**OUTDOOR AUDITORS SUBSCRIPTION AND SERVICE-LEVEL AGREEMENT**

Entered into between:

**OUTDOOR AUDITORS CC**

Registration Number: 2009/056676/23

(“OA”)

and

**The Customer**

(“the Customer”)

and jointly referred to as “the Parties”

* 1. DEFINITIONS

In this Agreement, unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them and shall be Capitalised in the body of the Agreement:

* 1. **Account Data -** means the account and contact information submitted to the Platform by the Customer
	2. **Agreement** – this agreement
	3. **Annexure –** the annexure to this agreement. If this agreement is signed electronically then reference to the annexure is not applicable and non-binding
	4. Commencement Date – the date on which OA approves the application for registration by the Customer
	5. **Content** – content including but not limited to text, images and tags contained on the Platform.
	6. **Customer** – the person (juristic or natural) reflected on the application from submitted on OA’s website during the Registration Process or the details as reflected on the Annexure hereto.
	7. **Customer Data** - means Stored Data and Account Data.
	8. **Customer Subscription** – monthly access to the Platform and the Platform Services in terms of this agreement
	9. **Customer Representative** – means the representative of the Customer set out in the application form or the annexure;
	10. **Elected Platform Service –** one of the categories of Platform Services elected by the Customer and upon which the Customer’s Subscription Fees are based
	11. **Initial Period** – the initial period, commencing on the Commencement Date, for which the Customer Subscriptionis granted as set in the application or as set out in Annexure
	12. **Login Details** – the username and password created by the Customer or User on a successful Registration Process. A second password is provided as well
	13. **Platform** – a web-based tool accessed via OA’s website providing the user with relevant information relating to billboards and outdoor advertising to assist the user in planning advertising campaigns, which includes the Content;
	14. **Platform Services** – the services, delivered via the Platform, are broken up into four levels of deliverables:
	15. Basic
		+ 1. Shows where SA's ~13,000 billboard faces are, who owns them (where known), photos and other relevant key data
			2. Comes equipped with 5 demographic layers (by Ward): Race, Employment Rate, Population, Household Income, Language
	16. ARA-layer
		+ 1. Same as Basic + whether a site is likely ARA-compliant or not (using current ARA-guidelines)
	17. Proximity-layer
		+ 1. Same as basic + functionality that shows how far each site is to the nearest relevant Point of Interest (POI)
	18. ARA- and Proximity layer
		+ 1. Basic + ARA + Proximity
	19. **Platform Usage Training** – training provided by OA to Users, instructing them on proper use of the Platform and the Platform Services
	20. **POI** – Point of Interest. This includes cinemas, golf courses. hospitals, hotels, markets, petrol stations, schools, car dealerships, banks, hospitals, pharmacies, restaurants, shopping centres, tertiary institution, and any other relevant landmarks
	21. **Renewal Increase** – the percentage by which the Subscription Fee shall be increased year on year after the Initial Period, as set out on the Platform or in the Annexure.
	22. **Request for Support** – Any correspondence sent by a User requesting Support with respect to the Platform.
	23. **Responsible Person** –the person designated by the Customer for discharging its obligations to OA in order to ensure that OA has the correct information for Configuration and to render the Platform Services to the Customer.

