

## MASTER SOFTWARE AND SERVICES AGREEMENT

This Agreement (the "Agreement") is entered into as of \_\_\_\_\_, 2014 (the "Effective Date") by and between Four Winds Interactive LLC, a Colorado limited liability company having its principal office at 3012 Huron Street, Denver, Colorado 80202 ("FWi") and \_\_\_\_\_ having its principal office at \_\_\_\_\_ ("Customer").

WHEREAS, FWi owns certain computer programming, related documentation and expertise constituting its proprietary products and services for use in digital signage which contains valuable trade secrets and other confidential and proprietary information and rights of FWi; and

WHEREAS, Customer desires to obtain the license granted herein for its use of the Software, as defined below, and FWi is willing to grant such license under the terms of this Agreement; and

WHEREAS, Customer further desires and FWi agrees to provide maintenance service for the Software under the terms of this Agreement; and

WHEREAS, Customer may also desire to obtain additional services from FWi including professional, consulting, or creative services, and content hosting services related to digital signage under the terms of this Agreement or as may be more fully described in an applicable Statement of Work (as defined below);

NOW, THEREFORE, the parties agree as follows:

### ARTICLE 1 – DEFINITIONS

- 1.1 "Authorized Users" shall mean all direct employees, contractors or agents of Customer who are authorized by Customer to use the Software subject to the terms and conditions of this Agreement.
- 1.2 "Content Subscription Service" shall mean web based content as may be provided by FWi to Customer on a subscription basis.
- 1.3 "Contract Documents" shall mean this Agreement, the FWi Proposal or Quote, Customer issued Purchase Order, a separate Statement of Work, or such other document as may be entered into between the parties as applicable.
- 1.4 "Designated Equipment" shall mean the personal computers, supplied by Customer, connected to the digital signs for which the Software is licensed for use.
- 1.5 "Documentation" shall mean all manuals, user documentation, and other related materials pertaining to the Software as supplied by FWi.
- 1.6 "Hardware" shall mean the equipment purchased by Customer directly from FWi for use with the Software.
- 1.7 "Hosting Services" shall mean a set of subscription-based, hosted services residing on FWi servers to include any of the following: (i) FWi web server (ii) SQL server database (iii) FWi Content Manager Express application software (iv) content storage capacity (v) FWi Content Store web

application, (vi) hosted deployment manifests and deployed assets, and (vii) hosted Integration Framework adapters.

- 1.8 "License" shall mean the Perpetual License(s) or Limited License(s), as defined below, granted to Customer by FWi pursuant to this Agreement and the Contract Documents.
- 1.9 "License Fee" shall mean the agreed upon and accepted amount to be paid by Customer for the Software as set forth in the Contract Document(s), whether such fee is for a Perpetual Software License or for a Limited License pursuant to the Software Subscription Service, and whether the Software shall be hosted by FWi or Customer.
- 1.10 "Maintenance Service" shall mean call-in customer and technical support for diagnostic and error correction of the Software including available patches or solutions as well as Software updates including bug fixes and enhancement to Customers current version of the Software.
- 1.11 "Maintenance Service Fee" shall mean the agreed upon and accepted amount to be paid by Customer for Maintenance Service as set forth in the Contract Document(s).
- 1.12 "Managed Services" shall mean an FWi dedicated program manager to provide specialized support services including requests to add, schedule or deploy content at Customer's request.
- 1.13 "New Software Releases" shall mean new releases of new software that may include different or enhanced functionality as may be provided by FWi.
- 1.14 "Professional Services" shall mean billable professional and technical services to assist with installation, testing, data conversion, on-site support, multi-vendor coordination, multi media design, sign architecture, project management or other related services.
- 1.15 "Professional Services Fees" shall mean the agreed upon and accepted amount to be paid by Customer for Professional Services as set forth in the Contract Document(s) and/or any agreed upon Statement of Work.
- 1.16 "Proposal" or "Quote" shall mean the Contract Document issued by FWi and accepted by Customer indicating type, quantities and prices for the designated Software, Hardware, Maintenance, Professional or other Services.
- 1.17 "Public Entity" shall mean a governmental entity created pursuant to (i) the US constitution; (ii) the constitution of any state within the US; or (iii) federal or state law or statute.
- 1.18 "Purchase Order" shall mean the Contract Document issued by Customer and accepted by FWi indicating type, quantities and prices for the designated Software, Hardware, Maintenance, Professional or other Services.
- 1.19 "Recurring Fees" shall mean the amounts payable pursuant to the Contract Document(s) for Services provided on a recurring monthly, annual, or other interval basis even if such amounts are prepaid by Customer which Services shall include but not be limited to Software Subscriptions, Software Maintenance, Hosting Services, Managed Services, and Third Party Subscriptions.
- 1.20 "Site" shall mean any and all properties or locations owned, operated or managed by Customer for which it has paid FWi a License Fee.
- 1.21 "Software" shall mean the Four Winds Interactive computer programs identified in the Contract Documents and licensed to Customer hereunder.

