

**TOUCHSCREEN LEASE AGREEMENT**

**between**

---

(hereinafter referred to as **“the Landlord”**)

and

---

(hereinafter referred to as **“the Client”**)

in respect of

Touchscreens situated at \_\_\_\_\_ Shopping Centre

(hereinafter referred to as **“the Touchscreens”**)

## 1. INTERPRETATION AND DEFINITIONS

In this Agreement -

- 1.1 Clause headings are for convenience purposes only and shall not be used in its interpretation;
- 1.2 Unless the context clearly indicates a contrary intention –
  - 1.2.1 An expression which denotes any gender includes the other genders, a natural person includes an artificial person and vice versa and the singular includes the plural and vice versa;
  - 1.2.2 Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement;
  - 1.2.3 The following expressions shall bear the following meanings and related expressions shall bear corresponding meanings: -
    - 1.2.3.1 “Agreement” shall mean this Agreement and all annexures, addenda and appendices hereto;
    - 1.2.3.2 “Advertising Material” means any visual communication, representation, reference or notification which is intended to promote the sale, leasing or use of goods, services, brand or product and which is displayed pursuant to the provisions of this Agreement;
    - 1.2.3.3 “Basic Monthly Rental” means the amount set out in clause 3.1.1 below;

- 1.2.3.4 “business days” means calendar days excluding Saturdays, Sundays and Public Holidays;
- 1.2.3.5 “Commencement Date” means \_\_\_\_\_, notwithstanding the date of signature of this Agreement;
- 1.2.3.6 “Touchscreens” shall mean the touchscreen/(s) hereby let to the Client on the terms and conditions of this Agreement and as depicted on the plan attached hereto as Annexure \_\_\_\_;
- 1.2.3.7 “Landlord” shall mean \_\_\_\_\_(Registration Number \_\_\_\_\_), a company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.2.3.8 “Lease Period” shall mean the period of \_\_\_\_\_ months from the Commencement Date;
- 1.2.3.9 “Client” shall mean \_\_\_\_\_ (Registration Number \_\_\_\_\_) a public company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.2.3.10 “Party/ies” means the parties to this Agreement;
- 1.2.3.11 “Property” shall mean \_\_\_\_\_(PROPERTY DESCRIPTION);
- 1.2.3.12 “Shopping Centre” shall mean the Property together with any and/or all buildings and improvements thereon;
- 1.2.3.13 “Shopping Centre Manager” means the person appointed by the Landlord to manage the Shopping Centre from time to time.

- 1.3 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on any party, then effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.4 Any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the signature date, and as amended or replaced from time to time;
- 1.5 When any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday or public holiday in the republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.6 Any schedule or annexure to this Agreement shall form part of this Agreement;
- 1.7 The use of the word “including” followed by a specific example/s shall not be considered as limiting the meaning of the general wording preceding it;
- 1.8 The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide this;
- 1.9 In its interpretation, the *contra proferentem* rule of construction shall not apply (this Agreement being the product of negotiations between the parties) nor shall this Agreement be construed in favour of or against any party by reason of the extent to which any party or its professional advisors participated in the preparations of this Agreement; and

1.10 The Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

1.11 The following annexures shall form part of this Agreement:

Annexure A - Plans indicating the Touchscreens' locations in the Shopping Centre

## 2. LEASE OF PREMISES

The Landlord hereby leases the Touchscreens to the Client for the duration of the Lease Period and for the purpose of placing the Advertising Material thereon.

## 3. RENTAL AND OTHER CHARGES

3.1 The Client shall pay the Landlord the following amounts, monthly in advance on or before the 1st (first) day of each month, without deduction or set off, directly into the bank account of the Landlord that it elects from time to time:

3.1.1 **R1 250 (One Thousand Two Hundred and Fifty Rand)** excluding VAT per month.

3.1.2 The Client shall in addition to the above, be liable for any cost associated with or relating to the Advertising Material and/or the Touchscreens, including the cost of application for consent or any charges raised by any local or competent authority in relation thereto.

3.1.3 The Client shall be liable for and shall on demand pay to the Landlord (inclusive of VAT) all charges arising directly out of its use of electric current in respect of the Touchscreens together with any charges incurred in metering such electric current and in reading such meters.

3.1.4 [DRAFTING NOTE: CLIENT TO ENSURE THAT ALL CHARGES ARE RECORDED IN THIS CLAUSE]

3.2 The Basic Monthly Rental and all other charges payable in terms of this Agreement shall be payable monthly by the Client irrespective of whether Advertising Material is displayed on the Touchscreens.

