

Agreement for the Provision of the Display5 Cloud Platform Service

This Agreement (as defined below) is entered into by and between 2488336 Ontario Limited, dba as Display5 (“**Display5**”), or an authorized Reseller of Display5 (“**Reseller**”) as may be identified on the Order Form (such “**Reseller**” or “**Display5**”, as the case may be, the “**Provider**”), and the Client entity identified in the Order Form (the “**Client**”) which incorporates this Agreement. This Agreement sets out the terms upon which the Provider agrees to provide the Services, including the Display5 Cloud Platform, to the Client. This creates a contractual relationship between the Provider and the Client (notwithstanding that Provider may subcontract to any other party), and not any other party.

Terms & Conditions

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in the Agreement.

“**Administrators**” means those individuals who are employees, agents and independent contractors of the Client and are nominated by the Client as authorized to create and edit content, and to upload pre-produced content, e.g. images or videos, using the Services and the Documentation.

“**Agreement**” means the Order Form, the Support Policy, these Terms & Conditions.

“**Authorized Players**” means the number of Players licenced for use by the Service.

“**Authorized Users**” means Administrators and Users.

“**Back-Up Policy**” means the policy available at www.display5.com/legal or such other website address as may be notified by Display5 or Reseller to the Client from time to time.

“**Business Day**” means, any day which is not a Saturday, Sunday or public holiday in the Province of Ontario, Canada.

“**Capacity**” means the bandwidth and storage available to, or used by, the Client in relation to the Services, as specified in the Order Form or increased in accordance with clause 3.

“**Client Data**” means the content, data or other material inputted by the Client or its Authorized Users, or by the Provider on the Client’s behalf, for the purpose of using the Services or facilitating the Client’s use of the Services.

“**Cloud Platform**” means the systems and data relating to the delivery of digital media content on screens or displays, provided by Provider using Display5’s technology. These systems include and are limited to the server and database infrastructure, the media asset store, the application software code, associated components, any relevant configuration options of the Display5 Cloud Platform.

“**Confidential Information**” means (a) for Provider, Services, PS, Cloud Platform and Documentation, whether of the Provider or any other Reseller or Display5; (b) for the Client, Client Data; (c) any information of a party that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party receiving Confidential Information (the “**Recipient**”) (and, in the case of oral disclosures, summarized in writing and delivered to the Recipient within thirty (30) days of the initial disclosure), or that due to the nature of the information the Recipient would clearly understand it to be confidential information of the disclosing Party; and (d) for both parties, the specific terms and conditions of this Agreement between the Parties. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault or breach of this Agreement by the Recipient; (ii) was rightfully in the Recipient’s possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of or reference to the disclosing Party’s Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality and without restriction on use or disclosure.

“**Contract Year**” means a 12-month period commencing with the Subscription Start Date or any anniversary of it.

“**Documentation**” means the document(s) made generally available to the Client by Display5 or the applicable Reseller, if any, which sets out a description of the Services and the user instructions for the Services including the document(s) available online via www.display5.com or such other web address notified by the Provider to the Client from time to time.

“**Features**” means features and facilities which may be available from time to time as part of the Services, whether as standard or optional, such as the number of possible Authorized Players.

“**Fees**” means the Subscription Fees and all other fees stated in this Agreement as being payable by the Client.

“**GDPR**” means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

“**Intellectual Property Rights**” means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Maintenance**” means maintenance in relation to the Services, in accordance with the Support Policy.

“**Order Form**” means the document in which the Provider provides information on the Services, Hardware and/or Professional Services Fees being paid for by Client.

“**Player**” means the computing device which is either attached to, or integrated into, a display screen which is used to play a Display5 Show.

“**Professional Services**” means professional services, if any, to be provided by or on behalf of the Provider pursuant to a Statement of Work (the Fees for which shall be set out in the Order Form).

“**Services**” means the subscription services specified in the Order Form, including but not limited to the Cloud Platform. For the avoidance of doubt, Services shall not include Professional Services.

“**Show**” means a content stream utilizing Display5 technology.

“**Software**” means the software, online use of which is provided to the Client by the Provider as part of the Services.

“**Statement of Work**” or “**SOW**” means a statement of work setting out the scope of Services to be performed by the Provider or subcontractors, pursuant to an Order Form or other document.

“**Subscription Fees**” means the fees payable by the Client to the Provider for the right to use the Services and receive Maintenance and Support, as set out in the Order Form.

“**Subscription Period**” means the period as specified in the Order Form in respect of which the Client has paid Subscription Fees and any other Fees due under this Agreement and any associated Order Form inclusive of any renewal periods provided for in clause 14.1.