* 1. **Registration Process –** the process whereby the Customer applies to register on the Platform via OA’s website, in terms of which the Customer records amongst other, its details, the Elected Platform Service and payment method. The application shall be approved by OA at their sole discretion. The process shall be complete once the Customer has accepted the terms and conditions contained in this agreement and the Login Details have been electronically submitted to the Customer and/or the User
	2. **Subscription** – the right to access the Platform and to the use of the Elected Platform Services subject to the terms of this Agreement.
	3. **Subscription Fees** – the fees payable by the Customer for access to and the use of the Platform in terms of this Agreement.
	4. **Support** – Assistance provided to Users by OA, in response to Requests for Support sent via the Platform or via email, which are of a technical nature and relate to the proper functioning of the Platform.
	5. **Update Notifications –** notifications of Relevant Publications delivered to Users from time to time
	6. **User** – An employee or authorized person of a Customer with Login Details authorizing them to access the Platform and Platform Service.
	7. **Working Day** – any day of the Week excluding Saturdays and Sundays and South African Public Holidays.
	8. INTRODUCTION
	9. OA is the creator and owner of the Platform, which provides the Platform Services.
	10. The Customer wishes to subscribe to the Platform and use the Elected Platform Service subject to the terms of this Agreement.
	11. The Parties therefore have agreed on the terms set out in this Agreement.
	12. SUBSCRIPTION
	13. The Customer hereby subscribes to OA for access to the Platform and the use of the Elected Platform Service, subject to the terms and conditions of this Agreement;
	14. The Subscription shall commence once the Customers’ Registration Process is complete.
	15. The Login details are for the sole use of the User, shall be kept confidential and may not be shared with any other person without the express written consent of OA. ‘’Any other person’’ shall include but not limited to colleagues of the User, customers of the Customer, associates, partners, family, friends or any third party.
	16. The Subscription shall be valid for the Initial Period, unless terminated early in accordance with clause 3.5 and shall be subject to the terms of this Agreement.
	17. Either Party may cancel this Agreement in its entirety for any reason whatsoever on 2 (two) months’ written notice to the other Party.
	18. Notwithstanding anything to the contrary contained herein, either Party shall be entitled to forthwith terminate this Agreement by written notice to the other Party if:
	19. the other Party is liquidated; and/or
	20. the other Party ceases to carry on business.
	21. Termination of this Agreement shall not release either Party from any liability which had already been incurred as at that date.
	22. SUBSCRIPTION FEE AND DISBURSEMENTS
	23. The Subscription Fees are set out in the Registration Process or in the Annexure, if applicable.
	24. Upon receipt of a tax invoice from OA the Customer shall pay OA the Subscription Fees on a monthly basis, or upon a payment structure agreed to by both parties
	25. USE OF THE PLATFORM
	26. The Platform and Platform Services are intended for the use of the Customer only
	27. The Customer may not use the Platform or the Platform Services for any purpose not related to the business of the Customer
	28. The Customer is specifically prohibited from:
	29. Downloading, copying, or re-transmitting any or all of the Site or the Content without, or in violation of, a written license or agreement with OA;
	30. Using any data mining, robots or similar data gathering or extraction methods;
	31. Manipulating or otherwise displaying the Platform of the Platform Services by using framing or similar navigational technology;
	32. Registering, subscribing, unsubscribing, or attempting to register, subscribe, or unsubscribe any party from the Platform service if the Customer are not expressly authorized by such party to do so; and
	33. Using the Platform or Platform Services other than for its intended purpose, or as determined solely in OA discretion, including but not limited to using the Platform to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy) of others, and/or to publish, post, distribute or disseminate any defamatory, infringing, obscene, pornographic, sexual, indecent or unlawful material or information.
	34. The Customer may not interfere with the security of, or otherwise abuse the Platform, the Platform Services or any system resources, services or networks connected to or accessible through this Platform. The Customer may only use this Platform for lawful purposes.
	35. USER SUPPORT
	36. OA shall provide Support to Users, after receiving a Request for Support from those Users.
	37. UPTIME UNDERTAKINGS
	38. OA shall ensure that:
	39. The Platform shall have 99% (ninety-nine percent) Uptime, during Core Working Hours in any calendar year, except in the case of agreed Scheduled Downtime.
	40. The Customer shall be given with at least 48 (forty-eight) hours’ notice of any Scheduled Downtime in order that the Customer may inform the Usersaccordingly.
	41. Scheduled Downtime will occur outside of Core Working Hours, except under unusual circumstances, in which case OA shall notify the Customer accordingly.
	42. The Platform does not experience more than 15% Scheduled Downtime in any calendar year, except by written agreement.
	43. RENEWAL OF THE SUBSCRIPTION
	44. After the Initial Period, the Subscription shall be renewed automatically for period of one month at a time, that is, unless either Party gives notice to the other Party, stating that the Subscriptionshall not be renewed, and such notice is received by the other Party not less than one month before the end of the Initial Period or the anniversary of such end date (as the case may be).
	45. In the case of a renewal, the Subscription Fee for subsequent renewals shall be increased by at least the Renewal Increase, unless otherwise agreed in writing between the Parties.
	46. OWNERSHIP OF INTELLECTUAL PROPERTY
	47. All Intellectual Property added to the OA Platform resulting from suggestions, comments and requests made by the Users or anybody else, shall become the property of OA.
	48. OA shall retain copyright over the Platform and the Platform Services.

