

LEASES AND PROVISION OF ADVERTISING SERVICES TERMS AND CONDITIONS

1. INTERPRETATION

In these terms and conditions: -

- 1.1. clause headings are for convenience and are not to be used in its interpretation;
- 1.2. unless the context indicates a contrary intention, an expression which denotes:
 - 1.2.1. any gender denotes the other genders;
 - 1.2.2. a natural person includes a juristic person and *vice versa*;
 - 1.2.3. the singular includes the plural and *vice versa*;
- 1.3. The following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings:
 - 1.3.1. **"Advertiser"** means the client on whose behalf the Media Agency leases Sites and Signs from the Media Owner, from time to time;
 - 1.3.2. **"Advertising Material"** means all the necessary artwork, designs or materials reasonably required in order to flight such artwork, designs or material on a Sign;
 - 1.3.3. **"Advertising Services"** means the erection, lighting of Advertising Material and maintenance of the Signs and Sites, in accordance with the provisions of these terms and conditions and a Transaction Schedule;
 - 1.3.4. **"Applicable Laws"** means any applicable law, including *inter alia*, statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, standards, guidelines, treaties, policies, notices, practices, administrative interpretations, directions, decrees, judgments, awards or requirements which have been duly enacted, issued or promulgated by any authority;
 - 1.3.5. **"Commencement Date"** means the date upon which the Rental Period in respect of that Site and Sign commences, in accordance with a Transaction Schedule;

- 1.3.6. **"CPIX"** means the average annual consumer price index, excluding interest rates on mortgage bonds, as published by Statistics South Africa (or its successor in title), for Metropolitan and other Urban Areas, report reference P0141.1;
- 1.3.7. **"Data Protection Legislation"** means all Applicable Laws (including GDPR laws) on data protection relating to the protection of data and/or Personal Information;
- 1.3.8. **"Digital Signs"** means electronic displays to communicate information, advertisements or other multimedia content to target audiences;
- 1.3.9. **"GDPR Laws"** means the General Data Protection Regulation agreed upon by the European Parliament and Council in April 2016;
- 1.3.10. **"Licences"** means all permissions or authority required by the Media Owner from all governmental or local authority in order to lawfully render the Advertising Service, which shall include but not be limited to (insofar applicable):
- 1.3.10.1. the Advertising on Roads and Ribbon Development Act, 21 of 1940,
 - 1.3.10.2. the National Building Regulations and Building Standards Act , 103 of 1977,
 - 1.3.10.3. any applicable local municipality by-laws,
 - 1.3.10.4. the Occupational Health and Safety Act, 85 of 1993,
- and **"Licence"** shall mean anyone of them;
- 1.3.11. **"Media Agency"** means Park Advertising Investment Holdings Proprietary Limited, with registration number: 1984/011226/07;
- 1.3.12. **"Media Owner"** means the person or entity that provides the Advertising Services as reflected in a Transaction Schedule;
- 1.3.13. **"Monthly Rental"** means the amount payable in terms of a Transaction Schedule in respect of each Site and Sign, for each of the months making up the rental period set out in that

Transaction Schedule in respect of that Site and Sign, plus VAT thereon at the prevailing rate prescribed by law;

1.3.14. **"Personal Information"** means personal information as defined in the Protection of Personal Information Act, 4 of 2013;

1.3.15. **"Proof of Flighting"** means a dated photo encapsulating the flighting of Advertising Material on a Sign, which proof will include the global positioning system ("**GPS**") coordinates of the Site on which the Sign is situated;

1.3.16. **"Sites"** means the sites described in a Transaction Schedule and **"Site"** shall mean anyone of them;

1.3.17. **"Rental Period"** means the period for which the Media Agency lease the Sign(s) or Site(s), as recorded in a Transaction Schedule;

1.3.18. **"Signs"** means the Static Signs and/or Digital Signs at Sites to display Advertising Material produced by or at the instance of the Advertiser in accordance with the specifications set out in a Transaction Schedule;

1.3.19. **"Static Signs"** means displays to communicate information and advertisements to target audiences, other than Digital Displays;

1.3.20. **"Transaction Schedules"** means written documents for the purchase of Advertising Services from the Media Owner on behalf of an Advertiser and **"Transaction Schedule"** means any one of them;

1.3.21. **"Termination Date"** means in respect of each of the Sites and Signs, the date upon which the Rental Period in respect of that Sign and Sites terminates, in accordance with a Transaction Schedule.

