

# END USER AGREEMENT

THE FOLLOWING TERMS AND CONDITIONS ARE A LEGAL AGREEMENT BETWEEN YOU EITHER AN INDIVIDUAL OR A SINGLE ENTITY (“YOU” OR “YOUR” OR “CUSTOMER”), AND NOWSIGNAGE LIMITED (“PROVIDER”), SUITE D, THE TOWERS, TOWER BUSINESS PARK, DIDSBURY, MANCHESTER, M20 2SL (VAT NUMBER GB158122617 COMPANY NUMBER 08424626). THE TERMS CONTAIN SIGNIFICANT RESTRICTIONS AND LIMITATIONS ON RIGHTS AND REMEDIES AND CREATE OBLIGATIONS ON ANYONE WHO ACCEPTS THIS AGREEMENT. THEREFORE, YOU SHOULD READ THIS AGREEMENT CAREFULLY BEFORE AGREEING TO THESE TERMS.

BY ACCEPTING THE TERMS OF THIS AGREEMENT, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS WHICH CONSTITUTE A LEGALLY ENFORCEABLE WRITTEN END USER AGREEMENT (THE “AGREEMENT”) DEEMED SIGNED BY BOTH PARTIES GOVERNING YOUR USE OF THE NOWSIGNAGE ONLINE SERVICE ENABLING THE UPLOAD, SCHEDULING AND DEPLOYMENT OF MEDIA CONTENT TO ENABLED DEVICES CONNECTED TO THE NOWSIGNAGE ONLINE SERVICE VIA THE INTERNET, PROVIDED BY THE PROVIDER (AS DEFINED BELOW). IF YOU AGREE TO THE TERMS ON BEHALF OF A LEGAL ENTITY YOU REPRESENT THAT YOU HAVE THE COMPLETE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY; OR IF YOU AGREE TO THE TERMS AS AN INDIVIDUAL, YOU REPRESENT THAT YOU ARE OVER THE AGE OF 18.

As a User you will be given access to an account and as such responsible for its use of the Service

If you do not have the requisite authority, or if you do not agree to these terms and conditions, you may not use the Service (as defined below).

User acceptance of this Agreement will enable a User to access the Service and a NowSignage License can then be allocated to a single Enabled Device (both as defined below)

## **Fees**

The fees for using the Service are calculated based upon the number of NowSignage Licenses generated within the Service. Fees are payable per month (unless otherwise agreed by the provider) per NowSignage License in accordance with the pricing provided by the Provider or its Partner (as defined below) unless agreed in writing otherwise with the Provider or its Partner.

NOW IT IS AGREED as follows:

## **1. Definitions and construction**

1.1. In this Agreement the following expressions shall apply:

1.1.1 “Breach of Duty” means the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

1.1.2 “Commencement Date” means the date on which Customer agrees to these terms.

1.1.3 “Confidential Information” means information relating to one party or its agents (the “Disclosing party”) and/or the business carried on or proposed or intended to be carried on by the Disclosing party and which is made available in connection with this Agreement to the other party (the “Receiving party”) (or its agents) by the Disclosing party (or its agents). Customer hereby acknowledges that the Service including any documentation, source code, translations, compilations, partial copies and derivative works used in connection with the Services is provided using Confidential Information belonging exclusively to Provider, and Provider hereby acknowledges that Customer Data (as defined below) contains Confidential Information belonging exclusively to Customer or relating to its affairs (in each case, “Confidential Information”).

1.1.4 “Customer” as defined in the Preamble on page 1 of this Agreement.

1.1.5 “Customer Data” means all data provided by Customer or in relation to Customer which is processed by Provider as part of the Service for Customer including, but not limited to data generated by the Website from visitor input.

1.1.6 “Customer Equipment” means the hardware and software, which Customer is required to have in use in order to use and enable the Service to be provided in accordance with this Agreement.

1.1.7 “Customer’s Representative” means an individual appointed by Customer to administer its access to the NowSignage Network.

1.1.8 “Downtime” means a period during Hosted Application Hours during which there is total loss of the Service.

1.1.9 “Enabled Device” means a screen or any other device enabled to use the Service.

1.1.10 “Hosted Application” means the software application set out in Schedule 1 which Provider uses to provide the Service.

