 Prior to any de-installation and/or re-installation of the equipment for both purchased or rental equipment, you must consult ODM for a risk-assessment. Should you proceed with the de-installation and/or re-installation without consulting ODM and/or without complying with the risk assessment all manufacturer and/or site warranties on such equipment shall be considered void.

## 9. MOVING, ENCUMBERING AND/OR DISPOSING OF THE EQUIPMENT

If you are renting the Equipment from ODM, you must not at any time remove or relocate it from the Site, in whole or in part, without ODM's prior written consent, or sell, pledge or otherwise dispose of the Equipment or any part thereof.

## 10. ACCESSION

If you rent the Equipment from ODM, for the purposes of this agreement, it is deemed not to accede to the Site and on termination of this agreement for any reason, ODM may remove the Equipment without compensation to you. You must within 5 business days of request, give ODM and its Personnel access to the Equipment for this purpose.

## 11. ACCESS TO, AND INSPECTION OF, THE EQUIPMENT

You must for the duration of this agreement, at your cost and at all reasonable times, give ODM access to the Site and the Equipment for the purposes of inspecting and repairing or replacing the Equipment or any component thereof.

## 12. SOFTWARE LICENSE

12.1 ODM will supply the software required for the Equipment to function ("the Software").

12.2 The Software is ODM's property and you will not acquire any ownership or other rights in or to the Software other than as set out in this agreement.

12.3 For the duration of this agreement, ODM gives you a non-exclusive license to use the Software in relation to the Equipment. The Software may not be used for any other purpose whatsoever, and may not be made available to any third party, without ODM's prior written consent.

## 13. OWNERSHIP, RISK AND INSURANCE

13.1 Subject to clause 13.3.1, ODM owns the Equipment until such time that it receives as freely available funds in its bank account, the full amount invoiced in relation to the items in the Quote.

13.2 All risk in and to the Equipment shall pass to you as and when it is installed at the Site.

13.3 If you are renting the Equipment from ODM:

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- 13.3.1 ownership in the Equipment will remain with ODM at all times;
- 13.3.2 you must take out and maintain, with an underwriter, and on terms and conditions, all of which are reasonably acceptable to ODM, sufficient insurance cover to the full replacement value of the Equipment, which insurance cover will not in any way limit any claim which ODM may have against you.
- 13.3.3 For the duration of this agreement, you must take out and maintain adequate legal liability and public liability insurance cover of not less than R10 million per incident, to cover all the liabilities for which you are responsible in terms of this agreement and any loss or damage arising from any negligent act by, or omission of, yours or your Personnel.
- 13.3.4 You hereby cede to ODM any rights which you have to the proceeds of any insurance cover taken out in terms of this clause.
- 13.3.5 You must ensure that ODM's interest is reflected on the insurance policies referred to in this clause.
- 13.3.6 You must, on demand, provide ODM with an underwriter's certificate confirming that you have taken out the insurance policies referred to in this clause, paid all the premiums in respect thereof and that your cession of the proceeds of the policies to ODM has been noted on the insurance policies.
- 13.4 You waive your right to recover from ODM any claims, including any loss, damages, costs or other liabilities which you suffer or incur because of the injury, illness or death of any third party, except if that injury, illness or death is directly caused by any grossly negligent or unlawful and wilful act or omission by ODM or its Personnel.
- 13.5 The insurance cover which you have to take out in terms of this clause does not in any way limit any claim which ODM may have against you.

#### **14. VOETSTOOTS AND DEFECTS**

- 14.1 The Equipment is supplied "voetstoots" and is deemed to be in good order and condition and free of any defects. You will not have any claim against ODM for a shortage in the quantity of, or defect in, the Equipment unless you notify ODM thereof in writing within 3 days after the date on which the Equipment is installed ("the Defects Period").
- 14.2 ODM is not liable for any defects of any nature in any Equipment which you have altered, modified or otherwise changed in any way, defects which are caused by your acts or omissions or those of your Personnel, invitees or other third parties or normal wear and tear. You may not withhold payment in respect of any Equipment which you claim is defective.
- 14.3 If during the Defects Period, you notify ODM of a defect which ODM agrees is its responsibility, ODM may in its discretion, and at its cost, either repair the defect using components of its choice, or exchange the defective Equipment with new or "as used" items. If the Equipment or any component thereof is replaced, the balance of the Defects Period will apply to the replacement Equipment or component.

