

## 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

"**Advertisement Programme**" the advertisements to be displayed on the Screens at the Venue's Premises.

"**Advertiser**" the person or firm who advertises in the Advertisement Programme.

"**Business Day**" a day (other than a Saturday, Sunday or public holiday) when UK clearing banks in the City of London are open for general business.

"**Commencement Date**" has the meaning set out in clause 2.2.

"**Conditions**" these terms and conditions as amended from time to time in accordance with clause 13.7.

"**Content**" means all text, information, data, software, executable code, images, audio or visual or video material in whatever medium or form, and all Intellectual Property Rights subsisting or embedded therein, provided by the Advertiser to OSM for incorporation in the Advertisement Programme.

"**Contract**" the contract between OSM and the Venue for the provision of Hosting Services in accordance with these Conditions.

"**Hosting Services**" the hosting of the Screens and playing of the Advertisement Programme at the Venue's Premises as set out in these Conditions and the Screen Hosting Form.

"**Inappropriate Content**" means any Content or material which infringes any applicable laws or regulations or is indecent, obscene, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing or blasphemous.

"**Intellectual Property Rights**" all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"**Opening Hours**" the standard opening hours of the Venue from time to time and at the Commencement Date as detailed in Part 4 of the Screen Hosting Form.

"**Order**" OSM's order for Hosting Services as set out on the Screen Hosting Form.

"**OSM**" On-Screen Media UK Limited, a limited company registered in England and Wales with company number 05037274.

"**Payment Terms**" the terms upon which OSM agrees to pay the Venue for the Hosting Services.

"**Promotional Materials**" means the promotional materials including, but not limited to, catalogues, brochures, leaflets, flyers and pamphlets provided by OSM to be made available at the Venue's Premises.

"**Screens**" the plasma televisions, screens or other equipment provided by OSM to the Venue for the purposes of the Hosting Services as detailed in Part 1 of the Screen Hosting Form or otherwise in writing and signed by OSM.

"**Screen Hosting Form**" the form completed by the Venue and OSM as set out overleaf.

"**Screen Location**" the agreed location of the Screens as detailed in Part 3 of the Screen Hosting Form or otherwise in writing and signed by OSM.

"**Venue**" the person or firm who provides the Hosting Services as detailed on the Screen Hosting Form.

"**Venue's Premises**" the Venue's Premises details of which are set out in Part 2 of the Screen Hosting Form.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (e) unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular; and
- (f) a reference to **writing** or **written** includes e-mails.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by OSM to purchase the Hosting Services from the Venue in accordance with these Conditions and the Screen Hosting Form.

2.2 The Order shall only be deemed to be accepted when an authorised representative of OSM signs and dates the Screen Hosting Form, at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3 The Contract constitutes the entire agreement between the parties. The Venue acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of OSM which is not set out in the Contract.

2.4 Any descriptive matter, projected profits, commission forecasts or other advertising issued by OSM, and any descriptions contained in OSM's catalogues, brochures or website shall not form part of the Contract or have any contractual force.

2.5 These Conditions together with the Screen Hosting Form apply to the Contract to the exclusion of any other terms that the Venue seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, which are hereby expressly rejected by OSM.

2.6 If there is any conflict between the provisions contained in these Conditions and those in the Screen Hosting Form, the provisions of the Screen Hosting Form shall prevail and take precedence.

## 3. VENUE'S OBLIGATIONS

3.1 The Venue shall supply the Hosting Services to OSM in accordance with these Conditions and the Screen Hosting Form in all respects, and shall:

- (a) subject to clause 3.1(b), procure that the Screens be installed, and remain throughout the Term, at the Screen Location;
- (b) relocate the Screens within the Venue's Premises if OSM so directs;
- (c) procure that the Screens are switched on and playing the Advertisement Programme, without interruption at all times during the Venue's Opening Hours throughout the Term;
- (d) permit a reasonable amount of Promotional Materials to be installed at the Venue's Premises, as close as possible to the Screen Location throughout the Term;
- (e) procure that the Screens shall not at any time throughout the Term be obscured, blocked or covered in any way;
- (f) co-operate with OSM in all matters relating to the Hosting Services including, but not limited to, promptly informing and consulting with OSM in respect of any matters which may affect the Venue's ability to perform the Hosting Services including, without limit, a proposed

relocation, alteration, extension or redecoration of the Venue's Premises;

- (g) provide OSM, its employees, agents, consultants and subcontractors, with access to the Venue's Premises, office accommodation and other facilities as reasonably required by OSM for the purposes of monitoring the Venue's compliance with its obligations under this Contract and/or installing, removing or repairing the Screens;
- (h) prepare the Venue's Premises for the installation, repair and/or removal of the Screens (as applicable);
- (i) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (j) maintain the Screens in good condition until returned to OSM, and not dispose of or use the Screens other than to play the Advertising Programme and in accordance with OSM's written instructions or authorisation.

3.2 The Venue shall indemnify OSM against all costs, losses and expenses incurred by OSM as a result of a claim or non-payment of monies owing to OSM by an Advertiser arising out of a failure by the Venue to comply with any of its obligations under clauses 3 and 4.