* 1. USE OF DATA AND CONTENT AND DATA PROTECTION

The Customer consents to data and content collected by OA from Customers being used in an aggregated, de-identified and anonymous format for research and analysis by OA or third parties which research may be published by OA and third parties.

* 1. DATA SECURITY
	2. OA shall exercise commercially reasonably efforts to prevent unauthorized exposure or disclosure of the Customers’ Data
	3. OA will use, at a minimum, industry standard technical and organizational security measures to transfer, store, and process the Customer Data. These measures are designed to protect the integrity of the Customer Data and guard against the unauthorized or unlawful access to, use and processing of the Customer Data

* 1. OA shall not be held responsible in the event of data loss for any reason whatsoever.
	2. BREACH AND SUSPENSION OF SUBSCRIPTION
	3. In the event of either Party (the “Defaulting Party") remaining in breach of any term of this Agreement after having received 7 (seven) Working Days’ written notice to remedy such breach then the other Party (the “Aggrieved Party") shall have the right, notwithstanding anything to the contrary herein contained, and without prejudice to any other rights the Aggrieved Party may have in law, to cancel this Agreement or to claim specific performance in terms of this Agreement.
	4. Notwithstanding anything to the contrary contained in clause 13.1 above, should the Customer be in breach OA shall have the right to immediately suspend access to the Platform and revoke the Customers Login Details until such time as the breach has been remedied.

* 1. DISPUTE RESOLUTION
	2. Should any dispute, disagreement or claim arise between the Parties (“the dispute”) concerning this Agreement
	3. The Parties are obliged to resolve the dispute by negotiation and mediation as set out below and may not initiate court proceedings, save if negotiation and mediation fail and save as stipulated in 16.9 below.
	4. The Parties shall endeavour to resolve the dispute by negotiation.

**Negotiation**

* 1. Either one of the Parties shall be entitled to invite the other, in writing, to meet to attempt to resolve the dispute at a meeting to be held within 14 (fourteen) days after the date of invitation.
	2. If the dispute has not been resolved by negotiation within 14 (fourteen) days of such meeting of the Parties (which may be the first of a series of meetings), then either of the Parties shall be permitted to refer the dispute to mediation.

**Mediation**

* 1. Either Party shall be entitled to refer the dispute to mediation by delivering notice to the other Party stating that resolution of the dispute by negotiation has failed and that the dispute is to be referred to mediation.
	2. The mediator shall be:
	3. agreed upon by the Parties; or (in the event that the Parties fail to reach agreement as to the identity of the mediator within 7 (seven) days of referral of the dispute to mediation) then;
	4. a suitably qualified and experienced mediator (given the nature of the dispute) suggested by the Association of Independent Mediators (“AIM”). In the event that AIM cannot suggest a suitably qualified and experienced mediator, the mediator shall be a suitably qualified mediator suggested by Conflict Dynamics.
	5. The Parties shall use their best endeavors to ensure that a mediator is agreed or appointed within 7 (seven) days of referral to mediation and that the mediation is held and concluded and a decision handed down within 30 (thirty) working days after the delivery of the referral to mediation.
	6. A Party to this Agreement may institute court proceedings if:
	7. they are necessary for the protection of any rights pending the resolution of a negotiation and mediation in terms hereof; or
	8. they are necessary to obtain relief where grounds justifying urgent relief exist;
	9. they are necessary to compel a Party to abide by the terms of this dispute resolution clause.
	10. DOMICILIUM
	11. OA and the Customer choose the following addresses as their respective address for the delivery of any document in connection with this Agreement (hereinafter referred to as “service address”):
	12. OA at:

I Exeter Park

6 Indian Road

Kenilworth

Cape Town

Email: erik@outdoorauditors.co.za

* 1. the Customer at:

The physical and postal addresses recorded on the application form or in the Annexure.

The email address recorded on the application form or in the Annexure.

