



## Digital Advertising Agreement

This Digital Advertising Agreement ("Agreement") is made and effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Active Digital Signage, L.L.C., an Arizona limited liability company ("ADS") and \_\_\_\_\_, an \_\_\_\_\_ ("Customer").

**A.SPOTS.** During the Term of this Agreement, ADS shall provide Customer with the number of spots ("Spots") on the Display located as shown below. No more than 180 spots (the "Total Number of Spots"), including the Customer's Spot(s), shall be available on the Display during each "Day's Available Rotation" (defined below) and each Spot shall have a duration equal to or no less than ten (10) seconds. Subject to the Terms and conditions below, each "Day's Available Rotation" shall mean any time during the applicable calendar day that the established business in which the Display Location(s) listed below are open for scheduled business hours. ADS guarantees that Customer's copy will be displayed during each Day's Available Rotation (the "Guaranteed Time"), except as described in Section 3 below.

**B.COPY.** Customer shall provide copy to ADS in media and file formats acceptable to ADS. Customer may replace its initial "Copy" (text, graphics, artwork, and all other advertising, hereinafter ("Copy")) with new copy if received by ADS with at least 7-10 business days notice. A copy change fee of \$45.00 will be paid for each copy change.

**C.INITIAL COPY AND CHANGES.** Customer shall provide the Copy for Customer's initial posting on or before effective date of contract but no later than 7 days after the contract effective date. Copy can be prepared by Customer or ADS or an affiliate or agent thereof. ADS shall prepare/review the final copy for Customer's Spot(s) for use on the Display. The initial Copy prepared by ADS (if applicable) shall be paid for by Customer in accordance with ADS's then current quoted rates. AD's will charge the Customers credit card on the effective date of the contract for the initial monthly fee, and ADS will have 7 working days to build the AD copy and send out a proof to customer. If more than 2 hours of AD construction/graphic time is necessary, the Customer will pay \$45 an hour for additional graphic time, which will be paid for at the time the charges are incurred.

**D.POTENTIAL REJECTION OF PROPOSED COPY.** ADS may reject any Copy that ADS in its sole and absolute discretion determines is or may be false, misleading, deceptive, offensive to the moral standards of the community, is or may be a violation of an existing or proposed law, may result in the creation of new laws or regulations designed to restrict advertising or the advertising industry, or which in any way reflects adversely on the character, integrity, or standing of any person or business. ADS may also reject any copy, which ADS in its sole and absolute discretion determines to be: (i) contrary to the public's interest, (ii) contrary to ADS's interest or policies, or (iii) in conflict with or which may adversely affect any other advertiser's Copy on the Display. If ADS rejects Customer's initial Copy, this Agreement shall be terminated and all sums shall be refunded to Customer within thirty (30) days. If ADS rejects Copy that has been previously been approved by ADS or a change to Customer's Copy, ADS may either continue running any Copy that ADS previously approved in which case this Agreement will continue in full force and effect or ADS may terminate this Agreement, in which case all unused funds paid by Customer shall be refunded on a pro-rata basis.

### Digital Advertising Package

(Please check mark ad package below):

Pricing

Setup Fee

Monthly Payment  
@12 mos w/credit card

_____ <b>Level 1</b>	1 AD/Location Package	\$ 250.00 + \$99.00 Setup		<b>\$349 paid in full</b>
_____ <b>Level 2</b>	5 AD/Location Package (\$21.58 per screen/mo)	\$ 1,295.00	Included	<b>\$ 107.92 monthly</b>
_____ <b>Level 3</b>	10 AD/Location Package (\$15.79 per screen/mo)	\$ 1,895.00	Included	<b>\$ 157.92 monthly</b>
_____ <b>Level 4</b>	20AD/Location Package (\$10.40 per ad/mo)	\$ 2,495.00	Included	<b>\$ 207.92 monthly</b>
_____	AD/Locations above (20) are \$10.40/screen			\$ _____

**Total Monthly Payment: \$ \_\_\_\_\_**

*Financing not available for Level 1 package.*

o Optional Paid in Full for OneYear: Total \$ \_\_\_\_\_

**Credit Card Information** (Please circle credit card type)

Visa    MasterCard    American Express    Discover    Other

Name on Card: \_\_\_\_\_

Credit Card Number: \_\_\_\_\_ EXP Date: \_\_\_\_\_

CVV Code: \_\_\_\_\_

## General Terms and Conditions

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1. **BILLING AND PAYMENTS:** The Annual Payment or the Monthly Payment as shown on page one of this agreement, will be due on the effective date of this contract. This payment is non-refundable except for conditions mentioned within this Agreement. Ads has 7 working days to build the AD copy after receipt of artwork, however, the credit card will still be charged on the Effective Date while artwork and design are in process (see Section C on page 1). Customer may opt for the monthly payment plan as shown on page one of the agreement if they provide a credit card for monthly auto draft. Charges thereafter will be due on the same numerical date of the month as the effective date of this contract. ADS's acceptance of late payment(s) shall not be construed as a waiver of ADS's rights relative to any subsequent late payment(s) or any other event of default. If Customer provides ADS with a credit card for payment, ADS is hereby authorized to run such card for amounts due hereunder from time to time without pre-approval or notice from Customer. Customer may cancel after the initial Term of one year by notifying ADS of its cancellation at least 30 days prior to the expiration of the initial Term, or any renewal thereof; otherwise unless cancelled by ADS, this Agreement shall continue in full force and effect on an annual basis until Customer so notifies ADS of its cancellation.

