



## FOURTHWALL MEDIA INC. GENERAL SALES TERMS and CONDITIONS

*These terms and conditions may be subject to change from time to time as deemed necessary by Fourthwall Media Inc.*

### ➤ AGREEMENT

This Agreement is between FourthWall Media, Inc. ("FourthWall") and You, ("Customer"), collectively, the "Parties". This Agreement governs Customer's purchase of FourthWall's Products to include *Managed Services*. The Parties agree as follows:

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE OR BY EXECUTING A SALES ORDER THAT REFERENCES THIS AGREEMENT, CUSTOMER AND FOURTHWALL AGREE TO THE TERMS CONTAINED HEREIN.

### ➤ DESCRIPTION OF SERVICES and SOFTWARE LICENSES.

FourthWall offers an array of pre-packaged and/or customized "Managed Services". A complete menu of these products is available on our website: [www.fourthwall.tv/products](http://www.fourthwall.tv/products). "Our Products".

### ➤ USE OF SALES ORDERS:

With your selection of Managed Services, the configuration that you choose, scope of work, and agreed upon pricing will require the completion and acceptance of a "FourthWall Sales Order". The FourthWall Sales Order describes the agreed upon services being provided by FourthWall to Customer, specific information required to complete the order, critical dates, timelines and payment terms.

In the event of a conflict or inconsistency between the terms of this Agreement and the terms of a FourthWall Sales Order, other than payment terms, the terms of this Agreement will govern.

### ➤ PROPRIETARY RIGHTS AND LICENSES.

FourthWall reserves all of the rights, title, and interest in its products including all updates, upgrades, or derivative works from the foregoing, and all intellectual property rights therein. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement. Subject to Customer's consent (which may be provided via email), FourthWall may use Customer's trademarks, service marks and logos to promote their respective products and services.



➤ **FEES AND PAYMENT TERMS**

- For the Services provided under this Agreement, Customer will pay FourthWall the fees in the amounts and date(s) set forth in the applicable FourthWall Sales Order. Client will reimburse FourthWall those expenses expressly authorized in an Order Form or otherwise approved by Client in writing. All fees paid and expenses reimbursed under this Agreement will be in United States currency.

- ***Right To Audit Impressions.*** At the Expected End Date of the Campaign FourthWall will invoice Customer for the Estimated Obligation, and Customer will report Actual Total Impressions with remittance. Customer agrees to alert FourthWall within 2 weeks of Estimated Start Date if the Campaign has been cancelled or significantly modified. If Reach and Frequency Analysis is selected, Customer agrees to pay for the additional fees upon delivery of the Analysis. Customer is responsible for all 3<sup>rd</sup> party data fees, matching costs, activation and delivery fees. FourthWall will communicate the final fees, if any, for Customer's approval.
- ***Late Fees.*** If any invoiced amount is not received by FourthWall by the due date, then, without limiting FourthWall's rights or remedies, those amounts will accrue interest at a rate of 1.5% per month or the maximum allowed under state law (whichever is lower). FourthWall, at its option, may suspend the Services, in whole or in part, if FourthWall does not receive all undisputed amounts due and owing under this Agreement within thirty (30) days after delivery of notice to Customer of the failure to pay such overdue balances. FourthWall shall be entitled to an award of its reasonable attorney's fees and collection costs in connection with Customer's breach of its payment obligations.
- ***Taxes.*** FourthWall's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder.
- ***No Offset.*** Fees and expenses due from Customer under this Agreement may not be withheld or offset by Customer against other amounts for any reason.

➤ NON-DISCLOSURE AND CONFIDENTIALITY.