“**Subscription Start Date**” means the date specified in the Order Form.

“**Support**” means support in relation to the Services, in accordance with the Support Policy.

“**Support Policy**” means Display5’s policy for providing Support and Maintenance in relation to the Services as set out in the Display5 Cloud Platform Maintenance & Service Availability Policy attached to these Terms & Conditions. To the extent any Reseller offers additional or different support terms, it, and not Display5, is fully responsible therefor and Display5 shall have no liability to the Client therefor.

“**User ID**” means the secure logon identification and password assigned to each Authorized User for his use of the Services and Documentation.

“**Users**” means those individuals who have been authorized by the Client to utilize the Services because the Client has issued a login and password to this user, including without limitation individuals who are logged onto the Services via SSO/SAML.

“**Viewers**” means individuals who are authorized or enabled by the Client to view content that has been created using the Services, but who are not Authorized Users.

“**Virus**” means any device or thing (including any software, code, file or programme) which may: (i) 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; (ii) 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 (iii) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. References to 'view' in this Agreement shall be deemed to include listening, perceiving or otherwise sensing as well as or instead of seeing, and 'viewed' and 'viewings' shall be similarly construed.
- 1.3. References to clauses are to the clauses of these Terms & Conditions. Clause headings shall not affect the interpretation of this Agreement.
- 1.4. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7. A reference to writing or written includes faxes and e-mail. Notices required under this Agreement must be provided in accordance with clause 16.11.

2. Subscription to use the Services

- 2.1. Subject to the Client paying the Fees in accordance with the Agreement, the restrictions set out in this clause 2 and the other terms and conditions of the Agreement, Display5 (through its Reseller, as the case may be) hereby grants to the Client a non-exclusive, non-transferable right to use the Services and the Documentation during the Subscription Period solely for the Client's internal business operations.
- 2.2. The Client undertakes that:
 - (a) only Authorized Users (subject to clause 2.2(b) below) will create and edit content using the Services, publish Shows using the Services, or upload preproduced content using the Services;
 - (b) the maximum number of Administrators, Players and Users that it authorizes to access

and use the Services and the Documentation shall not exceed the maximum number of Administrators, Players and Users allowed in relation to the Client's chosen functionality package as specified in the Order Form (or as increased, by written agreement between the parties);

- (c) each Authorized User shall require and keep a secure User ID to use the Services and the Documentation, that the password for such User ID shall be changed no less frequently than every 90 days and that each Authorized User shall keep his User ID confidential;
- (d) it will register each Player, playing a Display5 Show, in the system;
- (e) it shall maintain written, up to date lists of current Authorized Users and provide such lists to Display5 or the applicable Reseller, within 5 Business Days of a written request at any time or times;
- (f) it shall permit the Provider and/or Display5, as the case may be, to audit the Client's use of the Services in order to establish the name and User ID of each Authorized User and/or the registered Players and the use of Display5 Software modules. Such audit may be conducted no more than once per annum, at the Provider's (or Display5's, as the case may be), expense (subject to clause 2.2(i)), and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business or more frequently without notice, where the Provider or Display5, as the case may be, suspects fraud or material breach by the Client of its obligations under this Agreement;
- (g) if any of the audits referred to in clause 2.2(f) reveal that any User ID has been provided to any individual who is not an Authorized User, then without prejudice to any rights of Display5 or Reseller, the Client shall promptly disable such User ID and shall not issue any new User ID to any such individual;
- (h) if any of the audits referred to in clause 2.2(f) reveal that the number of Players, playing Shows, exceeds the number of Authorized Players, then without prejudice to any rights of Display5 or Reseller, the Client shall promptly disable such Players and shall not register any new Players;

- (i) if any of the audits referred to in clause 2.2(f) reveal that the Client has underpaid Fees hereunder, the Client shall pay to the Provider an amount equal to such underpayment as calculated in accordance with the Order Form, together with the reasonable costs of the audit as notified by the Provider to the Client, within 20 Business Days of the date of the relevant audit; and
- (j) during the course of its use of the Services, the Client shall not access, store, distribute or transmit any Viruses, and the Client shall not use the Services in connection with any material that:
 - i. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - ii. facilitates illegal activity;
 - iii. depicts sexually explicit images;
 - iv. promotes unlawful violence;
 - v. is discriminatory based on race, gender, color, sexual orientation, disability, or any other prohibited basis; or
 - vi. causes damage or injury to any person or property;

and the Client acknowledges that Display5 may, in its sole discretion and without liability to the Client, disable the Client's access to any material that breaches the provisions of this clause, and delete such material, immediately on notice to the Client or without notice where it is not reasonably practicable to notify the Client in advance, in which case the Provider shall notify the Client as soon as reasonably practicable thereafter.