2. **OWNERSHIP:** Customer warrants that it possesses full legal right to use, and to allow ADS to use as contemplated in this Agreement, all information or Copy of whatever kind and whatever form delivered by Customer to ADS. Customer shall indemnify, defend, and hold harmless ADS and its officers, directors, employees, and agents from all claims, losses, costs and other damages (including reasonable attorney's fees) suffered by ADS because of Customer's breach of this warranty. Customer's obligations in this paragraph shall survive the Termination of this Agreement.

3. **LOSS OF DISPLAY AND INTERRUPTION OF SERVICE:** Customer acknowledges that if any Display or proposed Display Location becomes permanently or temporarily unavailable to ADS during the Term, or should any proposed Display Location become excessively burdensome to secure, or should any Display become completely or substantially obstructed, or partially destroyed or defaced, or should ADS for any reason change or terminate any Display location, ADS shall have the right to display Customer's Spots on an acceptable replacement location and all terms of this Agreement shall remain in affect. If the parties can not mutually agree on another acceptable location owned or controlled by ADS (if any) within ten (10) days after notice by one party to the other of the occurrence of such an event, this Agreement shall terminate effective upon the expiration of such ten (10) day period and within thirty (30) days thereafter, as Customer's sole and exclusive remedy, ADS shall refund Customer on a pro-rata basis for any pre-paid then outstanding display time as of the effective date of termination. Notwithstanding anything to the contrary herein, if ADS is unable start the Term by the effective date or deliver advertising as a result of force majeure, acts of war, terrorism, labor disputes, governmental regulations, restrictions or ordinances, power outages, vandalism, breakages, unforeseen interruptions, or similar causes not within ADS's reasonable control, such delay or non-delivery shall not be construed as a breach or termination of the Agreement; in such cases, Customer's sole remedy shall be a delay in the effective date (up to thirty (30) days) or an extension of the Term as necessary to utilize the Guaranteed Time paid for, but not received. If ADS is unable to deliver advertising for reasons reasonably within ADS's control, that result in non-delivery of advertising, such non-delivery shall not be construed as a breach or Termination of the Agreement. In such case, ADS shall provide a credit to Customer for Guaranteed Time paid for, but not received on a pro-rata, monthly basis. In the event of a delay beyond thirty (30) days from the anticipated effective date or permanent loss of the Display, for whatever cause, the Agreement shall terminate and Customer's sole remedy shall be a credit for Guaranteed Time paid for, but not received on a pro-rata, monthly basis. Any credit to be provided pursuant to this paragraph shall be determined by calculating the amount of Guaranteed Time not received for a given annual period and providing a annual proportional credit for the same.

4. **DEFAULT:** If Customer fails to deliver to ADS any Payment when due, or fails to perform any other obligation herein, or bankruptcy, receivership, or other insolvency proceedings are commenced by or against it (collectively, "Default"), Customer shall, without notice, become obligated to immediately pay to ADS an amount equal to the (i) sum of all unpaid Payments previously accrued, plus (ii) liquidated damages (for loss of a bargain and not as a penalty) in an amount equal to seventy-five percent (75%) of the sum of all remaining Monthly Payments, such amount is hereby conclusively agreed by the parties to approximate ADS's actual damages and that in such an event, ADS's actual damages would be extremely difficult or impossible to calculate. If this Agreement is cancelled by Customer for any reason before advertising is placed on the Display, Customer will pay as liquidated damages twenty percent (20%) of the total sum of all the Payments as liquidated damages; such amount is hereby conclusively agreed by the parties to approximate ADS's actual damages and that in such an event, ADS's actual damages would be extremely difficult or impossible to calculate. ADS shall have no obligation to display Customer's advertising on the Display at any time this Agreement is in Default.