## 4. CONTENT

4.1 The Venue must provide in Part 5 of the Screen Hosting Form full, specific and accurate details of the types of business and content that it does not wish to be included in the Advertisement Programme ("**Restricted Content**").

4.2 OSM shall use reasonable endeavours to ensure that no Restricted Content which has been notified to it in accordance with clause 4.2, is included in the Venue's Advertisement Programme.

4.3 Subject to clause 4.2, unless the Content is Inappropriate Content, the Venue shall not be entitled to reject or refuse to play any Content included in the Advertisement Programme, and OSM shall be entitled to update the Advertisement Programme with new Content provided to OSM from time to time without notifying the Venue.

4.4 The Venue shall notify OSM immediately if it becomes aware of any allegation that any content or material included in the Advertisement Programme is or may be Inappropriate Content.

## 5. CHARGES AND PAYMENT

5.1 The charges for the Hosting Services ("**Charges**") shall be those agreed by OSM and detailed in Part 6 of the Screen Hosting Form.

5.2 OSM shall pay the Charges to the account nominated in writing by the Venue in accordance with the Payment Terms agreed by OSM and detailed in Part 7 of the Screen Hosting Form and only following receipt of a correctly rendered invoice.

5.3 OSM reserves the right to set off from any monies (including but not limited to, Charges) owing to the Venue:

- (a) an amount calculated on a pro-rata basis for each period of Downtime (as defined in clause 5.4 below); and
- (b) all costs and expenses incurred by OSM including, but not limited to, any expenses incurred by the individuals engaged by OSM, and for the cost of services provided by third parties in replacing or repairing any Screens which have been lost, stolen or damaged whilst in the Venue's possession, other than as a result of an act or omission of OSM.

5.4 For the purposes of clause 5.3, **Downtime** shall mean any period when the Advertisement Programme is not running during the Term as a result of the default of the Venue including, but not limited to, as a result of the loss, theft or damage to the Screens which results from a breach of this Contract by the Venue.

## 6. INTELLECTUAL PROPERTY RIGHTS

Noting in this agreement shall serve to assign any rights (including Intellectual Property Rights) in the Content or any other content or materials including, but not limited to, the Promotional Materials, to the Venue.

## 7. TITLE AND RISK

7.1 The risk in the Screens shall pass to the Venue upon the Screens' arrival at the Venue's Premises.

7.2 Title to the Screens shall not pass to the Venue, and shall at all times remain with OSM.

## 8. CONFIDENTIALITY

A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of the Contract.

## 9. LIMITATION OF LIABILITY: THE VENUE'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in these Conditions shall limit or exclude the OSM's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to clause 9.1:

- (a) OSM shall under no circumstances whatever be liable to the Venue, whether in:
  - (i) contract;
  - (ii) tort (including negligence);
  - (iii) breach of statutory duty; or
  - (iv) otherwise, for any:
    - (A) loss of profit; or
    - (B) indirect or consequential loss arising under or in connection with the Contract; and
- (b) OSM has obtained insurance in respect of its own legal liability for claims in aggregate not exceeding £2,000,000 ("**Insurance Policy**"). OSM's total liability to the Venue in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of:

- (i) three times the amount of the Charges paid to the Venue in the preceding 12 months; and
- (ii) £650,000, in view of the amounts available to OSM under its Insurance Policy,
- and the Venue is responsible for making its own arrangements for the insurance of any excess loss.

9.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

## 10. TERMINATION

The Contract begins on the Commencement Date, and subject to clauses 10.2 and 10.3 shall continue for an initial term of three years ("**Initial Term**") and (subject to clause 10.2) indefinitely after that until terminated by either party giving at least six months' prior written notice ("**Notice Period**"), such notice to expiry on or after the expiry of the Initial Term ("**Term**") or until the last remaining advertising contract expires (whichever happens later). Once notice of cancellation is received from the Venue, no further advertising contracts shall be taken out on the venue. Should the venue change hands or be sold within the first term of the agreement the company reserve the right to enforce the agreement until the first anniversary of the signing of the agreement and there after until termination. .

10.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of the Contract (which for the avoidance of doubt, includes a breach by the Venue of clauses 3 and/or 4) and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(b) to clause 10.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

10.2 OSM shall be entitled to terminate the Contract with immediate effect by giving written notice to the Venue if the Venue's financial position deteriorates to such an extent that in OSM's opinion the Venue's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

## 11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason:

- (a) OSM (or a representative of OSM) shall be entitled to collect the Screens and/or any Promotional Material from the Venue's Premises. Until they have been collected, the Venue shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.

## 12. FORCE MAJEURE

12.1 For the purposes of this Contract, "**Force Majeure Event**" means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of either party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12.2 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

12.3 If the Force Majeure Event prevents the Venue from providing the Hosting Services for more than two weeks, OSM shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Venue.

## 13. GENERAL

### 13.1 Assignment and other dealings.

- (a) OSM may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Venue shall not, without the prior written consent of OSM, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 13.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, other next working day delivery service or by registered airmail, commercial courier, or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting if sent by registered airmail, at 9.00am on the eighth Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 13.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

13.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).