2.3. Subject to clause 2.5, the Client shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - i. and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, the Software and/or

- Documentation (as applicable) in any form or media or by any means; or
- ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services, the Software or Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Software, the Services and/or Documentation to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software, the Services and/or Documentation available to any third party; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Software, the Services and/or Documentation, other than as provided for under this clause 2.

2.4. Subject to clause 2.3, the Client shall be permitted to use the Services and the Documentation to create content, or Shows, which may be viewed by Viewers.

2.5. The Client shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Software, the Services and/or the Documentation and, in the event of any such unauthorized access or use, the Client shall promptly notify the Provider.

3. Additional functionality and additional infrastructure requirements

3.1. Subject to the following provisions of this clause 3, the Client may, from time to time during any Subscription Period:

- (a) purchase a different functionality package from that set out in the Order Form; and/or
- (b) purchase additional Features or Capacity.

3.2. If the Client wishes to purchase a different functionality package or additional Features or Capacity, the Client shall notify the Provider in writing. The Provider shall evaluate such request and respond to the Client with approval or disapproval of the request.

3.3. If the Provider approves the Client's request, the parties shall complete and sign a new Order

Forms. Such new set of Order Forms shall, with effect from the Subscription Start Date specified therein, become the Order Forms for all purposes of this Agreement.

- 3.4. Where the Client's use of Capacity exceeds the level(s) stated for the functionality package specified in the Order Form, the Client shall pay increased Fees for such additional usage in accordance with the Order Form.
- 3.5. Notwithstanding clause 3.4 above, neither Display5 nor any Reseller shall be obliged to provide additional Capacity where the Client has not previously been granted such additional Capacity in accordance with clauses 3.1 to 3.3 (inclusive) above.
- 3.6. As between the Client, on one hand, and Display5 and its Reseller, on the other hand, all Intellectual Property Rights and all other rights in any changes or modifications made to the Services shall be owned by Display5 and its licensors. Display5 hereby grants a license of all such rights to the Client on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Services, including any modifications, to the extent contemplated by this Agreement and any new Order Forms signed pursuant to clause 3.3 above.

4. Services

- 4.1. The Provider shall, during the Subscription Period, provide or procure the provision of the Services and make available the Documentation to the Client on and subject to the terms of this Agreement.
- 4.2. The Provider shall use commercially reasonable endeavors to make the Services available 24 hours a day, seven days a week, subject to the Support Policy.
- 4.3. The Provider will, at no additional cost to the Client, provide or procure the provision of Maintenance and Support to the Client in accordance with the Support Policy in effect at the relevant time.
- 4.4. Any services to be provided by the Provider in addition to the standard set-up and Maintenance and Support shall be the subject of a separate written agreement between the parties.
- 4.5. The Client acknowledges that Display5 may amend its Back-Up Policy and the Support Policy in its sole discretion from time to time, provided that no such change shall be materially adverse

to the Client. The Provider shall notify the Client in advance of any such changes being made.

5. Client Data and Data Protection

- 5.1. The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 5.2. Display5 shall follow its archiving procedures for Client Data as set out in its Back-Up Policy. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for the Provider to use reasonable commercial endeavors to cause Display5 to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Display5 in accordance with the archiving procedure described in its Back-Up Policy. Neither Display5 nor any Reseller shall be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties subcontracted by Display5 or the applicable Reseller to perform services related to Client Data maintenance and back-up).
- 5.3. The Client acknowledges and agrees that the level of security provided by the Provider in relation to the Services will be as specified in the Documentation and will depend on the type of Services subscribed for by the Client, as stated in the Order Form. Neither Display5 nor any Reseller shall be liable for any breaches of security in relation to Client Data or otherwise provided that it has complied with its obligations to provide such level of security.
- 5.4. If Display5 or the applicable Reseller processes any personal data on the Client's behalf when performing its obligations under this Agreement, the parties record their intention that the Client shall be the data controller and such party shall be a data processor and in any such case:
 - (a) when Client is located within the EEA, the parties agree that personal data may not be transferred or stored outside the EEA or the country or countries where the Client is located except to the extent reasonably necessary to enable Authorized Users and Viewers to view content generated by the Client using the Services or otherwise in order for Display5 and/or its Reseller to carry out the Services and Display5's and/or its Reseller's other obligations under this Agreement. Display5 and its Resellers will ensure its compliance with GDPR, including but not limited to Articles 44 and 46 GDPR,

in relation to the provision of Services under this Agreement;