5. **DISPUTES:** In the event of litigation, venue of any action shall be in Maricopa County, Arizona. This Agreement shall be governed and construed in accordance with Arizona law, without regard to its conflict of laws provisions. ADS shall not be liable for incidental or consequential damages, including lost profits, irrespective of cause or theory. If ADS places this Agreement with a collection agency or an attorney for collection or enforcement, Customer shall pay all costs and expenses resulting there from, including reasonable attorneys' fees. NOTWITHSTANDING ANYTHING TO THE CONTRARY HERE, THE MAXIMUM LIABILITY OF ADS, ITS MANAGING MEMBERS, OWNERS, OFFICERS, EMPLOYEES AND AGENTS TO CUSTOMER FOR DAMAGES FOR ANY AND ALL CAUSES

WHATSOEVER, AND CUSTOMER'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE MONTHLY PAYMENTS RECEIVED BY ADS, EXCEPT IN THE CASE OF ADS'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

6. **INDEMNIFICATION:** Except to the extent of ADS's gross negligence or willful misconduct Customer shall indemnify, defend, and hold harmless ADS and its managing members, owners, officers, directors, employees, agents, and subcontractors from any and all claims, costs (including reasonable attorney's fees), damages, and liabilities, at law or in equity arising out of or related to this Agreement. This paragraph shall survive the expiration or earlier termination of this Agreement.

7. **TRANSFERS AND ASSIGNMENT:** If Customer sells or otherwise transfers ownership (or other rights) to its business assets, Customer shall deliver to ADS written notice of such intention at least thirty (30) days prior to closing on such sale or transfer. At the time of closing and with proceeds there from, Customer shall pay to ADS an amount equal to the sum of items (i) and (ii) of Section 6 above, unless ADS has previously agreed in writing to Customer's assignment of this Agreement. All the Terms and conditions hereof shall be binding upon and inure to the benefit of the successors, assigns, and legal representatives of the respective parties. Customer may not transfer its interests, rights, and obligations in this Agreement, nor shall Customer sublet or donate any advertising hereunder without the prior written consent of ADS. ADS may freely transfer its interests, rights, and obligations in this Agreement.

8. **AGENCY IS RESPONSIBLE:** If this Agreement is executed for Customer by an agency, Agency warrants and represents that it is fully authorized to enter into this Agreement for and in behalf of Customer. Agency hereby agrees to be jointly and severally liable with Customer for the full and faithful performance of Customer's obligations under this Agreement.

9. MISCELLANEOUS PROVISIONS: (i) No statements made by ADS's account executive(s), agent(s) or employee(s) shall be binding unless incorporated herein in writing. This Agreement shall not be binding upon ADS for any purpose until the managing member of ADS accepts this Agreement for ADS by signing below. (ii) The Annual Payment includes displaying, posting, maintaining, etc., as specified on the 1<sup>st</sup> page of this Agreement. Production costs for Copy, if applicable, are not included in the Annual Payment and Customer hereby agrees to pay for the same at ADS's standard rates, if applicable. (iii) Customer may request to add up to 7 days to the end of the Term if there is a delay in receiving the Initial Copy per paragraph C. (iv) Time is of the essence for all provisions of this Agreement. All past due amounts shall bear an annual interest rate of the lesser of eighteen (18) percent or the maximum rate allowed by law. (v) If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the intent and economic effect of the original provision, and the remaining provisions shall continue in full force and effect. Headings in this Agreement shall not be used to interpret the meaning of any provision hereunder and otherwise shall be given no legal effect. (vi) This document may be executed in several counterparts, each of which shall be treated an original, all of which shall constitute but one and the same instrument. This document is a complete integration and final expression of the Agreement between ADS and Customer, and may not be modified except by a subsequent written Agreement that is executed by authorized representatives of both parties. (vii) all references to time(s) of the day or day(s) shall be interpreted to mean the time of the day or day, whichever is applicable, in Phoenix, AZ. (viii) where an Agency is involved, any refunds due to Customer hereunder shall exclude any payments previously made by ADS to Customer's Agency. (ix) in addition to the charges listed in this Agreement, Customer shall pay all applicable sales tax associated with such charges. (x) the parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement. (xi) each of the parties has had sufficient time to review

this Agreement and seek advice of counsel; no provision of this Agreement shall therefore be construed against the drafter.

10. NOTICES. All notices shall be in writing and may be delivered by person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, by e-mail or facsimile transmission, and shall be deemed sufficiently given if given in the manner provided in this paragraph. The address noted adjacent to the applicable party's signature (if any) on this Agreement shall be that party's address for delivery or mailing of notices. A party may change its notices address any time upon notice to the other. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by e-mail or facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED  
THIS AGREEMENT EFFECTIVE AS OF THE DATE SET  
FORTH ON THE 1<sup>ST</sup> PAGE OF THIS AGREEMENT.**

**ADS Customer**

By: \_\_\_\_\_ (Company)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**ADS Representative**

By: \_\_\_\_\_ (ADS)

Name: \_\_\_\_\_

Address: 4060 W. Clarendon  
Phoenix, AZ 85019  
E-Mail: info@activedigitalsignage.com

Facsimile: 602-393-5456

Signature: \_\_\_\_\_

Date: \_\_\_\_\_