* 1. Either Party may change their service address by delivery of a written notice to that effect to the service address of the other Party. The change will be effective from the date of delivery.
	2. Any notice to be given by either Party to the other Party in terms of this agreement will be given by pre-paid registered post or will be delivered by hand or will be sent by e-mail.
	3. Notices sent by e-mail shall be deemed to be delivered at the time of delivery if transmitted before 17h00. If notice is transmitted after 17h00, it shall be deemed to be delivered the next Working Day.
	4. DISCLAIMER AND LIMITATION OF LIABILITY
	5. The Customer expressly acknowledges and agrees that use of the Platform and Platform Services is at the Customers sole risk.
	6. OA does not warrant against interference with the Customers enjoyment of the Platform and Platform Services, (i) that the functions contained in the Platform and Platform Services will meet the Customer’s requirements, (ii) that the operation of the Platform and Platform Services will be uninterrupted or error-free, or (iii) that defects in the Platform and Platform Services will be corrected.
	7. No oral or written Information or advice given by OA or its authorized Representative shall create a warranty. Under circumstances will OA be liable to the Customer or the Customer’s end users or licensees, whether under contract, delict, or any other theory of liability, for any damages arising out of the Customer’s use of the Platform of Platform Services, whether direct, indirect, consequential, special, indirect, punitive, or otherwise, even if OA has been given advance notice of the possibility of such damages, and including any damages that result from the discontinuance of the Customer’s access to the Platform and Platform Services.
	8. GENERAL
	9. Notwithstanding the word “partner” being used herein, or anything else herein, the word partner is used in the generic, non-legal sense and this agreement does not constitute a partnership, agency arrangement or joint venture between the Parties, and no Party shall be entitled to incur any liability on behalf of the other Party or bind the other Party in any way whatsoever without the other Party’s prior written consent.
	10. This Agreement has been negotiated and therefore the rule of interpretation that construes the meaning of a clause against the Party that presented a contract shall not apply.
	11. No variation or consensual cancellation of this Agreement and no addition to this Agreement shall be of any force or effect unless reduced to writing and signed by both Parties or their duly authorized representatives.
	12. No relaxation, leniency, or extension of time by a Party of any of its rights in terms of this agreement at any time shall prejudice or be deemed to be a waiver of its rights, unless it is a written waiver, and the waiver shall relate only to the specific instance in question and for the purpose given.
	13. The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in its interpretation.
	14. This Agreement constitutes the whole agreement between OA and the Customer with regard to the subject matter hereof and supersedes all prior verbal or written agreements or understandings or representations by or between OA and the Customer regarding the subject matter of this Agreement, and OA and the Customer will not be entitled to rely on any terms, conditions or representations not expressly contained in this Agreement.
	15. The validity, application and interpretation of this Agreement will be governed by the laws of South Africa.
	16. Any reference to the singular includes the plural and vice versa.

* 1. Each and every clause and sub-clause in this Agreement shall be severable from the other clauses in this agreement and in the event of any clause or sub-clause being held invalid by any competent court for any reason same shall not affect the validity of the remaining clauses or sub-clauses.

* 1. Each Party shall not be liable for failure to perform its obligations if such failure is as a result of so called acts of God (including but not limited fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labor dispute, strike, lockout. No Party is entitled to terminate this Agreement under in such circumstances. If either Party asserts Force Majeure as an excuse for failure to perform the Party's obligation, then the non-performing Party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the Party substantially fulfilled all non-excused obligations, and that the other Party was timely notified of the likelihood or actual occurrence of an event described in this clause.
	2. If any provision in clause 1 and clause 18 is a substantive provision conferring rights or imposing obligations on any Party, then notwithstanding that such provision is contained in clause 1 and clause 18 , effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
	3. This Agreement may be executed in a number of counterparts and by the same Parties in different counterparts but shall only be deemed to have been concluded when each Party has executed at least one counterpart.
	4. The parties agree that this Agreement may be signed electronically (either in whole or in part) in terms of section 11 of the Electronic Communications and Transactions Act 25 of 2002. This Agreement shall be deemed to be signed electronically by both parties once the Customer has accepted the terms and conditions of this Agreement on the OA Website or on the Platform, during the Registration Process.
	5. In the implementation of this Agreement, the Parties undertake to observe the utmost good faith and they warrant in their dealings with each other that they shall neither do anything, nor refrain from doing anything, which might prejudice or detract from the rights, assets or interests of any other of them.
	6. No Party shall be entitled to cede any of its rights, delegate any of its obligations and/or assign any of its rights and obligations under this Agreement without the prior written consent of the other Party.