- (b) the Client shall ensure that the Client is entitled to transfer the relevant personal data to Display5 (directly or through its Reseller, as the case may be) so that Display5 and its Reseller, if applicable, may lawfully use, process and transfer the personal data in accordance with this Agreement on the Client's behalf;
- (c) the Client shall ensure that the relevant third parties have been informed of, and have specifically and freely given their consent to, such use, processing, and transfer as required by all applicable data protection legislation (including but not limited to GDPR);
- (d) Display5 and its Reseller, if applicable, shall process the personal data for the duration of this Agreement and only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Client from time to time; and
- (e) each party shall take and shall cause its subcontractors to take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. Third party providers

The Client acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Provider makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Provider (but for greater certainty, if the Provider is a Reseller, this does not apply to any Display5 end user license terms or terms and conditions that may appear in connection with the use of the Services, which shall form part of this Agreement). The Provider recommends that the Client refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party

website. The Provider does not endorse or approve any third-party website nor the content of any of the third-party websites made available via the Services.

7. The Provider's obligations and warranties

- 7.1. The Provider warrants that during the applicable Term, the Services, when used as authorized under this Agreement, will perform substantially in conformance with the Documentation associated with the applicable Services.
- 7.2. The warranty at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services, contrary to the Provider's instructions, or modification or alteration of the Services by the Client or its Authorized Users or any other person authorized or allowed by the Client to use the Services.
- 7.3. If the Services do not conform with the warranty at clause 7.1, the Provider will, at its expense, use all commercially reasonable endeavors to cause Display5 to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the warranty set out in clause 7.1.
- 7.4. Notwithstanding the foregoing, neither Display5 nor any Reseller:
 - (a) warrants that: (i) the Client's use of the Services will be uninterrupted or error-free; (ii) the Services, Documentation and/or the output or information obtained by the Client through the Services will meet the Client's requirements; and
 - (b) is responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.5. This Agreement shall not prevent Display5 or any Reseller from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.6. The Provider warrants that it has and will maintain all necessary licenses, consents, and

permissions necessary for the performance of its obligations under this Agreement.

8. Client's obligations

The Client shall:

- (a) provide the Provider with:
 - i. all necessary co-operation in relation to this Agreement; and
 - ii. all necessary access to such information as may be required by the Provider in order to render the Services, including but not limited to Client Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, those related to import, re-import, export and re-export, including U.S. export control and administration regulations, and those related to anti-corruption, including the U.S. Foreign Corrupt Practices Act, and any similar applicable regulations in any relevant jurisdiction;
- (c) ensure that no Client Data or any use of the Services by it or its Authorized Users or Viewers is obscene, defamatory or otherwise prohibited by any applicable laws or regulations;
- (d) carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Provider may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (e) ensure that Authorized Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorized User's acts or omissions which are a breach of this Agreement;
- (f) obtain and shall maintain all necessary licenses, consents, and permissions necessary for the Provider its subcontractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (g) ensure that its network and systems comply with the relevant specifications provided by the Provider from time to time; and

- (h) as between Display5 and its Resellers, on the one hand and the Client, on the other hand, be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Display5's or any Reseller's data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

9. Fees and payment

- 9.1. The Client shall pay the Fees to the Provider in accordance with the Order Form and this clause 9. Fees for renewal periods shall be determined in accordance with this clause 9 and clause 14.
- 9.2. The Client shall pay Fees by the dates specified in the Order Form or, if no date is specified in the Order Form, within 30 days of the invoice date (the "Due Date"). The Provider shall provide invoices to the Client for all Fees. Notwithstanding the foregoing, any invoices relating to renewals of Subscription Periods must be paid prior to the start date of any new Subscription Period.
- 9.3. If the Provider has not received payment by the Due Date, and without prejudice to any other rights and remedies Display5, or its Reseller, may have:
 - (a) The Provider may, on 14 days' written notice and without liability of Display5 or any Reseller to the Client, disable the Client's password, account and access to all or part of the Services and the Provider shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid; and
 - (b) where Provider is based in North America, any amount which is not paid when due may, at the Provider's option, be subject to compounding monthly interest of 1% of such unpaid amount for each month (or portion thereof) in which such amount is due or not paid, whether before or after judgment, not to exceed the maximum rate allowed by applicable laws or regulations.
 - (c) where the Provider is based in the UK, any amount which is not paid when due may, at the Provider's option, shall bear interest both before and after any judgement at an annual rate equal to the then current rate provided for under the Late Payment of Commercial

Debts (Interest) Act 1998, from the due date until up to and including the date that payment is made in full.