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- 14.4 You must at your cost and promptly on request by ODM from time to time, repair or replace the melamine bulkheads, support beams, electricity plug points and data points at the Site.

## 15. WARRANTIES

- 15.1 The Equipment may be subject to a warranty issued by the manufacturer thereof ("Manufacturer's Warranty"). ODM will make warranty claims on your behalf under a Manufacturer's Warranty.
- 15.2 ODM does not itself provide any warranties in relation to the Equipment.
- 15.3 In the event of a call-out for maintenance in respect of out-of-warranty rented and/or purchased equipment, such call-out(s) will be charged for at standard call-out rates.
- 15.4 It is advisable to purchase additional equipment as Service Level Stock to minimise screen downtime. In the unlikely event of a hardware failure, the turnaround time of the hardware repair is dependent on the manufacturers repair time. ODM is not obliged to provide loan hardware in such circumstances.

## 16. USE OF THE EQUIPMENT

- 16.1 ODM will provide you with all user manuals in its possession which apply to the Equipment and/or software ("the Manuals").
- 16.2 You must for the duration of this agreement, at all times use the Equipment and/or Software in accordance with the Manuals.
- 16.3 ODM is not liable for any losses, damages, costs or claims of any nature arising from the use of the Equipment and/or Software in a manner inconsistent with the instructions contained in the Manuals.

## 17. MAINTENANCE SERVICES

- 17.1 If you rent the Equipment from ODM, the Equipment may not be serviced, repaired or maintained by anyone other than ODM.
- 17.2 The Equipment must be serviced, repaired and maintained in compliance with the Manuals.
- 17.3 If you have purchased the Equipment from ODM, for the duration of this agreement, only ODM may service, repair and maintain it.
- 17.4 ODM is not liable for any losses, damages, costs or claims of any nature relating to the installation, servicing, maintenance, repair, replacement or other service provided in respect of the Equipment by a third party not approved by ODM.
- 17.5 ODM has marked the Equipment with serial numbers and other information for the purposes of identification. Should you remove, modify or tamper with the serial numbers rendering the information illegible, all warranties shall be regarded as void.

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## 18. ADDITIONAL SERVICES

- 18.1 The Monthly Operational costs quoted for include, but are not limited to Telephonic Helpdesk, Cloud Storage, Scheduling, Media Player and Smart Player licenses.

## 19. PAYMENT OF MONTHLY OPERATIONAL COSTS

- 19.1 At, or prior to, the beginning of each calendar month, ODM will provide you with a tax invoice in respect of the costs in respect of maintenance and other services (collectively "Monthly Operational Costs") due for that month. The Monthly Operational Costs are payable in advance and exclude VAT which you are required to pay at the applicable rate.
- 19.2 You must within 30 days after the date of ODM's invoice, pay the Monthly Operational Costs to ODM, without deduction or set-off, by electronic funds transfer or debit order into ODM's banking account, the details of which are on the invoice.
- 19.3 Without prejudice to ODM's other rights, if you fail to pay the Monthly Operational Costs or any part thereof within 5 days after the due date for payment, the overdue amount shall bear interest at a rate of 2% per month from the due date for payment, up to and including the actual date of payment.
- 19.4 Without prejudice to its other rights, ODM may immediately and without notice, discontinue all services which it provides to you if you fail to make full payment of an invoice within 30 days after the date of the invoice.
- 19.5 ODM is not liable for any loss or damages which you may suffer as a result of not having access to or use of the services because you failed to pay the Monthly Operational Costs by the due date for payment.