1.4. Words and expressions defined in any clause shall, for the purpose of that clause, bear the meaning assigned to such words and expressions in such clause;

1.5. The words "terms and conditions" refers to these terms and conditions and the words "clause" and "clauses" refer to a clause or clauses of these terms

and conditions.

2. DURATION

- 2.1. These terms and conditions in respect of each of the Signs and Sites, shall endure as per a Transaction Schedule.
- 2.2. The Media Owner shall give notice in writing to the Media Agency, not less than 60 (sixty) days before the Termination Date, calling upon the Media Agency, should it so wish, to renew a Transaction Schedule in respect of the Sign and Site to which such Termination Date applies.
- 2.3. Upon receipt of a notice in terms of clause 2.2, the Media Agency shall be entitled, by written notice given to the Media Owner within 30 (thirty) days of receipt of the said notice, to renew the relevant Transaction Schedule in respect of some or all the Sign(s) and Site(s) to which such notice applies.
- 2.4. Notwithstanding the provisions of these terms and conditions or a Transaction Schedule, the Media Agency shall be entitled to cancel a Transaction Schedule (or part thereof) on 60 (sixty) days written notice, and the Media Owner shall have no claim against the Media Agency.

3. RENTAL AND PAYMENT

- 3.1. In consideration for the Media Owner providing the Advertising Services, the Media Agency shall pay the Monthly Rental in respect of each calendar month to the Media Owner 45 (forty five) days from the last day of the calendar month in which the Advertising Service was rendered, free of exchange and without any deduction or set-off, by an electronic fund transfer into the bank account of the Media Owner, of which the Media Owner has advised the Media Agency in writing in a Transaction Schedule.
- 3.2. Interest shall be payable on all amounts due and payable in terms of these terms and conditions that are not paid on the due date thereof, at the prime commercial overdraft rate charged from time to time by The Standard Bank of South Africa Limited, from the due date to the date of payment.
- 3.3. In the event that a Transaction Schedule is renewed in terms of clause 2.3, the Monthly Rental will escalate, with effect from the Termination Date, by a proportion mutually agreed upon between the Parties or, failing such agreement prior to the Termination Date, by a proportion equal, if any, by

which the average of CPIX for the period between the Commencement and Termination Dates exceeds the average of CPIX for the period of 1 (one) year prior to the Commencement Date.

4. **PROVISION AND INTERRUPTION OF ADVERTISING SERVICE AND MALFUNCTION OR DAMAGE TO THE SIGNS**

4.1. Subject to the further provisions of this clause 4, the Media Owner shall provide the Advertising Services throughout the Rental Period of a Transaction Schedule.

4.2. In the event that the Media Owner fails to flight any Advertising Material on a Sign within 15 (fifteen) days of the later of: -

4.2.1. the Commencement Date; and

4.2.2. the date upon which the Media Owner has been provided with all of the necessary Advertising Material reasonably required by it in order to flight such Advertising Material on a Sign,

the Media Agency shall be entitled, but not obliged, to cancel the relevant Transaction Schedule (or part thereof) on written notice to the Media Owner and, whether the Media Agency elects to cancel such Transaction Schedule (or part thereof) in terms of this clause, no Monthly Rental shall be payable to the Contactor in respect of such Sign until the Advertising Material has been flighted on the relevant Sign and the Media Agency has received Proof of Flighting.

