

TERMS & CONDITIONS

Updated January 13, 2018

These terms and conditions (“Terms”) set out the terms on which Tonymac (“Tonymac,” “Us,” “We,” “Our”) provides you (“You,” “Your,” “Customer”) with Digital Signage services. Please read these terms carefully and ensure that you have understood them. By agreeing to a Month-to-Month or Annual subscription, you warrant that you understand and accept these terms. If you are accepting these terms on behalf of your employer or acting as an employee, you warrant that you are authorized to enter into a legally binding contract on behalf of your employer. The same rights, limitations, and restrictions apply to your employer. You agree that these terms are enforceable as if they were a written negotiated agreement signed by your employer.

YOU ARE ADVISED TO PRINT AND RETAIN A COPY OF THESE TERMS FOR YOUR FUTURE REFERENCE.

1. DEFINITIONS

"Amendments" means an increase or decrease in the fees payable by you during a Billing Month, calculated in accordance with clause 7;

"Contract" means the agreement between Tonymac and you for provision of the Subscription and which incorporates these Terms;

"Digital Content" means any and all data, files, documents, multimedia files, third party links, images, videos, and any other information or material whatsoever (in any format) produced by Tonymac or submitted by you or any user;

"Fee" (“Fees”) means the monthly fee(s) payable by you for the Subscription as specified on our website, print collateral, or otherwise agreed to between Tonymac and you in writing;

"Hardware" means your computer, laptop, mounting equipment, or other devices used in conjunction with the Subscription;

"Network" means the third party electronic communications system used by Tonymac to provide the Subscription;

"Screen(s)" means any television, monitor, or other device supported by the Subscriptions;

“Estimate” means the itemized, pricing details of the Subscription, including any one-time hardware purchases.

"Subscription" ("Subscriber) means the delivery of digital signage services made available by Tonymac to you; and

"User" means an individual employee of your organization whom you have permitted to manage the Subscription.

2. INFORMATION ABOUT TONYMAC AND THE SUBSCRIPTION

2.1 The Subscription is offered by Tonymac Digital/Signage, with a registered head office address at 21 Northgate Drive, North York, Ontario, Canada M3K 1R1.

2.2 The Subscription is intended to be used for commercial purposes. If you wish to use the Subscription for private, non-commercial purposes, please contact us at (416) 402-1997 or by email at **digitalsignage@tonymac.ca**.

3. DIGITAL SIGNAGE SERVICES AND SOLUTIONS

3.1 A Subscription is defined as the delivery, programming, management, and/or monitoring of Digital Content from our control centre in North York, Ontario, Canada to the Screen(s) designated on your Invoice.

3.2 Subscription options are available on a month-to-month Contract (automatically renewed every month until cancelled) and annual Contract which consists of a Subscription held for twelve (12) consecutive months.

3.3 Subscription services are listed on your Estimate and shall be deemed to be the services included in your annual or month-to-month Contract unless other arrangements are agreed upon in writing between you and Tonymac. Subscription services listed in your Estimate will supersede any Subscription offerings advertised on our website which can change from time to time without notice to you.

3.4 Any services and/or products, including but not limited to TV screens and other hardware, not listed on the Estimate but which may be required to fulfill digital content delivery, shall be deemed to be **NOT INCLUDED** in your Subscription Fees.

4. FORMATION AND TERMINATION OF YOUR CONTRACT

4.1 Your Contract with us shall commence on the date we receive the signed Estimate and shall continue until terminated.

4.2.1 You may terminate your month-to-month Contract by providing notice by e-mail sent to **digitalsignage@tonymac.ca** within five (5) business days of month end. Upon termination, no further fees will be charged and all Digital Content delivery will cease on or before the first day of the following month.

4.2.2 You may terminate your annual Contract early by providing notice by e-mail sent to **digitalsignage@tonymac.ca** within five (5) business days of month end. Upon termination, you will be responsible for paying the difference of the rate as would be charged on a month-to-month Subscription. For example, if the month-to-month Subscription rate is \$199 per month and the annual Subscription rate is \$169 per month and you cancel your annual Subscription after 5 months, you will pay the difference of \$150 upon cancellation. Upon payment of this cancellation fee, no further fees will be charged and all Digital Content delivery will cease on or before the first day of the following month.

4.3 We may suspend or terminate your Subscription immediately on notice to you in the event that:

4.3.1 third party services and network providers cease to make the third party service or network available to us;

4.3.2 you fail to comply with one or more of these Terms;

4.3.3 we believe that there has been fraudulent use, misuse, or abuse of features and functionalities of the Service (in whole or in part); or

4.3.4 we believe that you have provided us with any false, inaccurate, or misleading information,

and for the avoidance of doubt, no fees shall be refunded to you in the event of termination in accordance with the foregoing.