#### 4. OWNERSHIP, RISK AND USE OF THE TOUCHSCREENS

4.1 The Touchscreens are let by the Landlord to the Client for the purpose of placing, installing, maintaining and operating the Advertising Material and for no other purpose whatsoever and shall at all times remain the property of the Landlord. The Client shall not display or allow to be displayed any Advertising Material without the prior written consent of the Landlord.

4.2 The Client or its agents shall during the normal trading hours of the Shopping Centre, as determined by the Landlord from time to time, have access to the Touchscreens for the purposes of servicing, altering, repairing, general maintenance or removing the Advertising Material.

4.3 The Landlord does not warrant that the Touchscreens are suitable for the purpose of the Tenant nor that it will be granted any licence or consent in respect of its business or that such licence or consent will be renewed or extended. The Client has agreed to accept the Touchscreens as viewed and that the Client shall be responsible for all costs in respect of any alterations required to the Touchscreens which may only be effected after prior written approval of the Landlord was obtained.

4.4 The Advertising Material shall be erected at the Client's own expense and will remain the property of the Client. Upon termination of this Agreement for whatsoever reason the Client

is obliged to and shall remove all Advertising Material from the Touchscreens and restore the Touchscreens to the same condition that they were at the date of signature of this Agreement within 7 (seven) days of termination of this Agreement. Failing such reinstatement, the Landlord shall be entitled to restore the Touchscreens in accordance with this clause at the Client's cost.

- 4.5 Any damage to the Touchscreens or any part of the Property caused by the Client or its servants, agents, contractors or advertiser/s shall immediately be repaired by the Client at its own cost.
- 4.6 It is specifically recorded that the Landlord shall not be held liable for any interruption or failure in the supply of electricity to the Touchscreens and the Client shall have no claim for any damages, nor be entitled to cancel this Agreement or to receive any remission of Basic Rental by reason of the fact that the supply of electricity has failed or has been interrupted.

## 5. INDEMNITY

- 5.1 The Client hereby indemnifies the Landlord and holds the Landlord harmless against any loss or damage that the Client may sustain and any claims, costs or expenses of any nature as a result of an injury to any person and/or damages to property arising out of the installation, erection, operation, removal of Advertising Material and as a result of any failure on the part of the Client or its employee or agents to keep and maintain the Touchscreens in good order.
- 5.2 The Client hereby indemnifies and holds the Landlord, their directors, employees, agents, invitees, contractors and subcontractors harmless against all claims, actions, losses, suits, proceedings, demands of whatsoever nature which may arise from the negligent or willful conduct or omission of the Client, its directors, employees, agents, invitees, contractors or

subcontractors or their breach of this Agreement, including, without limitation to the foregoing claims for damages, legal costs and all costs incurred in defending criminal prosecutions.

## 6. **INSURANCE**

- 6.1 The Client shall at its own expense at all times during the currency of this Agreement be obliged to take out public liability insurance for an amount of no less than R\_\_\_\_\_ (RAND) per any one claim or series of claims arising out of one event and take out all risk insurance against injury, damage or loss (whether direct or indirect, consequential or otherwise) to the Touchscreens and/or suffered by any person/s on the Property as a consequence of or arising from or in any way connected with the Touchscreens. Such risks include but are not limited to that of fire, lightening, explosion, riot, strikes, malicious damage, storm, special perils, impact, earthquake, political riot and loss of income.
- 6.2 The Client shall provide proof of such insurance to the Landlord upon demand of the Landlord.

## 7. **CONTENT OF AND ALTERATION OF ADVERTISING MATERIAL**

- 7.1 The Client shall manage the content of the Advertising Material featured and shown on the Touchscreens, subject to the provisions below:
- 7.2 In exercising those rights and benefits acquired by it in terms of this Agreement, the Client shall be obliged to generally ensure that it neither causes nor allows to be caused any interference with the use and enjoyment by the Landlord, its tenants and other authorised persons visiting or occupying the Property.



- 7.3 In particular, and without in any way detracting from the generality of the foregoing, such obligations shall include but not necessarily be limited to the following: -
- 7.3.1 to operate and maintain the Touchscreens and all attachments thereto in a clean, well-maintained and working order;
  - 7.3.2 to maintain the validity of such national and local authority consents and approvals as may be lawfully required for the purpose of the display thereon of the Advertising Material;
  - 7.3.3 to not contravene any statute or law applicable to the use of or Advertising Material placed on the Touchscreens;
  - 7.3.4 to not display or allow to be displayed any Advertising Material containing material, whether in picture form or written form, which is unlawful, vulgar, in bad taste, contentious, obscene, offensive or contrary to social values or any Advertising Material of any business which competes, either directly or indirectly with any business carried out by the tenants of the Landlord in the Shopping Centre which could cause a conflict of interest. In addition, the Client has acquainted itself with a list of tenants on the Property and will do so throughout this Agreement at all times;
  - 7.3.5 The Client will obtain approval, in writing, from the Landlord for all advertising content, which approval shall not be unreasonably withheld and shall be given within five (5) working days of each submission. The Client shall be obliged to ensure that the approval of advertising content is obtained timeously.