- 1.22 “Statement of Work” or “SOW” shall mean the Contract Document describing the Professional Services to be performed and the responsibilities of the parties with regard to the Professional Services engagement.
- 1.23 “Subscription Services” shall mean any Service provided by FWi hereunder on an annual or monthly subscription basis pursuant to this Agreement or an applicable Contract Document, including but not limited to Software Subscriptions, Content Subscriptions (FWi Content Store, etc.), Third Party Subscriptions, Database Hosting Services and the like.
- 1.24 “Term” shall mean the term of service set forth on the Contract Document(s) and any renewal thereof as may be provided for herein.
- 1.25 “Third Party Subscriptions” shall mean content procured by FWi for and at the request of Customer for an additional fee and according to the terms of a License Agreement for such content as may be required by such third party.

## ARTICLE 2 – GRANT OF LICENSE

- 2.1 Perpetual Software: Pursuant to the Contract Document(s) and subject to Customer’s payment of the License Fee, if Customer has purchased the Software for perpetual use, FWi hereby grants to Customer, and its Authorized Users, a nonexclusive perpetual license to use the Software identified on the Contract Document(s) at the Site on a per user or per machine basis in object code form (a “Perpetual License”).
- 2.2 Software Subscription: Pursuant to the Contract Document(s) and subject to Customer’s payment of the License Fees, if Customer subscribes to the Software, FWi hereby grants to Customer, and its Authorized Users, a nonexclusive limited license to use the Software identified on the Contract Document(s) at the Site on a per machine basis in object code form during the Term (a “Limited License”).
- 2.3 The License granted to each Authorized User shall automatically terminate in the event that such Authorized User ceases to be an authorized employee, contractor or agent of Customer.
- 2.4 The Licenses may be transferred by Customer to alternate equipment at the Site or, at FWi’s sole digressions upon request of Customer, to an alternate Site, without payment of a transfer or replacement fee provided that: (i) Customer provides written notice to FWi of its intent to transfer the Licenses, which notice shall include identification of the equipment and or Site to which Licenses shall transfer or replace; and (ii) Customer certifies to FWi that Licenses transferred or replaced have been uninstalled from or removed from such equipment and or Site and are no longer in use by Customer.
- 2.5 Customer agrees the source code for the Software is not licensed hereunder.
- 2.6 Customer shall not make copies of the Software in whole or in part, except exclusively for Customer’s backup or archive purposes. Customer agrees to maintain appropriate records of the number and location of all copies of the Software and make such records available to FWi upon request. Copies permitted herein must be reproduced with all copyright and other proprietary notices in the same manner as originally included in the Software.

- 2.7 Content Subscription. Pursuant to the Contract Document(s) and subject to Customer's payment of the applicable fees, if Customer subscribes to Content Subscription Service, FWi hereby grants to Customer, and its Authorized Users, a nonexclusive limited license to use the Content Subscription Service for its internal business purposes at the Site during the Term.
- 2.8 Third Party Software Grant of License. If applicable pursuant to the Contract Document(s), Third Party Software shall be licensed to Customer according to the terms of such Third Party, and Customer hereby agrees to pay the subscription fees for such Third Party Software and hereby accepts the terms of the Third Party as set forth at the following link: [Third Party License Terms](#).

#### ARTICLE 3 – SOFTWARE DELIVERY

- 3.1 Upon receipt of payment of the License Fee, FWi shall deliver the Software electronically, by “load and leave” or by another method that delivers the Software without providing Customer the Software on a compact disk (CD), digital video disk (DVD), flash drive or similar device.
- 3.2 FWi shall deliver the Documentation via an email link. Customer may make additional copies of the Documentation for archive and training purposes.
- 3.3 Customer or FWi, as the case may be, shall install the Software on the Designated Equipment pursuant to the Documentation.

#### ARTICLE 4 – MODIFICATION

- 4.1 Updates and Error Corrections. FWi will provide Customer with error corrections, bug fixes, patches or other updates to the Software when available during the subscription period or pursuant to Maintenance Services, if applicable under this Agreement.
- 4.2 Other Modifications. FWi may, in its sole discretion, undertake to incorporate Customer requested features or enhancements. FWi may distribute such Software features and enhancements to all or any of FWi's licensees.
- 4.3 Title to Modifications. All such error corrections, bug fixes, patches, updates or other modifications shall automatically be considered part of the licensed Software, subject to the provisions of this Agreement, and shall be the sole property of FWi.