4.3. In the event that the Media Owner is prevented from supplying the Advertising Services in terms of a Transaction Schedule and/or in the event of the malfunctioning of and/or damage to any of the Signs, as a result of any act of God, war, strike, lock-out or other labour dispute, fire, flood, legislation, act of government or any other competent authority, insurrection, or other cause beyond the reasonable control of the Media Owner, but excluding theft of cables or load-shedding (any such event hereinafter called "**force majeure**"), then the Media Owner shall give written notice to the Media Agency.

4.4. The Media Owner shall not be liable for any delay or failure in supplying the Advertising Services and/or the malfunctioning of and/or damage to any of the Signs due to or resulting from the force majeure, provided that:

- 4.4.1. the Media Owner shall use its best endeavours to supply the Advertising Services throughout the Rental Period and to ensure that there is no malfunctioning of and/or damage to any of the Signs;
 - 4.4.2. if the force majeure continues for more than 1 (one) month, the Media Agency shall be entitled to cancel the relevant Transaction Schedule (or part thereof) on the expiry of a 1 (one) month period, from the date on which the Media Owner gave written notice to the Media Agency in terms of clause 4.3, but shall not be entitled to claim damages against the Media Owner as a result of the delay or failure in supplying the Advertising Services and/or the malfunctioning, due to or resulting from the force majeure, of and/or damage to the Sign(s) affected thereby;
 - 4.4.3. the Media Agency shall be entitled to a remission in the Monthly Rental in respect of the Sign(s) affected by such force majeure, calculated in accordance with the relevant Transaction Schedule, from the date on which the force majeure first commenced to the date on which the force majeure is discontinued or the Media Agency cancels the relevant Transaction Schedule. Should the force majeure occur and/or be discontinued during the course of any calendar month the remission of Monthly Rental to which the Media Agency shall become entitled shall be calculated *pro rata* to the portion of that calendar month during which the force majeure endured.
- 4.5. In the event of the Media Owner being unable to provide illumination for any of the Static Signs in a Transaction Schedule for a period of more than 5 (five) days, calculated from the date on which the non-illumination of the Sign first occurred, then the Media Agency shall be granted a 30% (thirty percent) reduction in the Monthly Rental until such time as the illumination of the Sign is restored.
- 4.6. In the event of the Media Owner being unable to provide power for any of the Digital Signs in a Transaction Schedule for a period of more than 5 (five) days, calculated from the date on which the power outage in respect of the Sign first occurred, then the Media Agency shall be granted a 100% (one hundred percent) reduction in the Monthly Rental until such time as the power of the Sign is restored.

- 4.7. In the event of the Advertising Services in respect of any of the Signs being interrupted for any reason whatsoever, in circumstances which do not fall under clause 4.3, for a period of more than 1 (one) month, the Media Agency shall be entitled to a remission in the Monthly Rental in respect of the Sign/s affected by such interruption, calculated in accordance a Transaction Schedule until such time as the Media Owner is again able to supply the Advertising Services. Should the interruption occur and/or the Advertising Services be resumed during the course of any calendar month the remission of Monthly Rental to which the Media Agency shall become entitled shall be calculated *pro rata* to the portion of that calendar month during which the Advertising Services were interrupted.

5. **INSURANCE AND LIMITATION OF LIABILITY**

- 5.1. The Media Owner shall take out and keep public liability insurance against liability or bodily injury to any person and/or damage to property resulting from any accident arising out of the construction, erection, maintenance or removal of any of the Signs.
- 5.2. The Media Owner's liability for any of the eventualities referred to in clause 5.1 shall be limited to the amount of the indemnity given to the Media Owner under such a policy.