## 20. EXCLUSIONS

Except to the extent that this agreement provides otherwise, ODM is not required to supply, perform, maintain, repair, replace and/or pay for:

- 20.1 parts, consumables and defects and faults which are covered by the Manufacturer's Warranty, unless the defect or fault is as a direct result of a grossly negligent or intentional and unlawful act or omission of ODM or its Personnel;
- 20.2 any Equipment from which the markings referred to in clause 17.5 have been removed;
- 20.3 services (including shop-fitting) required due to the movement, relocation and/or alteration of the Equipment and any attachments, devices, lines or software which do not comply with the interface specifications of ODM;
- 20.4 repair, damage, increase in service time or any failure by ODM to comply with its obligations as a result of any circumstance which is beyond ODM's reasonable control, including adverse environmental conditions, fire, water, lightning, surges in the power supply, power supply interruptions, incorrect power supply, accident, your

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- neglect, misuse or use other than as recommended by the manufacturer, air-conditioning or humidity control;
- 20.5 changing the specification or performing services concerned with relocating the Equipment or adding or removing accessories, attachments or other devices;
- 20.6 operator or user functions which you are required to carry out in terms of the Manuals supplied by ODM;
- 20.7 cabling which is external to the Equipment;
- 20.8 rectifying or recovering lost or corrupted data, except if it was lost or corrupted due to a grossly negligent or intentional and unlawful act or omission of ODM or ODM's Personnel; or
- 20.9 repairs, replacements, maintenance and other services which in ODM's view, are more difficult to provide because of changes, alterations, additions, modifications, or variations to the Equipment or operating environment which you have made without ODM's prior written approval.

## **21. COMPLIANCE WITH LAWS**

You must for the duration of this agreement, at all times comply with all laws, by-laws and regulations applicable to this agreement and/or the Equipment.

## **22. INDEMNITY AND LIMITATION OF LIABILITY**

- 22.1 Despite any other provision of this agreement, neither party is liable to the other for any special damages, or any consequential or indirect loss or damages arising from, or in connection with, this agreement and which is caused in any way.
- 22.2 You hereby indemnify ODM against any claim of any nature made by any third party against ODM or any of its Personnel arising from or in connection with this agreement, the Equipment or the services provided in terms hereof, and caused in any way except by a grossly negligent or intentional and unlawful act or omission of ODM or its Personnel.
- 22.3 Despite any other provision of this agreement, ODM is not liable for any claim of any nature, for losses, damages and/or costs of any nature which you may suffer, arising out of or in connection with this agreement or the provision by ODM of the Equipment and/or the services specified herein.
- 22.4 ODM's total liability for any claim not excluded by the other provisions of this agreement is limited to a maximum sum equivalent to the monthly Service Fee paid during the month immediately preceding the date on which the claim arose.

## **23. SUBCONTRACTING**

- 23.1 ODM may subcontract its obligations in terms of this agreement to a third party of ODM's choice, and is responsible to you for the acts and omissions of its subcontractor as if they were acts and omissions of ODM.

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- 23.2 You may not cede or assign any of your rights and/or obligations in terms of this agreement without ODM's prior written consent on each occasion.

#### **24. INTELLECTUAL PROPERTY**

- 24.1 All intellectual property relating to the Software ("the IP"), including but not limited to content, trade marks, domain names, designs, software (including workflows and monitoring and evaluation structures), text, graphics, icons and hyperlinks, is the property of, or licensed to, ODM.
- 24.2 By using the Website and/or the Services, you will not acquire any rights in or to the Website IP.
- 24.3 You must not, and must procure that the Authorised Users do not, attempt to copy, modify, duplicate, create derivative works from, mirror, republish, disassemble, reverse engineer, download, transmit or otherwise distribute all or any portion of the Website IP, the Website and/or the Services in any form or by any means.
- 24.4 The provisions of this clause 24 survive the termination of this agreement for any reason, and remain binding on the parties.

#### **25. PROTECTION OF RIGHTS**

- 25.1 If you fail to comply with any obligation imposed upon you by this agreement, ODM may effect such compliance at your expense and recover the costs and expenses of doing so from you on demand, without prejudice to any other rights ODM may have.
- 25.2 You waive any claim against ODM, and any defence you may have to any claim by ODM, as a result of any act or omission of ODM arising from ODM attempting to effect such compliance, or failing to do so properly or at all.