#### ARTICLE 5 – MAINTENANCE SERVICE

- 5.1 Software Maintenance Service shall be provided by FWi to Customers subscribing to Maintenance Service or Software Subscription Service. Software Maintenance Service shall be subject to Customer's payment of the Maintenance Service Fee or Software Subscription License Fee and shall be provided remotely in the English language, unless specified otherwise. If applicable, Customer shall provide all required access to its network and/or systems as may be necessary for the provision of the Software Maintenance Service by FWi.
- 5.2 The following shall constitute FWi's standard Software Maintenance Service:

- a. Software Upgrades. FWi shall make available updates to the Software which may include but are not limited to enhancements or bug fixes for Customer's existing version of software. Software Upgrades shall not reduce the functionality of the Software provided hereunder.
  - b. Web Site Service. FWi shall provide Customer's account representative access to FWi's web site which may contain reference materials and provide Customer the opportunity to electronically access, install and download Software Upgrades as they are made generally available. Customer agrees to install Software Upgrades according to FWi Release Notes within a reasonable time, but no later than the support expiration date for the prior Software Upgrade. A Software Upgrade will generally be supported for six (6) months after issuance of the next replacement Software Upgrade. If FWi discontinues a Covered Software product, it will notify Customer about the remaining service period by publication on FWi's website. Customer shall observe all security requirements and shall not allow others to share its account.
  - c. Call-In Maintenance Service. Customer shall have access to FWi's technical support 24 hours per day 7 days per week for the purpose of (i) placing service requests; (ii) clarifying functions and features of the Software; (iii) diagnosis and error correction including documenting the error, providing any available patch or solution, replicating and analyzing the issue on a test system, devising a case resolution path, resolving the reported error through a workaround or product engineering; or (iv) determining that no solution is technically or economically feasible. FWi reserves the right to provide services hereunder on an on-call basis. FWi will address all problems on a best efforts basis.
- 5.3 Software Maintenance Service does not include New Software Releases unless Customer has paid any applicable extra surcharge, if any, announced at the time of the New Software Releases.
- 5.4 Problems determined by FWi to be hardware related, despite whether hardware was procured by FWi, will be referred to the applicable hardware manufacturer warranty or extended warranty if applicable. FWi shall have no further maintenance obligations respecting hardware related issues.
- 5.5 Any beta or pre-release software offered by FWi shall not be covered by the Software Maintenance Service.

#### ARTICLE 6 – HOSTING SERVICES

- 6.1 If applicable pursuant to the Contract Document(s) and subject to Customer's payment of the applicable fees, FWi shall provide the Hosting Services to Customer on a subscription basis at the subscription level identified on the Contract Document(s).
- 6.2 Customer data shall be stored and accessed via a shared server or dedicated server according to the subscription level identified on the Contract Document(s).

#### ARTICLE 7 – MANAGED SERVICES

- 7.1 If applicable pursuant to the Contract Document(s), FWi shall provide a dedicated program manager to perform and coordinate the Managed Services according to the tier of Managed

Services identified on the Contract Documents and for which Customer has paid the applicable fees for such Managed Services.

#### ARTICLE 8 – PROFESSIONAL SERVICES

- 8.1 Professional Services may be specified and agreed upon in the Contract Document(s) and/or a separate Statement of Work may be entered into between the parties outlining additional details and responsibilities with respect to Professional Services.
- 8.2 Subject to Customer's payment of the Professional Services Fees, FWi shall provide additional specified and agreed upon Professional Services which may include but shall not be limited to: (a) consulting services; (b) technical and professional services related to installation, testing, data conversion and on-site support; (c) technical account training (d) creative services including multi-media design and sign architecture; (e) multi-vendor coordination; (f) project management services; (g) other technical or professional services for the Software or otherwise at the Site not included in the Maintenance Services or Managed Services.
- 8.3 FWi shall remain liable for all work performed by subcontractor contracted by FWi to perform any of the Professional Services.