1.1.11 “Hosted Application Hours” means the hours during which the Service is to be provided as set out in Schedule 1. References to “hour(s)” and “minute(s)” in this Agreement will, unless otherwise indicated, be taken only to refer to the elapse of time during Hosted Application Hours.

1.1.12 “Intellectual Property Rights” means all copyrights, patents, inventions, database rights, registered and unregistered design rights, trademarks and service marks and any applications for any of the foregoing, all trade secrets, know-how, domain names, Confidential Information and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.

1.1.13 “Liability” means “means liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the purposes of this definition, all references to “this Agreement” shall be deemed to include any collateral contract);

1.1.14 “Month” means a calendar month and “monthly” shall be construed accordingly.

1.1.15 “NowSignage license” means a unique 5 -character PIN Number allocated to a single Enabled Device allowing use of the Service subject to payment of the Service Fees.

1.1.16 “NowSignage Network” means one or more networks created by a NowSignage user within the NowSignage service to enable the grouping of Enabled Devices and management of media content.

1.1.17 “Outage” means an instance of Downtime.

1.1.18 “Partner” means a distributor, reseller or strategic partner appointed by Provider to sell the Service on behalf of Provider.

1.1.19 “Partner Agreement” means an agreement between a Partner and Customer relating to the provision of the Service.

1.1.20 “Provider” as defined in the Preamble on page 1 of this Agreement.

1.1.21 “Relevant Event” means a matter or factor which absolves Provider from compliance with any obligation under this Agreement, and which may include (but are not limited to):-

1.1.21.1 act or omission or delay by Customer, the effect of which is to prejudice the ability of Provider to perform its obligations in accordance with this Agreement

1.1.21.2 Tolerances (as specified in Schedule 2)

1.1.21.3 any matter falling within Clauses 7.3, 8 or 13.

1.1.22 “Service” means the provision of the NowSignage services accessible through the Website (as set out in Schedule 2).

1.1.23 “Service Fee” means the fees payable to Provider or its Partner for use of the Service as agreed in writing between the Customer and Provider or its Partner from time to time

1.1.24 “Service Interruption” means a period during which there is partial loss of the Service (for whatever reason).

1.1.25 “Service Levels” means the levels of performance to which the Service is to be provided to Customer by Provider as set out in Schedule 2.

1.1.26 “System” means the Hosted Application and Provider hardware as the same operate together in the provision of the Service.

1.1.27 “System Management Regulations” means regulations introduced by Provider from time to time for the better management of the Service and which may include (but are not limited to):

1.1.27.1 defining minimum specifications for equipment used by Customer to interface with the Service (including, but not limited to, routers, firewalls and PC’s);

1.1.27.2 regulations to ensure that the network through which the Service is provided are not overloaded and that the security and integrity of the network is maintained and including regulations which arise from the need to comply with regulations of any data centre facility engaged by Provider in connection with the Service; and

1.1.27.3 regulations to ensure that any database or other applications which form part of the Service are used to the best effect and within their capacities.

1.1.28 “Term” means the effective term as set out in any order placed

1.1.29 “Tolerances” means instances of diminution of or interruption to the Service Levels as set out in Schedule 2 and which are to be disregarded from the point of view of establishing whether Provider has fallen below those performance levels or breached any provision of this Agreement.

1.1.30 “Virus” means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or

any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise) or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.1.31 “User” means an individual employee, representative or contractor working for Customer or Partner who accesses the Service.

1.1.32 “Website” means [www.nowsignage.com](http://www.nowsignage.com).

## **2. Provision of Service and licenses**

2.1. Effective from the Commencement Date in consideration of the payment of the Service Fees by Customer to Provider or Partner, Provider hereby grants to Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Users to use the Service during the Term solely for the Customer's internal business operations.

2.2. Customer agrees that Provider may at any time, and without notice, incorporate license management or other software into the Hosted Application for the purposes of ensuring that any license rights granted to Customer under or in connection with this Agreement are not exceeded by Customer or for such other purposes as Provider may determine from time to time.

2.3. Customer agrees that it may not duplicate, reproduce or copy the Hosted Application for any purpose.

2.4. Customer agrees that licenses granted under or in connection with this Agreement are non-transferable between networks and that once a license has been added it cannot be moved. The rights provided under this Clause 2 are granted to Customer only, and shall not be considered granted to any subsidiary or holding company of Customer.

