



## 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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## SERVICE LEVEL AGREEMENT

This Service Level Agreement (this "SLA") is part of, and is incorporated by reference into, the Hosting Services Agreement (the "HSA") between Visix and Client.

### 1. DEFINITIONS.

Capitalized terms in this SLA shall have the meaning set forth below. Where a capitalized term is used that is not expressly defined below, that term shall have the meaning set forth in the Master Agreement or any Exhibit. Where a capitalized term is used that is not expressly defined in the Master Agreement or any Exhibit, that term shall have the customary meaning the field of online application hosting and software development.

"Client Content" means Platform Content provided by Client for use in connection with the Software.

"Planned Downtime" means periods of time during which the Hosting Services are suspended or are otherwise unavailable so Visix or its third-party vendor can perform maintenance, correct faults, and implement updates to the Platform or Software.

"Third-Party Applications" means online, Web-based applications or offline software products that are provided by third parties and included in the Hosting Services.

"Unscheduled Downtime" means periods of time during which the Hosting Services are unavailable due to circumstances beyond Visix's reasonable control, including without limitation, (i) acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, cable or satellite failures or disruptions, unforeseen software errors, malware or security breaches or Internet service provider failures or delays, and (ii) unavailability required by law or government regulation.

"User Data" means all electronic data or information submitted by Authorized End Users to the Platform during the term of the Agreement.

### 2. USE OF THE SERVICES.

2.1. *Visix Responsibilities.* Visix shall: (i) use commercially reasonable efforts to make the Hosting Services available 24 hours a day, 7 days a week during the term of the Agreement, except for: Planned Downtime, or Unscheduled Downtime. Visix shall give at least 8 hours' notice prior to Planned Downtime by posting a notice on the Platform or sending Client an email and shall use commercially reasonable efforts to complete all necessary maintenance, fault correction and updating during the time period set forth in such notice. To the extent practical, Visix shall schedule Planned Downtime during weekend hours or between the hours of midnight and 5:00 AM. Visix shall also use commercially reasonable efforts to minimize any Unscheduled Downtime.

2.2. *Support Availability.* During the term of the Agreement, Visix shall use commercially reasonable efforts to provide support to Client as follows (all times are in the Eastern Time Zone):

- Telephone support: 8:00 AM to 8:00 PM (EST/EDT) Monday – Thursday and 8:00 AM – 5:00 PM (EST/EDT) Friday with the exception of published holidays. All calls are collected as voice mail messages and responded to in accordance with the *response times* noted in **Section 2.3**. Calls received outside office hours will be collected and responded to the next working day.
- Email support: Monitored 8:00 AM to 8:00 PM (EST/EDT) Monday – Thursday and 8:00 AM – 5:00 PM (EST/EDT) Friday with the exception of published holidays. Emails received outside of office hours will be collected, but may not be reviewed until the next working day.



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2.3. *Response Times.* Upon receiving a support request, Visix shall promptly classify such request as “High Priority” (meaning that access to the Hosting Services is unavailable or that documented features of the Hosting Services are not functioning as documented and no work around is available), “Medium Priority” (meaning that the Hosting Services are not functioning as documented but that such malfunction does not prevent reasonable use of the Hosting Services or a work around is available), “Low Priority” (meaning all other deviations from the documented operational parameters of the Hosting Services), or “Not an Issue” (meaning a suggestion for alternative functionality or a misunderstanding of the documented operational parameters of the Hosting Services or an unavailability due to user hardware or networking components not under the control of Visix or an issue arising from the use of hardware or software not meeting the minimum usage requirements documented by Visix). Visix shall use commercially reasonable efforts to classify incidents submitted by Client within the following time frames:

- 0-8 hours (during business hours) for issues classified as High Priority.
- Within 48 hours for issues classified as Medium Priority.
- Within 5 working days for issues classified as Low Priority.
- For any incident that is classified as Not an Issue, within 5 working days Visix will notify Client of the basis of its classification. No further action shall be required for such incidents.

Incidents may be responded to remotely by email, remote support technology or telephone, or any other means that Visix determines is appropriate in its reasonable discretion. Onsite assistance shall only be provided when remote assistance is not feasible, in Visix’s sole discretion.

2.4. *Client Responsibilities.* Client shall (i) be responsible for Authorized End Users’ compliance with the Agreement and this SLA, (ii) be solely responsible for the accuracy, quality, integrity and legality of User Data and of the means by which User Data is acquired and used, (iii) be solely responsible for all licensing and other permissions necessary or prudent in connection with Client Content and User Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Hosting Services, and notify Visix promptly of any such unauthorized access or use, and (v) use the Hosting Services only in accordance with the applicable laws and government regulations. Neither Client nor any person for whom Client is responsible shall (a) make the Services available to anyone other than Authorized End Users, (b) sell, resell, rent or lease any portion of the Hosting Services, (c) use the Hosting Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third- party privacy rights, (d) use the Services to store or transmit malware or malicious code, (e) interfere with or disrupt, or allow any third party to interfere or disrupt, the integrity or performance of the Hosting Services, Platform, Software, Content or any third-party data contained therein, or (f) attempt to gain unauthorized access to the Hosting Services or their related software, data, content, systems or networks. Visix shall have no liability or responsibility for failures of user hardware or any hardware or networking system or component not under Visix’s direct control.