#### ARTICLE 9 – FEES, PAYMENTS, AND INVOICING

- 9.1 Invoicing and Payments. Customer agrees to pay invoices according to the terms of the applicable Contract Document. If such Contract Document does not specify invoice and payment terms, the terms shall be as set forth herein.
  - a. The following charges, if applicable, shall be invoiced upon execution of the applicable Contract Document and shall be due upon receipt of the invoice:
    - License Fees – Perpetual Software
    - First Year Software Maintenance Service – Perpetual Software
    - License Fees – First Month/Year Software Subscription
    - Subscription Services including Third Party Subscriptions
    - Hardware Deposits – required for all Hardware orders over \$10,000
    - Professional Services pursuant to a Services Package
    - Set up Fees unless specified otherwise in an applicable SOW
  - b. The following charges, if applicable, will be invoiced as specified herein and are due within thirty (30) days of invoice:
    - Annual recurring fees for Software Maintenance Service or Subscription Services provided on an annual basis will be invoiced annually on or about the first day of the month following each anniversary of the Effective Date.
    - Monthly recurring fees for Subscription Services provided on a monthly basis will be invoiced on or about the first day of each month following the Effective Date.
    - Hardware Fees and related charges for PC configuration will be invoiced upon shipment of Hardware.
    - Professional Services or Managed Services pursuant to an applicable SOW will be invoiced monthly on a time and materials basis as incurred unless specified otherwise in the SOW.
    - Travel Expenses and related charges will be invoiced monthly in arrears following month

- in which expenses are incurred.
- Installation Fees provided by a third party on behalf of Customer will be invoiced immediately as incurred.
- 9.2 All amounts payable hereunder shall be payable in United States dollars without setoff or deductions for taxes, assessments, fees, or charges of any kind. Customer shall be responsible for paying all applicable (i) sales, use, excise, value-added, or other tax or governmental charges imposed on the licensing or use of the Software or Documentation hereunder; (ii) freight, insurance and installation charges; and (iii) import or export duties or the like. Taxes and/or shipping charges, if applicable, will be included on the invoice for the associated item charge. Customers exempt from sales taxes must provide valid documentation to FWi prior to the time of invoice.
- 9.3 Deposit amounts may be applied to outstanding invoices at FWi's discretion. Customer acknowledges FWi will not order Hardware and will not initiate Services prior to receipt of Deposit amounts due under any applicable Contract Document(s).
- 9.4 If Customer receives access to the Software prior to its payment of the License Fee, such License shall be conditional until payment has been received by FWi, and shall automatically terminate for failure to pay the License Fee. Customer's License shall become unconditional upon payment of the License Fee for the applicable Software. In the case of a Limited License, the License shall be unconditional only for the time period for which the License Fee applies.
- 9.5 Shipping terms are FOB Destination "prepaid and add" unless agreed to in writing between the parties to the contrary. Shipping charges specified in the Contract Document(s) may reflect estimated charges. In all cases, FWi shall invoice Customer for actual shipping cost as incurred and Customer shall pay such invoice in accordance with the terms hereof. A twenty percent (20%) restocking fee may apply for Hardware returned or exchanged by Customer.
- 9.6 Customer acknowledges Service Packages may contain discounted rates and shall be available for use by Customer for the time period specified in the applicable Contract Document(s). Prepaid Services not redeemed prior to expiration of any specified time will be forfeited.
- 9.7 Total dollar amounts specified in the Contract Document(s) as estimated charges shall be considered reasonably accurate estimates only, and unless expressly identified as a fixed fee or not-to-exceed amount, Customer shall pay actual costs, charges and fees as invoiced.
- 9.8 Beginning with the second year of the Term, FWi may adjust Recurring Fees by the amount of the increase in the Consumer Price Index ("CPI") which shall be calculated using CPI-U for all items as of the second calendar month preceding the Effective Date and subsequent anniversaries thereof.
- 9.9 If Maintenance Service lapses and is later reinstated, Customer shall pay Fees otherwise due for the period of lapse.
- 9.10 Except as set forth herein, Fees are non-refundable and non-cancelable.
- 9.11 Third-party pass-through costs or subscriptions, if any, may be increased at the time and in the manner the increases are received from the third party.
- 9.12 Customer may purchase or subscribe to receive additional Licenses and or Services pursuant to this Agreement and a separate subsequently issued and accepted Contract Document at the

quantities and prices agreed upon in such Contract Document. At FWi's option, Fees due for additional Software Subscriptions and Services may be prorated for the period after such purchase of such Services or Software Subscription until the following applicable month or year of the Term, as the case may be, at which time such fees may be combined into a single invoice. If Customer requests and FWi agrees, fees may be prorated to coincide with Customer's fiscal year.