2.5. In relation to the Users, the Customer agrees that:

2.5.1. it will not allow any Enable Device to be used by more than one individual User unless it has been reassigned in its entirety to another individual User, in which case the prior User shall no longer have any right to access or use the Service;

2.5.2. it shall maintain a written, up to date list of current Users and Enables Devices, and provide such list to Provider within 7 days of Provider's written request at any time or times;

2.5.3. it shall permit Provider, Provider's designated auditor or Partner to audit the Service in order to establish the name and password of each User and Supplier's data processing facilities to audit compliance with this Agreement;

2.5.4 if any of the audits referred to in Clause 2.5.3 reveal that any password has been provided to any individual who is not an User, then without prejudice to Provider's other rights, the Customer shall promptly disable such passwords and Provider shall not issue any new passwords to any such individual; and

2.5.5. if any of the audits referred to in Clause 2.2.3 reveal that Customer has underpaid Service Fees to Provider, then without prejudice to Provider's other rights, Customer shall pay to Provider an amount equal to such underpayment as calculated in accordance with the Provider's standard prices within 30 days of the date of the relevant audit.

2.6. Customer shall not access, store, distribute, upload or transmit any Viruses, or any material during the course of its use of the Service that:

2.6.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.6.2 facilitates illegal activity;

2.6.3 depicts sexually explicit images;

2.6.4 promotes unlawful violence;

2.6.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;

2.6.6. contains any personal data (as defined by the Data Protection Act 2018); or

2.6.7. is otherwise illegal or causes damage or injury to any person or property;

and Provider reserves the right, without Liability or prejudice to its other rights to Customer, to disable Customer's access to any material that breaches the provisions of this Clause 2.6.

2.7. Customer shall not:

2.7.1 except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the Parties and except to the extent expressly permitted under this Agreement:

2.7.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Hosted Application in any form or media or by any means; or

2.7.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hosted Application; or

2.7.1.3. access all or any part of the Service in order to build a product or service which competes with the Service: or

2.7.1.4. use the Service to provide services to third parties; or

2.7.1.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service available to any third party except the Users, or

2.7.1.5.attempt to obtain, or assist third parties in obtaining, access to the Service, other than as provided under this Clause 2; or

2.7.1.6. introduce or permit the introduction of, any Virus into Provider's network and information systems.

2.8. Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and, in the event of any such unauthorised access or use, promptly notify Provider.

2.9. Provider shall process all Customer personal data (as defined by the Data Protection Act 2018) in accordance with all applicable data protection laws.

### **3. Duration**

3.1. This Agreement shall commence on the Commencement Date and shall (subject to the payment of the Service Fees to Provider or Partner and the provisions for termination set out in this Agreement or Partner Agreement) continue for the Term.

### **4. Service Fees**

4.1. The Service Fees will, from time to time, be communicated by Provider or Partner to Customer and Customer undertakes to pay to Provider or Partner the Service Fees. If the Service Fees are not paid by Customer in accordance with the provisions hereof and any additional terms of payment communicated to Customer by Provider or Partner, all further access to the NowSignage Network will be suspended and/or terminated without further notice or Liability to Provider.

## **5. Service Levels**

5.1. Provider undertakes with Customer that it will use reasonable endeavours to provide the Service and each component, subject to Relevant Events, in accordance with the Service Levels save where otherwise expressly provided for by this Agreement.

## **6. Outages, Service Interruptions and Changes to Service**

6.1. Outages or Service Interruptions may be made by Provider when in its reasonable opinion they are necessary to facilitate improvements to or maintenance of the Service. Provider will use reasonable endeavours to minimise the Outages or Service Interruptions that may result.

6.2. If Outages or Service Interruptions are required under Clause 6.1 (“Scheduled Interruptions”), Provider shall use reasonable endeavours to schedule Scheduled Interruptions so as to minimise impact on the Service and will, where practicable, notify Customer of the anticipated commencement time of the Scheduled Interruption and its estimated duration.

6.3. Provider shall provide initial notice to Customer’s Representative as soon as reasonably possible by email to the address notified on sign-up to the Service (or such other address as may have been subsequently notified) after becoming aware of an event that has caused or may cause an unscheduled Outage and use reasonable endeavours to keep Customer’s Representative informed of progress. In the event Customer first becomes aware of such event, Customer shall promptly notify Provider via email or online ticketing system.

