



## Hosting Services Agreement

This Hosting Services Agreement ("HSA") is entered into by and between Visix and Client as of the later date signed below (the "Effective Date"). The Parties acknowledge and agree this HSA is an Exhibit of the Master Agreement.

WHEREAS, Visix is the developer and owner of certain digital signage software (the "Software");

WHEREAS, the Software will be provided either on-site or in a cloud-based platform for the Company (the "Platform");

WHEREAS, Company desires to obtain access to a version of the Software customized for its needs via the Platform;

WHEREAS, Visix and Company desire to enter into a binding legal agreement under which Visix shall provide support and maintain a version of the Software for the Client via the Platform (the "Software") for the benefit of the Client;

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. DEFINITIONS.

"Authorized End User" means a person authorized by Visix to access the Software pursuant to and as set forth in this Agreement.

"Authorized Use" means use of the Software by an Authorized End User located in the Territory for the purposes of delivering, developing, receiving, supporting or administering digital signage and content within the Territory during the Term of this Agreement. Authorized Use expressly excludes any and all Prohibited Uses.

"Content" means content for delivery to Authorized End Users through the Software that Visix makes accessible to Client. Content may include materials or data from third parties licensed to Visix through an open source license, or content licensed to Visix through a non-open-source license. Use and access to all Content shall be subject to the restrictions and limitations of the applicable third-party license agreements, this Agreement and all Website Usage Agreements.

"Customizations" means features and capabilities added to the Software by Visix for the purposes of supporting Authorized End Users. Customizations may include configuration of the Software through settings and features, custom software that communicates with the Software, or custom software that accesses data or features of the Software developed by Visix pursuant to a separate agreement between Visix and Client.

"Designated Affiliates" means, if applicable, the affiliated companies listed on the Quote.

"Documentation" means the electronic and paper user manuals, installation, technical, and training guides, help files, and other documents delivered by Visix or its reseller or representative in conjunction with the Software or Platform or made available to Client via Visix's website.

"Go Live Date" means the date when the Software is launched for use by the Authorized End Users.

"Hosting Services" means the professional services Visix provides under this Agreement to host and maintain the Software during the term of this Agreement, all or some of which may be purchased by Visix from a third-party in its sole discretion.

"Implementation Services" means the professional services Visix provides under this Agreement to develop and implement the Software.

"Maintenance Services" means the professional services Visix provides under this Agreement to maintain the Software during the term of this Agreement and the support services Visix is obligated to provide to Authorized End Users during the term of this Agreement.



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"Platform" shall have the meaning set forth in the above recitals.

"Prohibited Use" means any use of the Content, the Platform or the Software not expressly authorized under this Agreement including, without limitation, any access to the Platform, Software or Content outside of the Territory, any attempt to reverse engineer the Platform, Software or gain access to the Platform, Content, or the source code or object code of the Software, any attempt to bypass any use limitation or security or privacy feature or protection of the Platform or Software, any attempt to access, use or copy any feature, data, content or materials within or underlying the Platform or Software by any means other than the user interface provided by the Platform or Software, any attempt to interfere with the use or operation of the Platform or Software, any attempt to access, hack, derive or utilize any password of any Authorized End User without the Authorized End User's express written permission, any use of the Platform or Software using a password or other credential by any person other than the Authorized End User to whom that password or other credential was given by the Platform or Software, any use or attempted use of the Platform or Software for any illegal purpose, any use or attempted use of the Platform or Software that is expressly prohibited by the Documentation, the Website Usage Documents, the online documentation accessible through the Software, which documentation may be updated from time to time by Visix.

"Software" shall have the meaning set forth in the above recitals.

"Territory" means worldwide.

"Website Usage Agreements" means a usage agreement, privacy policy, or similar agreement to which users of Software are bound through an account creation or similar process. All Website Usage Agreements may be updated from time to time by Visix in its reasonable discretion.

### 2. SERVICES.

During the Term, Visix shall use its commercially reasonable best efforts to provide Implementation Services, Hosting Services, and Maintenance Services to Client, and Client shall assist Visix in these efforts, as follows:

2.1. *Implementation Services.* Visix will utilize the Platform to establish the Software for use with the Designated Affiliates as set forth in the Quote attached to the Master Agreement. Client shall cause its personnel to cooperate in good faith and provide Visix with such assistance as it may reasonably request in connection with the establishment and implementation of the Software. In particular, Client shall designate a project manager who shall work directly with Visix.

2.2. *Hosting Services.* Visix will provide hosting of the Software during the Term to allow Authorized End Users within the Territory to access and use the Software for Authorized Uses. Hosting Services shall be provided pursuant to the service level agreement (the "SLA") attached hereto as Addendum A.

2.3. *Maintenance Services.* Visix will provide maintenance and support services for the Software during the Term as set forth in the maintenance terms attached hereto as Addendum B.

### 3. PAYMENT.

Client shall pay Visix for the Implementation Services, Hosting Services, and Maintenance Services as set forth in the Quote attached to the Master Agreement.



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### 4. PROPRIETARY RIGHTS.