6. **MAINTENANCE OF SIGNS**

The Media Owner shall be responsible for the reasonable maintenance of the Sign(s) and the Site(s) at its expense. Such maintenance shall include, but shall not be limited to: -

- 6.1. ensuring that the Signs' moving parts and lights are in working order;
- 6.2. ensuring that the hoardings of the Signs are at all times in good order and condition and suitable for the purpose for which they are required;
- 6.3. any touch-ups or repairs required to the structure;
- 6.4. replacing defective transformers;
- 6.5. repairing or replacing defective wiring;
- 6.6. repairing any other damage or loss not attributable to any act of negligence on the part of the Media Agency or its duly authorised agents or representatives; and

6.7. inspecting the faces of the Signs monthly and cleaning them.

7. DISMANTLING OF SIGNS

7.1. On termination of a Transaction Schedule (or part thereof) for any reason whatsoever, the Media Owner shall be entitled to dismantle and remove the Advertising Material. The Sign(s) shall at all times remain the property of the Media Owner.

7.2. The Media Owner shall be obliged at its own cost, if so required by the Media Agency and/or the Advertiser, to arrange for the storage of any or all of the Advertising Material for a period of up to 90 (ninety) days after it have been removed from the Sign(s). After the expiry of such period, the Media Owner shall destroy such Advertising Material.

8. PROVISION OF ARTWORK AND CONSEQUENCES OF DELAY

8.1. The Advertiser shall furnish the Media Owner with all necessary Advertising Material reasonably required by the Media Owner in order to flight the Advertising Material on the Sign(s,) by no later than 2 (two) weeks prior to the Commencement Date, and acknowledges that the Media Agency shall not be responsible for the provision of any Advertising Material to the Media Owner or for the flighting thereof on the Sign(s). The Media Agency shall only be held responsible if it has been allocated a production order or if it is a production inclusive deal.

8.2. Without limiting the generality of clause 8.1:

8.2.1. the Media Agency shall not be responsible for any loss suffered by the Advertiser or the Media Owner if for any reason, any of the Advertising Material has not been flighted on or before the Commencement Date; and

8.2.2. in the event that the provision of the Advertising Services is delayed or prevented by reason of the Advertiser or its agent's failure to provide the Media Owner with the Advertising Material reasonably required by the Media Owner in order to flight the Advertising Material on the Sign(s), the Monthly Rental will nevertheless become due and payable to the Media Owner from the Commencement Date.

8.3. The Media Owner shall be entitled, at its discretion, which shall not be

unreasonably exercised, to reject any Advertising Material supplied by the Advertiser if it is not satisfied with the quality or content thereof. In the event of a rejection, the Media Owner needs to furnish reasons for the said rejection and at its own cost refer the matter to the Advertising Standards Authority for an opinion.

9. **PROOF OF FLIGHTING**

- 9.1. The Media Owner shall provide the Media Agency with Proof of Flighting within 5 (five) days of the Commencement Date reflected in a Transaction Schedule or within 5 (five) days from the date of flighting the Advertising Material.
- 9.2. The Media Owner shall further provide the Media Agency Proof of Flighting as follows:
 - 9.2.1. if the Monthly Rental of a Sign is in excess of R10,000.00 (Ten Thousand Rand) proof of flighting will be monthly;
 - 9.2.2. if the Monthly Rental is less than R10,000.00 (Ten Thousand Rand) proof of flighting will be quarterly.
- 9.3. Failing to comply with clauses 9.1 and 9.2 will result in payment to the Media Owner being stopped until proof of flighting has been provided to the Media Agency to its satisfaction.
- 9.4. Within 5 (five) days of a Termination Date, the Media Owner shall provide the Media Agency proof of de-flighting in the similar manner as Proof of Flighting. In the event that it is mutually agreed for the Advertising Material to remain flighted, the photo will be provided when the de-flighting occurs.

10. **LICENCES AND INDEMNITY**

- 10.1. The Media Owner hereby warrants that it subscribes to and complies with the Advertising Regulatory Board of South Africa's code of conduct and has such authority as may be required in order to legitimately supply the Advertising Services.
- 10.2. The Media Owner warrants that throughout the duration of these terms and conditions and any Transaction Schedule, it will be in possession of the Licences and hereby indemnifies the Media Agency and the Advertiser against any third party claim arising out of breach of this warranty.