## **7. Provider Warranties and indemnities**

7.1. Provider warrants to Customer that:

7.1.1 Provider will use its reasonable endeavors, in accordance with the terms of this Agreement, and to exercise reasonable care and skill, to provide the Service;

7.1.2 Provider has authority to provide the Service to Customer in accordance with the terms of this Agreement.

7.2. Except for the express warranties set forth in this Clause 7, the service is provided on an “as is” basis, and customer’s use of the service is at its own risk and expense. To the extent permitted by law, provider does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice. Provider does not warrant that the

Service will (i) be uninterrupted, error-free, or completely secure, or (ii) meet Customer's requirements.

7.3. Provider does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Although Provider will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events within its control, Provider cannot guarantee that such events will not occur. Accordingly, to the extent permitted by law, Provider disclaims any and all Liability resulting from or related to such events.

## **8. Customer Obligations and Warranties.**

8.1. Customer agrees at all times during the Term to comply with all current System Management Regulations. Provider shall use reasonable endeavors to give reasonable notice (where possible and appropriate) to Customer of additions and changes to System Management Regulations.

8.2. In the event that Customer is in breach of any of its obligations under this Agreement, then:-

8.2.1 Provider cannot be held responsible should the Service fail to comply with the Service Levels as a result (directly or indirectly) of such Customer breach; and

8.2.2 Provider or Partner shall be entitled to charge Customer for staff time engaged on rectifying any resulting problems at Provider's or Partner's standard charge rates at the time.

8.3. Customer represents, warrants and undertakes that:

8.3.1 it has and shall during the Term have the legal right and authority to place and use and have used any of its equipment as contemplated under this Agreement;

8.3.2 it will use the Service only for lawful purposes and in accordance with this Agreement; and

8.3.3 any software, data, equipment or other materials provided by Customer to Provider or employed by Customer in its use of or receipt of the Service shall not infringe any Intellectual Property Rights of any third party and shall not be obscene or defamatory of any person and shall not violate the laws or regulations of any state which may have jurisdiction over such activity.

8.4. Customer shall:

8.4.1. provide Provider with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by the Supplier, in order to provide the Service, including but not limited to Customer Data, security access information and configuration services;

8.4.2. without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

8.4.3. carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Customer's provision of such assistance as agreed by the Parties, Provider may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.4.4. ensure that the Users use the Service in accordance with the terms and conditions of this Agreement and shall be responsible for any User's breach of this Agreement;

8.4.5. obtain and shall maintain all necessary licenses, consents, and permissions necessary for Provider, its contractors and agents to perform their obligations under this Agreement, including without limitation the Service;

8.4.6. ensure that its network and systems comply with the relevant specifications provided by Provider from time to time; and

8.4.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Provider's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet.

8.5. In the event of any breach of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Provider will have the right to suspend immediately any related services if deemed reasonably necessary by Provider to protect the proper interests of Provider or its other customers. If practicable and depending on the nature of the breach, Provider may (in its absolute discretion) give Customer an opportunity to cure. In such case once Customer has cured the breach, Provider will promptly restore the Service(s).

## **9. Limitation of Liability**

9.1 This Clause 9 prevails over all of this Agreement and sets forth the entire Liability of the Provider, and the sole and exclusive remedies of the Provider, in respect of:

9.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services in connection with this Agreement; or

9.1.2 otherwise in relation to this Agreement or entering into this Agreement.

9.2. The Provider does not exclude or limit its Liability for:

9.2.1. its fraud; or

9.2.2. death or personal injury caused by its Breach of Duty; or

9.2.3. any breach of the obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or

9.2.4. any other Liability which cannot be excluded or limited by applicable law.

9.3. Subject to Clause 9.2, and other than any Liability arising pursuant to this Agreement, the Provider does not accept, and hereby excludes, any Liability for Breach of Duty.

9.4 Subject to Clause 9.2, the Provider shall not have any Liability in respect of any:

9.4.1. indirect or consequential losses, damages, costs or expenses;

9.4.2. loss of actual or anticipated profits;

9.4.3. loss of contracts;

9.4.4. loss of use of money;

9.4.5. loss of anticipated savings;

9.4.6. loss of revenue;

9.4.7. loss of goodwill;

9.4.8. loss of reputation;

9.4.9 loss of business;

9.4.10. ex gratia payments;

9.4.11. loss of operation time;

9.4.12. loss of opportunity;

9.4.13. loss caused by the diminution in value of any asset; or

9.4.14. loss of, damage to, or corruption of, data;

whether or not such losses were reasonably foreseeable or the Provider or its Partners, agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 9.4.2 to 9.4.14 (inclusive) of this Clause 9.4 apply whether such losses are direct, indirect, consequential or otherwise.