4.1. *Ownership.* Client acknowledges and agrees that Visix owns, or is a licensee of, all right, title and interest in and to all software, source code, object code, web pages, database designs, documentation, data and related intellectual property that make up the Software (including without limitation (i) all copyrights and related rights in all source code, object code, web pages, documentation, and enhancements (ii) all patent, trademark, copyright, trade secret, and other intellectual property rights related thereto, and (iii) all rights in and to all Confidential Information of Visix). Client agrees that neither it, nor the Authorized End Users, shall obtain any rights in or to the Platform, the Software or related intellectual property by virtue of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that data posted to the Platform by Authorized End Users ("User Data"), shall be owned by Client and/or such Authorized End Users as set forth in the Website Usage Agreements. Client, on behalf of itself, and the Authorized End Users, hereby grants to Visix an unlimited, perpetual, royalty free, fully paid up, irrevocable worldwide right and license to use all User Data in the development of the Platform and the Software and in the performance of services under this Agreement, subject to the applicable terms and conditions of the Website Usage Agreements and all applicable laws and regulations.

4.2. *Modifications.* To the extent Visix creates Customizations, all such Customizations shall be owned solely by Visix, subject to a royalty free license to Client and the Authorized End Users to utilize such Customizations solely for Authorized Uses during the Term of this Agreement. Client may not make modifications to, or derivative works based on, the Software or Platform except to the extent such modifications or derivative works result from use of documented features of the Software as described in the Documentation. All suggestions and ideas communicated to Visix by Client or Client's representative relating in any way to the Quote, HSA, and/or SLA shall be deemed and treated as Customizations and owned solely by Visix.

### 5. LIMITED WARRANTY; DISCLAIMER.

5.1. *Limited Warranty.* Visix warrants that, subject to this **Section 5**, for a period of ninety days from the date of delivery (the "Warranty Period"), the Software will materially perform in accordance with the Documentation provided it is used in accordance with the terms of this Agreement and the Documentation. Visix does not warrant that the Software or Platform shall be uninterrupted or error free or will satisfy Company's requirements.

5.2. *Obligations of Visix.* For any claim under the warranty in **Section 5.1**, Visix's sole obligation shall be to correct the Software so that it will perform in accordance with the applicable Documentation or, at Visix's option, either (a) immediately provide Company with substituted Software or portions thereof which do not breach such warranty, or (b) refund a pro rata portion of the fees paid by Company to Visix for the affected Software. Company shall promptly return all applicable copies of the Software to the extent it has any (and related Documentation) to Visix upon issuance of any such refund, or, if preapproved in writing by Visix, destroy all copies of the Software in Company's possession or control.

5.3. *Limitations.* Visix's obligations in **Section 5.2** shall not apply: (a) to any authorized or unauthorized modifications to the Software or Platform; (b) if the Software or Platform is not used in accordance with the Documentation or this Agreement; (c) if Company is not using the most recent version of the Software or Platform; or (d) to any error or defect caused by Company, an Employee, any third party, or any third party software.

5.4. *Disclaimer.* EXCEPT AS EXPRESSLY STATED IN THIS **SECTION 5**, VISIX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED WITH RESPECT TO THIS AGREEMENT OR THE SOFTWARE OR PLATFORM OR ANY SERVICES PROVIDED TO CLIENT INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND VISIX EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. VISIX DOES NOT WARRANT THAT: (A) THE SOFTWARE OR PLATFORM WILL OPERATE UNINTERRUPTED; (B) THE SOFTWARE OR PLATFORM ERRORS, TO THE EXTENT THEY EXIST, CAN BE CORRECTED; OR (C) THE APPLICATIONS CONTAINED IN THE SOFTWARE OR PLATFORM ARE DESIGNED TO MEET ALL OF CLIENT'S BUSINESS REQUIREMENTS. CLIENT AGREES THAT VISIX IS NOT RESPONSIBLE FOR ANY LOSS OF DATA OR SECURITY BREACHES OF ANY KIND.

5.5. *Exclusive Remedy.* NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY EXHIBIT OR STATEMENT OR WORK TO THE CONTRARY, THIS **SECTION 5** SETS FORTH CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY SET FORTH IN **SECTION 5.1** ABOVE.



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### 6. INDEMNIFICATION.

Client shall indemnify, defend and hold harmless Visix from and against any (i) claim of infringement of a patent, copyright, or trademark asserted against Visix based upon any materials or Content or User Data posted to the Platform or used in connection with the Software by the Client or any end user, (ii) claim arising from any Prohibited Use or any use of the Software, the Platform, or any content that exceeds the express licenses granted in this Agreement, (iii) claim arising from Visix's implementation of any design or feature, or inclusion of any content, requested or required by Client, (iv) negligent, grossly negligent, reckless, or intentional act or omission of Client, any person for whom Client is responsible, or any end user of the Platform or Software, or (v) any breach of this Agreement by Client or any person for whom Client is responsible.

### 7. RIGHT OF FIRST REFUSAL.

In the event that Client wishes to provide access to the Software at additional locations, the Parties shall negotiate in good faith a separate agreement to cover those locations. Visix shall have a right of first refusal with respect to providing digital signage to the Client and any of its related or affiliate companies.

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