- (d) the Client shall indemnify Display5 and its applicable Resellers (if any), against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by it or them arising out of or in connection with the enforcement of this Agreement.
- 9.4. All amounts and fees stated or referred to in this Agreement:
- (a) shall be payable in the currency and on the dates specified in the Order Form;
 - (b) are, subject to clause 13.5, non-cancellable and non-refundable; and
 - (c) are exclusive of any applicable taxes, which shall be added to the Provider's invoice(s) at the appropriate rate.
- 9.5. Increases in Players, users, user types, features, Capacity, support services, support service type and other products and services provided hereunder may result in an adjustment in the ongoing Subscription Fees in accordance with the Order Form.
- 9.6. Purchase Orders. If a Client issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form or SOW, and the Provider hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by the Client, and conditions assent solely based on the terms and conditions of this Agreement as offered by the Provider. Upon request, the Provider shall reference the purchase order number on its invoices, provided, however, that the Client acknowledges that it is the Client's responsibility to provide the corresponding purchase order information (including a purchase order number) to the Provider upon the signing of any Order Form or SOW. The Client agrees that a failure to provide the Provider with the corresponding purchase order shall not relieve the Client of its obligations to provide payment to the Provider pursuant to this clause 9.
- 9.7. Taxes. The Client shall pay any and all taxes attributable to this Agreement, to the transactions contemplated hereunder, and to the transactions

performed by the Client or third parties using the Services, including, without limitation, any applicable value-added sales or use taxes. Notwithstanding the foregoing, the Client shall not be responsible for paying any income taxes assessed against Display5 or any applicable Reseller. If the Client is required by applicable law to make any tax deduction or withholding in relation to any payment pursuant to this Agreement, it shall do all things in its power which may be necessary to enable or assist the Provider to claim exemption from the deduction or withholding or (if this is not possible) a credit under any applicable double taxation or similar agreement or treaty from time to time in force, and shall, on reasonable notice, give the Provider proper evidence as to the deduction or withholding and payment over of the tax deducted or withheld.

10. Proprietary rights

- 10.1. The Client acknowledges and agrees that Display5 and/or its licensors own all Intellectual Property Rights in the Software, the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, Display5's Intellectual Property Rights, or any other rights or licenses in respect of the Software, the Services or the Documentation.
- 10.2. The Provider confirms that it has all the rights in relation to the Software, the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. Confidentiality

- 11.1. Each party may be given access to the other party's Confidential Information in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the receiving party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2. Subject to the provisions of this clause 11, each party shall hold the other's Confidential Information in confidence using the same standard of care that it would use to protect its own, similar information, but in any event never less than a reasonable standard of care and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 11.3. Each party may disclose the other's Confidential Information to those of its employees, officers, representatives, agents, subcontractors (as applicable) or advisers who need to know such Confidential Information for the purpose of exercising or performing that party's rights and obligations under or in connection with the Agreement.
- 11.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 11.5. The Client acknowledges that details of the Services and any Professional Services, and the results of any performance tests of the Services, constitute the Provider's Confidential Information.
- 11.6. The Provider acknowledges that the Client Data is the Confidential Information of the Client.
- 11.7. The Client agrees that Display5 shall be entitled to:
 - (a) use the Client's name and logo; and
 - (b) refer to the fact that the Client is a purchaser of the Services, for marketing and publicity purposes, on Display5's website and in Display5's marketing materials and other communications, provided that Display5 complies with such reasonable requirements as the Client may specify in relation to the display of its logo.
- 11.8. This clause 11 shall survive termination of this Agreement, however arising.

12. Indemnity

12.1. The Client shall defend, indemnify and hold harmless Display5, and its applicable Reseller,

against any third party claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or Documentation if and to the extent that such use is in breach of this Agreement, negligent, fraudulent, or in willful default, provided that:

- (a) the Client is given prompt notice of any such claim;
- (b) each of Display5 and its applicable Reseller provides reasonable co-operation to the Client in the defense and settlement of such claim, at the Client's expense; and
- (c) the Client is given sole authority to defend or settle the claim.

12.2. The Provider shall, subject to clause 12.5, defend the Client, its officers, directors and employees against any claim by any third party that the Services or Documentation infringes any patent effective as of the Subscription Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:

- (a) the Provider is given prompt notice of any such claim;
- (b) the Client provides reasonable co-operation to the Provider in the defense and settlement of such claim, at the Provider's expense; and
- (c) the Provider is given sole authority to defend or settle the claim,

and the Client acknowledges and agrees that where the Provider is a Reseller, the Reseller's obligations hereunder are limited strictly to using commercially reasonable efforts to enforce as against Display5 its obligations to do the same.

12.3. In the defense or settlement of any claim, the Provider may (or where it is a Reseller, may use commercially reasonable efforts to cause Display5 to):

- (a) procure the right for the Client to continue using the Services;
- (b) replace or modify the Services so that they become non-infringing; or
- (c) if the remedies set out in clauses 12.3(a) and 12.3(b) are not reasonably available,

terminate this Agreement on two (2) Business Days' notice to the Client.