9.5 Subject to Clause 9.2, Provider's total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to a sum equal to the Service Fees paid and total other sums payable to Provider for the 12 months prior to the date on which the claim first arose.

9.6. The foregoing limitations on Liability are intended to apply to the warranties and disclaimers above and all other Clauses of this Agreement.

9.7. Customer accepts that neither Provider nor Partner is in any way liable for any virus or other contaminants which enter Customer's email system or computer network via use of the Service.

9.8 Customer agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Service Fees have been calculated on the basis of the limitations and exclusions in this Clause 9 and that Customer will effect insurance as is suitable having regard to its particular circumstances and the terms of this Clause 9.

## **10. Intellectual Property Rights**

10.1. The parties hereby agree that Provider owns all Intellectual Property Rights and that Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the Hosted Application, the Service, the System and in all materials created or originated by Provider in connection with or related to the provision of the Service hereunder.

10.2. Provider warrants that, so far as it is aware, Provider has all necessary right, title or interest to enable Customer to use the Hosted Application in accordance with this Agreement.

## **11. Termination**

11.1. For the purposes of this Clause, the following events shall be deemed "acts of default":

11.1.1 if Customer fails to pay any monies due to Provider or Partner pursuant to this Agreement or to any agreement with Partner within 7 days of the due date therefore;

11.1.2 if a party commits any material breach of any term of this Agreement (other than one falling under Clause 11.1.3 below) and which, in the case of a breach capable of being

remedied, shall not have been remedied within 14 days of a written request by the other party to remedy the same

11.1.3 in the event a party to this Agreement files a petition in bankruptcy, is declared bankrupt, becomes insolvent, or makes an assignment for the benefit of creditors, the other party may terminate this Agreement by providing written notice of such termination; provided, however, with respect to involuntary proceedings, that such proceedings are not dismissed within ninety (90) days.

11.2. If Customer commits an act of default then Provider may:

11.2.1 immediately suspend the provision of the Service (or any of them or any part of them) and no such suspension shall be deemed a breach of any term or provision of this Agreement; or

11.2.2 immediately terminate this Agreement by notice in writing.

11.3. If Provider commits an act of default then Customer may terminate this Agreement by 30 days' notice in writing.

11.4. If NowSignage license exceeds 50 licenses, then Customer must provide 90 days' notice in writing to terminate this Agreement.

11.5. Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## **12. Confidentiality and Ownership of Customer Data**

12.1. Receiving party must keep the Disclosing party's Confidential Information confidential and must not:

12.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

12.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.

Receiving party must use adequate procedures and security measures to protect the Disclosing party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

12.2. Receiving party may disclose Disclosing party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

12.2.1. it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

12.2.2. it does so subject to obligations equivalent to those set out in this Clause 12.

12.3. Receiving party may disclose the Confidential Information of Disclosing party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 12.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

12.4. The obligations of confidentiality in this Clause 12 shall not extend to any matter which Receiving party can show:

12.4.1. is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

12.4.2. was independently developed by it; or

12.4.3. was independently disclosed to it by a third party entitled to disclose the same; or

12.4.4. was in its written records prior to receipt.

12.5. Disclosing party reserves all rights in its Confidential Information. No rights or obligations in respect of Disclosing party's Confidential Information other than those expressly stated in this Agreement are granted to Receiving party, or to be implied from this Agreement.

12.6. On termination of this Agreement, Receiving party must:

12.6.1 return to the Disclosing party all documents and materials (and any copies) containing, reflecting, incorporating or based on Disclosing party's Confidential Information;

12.6.2 erase all Disclosing party's Confidential Information from its computer systems (to the extent possible); and

12.6.3 certify in writing to the Disclosing party's that it has complied with the requirements of this Clause 12.6, provided that Receiving party may retain documents and materials containing, reflecting, incorporating or based on Receiving party's Confidential Information

to the extent required by law or any applicable governmental or regulatory authority. The provisions of this Clause 12 shall continue to apply to any such documents and materials retained by Receiving party following termination of this Agreement for any reason.