4.4 Upon termination of your Contract with Tonymac in accordance with this clause 4, Digital Content delivery shall cease and any Digital Content will no longer be accessible through the Subscription. We may retain copies of your Digital Content and/or other data (including any User's data) made available through the Subscription for auditing and/or tax purposes, or as may be required by us to comply with applicable law.

5. DIGITAL CONTENT DELIVERY AND SUPPORT

5.1 In consideration for payment of the applicable Subscription Fee, we will hereby provide services that include unlimited uploading, managing, and monitoring of Digital Content to the designated Screen(s) in the Estimate. Such fees may include free use and access to templated, Digital Content designs customized to your specifications or other promotions offered to you at the time of Subscription purchase.

5.2 Other services may be available during the life of the Subscription which include free Digital Content applications ("Apps") and custom Digital Content design priced accordingly upon your request.

5.3 You acknowledge that you shall ensure that these Terms are brought to the attention of all Users. You shall be liable for breach of these terms by a User as if it were a breach by you.

5.4 We shall use reasonable efforts to ensure uninterrupted Digital Content delivery but we cannot guarantee any disruptions throughout the duration of your Contract.

5.5 Our ability to provide the Subscription may be impaired by conditions or circumstances that are beyond our control, including without limitation, third party service providers, geographic or atmospheric conditions, local physical obstructions, software and hardware features or functionality of your operating systems, and server load. We shall take reasonable action to minimize the disruption caused by such circumstances but you acknowledge, agree, and accept that some such interruptions may not be avoidable.

5.6 The Network is not controlled by us and may from time to time be upgraded, modified, subject to maintenance work, or otherwise amended by the operators of the Network. Such circumstances may result in the Subscription services being temporarily unavailable. We will take reasonable action to minimize the disruption caused by such circumstances but such interruptions may not be avoidable.

5.7 We use industry standard security measures to protect against the loss, misuse, and alteration of the information, data, and/or content maintained in your Subscription. However, you acknowledge and agree that we cannot guarantee complete security of such information, data, and/or content or that our security measures will prevent hacks, worms, bugs, trojans or such other similar devices that may allow access to or unauthorized viewing of such information, data, and/or content.

5.8 All Digital Content designed by Tonymac is protected under the copyright laws of Canada and is made available to you on a non-exclusive basis throughout the duration of your Contract. All third party Digital Content, including Digital Content supplied by you, will remain with the respective copyright holders.

5.9 We reserve the right to make changes to the Subscription or part thereof from time to time at our sole discretion, and we may from time to time update, add, remove, modify and/or vary any features or functionalities of the Subscription services.

5.10 We offer Subscription sales and support between 9am to 6pm, Eastern time, Monday to Saturday via a dedicated account manager who is responsible to address your questions, concerns, fulfill administrative requests, remedy interruptions (if possible), and other operational duties (when and where applicable) within twenty-four (24) hours from the time such requests are received.

5.11 The support detailed in this clause 5 shall not include the diagnosis and rectification of any disruption resulting from i) use of the Subscription other than in accordance with these terms or the use of the Subscription for a purpose for which it was not designed; ii) a fault in your or a third party's software, hardware, network connections or application, or any upgrade in respect

thereof; or iii) a fault in the equipment or in any other software operating in conjunction with or integrating with the Subscription.

6. YOUR OBLIGATIONS

6.1 You are responsible for ensuring that any proprietary or third party Digital Content is not deemed to be offensive, illegal, inappropriate or that in any way:

i) promotes racism, bigotry, hatred or physical harm of any kind against any group or individual; ii) harasses or advocates harassment of another person; iii) displays pornographic or sexually explicit material; iv) promotes any conduct that is abusive, threatening, obscene, defamatory or libellous; v) promotes any illegal activities or instructions about illegal activities; vi) promotes or contain information that you know or believe to be inaccurate, false or misleading; vii) infringes any Intellectual Property Rights or any other proprietary rights of any third party.

6.2 You warrant and represent that you own, are licensed, or otherwise have a right to use any and all the Digital Content that you supply to us for upload to your Screen(s). You hereby indemnify and hold us harmless against all damages, losses, costs, and expenses (including reasonable legal expenses) incurred or suffered by us arising out of or in connection with any claim made against us by a third party arising out of or in connection with our use or possession of any Digital Content in accordance with these terms.

6.3 In the event that you or any user breach any of the terms in this clause 6, or we in our sole and absolute discretion reasonably suspect that you or any user have breached any of the terms set out in this clause 6, we reserve the right to take any action that we deem to be necessary, including without limitation, the termination of your Contract forthwith and without notice.