12.4. In no event shall Display5 or any Reseller or their respective employees, agents or subcontractors be liable to the Client to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by the Client or its Authorized Users or any other person authorized or allowed by the Client to access the Services; or
- (b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by Display5 or its applicable Reseller; or
- (c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from Display5, the Provider or any appropriate authority.

12.5. The foregoing states the Client's sole and exclusive rights and remedies, and the Provider's (including Display5's, Reseller's and their respective employees', agents' and subcontractors') entire obligations and liability, for the infringement of any Intellectual Property Rights.

13. Limitation of liability

13.1. Subject to the provisions of clause 12, this clause 13 sets out the entire financial liability of the Provider (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Client in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Client of the Services and Documentation or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.2. Except as expressly and specifically provided in this Agreement:

- (a) the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use;
- (b) Neither Display5 nor its applicable Reseller shall have liability for any damage caused by errors or omissions in any information, instructions or scripts provided to them by the Client in connection with the Services, or

any actions taken by Display5 or any Reseller at the Client's direction;

- (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (d) the Services and the Documentation are provided to the Client on an "as is" basis.

13.3. Nothing in this Agreement excludes the liability of either party to this Agreement for:

- (a) death or personal injury caused by that party's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot by applicable law be excluded or limited.

13.4. Save in respect of clauses 13.3 and 12.1, neither party to this Agreement shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any:

- (a) loss of profits;
- (b) loss of business;
- (c) depletion of goodwill;
- (d) loss or corruption of data or information;
- (e) pure economic loss; or
- (f) special, indirect or consequential loss, costs, damages, charges or expenses;

and/or similar losses howsoever arising under this Agreement. For greater certainty, where the Provider is a Reseller, nothing in this Agreement creates any liability of Display5 to the Client or claim by the Client from Display5, and where the Provider is Display5, nothing in this Agreement creates any liability of any Reseller to the Client or claim by the Client from any Reseller.

13.5. Save in respect of clauses 13.3 and 12.1, each party's total aggregate liability in any Contract Year in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid or payable (assuming the Agreement is not terminated, whether or not it is actually terminated) during the then current Contract Year, provided that this clause 13.5 shall be without prejudice to the Client's

obligations to pay Fees due in accordance with this Agreement.

14. Period and termination

14.1. Save as set out in an Order Form, this Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the date upon which it is signed by both parties and continue until midnight on the last day of the Fixed Term, whereupon this Agreement shall automatically renew for additional one year terms (each known as a Subscription Period). Any pricing increases due in relation to any renewed period will be as provided for in the Order Form.

14.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement by notice in writing, with immediate effect and without liability to the other if:

- (a) unless otherwise set out in the Order Form, either party provides written notice of its decision not to renew the Services no later than 90 days prior to the end of Client's current Subscription Period;
- (b) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (d) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors; or
- (e) a trustee or receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (f) the other party makes any arrangement or composition with its creditors, or makes an

application to a court of competent jurisdiction for the protection of its creditors in any way; or

- (g) the other party ceases, or threatens to cease, to trade; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3. On termination of this Agreement for any reason:

- (a) all licenses granted under this Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Client shall be obliged to download its Client Data by no later than termination of this Agreement;
- (d) following termination, the Provider shall destroy (or cause Display5 to destroy, as the case may be) or otherwise dispose of any of the Client Data; and
- (e) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. Force majeure

Neither party shall have any liability to the other party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other person), failure of a utility service or transport or telecommunications network, act of God, natural disaster, terrorism, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default or delay of suppliers or sub-contractors, provided that the other party is notified of such an event and its expected duration.