12.7. The provisions of this Clause 12 shall continue to apply after termination of this Agreement.

12.8. All Customer Data shall remain at all times the exclusive property of Customer and may only be used by Provider in order to fulfil its obligations pursuant hereto.

### **13. Force Majeure**

13.1. Neither party hereto shall be liable for any breach of its obligations hereunder, except in respect of payment, resulting from causes beyond the reasonable control of the party in default (or its subcontractors) including but not limited to act of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute, illness, flood, fire or tempest (an 'Event of Force Majeure'). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.

13.2. Each of the parties agrees to promptly give notice to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

13.3. If a default due to an Event of Force Majeure shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any Liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre existing rights or obligations of either party.

### **14. Waiver**

14.1. The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

### **15. Notices**

15.1. Any notice to be given hereunder shall be sent by email to the address of the other party set out in this Agreement (or such other address as may have been subsequently notified) and any such communication shall be deemed to have been served at 6pm (London time) for residents of all countries

## 15.2. Notices To Email:

Provider: support@nowsignage.com

Customer: As notified on sign-up to the Service

## 16. Invalidity and Severability

16.1. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## 17. Entire Agreement

17.1. The Provider reserves the right to amend the terms of this Agreement at any time on notice to the Customer. The amendments will form part of this Agreement from the date of the notice. Continued use of the Service and/or Website will be deemed to constitute acceptance by the Customer of the amended Agreement. No other terms or changes to this Agreement will be binding unless agreed in writing signed by the Provider.

## 18. Successors

18.1. This Agreement shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

## 19. Assignment

19.1. Customer shall not be entitled to assign, transfer, license and/or sublicense this Agreement nor all or any of its rights and obligations hereunder.

19.2. Provider shall be entitled to assign, transfer, license and/or sublicense this Agreement and all or any of its rights and obligations under this Agreement.

## 20. Subcontracting

20.1. Provider shall be entitled to sub contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Service itself.

20.2. Customer shall not be entitled to sub contract the whole or any part of its obligations hereunder to any third party.

## **21. Country Terms**

In addition to the foregoing, your contractual relationship with Provider will be subject to the relevant applicable country-specific contractual terms and conditions (“Country Terms”), which are agreed in writing with you and then incorporated into this Agreement. The Country Terms are dependent on your country of residence. You shall have accepted the Country Terms applicable to you upon your acceptance of this Agreement.

## **22. Governing law and jurisdiction**

22.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.

22.2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

## **22. VAT**

22.1. Save insofar as otherwise expressly provided all amounts stated in this Agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable therefore.

## **23. SALES TAXES**

23.1. Save insofar as otherwise expressly provided, all amounts in this Agreement are expressed exclusive of any and all applicable sales tax, use tax, lease tax and any similar tax added as a result of any license made hereunder and shall upon the issuance of an assessment of any of the foregoing be paid by the Customer making use of the software and such Customer shall be exclusively liable for and fully indemnify, defend and hold the Contracting Party harmless with respect thereto.

## **SCHEDULES**

UNLESS OTHERWISE STATED, ALL TIMES REFERRED TO IN THE SCHEDULES REFER TO THE FOLLOWING HOURS:

- MONDAY 08:00 – 6pm
- TUESDAY 08:00 – 6pm
- WEDNESDAY 08:00 – 6pm
- THURSDAY 08:00 – 6pm
- FRIDAY 08:00 – 6pm

ALL TIMES ARE UNITED KINGDOM TIME AND EXCLUDE U.K. PUBLIC HOLIDAYS

### **SCHEDULE 1**

HOSTED APPLICATION:-

NowSignage – accessible through <https://secure.nowsignage.com>

HOSTED APPLICATION HOURS:-

The Hosted Application will be available for Customer to connect to and use 24 hours/365 days per annum, subject to the exceptions detailed in Schedule 2 section 6 of this Agreement.

### **SCHEDULE 2**

#### **SERVICE AND SERVICE LEVELS**

##### **PART I – SERVICES**

##### **1. Purpose and Scope**

This schedule defines the specific services for a User that Provider will provide:

##### **a) Service**

NowSignage is a multi-screen CMS that enables users to upload, schedule and manage content across Enabled Devices at the click of a button. Our platform allows the displaying of a range of features. This includes controlling digital signage across single locations with tens of screens, or multiple locations with thousands of screens.