7. FEES AND PAYMENT

7.1 All Subscription Fees are invoiced on the first day of each month in advance for that given calendar month as per the amounts stipulated in the Estimate.

7.2 Amendments to a Subscription that requires the cancellation of any additional Screen(s) will be adjusted to reflect a revised Fee for the new active number of screens on the first day of the subsequent month following the date of cancellation. No refunds or pro-rated credit will be issued for any day(s) of non-usage of the cancelled screen for any given month.

7.3. Amendments to a Subscription that requires a requested addition of any Screen(s) will be adjusted to reflect a revised Fee for the new active number of screens on the first day of the subsequent month following the date of request. A pro-rated amount reflecting the revised Fee equal to the daily usage remaining in the Billing Month when such changes were made, if applicable, will be billed within five (5) business days to bring your account up to date.

7.4 Fees do not include the cost to purchase Screen(s), streaming hardware, mounting hardware and other required parts or accessories, and the installation of the Screen(s) in their designated locations.

7.5 Tonymac does not sell any of the hardware described above but may purchase such items on behalf of the Subscriber or User at his or her request and discretion and will make every effort to advise on the most economic and compatible equipment, devices, and hardware for the ideal setup and delivery of Digital Content.

7.6 All monthly Subscription fees are payable in advance and are non-refundable, unless otherwise agreed to by Tonymac in writing.

7.7 Any Fees, outstanding or otherwise, not paid by pre-authorized credit card are payable immediately by, electronic money transfer (EMT), certified cheque, or cash. If we do not receive the Fee within five (5) business days from the invoice date of issue, we reserve the right to suspend your Subscription and/or terminate your Contract.

7.8 We reserve the right to increase the Fees at any time with written notice to you which shall take effect from the start of the next Billing Month following the Billing Month in which we gave notice to you.

7.9 All Fees payable are subject to HST.

8. EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY

8.1 You hereby warrant that i) all Users are at least 18 years old; ii) you have the right and capacity to enter into and be bound by these terms; and iii) you shall comply with all applicable laws regarding the Use of the Subscription.

8.2 You should ensure that you and the Users have adequate back-up facilities for any Digital Content. We shall not be liable for any losses or damages incurred by you or any Users arising out of or in connection with your failure to implement adequate back-up facilities in respect of any Digital Content.

8.3 All warranties, representations, guarantees, conditions, and terms other than those expressly set out herein whether express or implied by statute, common law, trade usage or otherwise, and whether written or oral are hereby expressly excluded to the fullest extent permissible by law. Consequently, all information, advice, suggestions, and recommendations made available to you are provided to you on an "as is" basis.

8.4 Nothing in these terms shall be deemed to exclude, restrict, or limit liability for the following categories: i) death or personal injury resulting from negligence; ii) any liability for fraudulent misrepresentation; iii) any act of liability caused through willful default; or iv) any indemnity provided hereunder.

8.5 Subject to clause 8.4, neither you nor Tonymac shall be responsible for any: i) loss of profits, sales, business, or revenue; ii) loss or corruption of data, information or software; iii) loss of business opportunity; iv) loss of anticipated savings; and v) loss of goodwill,

whether such losses, damages, costs and expenses resulted from your or our negligence, failure to comply with these Terms, or otherwise.

9. PUBLICITY AND MARKETING

9.1 Subject to your prior approval, we may in any of our marketing material refer to you as our customer and refer to the type of services that we have provided to you.

9.2 Subject to your prior approval, we may publish and circulate a case study describing the Service supplied by us to you, including aggregate figures relating to your use of the Service and the benefits it has brought to your business (for use by us as a marketing tool).

10. GENERAL

10.1 No waiver by us of any of the Terms shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

10.2 All notification and communication should be sent to Max Maccari at **max.maccari@outlook.com** or **digitalsignage@tonymac.ca**. A notice or communication is deemed given: (i) if delivered personally, when left at the relevant party's address; (ii) if sent by post, two working days after posting it; and (iii) if sent by e-mail on completion of its transmission.

10.3 If any of these Terms are determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such term, condition or provision will to that extent, be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

10.4 Your Contract represents the entire agreement between you and us in respect of your Subscription and shall supersede any prior agreement, understanding, or arrangement between us, whether oral or in writing.

10.5 You acknowledge that in entering into these Terms, you have not relied on any representations, undertaking, or promise given by or implied from anything said or written whether on the Website, the Internet, or in negotiation between us (whether made innocently or negligently) except as expressly set out in these Terms.

10.6 We may alter or amend these Terms by giving reasonable notice on our website and/or by written notice to you.