16. General

16.1. A waiver of any right under this Agreement is only effective if it is in writing and signed by an

- authorised representative of the party waiving such right. No single waiver by a party of any right, power or remedy provided by this Agreement or by law shall preclude the exercise of such right, power or remedy or of any other right, power or remedy.
- 16.2. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 16.3. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.4. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 16.5. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 16.6. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not and whether or not negligently made) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 16.7. Each party shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under applicable bribery legislation if such activity, practice or conduct had been carried out in the jurisdiction of such applicable privacy legislation;
 - (c) promptly report to the other party any request or demand for any undue financial or other advantage of any kind, which it has received in connection with this Agreement;
 - (d) within six (6) months of the date of this agreement, and annually thereafter, certify to the other party in writing signed by an officer of that party, compliance with this clause 16.7 by that party; and
- (e) ensure that any person associated with that party who is performing services or otherwise receiving the benefit of services in connection with this agreement does so only on the basis of a written contract, which imposes on and secures from such person, terms equivalent to those imposed on each party under this clause 16.7.
- 16.8. In performing their obligations under this Agreement, each party shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force; and
 - (b) not engage in any activity, practice or conduct that would constitute an offence under applicable anti-slavery legislation, if such activity, practice or conduct were carried out in the such applicable jurisdiction.
- 16.9. Neither party shall, without the prior written consent of the other party, assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under this Agreement. Notwithstanding the preceding, the Provider may assign this Agreement to other entities within the Provider's group of affiliates and subsidiaries without restriction and without the Client's consent.
- 16.10. Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.
- 16.11. Any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing and sent using either: (a) email; (b) certified or registered mail; or (c) an internationally recognized overnight courier, to the appropriate party at the address set forth on the Order Form. Each party hereto expressly consents to service of process by registered mail. Either party may change its address for receipt of notice by notice to the other party through a notice provided in accordance with this clause 16.11. Notices are deemed given seven (7) Business Days following the date of mailing, or one (1) Business Day following delivery to an internationally recognized overnight courier for overnight delivery to the

address set forth in the Order Form. Delivery by other methods will be deemed delivered upon proof of receipt (including by electronic confirmation of delivery).

16.12. Unless the Order Form expresses otherwise, this Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein without reference to conflicts of law principles. Both parties waive their right to a jury trial. Unless the Order Form

expresses otherwise, in the event of litigation arising out of this Agreement, each party shall pay its own costs and expenses of litigation. Venue for any proceeding arising from or related to this Agreement or the transactions contemplated shall be the courts of the Province of Ontario, Canada and the parties hereby consent to the exclusive personal jurisdiction of such courts without reference to conflicts of law principles. The Client irrevocably waives any objection to the jurisdiction of, or venue in, these courts. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement, its execution, delivery or performance.

Display5 Cloud Platform Maintenance & Service Availability Policy

1. Overview

- A. This Support Policy defines Display5's obligations in respect of the Support Policy for the Display5 Cloud Platform. The parts of the Display5 Cloud Platform that are expected to be maintained include server and database infrastructure, the media asset store, Display5 application code, associated software components and any relevant configuration.
- B. This Support Policy applies only to the Client if the Client has a valid Order Form in place with Display5 or a Reseller.
- C. This Support Policy covers all equipment, infrastructure and software owned and operated by Display5 and any of its partners, or Resellers, including its Hosting Partner.
- D. In this Policy only, "Display5" means Display5, whether acting directly as a Provider or through its Reseller, as the case may be, pursuant to the terms of the applicable Agreement between the Provider and the Client.

2. Definitions

"Committed Charges" means the total monthly or annual fees paid by Client to Display5, or its Reseller, for the operation of Client's Display5 Cloud Platform, Client Support, Maintenance and backup services.

"Downtime" means any Maintenance that occurs during Normal Business Hours and which was not requested or caused by the Client.

"Error" means an Incident caused by a software bug or similar in the Display5 Cloud Platform.

"Hosting Partner" means the third-party company engaged by Display5 that runs data center(s) and a web hosting service(s) that allows individuals and organizations to access their Display5 Cloud Platform instance via the World Wide Web.

"Incident" means an occurrence where the Display5 Cloud Platform substantially fails to provide a material feature or service that the Display5 Cloud Platform was designed to deliver.

"Maintenance" means the provisioning of services and software after first delivery of the

Display5 Cloud Platform to correct Errors, improve performance or other attributes of the Display5 Cloud Platform and/or to adapt the Display5 Cloud Platform to a modified environment.

"Normal Business Hours" Monday through Friday 9 AM to 5 PM local time for the Client's selected support region.

"Planned Maintenance" means any activities undertaken by Display5 or a third party on its behalf to execute Updates. Such activities shall only be deemed Planned Maintenance where: (a) they are not performed during Normal Business Hours or during a Scheduled Maintenance Window; and (b) Display5 has provided Client at least three (3) Business Days advance notice (which notice may be made via email) of those activities and the expected length of the activities.

"Regional Data Center" means the data center selected in the deployment of the customers cloud instance located in either Europe or North America.

"Scheduled Maintenance Window" means a weekly window on Tuesdays from 10 pm to 4 am local time in the Regional Data Center.

"Service Availability" means the percentage of time each month that the Display5 Cloud Platform is available to Client exclusive of Planned Maintenance. Service Availability also does not include outages caused by some action or inaction on the Client's behalf or disruptions or outages as a result of Force Majeure events within the meaning of clause 15 of the Agreement.