#### **26. CONFIDENTIAL INFORMATION**

- 26.1 Each party must:
- 26.1.1 keep all of the other party's confidential information strictly confidential, secure and protected from use, disclosure or access which is not permitted by this agreement;
- 26.1.2 not disclose any of the other party's confidential information to any third party without the prior written consent of the other party; and
- 26.1.3 not use the other party's confidential information for any purpose other than fulfilling its obligations in terms of this agreement.
- 26.2 A party will not acquire any rights in, or to, any of the confidential information of the other party as a consequence of this agreement or the supply of the Equipment.

#### **27. LIENS**

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- 27.1 You waive any lien or right to retain possession of any items or documents belonging to ODM, which lien or right you may have or acquire as a consequence of this agreement.
- 27.2 If the premises at which the Equipment is installed are leased, you must:
- 27.2.1 within 5 business days after the Signature Date, inform the landlord of such premises by written notice, that:
- 27.2.1.1 the Equipment will be installed in the premises;
- 27.2.1.2 the Equipment belongs to ODM; and
- 27.2.1.3 the Equipment is not subject to any lien or hypothec in favour of the landlord;
- 27.2.2 within 5 business days after delivery of the notice referred to in clause 27.2.1, obtain written proof of receipt by the landlord of that notice and provide ODM with a copy thereof;
- 27.2.3 immediately advise ODM of any change of the landlord and proceed in terms of clauses 27.2.1 and 27.2.2 in respect of each new landlord.

## 28. BREACH

- 28.1 In addition and without prejudice to all its other remedies under this agreement or in law, including the right to claim damages, ODM may cancel this agreement or claim specific performance from you, if you:
- 28.1.1 breach any material provision of this agreement that cannot be remedied; or
- 28.1.2 breach any other provision of this agreement and fail to remedy that breach within 7 days after receiving written notice from ODM to do so.
- 28.2 If ODM cancels this agreement as a result of your breach, all amounts which you would have paid to ODM over the remaining period of the agreement shall immediately be due, owing and payable to ODM.

## 29. GENERAL PROVISIONS

- 29.1 You may not cede, assign or delegate any of your rights or obligations under this agreement to any other person without ODM's prior written consent.
- 29.2 The parties agree to accept service of all notices and correspondence in connection with this agreement at their respective physical and email addresses set out on the first page of this agreement. Any notice or communication delivered by hand

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between the hours of 08h00 and 17h00 on business days is deemed to have been received on the date of delivery, or sent by email, is deemed to have been received on the first business day following the date of transmission.

- 29.3 You consent to the jurisdiction of the Magistrate's Court in respect of all disputes arising from or in connection with this agreement. Despite this, ODM may institute proceedings in any other Court in which event it will not be limited to costs on the Magistrates' Court scale.
- 29.4 You may not rely on any representation which allegedly induced you to enter into this agreement, unless the representation is recorded in this agreement.
- 29.5 The rule of construction that clauses must be interpreted against the party principally responsible for drafting does not apply.
- 29.6 The provisions of this agreement are binding on successors in title and permitted assigns.
- 29.7 No agreement varying, adding to, deleting from or cancelling this agreement and no waiver of any right under this agreement shall be effective unless reduced to writing and signed by or on behalf of both parties.
- 29.8 No relaxation by ODM of any of its rights in terms of this agreement shall at any time prejudice or constitute a waiver of its rights (unless it is a written waiver) and it may exercise its rights thereafter as if such relaxation had not taken place.
- 29.9 This agreement is governed by and construed according to the law of South Africa.
- 29.10 For the purposes of this agreement, "day" means a calendar day, "business day" means any day other than a Saturday, Sunday or South African Public Holiday, "month" means a month calculated from a particular day in one month to the day before the day numerically corresponding to it in the following month, "calendar month" means one of the 12 months of the year from the first to the last day of such month, and whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African public holiday in which case the last day will be the next succeeding business day.
- 29.11 Any costs incurred by a party arising out of the breach by the other party of the any of the provisions of this agreement must be paid for by the party in breach on an attorney and own client scale.

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