- 9.13 Failure to Pay. Invoices not paid within thirty (30) days of the date the payment is due shall be subject to a penalty of 1.5% of the invoice amount per month or such lesser amount allowable by law. Notwithstanding the foregoing, if Customer fails to pay the License Fee, FWi may terminate this Agreement upon notice. If Customer shall fail to pay invoices outstanding for more than 60 days without notice of an Invoice Dispute, FWi may terminate this Agreement by providing 30 days notice to Customer. Except as prohibited by law, Customer acknowledges it shall be liable for FWi's cost of collection fees, including attorney's fees.
- 9.14 Invoice Disputes. Customer must provide notice within fifteen (15) days of receipt of an invoice as to a dispute of the charges on such invoice. All undisputed amounts shall be paid according to the terms of the invoice as specified herein. If the parties are unable to resolve the Invoice Dispute within 45 days of such notice, the parties agree to meet either in person or via conference call with the intent to resolve the dispute. If the parties are unable to reach a resolution, (i) FWi may terminate this Agreement and pursue collections actions or other legal remedies; or (ii) Customer may pay the disputed invoice to avoid termination.

#### ARTICLE 10 – OWNERSHIP AND PROTECTION OF PROPRIETARY RIGHTS

- 10.1 Ownership. Customer acknowledges that all copies of the Software in any form provided by FWi or made by Customer, as permitted herein, are the sole property of FWi and/or its suppliers. Customer shall have no right, title, or interest to any such Software or copies thereof except as provided in this Agreement, and further shall secure and protect all Software and Documentation consistent with maintenance of FWi's proprietary rights therein.
- 10.2 Reverse Engineering. Customer shall not modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof.
- 10.3 Distribution. Distribution, publication or public display of the Software by Customer is prohibited except as expressly permitted herein.
- 10.4 Except as permitted herein, Customer shall not make copies or derivative works, nor install or otherwise use copies or any portion of the Software beyond the number of licenses for which Customer has paid FWi a License Fee.
- 10.5 Proprietary Notices. Customer agrees to respect and not to remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or output generated by the Software, and to reproduce and include same on each copy of the Software.
- 10.6 Work Product. Customer agrees that in connection with the provision of Services hereunder, FWi may provide or use certain pre-existing materials, information, software components and proprietary tools to FWi (collectively, "FWi Standard Materials and Tools"). Customer



acknowledges that all right, title and interest in and to all pre-existing FWi Standard Materials and Tools is and remains the exclusive property of FWi or its suppliers. FWi retains the right to re-use, transfer, distribute and license to any of its current and future clients any of its FWi Standard Materials and Tools. For avoidance doubt unless specifically identified as “work for hire” in the Contract Documents, all Services hereunder shall be considered preexisting FWi Standard Materials and Tools.

- 10.7 Customer Property. FWi agrees that all data, content, and intellectual property supplied by Customer shall remain the exclusive property of Customer. FWi shall treat all Customer Property as Confidential Information as defined herein.

#### ARTICLE 11 – CONFIDENTIALITY

- 11.1 Acknowledgement. Customer hereby acknowledges and agrees that the Software and Documentation constitute and contain valuable proprietary products and trade secrets of FWi and/or its suppliers, embodying substantial creative efforts and confidential information, ideas, and expressions. Accordingly, Customer agrees to treat (and take precautions to ensure that its employees treat) the Software and Documentation as confidential in accordance with the confidentiality requirements and conditions set forth below.
- 11.2 Maintenance of Confidential Information. The term “Confidential Information” shall mean the information disclosed by either party under this Agreement which is in written, recorded, photographic, machine-readable, or other physical form or oral information reduced to writing as soon as practicable after disclosure to the other party and which may be marked or labeled “Confidential”, “Proprietary”, “Sensitive”, or in any other manner indicating its confidential and/or proprietary nature. Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that neither party shall have any such obligation with respect to use or disclosure to others not parties to this Agreement of such confidential information as can be established to: (a) have been known publicly; (b) have been known generally in the industry before communication by the disclosing party to the recipient; (c) have become known publicly, without fault on the part of the recipient, subsequent to disclosure by the disclosing party; (d) have been known otherwise by the recipient before communication by the disclosing party; or (e) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information.
- 11.3 Injunctive Relief. Customer acknowledges that the unauthorized use, transfer or disclosure of the Software and Documentation or copies thereof will (i) substantially diminish the value to FWi of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render FWi’s remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If Customer breaches any of its obligations with respect to the use or confidentiality of the Software or Documentation, FWi may, in addition to

any other legal or equitable rights or remedies which may be available to it, seek and obtain equitable relief to protect its interests therein, including, but not limited to, preliminary and permanent injunctive relief without necessity of proving actual damages or posting bond.

- 11.4 If Customer is a Public Entity, the above Customer obligations respecting Confidential Information shall be limited to that which is allowable pursuant to the laws of the jurisdiction under which Customer was created.