## 8. GENERAL DUTIES AND OBLIGATIONS OF THE CLIENT

8.1 The Client shall: -

- 8.1.1 Not cede or assign or mortgage or pledge any of its rights under this Agreement under any circumstances whatsoever or for any reason without the Landlord's prior written consent;
- 8.1.2 Shall, in respect of any electrical installation required at the Touchscreens pay for, in addition to what is recorded in clause 3 above, all the costs relating thereto as well as pay for the reinstatement thereof at termination of this Agreement. The Client undertakes and warrants that all electrical work shall be carried out by a suitably qualified electrician.
- 8.1.3 Have no claim of any nature whatsoever whether for damages or otherwise against the Landlord in respect of any damage or loss caused to or sustained by the Client or to any of its assets or Advertising Material on the Touchscreens as a result of a *vis major* or *casus fortous* or any other cause whatsoever, including but not limited to water leaks, weather conditions, vandalism, riot, fire or civil commission;

9. **BREACH**

- 9.1 In the event of the Client committing a breach of any of the terms of this Agreement and failing to remedy such breach within seven (7) days of receipt by it of written notice from the Landlord calling upon it to do so, then the Landlord shall be entitled, without prejudice to any other rights which it may have in terms hereof, to either:
- 9.1.1 enforce the provisions of this Agreement; or
- 9.1.2 cancel this agreement

in either event without prejudice to any other rights which the Landlord may have in law or in terms of this Agreement including, such rights that it may have to claim any damages arising as a result of such breach.

## 10. BUILDING OPERATIONS, DAMAGE OR DESTRUCTION

- 10.1 The Landlord shall not be hindered and shall be entitled at any time, to affect any repairs, alterations, improvements and/or additions to the Property and the Landlord shall be entitled to do and erect whatever may be necessary for the purpose aforesaid.
- 10.2 The Client further acknowledges that the Property and/or the Touchscreens may be damaged or destroyed to such an extent that they are no longer fit for the purpose for which they are let hereunder.
- 10.3 In the event that the Touchscreens becomes inoperable as a result of the events as envisaged above in clauses 10.1 or 10.2, then this Agreement shall be terminated, notwithstanding the Lease Period recorded herein, effective from the date upon which the Touchscreens became inoperable without any party having any claim of any nature against the other resulting from such premature cancellation of this Agreement.

## 11. DOMICILIUM CITANDI ET EXECUTANDI

- 11.1 The Landlord and the Client hereby respectively chose *domicilium citandi et executandi* for all purposes and in connection with this agreement as follows:

The Landlord: \_\_\_\_\_

The Client: \_\_\_\_\_

- 11.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by telefax.
- 11.3 Any Party may, by written notice to any other Party, change its *domicilium* for delivery of all notices and documents to another physical address in the Republic of South Africa or its telefax number, provided that the change will become effective *vis-à-vis* that the addressee on the 7<sup>th</sup> (seventh) business day from the deemed receipt of the notice by the addressee.
- 11.4 Any notice to a Party:
- 11.4.1 Sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its address for delivery of all notices and documents shall be deemed to have been received by the 7<sup>th</sup> business day after posting (unless the contrary is provided);
- 11.4.2 Delivered by hand to a responsible person during ordinary business hours at its address for delivery of all notices and documents shall be deemed to have been received on the day of delivery; and
- 11.4.3 Sent by telefax to its chosen telefax number shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 11.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen address for delivery of all notices and documents.

## 12. GENERAL

12.1 This is the entire agreement between the parties.

12.2 The Parties hereby consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings brought against it in connection with this Agreement.

12.3 Should any one or more of the provisions of this Agreement be unenforceable, unlawful, void or in contravention of any legislation for any reason whatsoever, then such provision(s) shall be severed from this Agreement and the remaining provisions shall be of full force and effect.

SIGNED AT..... ON THIS THE ..... DAY OF ..... 2017

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

for and on behalf of the **Landlord**

SIGNED AT..... ON THIS THE ..... DAY OF .....2017

AS WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

for and on behalf of the **Client**

## ANNEXURE A

### LOCATION OF TOUCHSCREENS IN SHOPPING CENTRE