Please be aware that NowSignage does not guarantee full feature compatibility across all Enabled Devices. A full list of Enabled Devices compatibility is available on request.

##### **b) Customer Support:**

- i) email support via support@nowsignage.com
- ii) online support ticket registration form available from the support menu within the Hosted Application

**c. Backup Services:**

- i) all Customer Data on the Hosted Application will automatically be backed up

**2. Customer Service Hours**

Customer service help desk, will be available to accept, and work on support calls received from Customer between the hours of 8am and 6pm UK time, Monday through Friday excluding UK Bank Holidays. Emails may be sent to support@nowsignage.com

**3. Online Availability**

The Hosted Application will be available to Customer for a minimum of 99.5% of the Hosted Application Hours. The percentage of online availability will be calculated on a monthly basis, and will be a reflection of the availability of the Hosted Application over the total number of “Hosted Application Hours” for the month.

**4. Backups**

**4.1 Backup Frequency**

The Hosted Application data is backed up daily to a secure storage medium, and we retain platform backups for seven days before securely destroying the database snapshot.

**5. Recovery times for System Failures**

Complete System Failure – where it is necessary to recreate the network infrastructure used to provision and provide the Service, it will be recovered within 24 hours of the fault being first fully reported to Provider.

**6. Agreed Outages**

**6.1 Server Operating System Patches & Upgrades**

Server operating system patches and upgrades will from time to time be applied to the server, to ensure continued support by the operating system vendor.

**6.2 Application Upgrades**

Hosted Application upgrades will be applied from time to time to the infrastructure, as required to ensure continued support and system developments by the Provider.

## **Support Ticket Incident Response Time**

NowSignage policy is to respond to all customer cases within 24 hours. An incident ticket is assigned with a priority number based on the severity of the issue.

### **Definitions**

- Initial Contact: Our uptime Notification Service will transmit a notification to all subscribers informing them of fault(s) that have led to interruption of their service within the NowSignage platform.
- Status Update: We will continue to provide an update on the nature of the fault(s) within the platform via the Notification System, and will endeavour to update this as we learn new information.
- Resolution: We have identified a solution to the fault(s) causing downtime on the NowSignage platform and where appropriate will be releasing a fix to all customers, pending technical details (such as propagation, deploy times etc.)

### **P1 – Critical Service Outage**

The system is down, no platform access is available:

- Initial Contact: < 30 minutes
- Status Update: < 8 hours
- Resolution: < 12 hours

Management Escalation: Immediate Availability Monday-Friday 8am-6pm.

### **P2 – High**

There are one or more significant features that are unavailable:

- Initial Contact: < 2 hours
- Status Update: < 24 hours
- Resolution: < 48 hours

### **P3 – Medium**

The problem does not prevent the End-User from accessing core features or using the Hosted Application.

- Initial Contact: < 48 hours
- Status Update: < 5 business days
- Resolution: < 5 business days or other special requests required by the

Buyer

#### **P4 – Low**

There are no obvious errors merely small insignificant problems i.e. layout, image or colour error that does not cause an issue to branding or service capability.

- Initial Contact: < 48 hours
- Status Update: < 5 business days
- Resolution: < dependent on business criticality

#### **NOTIFICATION SERVICE**

NowSignage provides free use of uptime monitoring software to notify Customers with information regarding ongoing downtime and emergency maintenance to the Hosted Application infrastructure.

#### **REPORTS AND SERVICE LEVEL REVIEWS.**

Provider will use industry standard tools to monitor and automatically report on the levels of service accessible via the Notification Service.

#### **TOLERANCES**

Interruptions to the Service or Outages arising directly or indirectly from:-

- Interruptions to the flow of data to or from the Hosted Application and other portions of the internet
- Changes to the Hosted Application or NowSignage Network (including the implementation of any necessary upgrades and operating system patches) and other housekeeping tasks which need to be made. The Provider will strive to minimise the interruptions/Outages that may be caused by such change
- Application upgrades
- The effects of the failure or interruption of services provided by third parties (who are not Provider's agents)
- Factors outside of Provider's reasonable control
- Any actions or omissions of Customer (including, without limitation, breach of Customer obligations set out in the Agreement) or any third parties
- Customer's equipment and/or third party equipment
- Customer requested interruptions to the Service