## ARTICLE 12 – WARRANTIES

- 12.1 The parties represent that their respective designated signers to this Agreement and the Contract Document(s) have the respective authority necessary to execute this Agreement and the Contract Document(s) on behalf of such party.
- 12.2 FWi represents that it is the owner of the entire right, title, and interest in and to Software, and that it has the sole right to grant licenses hereunder, and that it has not knowingly granted licenses to any other entity that would restrict rights granted hereunder.
- 12.3 FWi represents and warrants to Customer that the Software, when properly installed and used with the Designated Equipment, will perform substantially as described in the Documentation provided that: (a) Customer remains a continuous fully paid up subscriber to Software Subscription Service or Software Maintenance Services, as the case may be, pursuant to this Agreement; (b) Customer has properly installed all updates provided by FWi; (c) Customer is using the Software in accordance with FWi's guidelines, the Documentation, and this Agreement; (d) any error or defect detected is reproducible by FWi; and (e) Customer notifies FWi of any nonconformance.
- 12.4 FWi represents and warrants that it shall use commercially reasonable efforts to provide the Services hereunder in a professional and workmanlike manner substantially in accordance with this Agreement.
- 12.5 Notwithstanding the warranty provisions set forth herein, all of FWi's obligations with respect to such warranties shall be contingent on Customer's use of the Software in accordance with this Agreement and in accordance with the Documentation, as may be amended, supplemented, or modified by FWi from time to time and made available to Customer. FWi shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.
- 12.6 Sole Remedy. FWi's entire liability and Customer's exclusive remedy respecting the warranties herein shall be, at FWi's option, either (a) return of the price paid or (b) repair or replacement of the Software upon its return to FWi; provided FWi receives written notice from Customer of the breach.
- 12.7 THE WARRANTIES STATED HEREIN ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY FWI. THERE ARE NO OTHER WARRANTIES RESPECTING THE SOFTWARE AND DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN

IF FWI HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF FWI IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF FWI AS SET FORTH HEREIN.

- 12.8 Hardware Limited Warranty. Hardware warranties, if applicable, shall pass through FWi to Customer. Unless additional Extended Warranty is purchased from FWi, all hardware warranties and hardware indemnification obligations shall be provided by the applicable manufacturer. Hardware manufacturer warranties are located at [Hardware Warranties](#).
- 12.9 Hardware Extended Warranty. FWi shall provide additional Hardware Extended Warranty, or SWAP-IT program if purchased pursuant to the Contract Document(s), pursuant to FWi's Swap-It Guarantee, the details of which are located at [Extended-Warranty](#).

#### ARTICLE 13 – INDEMNIFICATION

- 13.1 Each party shall indemnify the other party from and against all Third Party Claims incurred by or asserted against such indemnitee to the extent such Third Party Claims relate to, arise out of or result from: (i) physical injury to or death of any person or damage to tangible property caused by any willfully or intentionally wrongful, or negligent, act or omission of any employee or agent of the indemnifying party relating to this Agreement.
- 13.2 FWi shall indemnify, hold harmless and defend Customer against any actions brought against Customer to the extent that such action is based on a claim that the Software, when used in accordance with this Agreement, infringes on any intellectual property right of a third party. FWi shall pay all costs, settlements and damages finally awarded; provided, that Customer promptly notifies FWi in writing of any claim, gives FWi sole control of the defense and settlement thereof and provides all reasonable assistance in connection therewith. If any Software is finally adjudged to so infringe, or in FWi's opinion is likely to become the subject of such a claim, FWi shall, at its option, either: (i) procure for Customer the right to continue using the Software (ii) modify or replace the Software to make it noninfringing, or (iii) refund the fee paid, less reasonable depreciation, upon return of the Software. FWi will not defend and does not indemnify Customer from any claim arising out of: (w) use of other than a current, unaltered release of the Software unless the infringing portion is also in the then current, unaltered release, (x) use of the Software in combination with non-FWi software, data or equipment if the infringement was caused by such use or combination, (y) any modification or derivation of the Software not specifically authorized in writing by FWi or (z) use of third party software. THE FOREGOING STATES THE ENTIRE LIABILITY OF FWI AND THE EXCLUSIVE REMEDY FOR LICENSEE RELATING TO INFRINGEMENT OR CLAIMS OF INFRINGEMENT OF ANY COPYRIGHT OR OTHER PROPRIETARY RIGHT BY THE SOFTWARE.
- 13.3 Except for the foregoing infringement claims Customer shall indemnify and hold harmless FWi, its officers, agents and employees from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of Customer's modification or enhancement of the Software or otherwise caused by, or arising out of, or resulting from, the use of the license granted hereunder, the content displayed or data, content or intellectual property supplied by Customer, its sublicenses, if any, its subsidiaries or their officers, employees, agents or representatives.