2.5. *Usage Limitations.* Hosting Services may be subject to other limitations, such as, for example, limits on disk storage space, and for Hosting Services that enable Client to provide public websites, limits on the number of page views by visitors to those websites.

### **3. BACKUP AND SECURITY.**

3.1. *Protection of Data.* Without limiting the above, Visix shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Hosting Services, Platform, Content, and User Data. Visix shall not (a) modify User Data, (b) disclose User Data except as compelled by law in accordance with Section 4.2 (Compelled Disclosure) or as expressly permitted by Client or the applicable Authorized End User or as necessary to meet the service level commitments in this SLA, or (c) access User Data or Client Content except to provide or improve the Services or prevent or address service or technical problems, or at Client’s request in connection with customer support matters.

3.2. *Compelled Disclosure.* Visix may disclose User Data or Client Content if it is compelled by law to do so, provided that it gives Client prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Client’s cost, if Client wishes to contest the disclosure. If Visix is compelled by law to disclose the Disclosing User Data or Client Content as part of a civil proceeding, the Client will reimburse Visix for its reasonable cost of compiling and providing secure access to such User Data or Client Content.



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3.3. *Backup and Disaster Recovery.* Visix shall create and maintain commercially reasonable backups of the Hosting Services, User Data, Software, Platform Content and Client Content in connection with the provision of the Hosting Services. The parties recognize and agree that no system or data can be entirely secure, error free, or malware resistant, and that no computer, storage device, or network can be guaranteed to be error free or to operate without interruption. Accordingly, Visix's sole and exclusive liability, and Client and Authorized End Users' sole remedy, in the event of a failure of the Hosting Services for any reason shall be that Visix utilize commercially reasonable efforts to restore the Hosting Services from the most recent reliable backup. Visix shall have no liability for any lost data, lost Client Content, or lost User Data resulting from a hardware failure, software failure, security failure, network failure or attempt by any third party to deny service or otherwise attack or interfere with the Hosting Services.

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## MAINTENANCE TERMS

These maintenance terms (these "Maintenance Terms") are part of, and is incorporated by reference into, the Hosting Services Agreement (the "HSA") between Visix and Client.

### 1. **DEFINITIONS.**

Capitalized terms in these Maintenance Terms shall have the meaning set forth in the Master Agreement or any Exhibit. Where a capitalized term is used that is not expressly defined in the Master Agreement or any Exhibit, that term shall have the customary meaning the field of online application hosting and software development.

### 2. **MAINTENANCE RESPONSIBILITIES.**

2.1. *Infrastructure Updates.* During the Term of the Agreement, Visix or its agents shall be responsible for maintaining the hardware, software, and web hosting facilities in the data center(s) selected by Visix in its sole discretion and from which the Hosting Services are delivered. Such maintenance shall include installation of operating system and system software updates as reasonably determined are appropriate by Visix, installation and maintenance of any additional security or malware prevention software reasonably determined to be necessary by Visix, and hardware and networking service and support of hardware system within such data centers.

2.2. *Platform Updates.* To the extent new releases of the Platform or Software are made generally available by Visix during the term of the Agreement, Visix shall create and implement a migration plan to implement such releases to Client. To the extent any such update is incompatible with any Customization for any reason, Visix may provide a services proposal to Client under which such Customizations will be migrated to the new release at Client's expense, or, in the event such migration is not feasible during the remaining Term of the Agreement or is cost prohibitive, Visix shall maintain the prior release of the Platform and/or Software for the remainder of the Term of the Agreement.

2.3. *Back Versions.* Notwithstanding the foregoing or anything else in the Agreement, the Quote, the SLA, or these Maintenance Terms, in no event shall Visix be required to host or support any version of the Platform and/or Software for more than two years after a subsequent release of the Platform and/or Software is made generally available. In the event such new release is incompatible with any Customization and Client elects not to pay for migration of such Customization, Visix may, in its sole discretion, implement the new release of the Platform and/or Software without such Customization after two years of general availability.

2.4. *Minimum Requirements.* Client understands and agrees that Visix may, in its sole reasonable discretion, revise the Documentation, including any minimum hardware or software requirements for end users, in connection with ordinary maintenance activities including, without limitation, new releases of the Platform and/or Software.

2.5. *Scheduling.* All updates to hardware and software (including the Platform and Software) shall be scheduled by Visix in its sole discretion. Visix reserves the right to delay any maintenance activity for any period of time Visix determines is prudent, including to help ensure stability of the Hosting Services. To the extent reasonably possible, Visix agrees to perform all maintenance activities that require suspension of the Hosting Services during Planned Downtime (as set forth in the SLA).