"Service Availability Credits" are the percentage of the monthly Committed Charges, or in the case of an annual Committed Charge, the percentage of one-twelfth (1/12) of the annual Committed Charge, for use of the Display5 Cloud Platform payable by Client to Display5 under the terms of the Agreement. These Services Availability Credits shall not exceed two (2) months of Committed Charges per annum.

"Support Request" means an Incident reported by the Client to Display5 Customer Support Services.

"Updates" means new releases of the Cloud Platform that contain patches, new software functionality, or infrastructure changes.

“**Uptime Service Levels**” means the percentage of time in any given month during which the Display5 Cloud Platform was available to the Client less any Downtime.

3. Coverage

- A. The Display5 Cloud Platform is warranted under the terms of the Agreement with Display5. Any Updates are also subject to the warranties and provisions set forth in the Agreement, including limitations and disclaimers.
- B. Display5 will utilize Planned Maintenance for Updates to the Display5 Cloud Platform. Access to the Display5 Platform may be occasionally limited during Planned Maintenance (Scheduled Maintenance Window referenced above).
- C. As noted in Clause 4.2 of the Agreement, Display5 shall make the Cloud Platform available 24 hours a day, seven days a week, subject to this Support Policy (including without limitation Planned Maintenance provided for herein) or as otherwise permitted under the Agreement.
- D. Display5 may interrupt the hosting of the Cloud Platform inside Normal Business Hours for emergency unscheduled Maintenance provided it gives Client advance written notice (which notice may be made via email). Display5 shall at all times use all reasonable endeavors to keep any Cloud Platform interruptions to a minimum. This shall be considered Downtime for the purpose of calculating Uptime Service Levels.
- E. If Service Availability falls below Uptime Service Levels during any one (1) month period (i.e. there is a lack of Service Availability for such period), then Client shall be entitled to the following Service Availability Credits as laid out below:

Uptime Service Levels	Service Availability Credits
<99.8% to 99%	10%
<99% to 90%	25%
<90%	40%

4. Exclusions

This Support Policy does not obligate Display5 to provide Maintenance services required as a result of any of the items noted below:

Display5 will not be obligated to provide Workarounds or Patches for issues with the Display5 Cloud Platform being reported to Display5, Customer Support by the Client if the issues are due to any of the following:

1. Issues due to factors outside Display5’s reasonable control.
2. Issues resulting from Client’s or third-party hardware or software.
3. Issues caused by Client’s use of the Display5 Cloud Platform after Display5 advised Client to modify its use of the Display5 Cloud Platform if Client did not modify its use as advised.
4. Issues during beta and trial periods of the Display5 Cloud Platform (as determined by Display5).
5. Issues attributable to the acts or omissions of Client or Client’s employees, agents, contractors, or vendors, or anyone gaining access to the Display5 Cloud Platform by means of Client’s passwords or equipment.
6. Such support relates to or involves any products, data, features, systems, devices or equipment not provided by Display5.
7. The Client or a third party has altered or modified any portion of the Display5 Cloud Platform in any manner without the prior written consent of Display5.
8. The Client has not used the Display5 Cloud Platform in accordance with instructions provided by Display5.
9. A party other than Display5 (or a party not authorized by Display5) has altered the Display5 Cloud Platform and the Display5 Cloud Platform no longer conforms to its specifications.
10. The Client is not in full compliance with the terms of the Agreement or any other agreement between Display5, and the Client.
11. The Client reports an issue related to a non-standard feature of the Display5 Cloud Platform, related to custom modifications or any other change to the Display5 Cloud Platform.
12. The Client reports an issue related to hardware, electrical work, networking work, interconnection work, or the installation, patching, upgrading or repair of accessories, alterations, parts, software or devices.

13. The Client requires additional education to resolve Display5 Cloud Platform issues. This is indicated by needing extensive help or “hand holding” related to “how things work”. These are educational issues.
14. The Client has modified their Display5 Cloud Platform in any material manner without the prior written consent of Display5.
15. The Client requires assistance with system administration or network administration (including tuning and/or maintaining). These activities are expected to be supported by the Client.
16. The issue being reported to Display5, Customer Support by the Client is a request to report on the root cause analysis regarding any issue reported by the Client to Display5.
17. The issue being reported to Display5, is not reported or handled exclusively by an Approved Support Contact of the Client’s staff that has been properly trained in the operation and usage of the Display5 Cloud Platform.
18. The Support Request requires Display5 to support the Client in any language other than English.
19. The Support Request asks Display5, Customer Support Services personnel to work with an end customer directly without the direct involvement of the Approved Support Contact who originally raised the Support request.
20. The issue being reported relates to a Player connected to the Display5 Cloud Platform Service.