- 13.4 Through the use of the license granted hereunder Customer will display content including its own content or content procured from external sources. Customer acknowledges and agrees that FWi is not responsible for the availability of any such external sources, and does not endorse any materials available from such external sources. Customer acknowledges and agrees that FWi is not liable for any loss or damage which may be incurred by Customer as a result of the availability of those external sources, or as a result of any reliance placed by Licensee on the completeness, accuracy or existence of any materials on, or available from, such sources.
- 13.5 If Customer is a Public Entity, the above Customer indemnification obligations shall be limited to that which is allowable pursuant to the laws of the jurisdiction under which Customer was created.

#### ARTICLE 14 – LIMITATION OF LIABILITY

IN NO EVENT WILL FWI BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR LOSS OF DATA, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL FWI'S LIABILITY FOR DAMAGES HEREUNDER EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 14 ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THIS AGREEMENT, AND CUSTOMER FURTHER ACKNOWLEDGE THAT FWI'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

#### ARTICLE 15 – INSURANCE

Each party agrees to carry comprehensive general liability and property damage insurance with combined bodily injury and property damage limit of no less than \$1,000,000 for each occurrence and further, FWi agrees to carry worker's compensation insurance in the minimum amount as required by the laws of the state in which work is being performed hereunder or pursuant to an applicable Statement of Work.

#### ARTICLE 16 – DEFAULT AND TERMINATION

- 16.1 Events of Default. This Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) if a party materially fails to perform or comply with this Agreement or any provision hereof; (2) if either party fails to strictly comply with the Confidentiality or No Assignment provisions hereof; (3) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (4) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party; or (5) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

- 16.2 Effective Date of Termination. Termination due to a material breach of the following Articles of this Agreement: Article 2 Grant of License, Article 10 Ownership and Protection of Proprietary Rights, or Article 11 Confidentiality shall be effective on notice. In all other cases, termination shall be effective thirty (30) days after notice of termination to the defaulting party if the defaults have not been cured within such thirty (30) day period.
- 16.3 Obligations on Termination. Within ten (10) days after termination of this Agreement or the License granted hereunder, Customer shall (i) cease and desist all use of the Software and Documentation, (ii) delete all full or partial copies of the Software from Customer's equipment, including any archive or backup copies, (iii) delete or destroy all Documentation in Customer's possession or under its control, and (iv) provide a written declaration to FWi of its compliance with this provision. If Customer does not comply with its obligations on termination, FWi may in its sole discretion disable the Software and pursue all remedies available hereunder or at law to obtain Customer's compliance with this provision.

#### ARTICLE 17 – MISCELLANEOUS

- 17.2 Term and Renewal. The Term of Service shall be as set forth in the applicable Contract Document. When applicable, the Software Maintenance Services, Managed Services, Subscription Services and Hosting Services provided hereunder shall automatically renew for successive annual or monthly terms upon payment by Customer of a valid invoice for such applicable annual or monthly period.
- 17.3 Notice. All notices, authorizations, and requests in connection with this Agreement shall be deemed given (i) five days after being deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one day (two days if international) after being sent by overnight courier, charges prepaid; and addressed to the notice address indicated on the Proposal or to such other address as the party to receive the notice or request so designates by written notice to the other.
- 17.4 Entire Agreement. This Agreement, together with the Contract Document(s) and any exhibits thereto contain the entire understanding and agreement between the parties respecting the subject matter hereof. This Agreement may not be supplemented, modified, amended, released or discharged, and no additional or prior terms shall apply, except by an instrument in writing signed by each party's duly authorized representative. If the parties have executed a binding agreement prior to the date hereof ("Prior Agreement"), and the parties have not agreed that this Agreement shall supersede the Prior Agreement, then such Prior Agreement is hereby incorporated and to the extent any terms in the Prior Agreement conflict with this Agreement, the Prior Agreement shall prevail. Customer issued Purchase Order Standard Terms and Conditions shall not constitute a Prior Agreement hereunder. For the avoidance of doubt, if there is any inconsistency (i) between the signed Quote or Statement of Work and this Agreement, the terms of the signed Quote or Statement of Work shall prevail; and (ii) between the terms of Customer's Purchase Order (excluding any signed Quote or Statement of Work) and this Agreement, the terms of this Agreement shall prevail. Any waiver by either party of any default or breach

hereunder shall not constitute a waiver of any provision of this Agreement or of any subsequent default or breach of the same or a different kind.