10.3. Should: -

10.3.1. the Licence be revoked or substantially amended; or

10.3.2. should the Media Owner receive notice from any governmental or local authority, in which notice such authority indicates an intention to revoke or substantially amend the Licence, or alleges that any term or condition of the Licence has been infringed, and fail to provide proof, to the reasonable satisfaction of the Media Agency, within 30 (thirty) days of receipt of such notice, that such authority is not entitled to revoke or amend the Licence, or that the Licence has not been infringed as alleged,

then, subject to the provisions of clause 10.4 any party shall forthwith be entitled to cancel the relevant Transaction Schedule (or part thereof) on written notice to the other Party.

10.4. Should any revocation or amendment of the Licence occur as a result of the negligence or wilful breach of any of the terms and conditions of the Licence by the Media Owner, the Media Owner shall be deemed to be in breach of these terms and conditions and the relevant Transaction Schedule and the provisions of clause 11 shall apply.

11. **BREACH**

11.1. Should any party ("**defaulting party**"), as the case may be:

11.1.1. fail to effect payment of any Monthly Rental instalment on due date; or

11.1.2. commit a breach of any other term of these terms and conditions or a Transaction Schedule and fail to remedy such breach within 14 (fourteen) days of receiving a written notice calling upon it to do so; or

11.1.3. be placed under a provisional or final winding-up; or

11.1.4. be sequestrated or placed under business rescue; or

11.1.5. commit any act of insolvency;

then the Parties ("**aggrieved parties**") shall be entitled, without prejudice

to any other rights which it may have in law, to either immediately cancel these terms and conditions and/or a Transaction Schedule on written notice to the defaulting party and, subject to the provisions of clause 11.2, either of the aggrieved parties shall be entitled to claim from the defaulting party any damages suffered by it by reason of such cancellation, or claim specific performance in terms of these terms and conditions and/or a Transaction Schedule.

- 11.2. No Party shall in any event be liable for any consequential damages, whether in the form of loss of profits or otherwise.

12. **PERSONAL INFORMATION**

- 12.1 Nothing herein contained confers on a Party any rights of whatsoever nature over the Personal Information, beyond those contained in these terms and conditions or the Transaction Schedules.

- 12.2 The Parties agree that they and their employees shall not:

12.2.1 process the Personal Information in any manner or for any purpose other than as set out in these terms and conditions or the Transaction Schedules;

12.2.2 source, verify, analyse or monitor any of the Personal Information without receipt of written instructions from the other Party or in terms of these terms and conditions or the Transaction Schedules and, where required to do so by any Applicable Law, shall furnish the other Party with prior written notice of at least 10 (ten) Business Days of its obligation in terms of any Applicable Law;

12.2.3 access the Personal Information without the necessary authorisation from the other Party to do so or in an unsafe manner;

12.2.4 compromise or damage any of the Personal Information during sourcing, verification, storage, handling, use, processing or transport;

12.2.5 cause the other Party to contravene any Data Protection Legislation;

- 12.2.6 cause any third party to process on its behalf any Personal Information without the other Party's prior written consent to do so. Such third-party data processor relationship will be subject to the obligations set out in these terms and conditions or the Transaction Schedules and the other Party is to procure that the third-party data processor shall provide sufficient guarantees regarding the security and confidentiality of the Personal Information; or
- 12.2.7 transfer any of the Personal Information across the border of the Republic of South Africa (in which they were collected) or any other country or territory or to any other third-party data processor, agent or partner without the prior written consent of the other Party. Any approved transfer of Personal Information is to be by way of encrypted connection to authorised representatives only.