- 17.5 Independent Contractors. Each party and its people are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.
- 17.6 Assignment. Neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent, which shall not be unreasonably withheld, and any attempt to the contrary shall be void. Notwithstanding the foregoing, either party may assign this Agreement and any applicable Contract Document(s) and/or any rights and/or obligations hereunder to: (i) any successor by merger, acquisition, consolidation or other corporate restructuring; (ii) any parent or majority owned subsidiary; or (iii) any entity which acquires all or substantially all of the assigning party's assets.
- 17.7 Choice of Law.
- a. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND COLORADO, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THE PARTIES MAY INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN SUCH DESIGNATED STATE AND IRREVOCABLY CONSENT TO NON-EXCLUSIVE PERSONAL JURISDICTION THEREIN.
  - b. IF CUSTOMER IS A PUBLIC ENTITY, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND STATE WHERE CUSTOMER IS LOCATED, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THE PARTIES MAY INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN SUCH DESIGNATED STATE AND IRREVOCABLY CONSENT TO NON-EXCLUSIVE PERSONAL JURISDICTION THEREIN.
  - c. The U.N. Convention on Contracts for the International Sale of Goods and the Unfair Contracts Act in the United Kingdom shall not apply to this Agreement.
- 17.8 Time Limit. Any claim arising out of or relating to this Agreement shall be initiated in a tribunal of competent jurisdiction within two (2) years after the claim arose, or be barred. Claims for infringement of proprietary rights, breach of confidentiality or violation of usage rights shall arise upon actual discovery by the aggrieved party.
- 17.9 Mediation.
- a. The parties agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Agreement by mediation. The parties further agree that their respective good faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy, including litigation, arbitration or other dispute resolution procedures.
  - b. Either party may commence the mediation process by providing to the other party written notice, setting forth the subject of the dispute, claim or controversy, and the relief requested. Within ten (10) days after the receipt of the foregoing notice, the other party shall deliver a written response to the initiating party's notice. The initial mediation session shall be held within thirty (30) days after the initial notice. The parties agree to share equally the costs and

- expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).
- c. The parties further acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
  - d. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.
  - e. Notwithstanding anything contained herein, mediation shall not be required prior to initiation of any action for emergency injunctive relief.
- 17.10 Counterparts and Electronic Signatures. Delivery of an executed counterpart of this Agreement or any Contract Document by facsimile or email shall be effective as delivery of a manually executed counterpart of this Agreement. The execution of this Agreement, Contract Document or any exhibit thereto by electronic signature shall constitute a valid and binding signature.
- 17.11 Captions. All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
- 17.12 Survival. The following Articles shall survive termination of this Agreement: Article 2 Grant of License, Article 10 Ownership and Protection of Proprietary Rights, Article 11 Confidentiality.
- 17.13 Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 17.14 Import/Export Regulations. Customer shall indemnify and hold FWi harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology provided herein. Customer shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce.
- 17.15 NOTICE TO U.S. GOVERNMENT END USERS
- a. Government acknowledges Contractor's representation that the software and its documentation were developed at private expense and no part of them is in the public domain. The Government acknowledges Contractor's representation that the software is commercial computer software to the fullest extent possible as set forth in Clause 12.212 of the Federal Acquisition Regulations (FAR), but at a minimum the software is "Restricted Computer Software" as that term is defined in Clause 52.227-19 of the FAR and is "Commercial Computer

Software” as that term is defined in 252.227.7014(a)(1) of the Department of Defense Federal Acquisition Regulation Supplement (DFARS).

b.U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND: Use, duplication or disclosure of licensed software by the Government is subject to restrictions as set forth in FAR 52.227-19 or DFARS 252.227.7202 and/or in similar or successor clauses in the FAR, or the DOD or NASA FAR Supplement. Unpublished-rights reserved under the Copyright Laws of the United States. Four Winds Interactive LLC., 3012 Huron St., Denver, Colorado 80202 software documentation other than commercial computer software and commercial computer software documentation shall be governed by 48 C.F.R. 52.227-14, Alternative III; and (3) technical data other than software and software documentation shall be governed by 48 C.F.R. 52.227-14 including, where applicable Alternatives I or II.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

\_\_\_\_\_  
(Customer Legal Entity Name)

FOUR WINDS INTERACTIVE LLC

By: \_\_\_\_\_  
(Signature of Authorized Representative)

By: \_\_\_\_\_  
(Signature of Authorized Representative)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_