13. **Anti-Corruption**

13.1 The Media Owner hereby:

- 13.1.1 represents and warrants that neither it nor any of its employees have at any time, directly or indirectly, promised or offered; and
- 13.1.2 undertakes not to, directly or indirectly, promise or offer, and to procure that its employees do not, directly or indirectly, promise or offer,

any payment, gift or other advantage, benefit or gratification whatsoever in order to influence any employee of the Media Agency or the Advertiser or any third party in the exercise of discretionary authority in connection with or in respect of the transactions contemplated in terms of the terms and conditions and Transaction Schedules.

14. **CESSION AND ASSIGNMENT**

No party hereto shall be entitled to cede any of its rights nor assign any of its obligations under these terms and conditions or a Transaction Schedule without the prior written consent of the other Party.

15. **REBUILDING AND ALTERATIONS**

Should the owner of the property on which the Site is situated at any time during the currency of these terms and conditions or a Transaction Schedule decide to carry out any demolition, alteration or building works which will have a material effect on the visibility or physical integrity of the Sign then, notwithstanding anything to the contrary contained in these terms and conditions or a Transaction Schedule, either party shall be entitled to terminate these terms and conditions or the relevant Transaction Schedule (or part thereof) on 2 (two) month's written notice to the other Party. No Party shall have a claim against any other save for causes of action which arose prior to such termination.

16. **SEVERABILITY**

Should any one or more of the provisions of these terms and conditions or the Transaction Schedules be unenforceable, then the remaining provisions which are not so affected shall be of full force and effect.

17. **TERMINATION OF THIS AGREEMENT BY THE MEDIA OWNER**

17.1. Notwithstanding any provisions to the contrary contained in these terms and conditions or the Transaction Schedules, in the event of the Licence being withdrawn due to no fault and/or negligence of the Media Owner, or the authorities amended regulations applicable to the Media Owner, the Sign and/or the Site, which in any way alters the rights presently enjoyed by the Media Owner in respect of the Sign and/or the Site or the rights in terms of which the Media Owner is entitled to occupy the Site or portion thereof, then the Media Owner shall be entitled to terminate these terms and conditions or the relevant Transaction Schedule (or portion thereof), by giving the Media Agency 1 (one) month's written notice, whereupon no party shall have a claim against any other save for causes of action which arose prior to such termination.

17.2. Upon the happening of any of the events referred to in clause 16.1 above, as a result of the negligence and/or fault of the Media Owner, then the Media Owner shall be entitled to terminate these terms and conditions or relevant Transaction Schedule (or part thereof), by giving the Media Agency 1 (one) month's written notice, whereupon the Media Agency shall have a claim for direct damages sustained by it or the Advertiser as a result of such cancellation.

18. **WHOLE AGREEMENT**

18.1. These terms and conditions read with the Transaction Schedules contains the whole agreement between the parties.

18.2. No alteration, amendment, variation or consensual termination of these terms and conditions or Transaction Schedule shall be of any force and effect unless reduced to writing and signed by the parties hereto.

19. **JURISDICTION**

The parties hereby consent to the jurisdiction of the Magistrate's Court in respect of any claim or action which arises out of the provisions of these terms and conditions or a Transaction Schedule. Notwithstanding the foregoing, any Party shall be entitled, at its sole and absolute discretion, to institute any proceedings in respect of any such claim or action in the High Court.

20. **DOMICILIUM CITANDI ET EXECUTANDI**

20.1. The Parties chose as their *domicilia citandi et executandi* the address set out in a Transaction Schedule and any of the Parties shall be written notice be entitled to change such domicile, which change shall become effective 14 (fourteen) days after receipt of notice thereof.

20.2. Any notice or letter delivered to a Party's chosen *domicilium citandi et executandi* by hand shall be deemed to have been received on the date of such delivery, or if posted to a Party's chosen *domicilium citandi et executandi* by prepaid registered post, shall unless otherwise proved be deemed to have been received on the 7th (seventh) day after such posting or if send by e-mail shall be deemed to have been received on successful transmission thereof.