- *Definition of Confidential Information.* “Confidential Information” means information disclosed by a party to the other party that is designated as confidential or that reasonably should be considered confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each party includes the terms and conditions of this Agreement and all Sales Orders (including pricing), as well as information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing; “Disclosing Party” refers to the party disclosing Confidential Information hereunder, whether such disclosure is directly from Disclosing Party or through Disclosing Party’s employees or agents; and “Recipient” refers to the party receiving any Confidential Information hereunder, whether such disclosure is received directly or through Recipient’s employees or agents. Confidential Information does not include information that: (a) is already known to the Recipient without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Recipient; (c) is developed by the Recipient independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Recipient from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

- *Requirement of Confidentiality.* The Recipient agrees that it will use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to: (a) not disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party, provided that the Recipient may disclose the Confidential Information of the Disclosing Party to its, and its affiliates’, officers, employees, consultants and legal advisors who have a “need to know,” who have been apprised of this restriction and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section 6; and (b) use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations or as otherwise authorized under this Agreement. The Recipient will promptly notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the

- *Confidential Information of Disclosing Party.* The obligations in this Section, NON-DISCLOSURE AND CONFIDENTIALITY will survive termination and continue for so long as the applicable information constitutes Confidential Information.

- *Compelled Disclosure.* The Recipient may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Recipient gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Recipient is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Recipient for its reasonable cost of compiling and providing secure access to that Confidential Information.



- *Feedback.* Any feedback, comments, suggestions or proposed modifications to the Services provided by Customer to FourthWall may be freely used by FourthWall without limitation, notice, or duty of accounting.

- REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS.

- *Mutual Representations.* Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

- *Services Warranties.* FourthWall represents and warrants that it will provide the Services in a professional and workmanlike manner in accordance with the FourthWall Sales Order. Customer's sole remedies available for any claims arising out of this section are (a) substitute distribution of the Services or (b) a refund of amounts paid by Customer for the unfulfilled portion of the applicable FourthWall Sales Order, in the sole discretion of FourthWall.

- *Customer Warranties.* Customer represents and warrants that (a) Customer will use, and will ensure that all users use, each Service in full compliance with this Agreement, and all Law; (b) it has all necessary rights to Customer Materials provided to FourthWall for the purpose of providing Services requested by Customer; (c) the Customer Materials, and the use thereof by FourthWall to provide such requested services, comply with all applicable Laws and do not violate the rights of any third party, including, without limitation, any copyright, patent, trademark, trade secret or other intellectual property, privacy, or proprietary right; and (d) the provision and use of Customer Materials as contemplated by this Agreement and any Service do not and shall not violate any Customer's privacy policy, terms-of-use or other agreement to which Customer is a party or any Laws or regulation to which Customer is subject to; and

- *Disclaimer.* OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS, FOURTHWALL DISCLAIMS ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS TO CUSTOMER REGARDING THIS AGREEMENT AND THE SERVICES, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE ARE EXPRESSLY EXCLUDED AND DISCLAIMED BY FOURTHWALL. NO WARRANTY IS MADE THAT USE OF THE SERVICES WILL BE ERROR FREE OR UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED, OR THAT THE SERVICES FUNCTIONALITY WILL MEET CUSTOMER'S REQUIREMENTS.

- LIMITATION OF LIABILITY.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE, REVENUE, PROFIT, OR DATA, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS



OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO FOURTHWALL PURSUANT TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

➤ INDEMNIFICATION.

- *FourthWall Indemnification.* FourthWall will defend Customer and its respective officers, directors, employees, agents, affiliates, successors and permitted assigns against any claim, suit, action or proceeding brought by a third party: (a) alleging that any information or materials provided by FourthWall, or Customer's receipt or use thereof, are illegal, offensive, obscene, defamatory, libelous, false, or otherwise violates the rights of any third party, including privacy rights, intellectual property rights against infringement or misappropriates any trade secret of a third party; (b) arising from FourthWall's failure to comply with Laws; or (c) arising from a dispute between FourthWall and any client of FourthWall, except to the extent such dispute arises solely due to Customer's breach of this Agreement (each of (a) - (c), a "Claim Against Customer") and will pay all settlements entered into and damages awarded against Customer as a result of a Claim Against Customer.

- *Customer Indemnification.* Customer will defend FourthWall and its respective officers, directors, employees, agents, affiliates, successors and permitted assigns against any claim, suit, action or proceeding brought by a third party: (a) alleging that any information or materials provided by Customer (including Customer Materials), or FourthWall's receipt or use thereof, are illegal, offensive, obscene, defamatory, libelous, false, or otherwise violates the rights of any third party, including privacy rights, intellectual property rights against infringement or misappropriates any trade secret of a third party; (b) arising from Customer's failure to comply with Laws; or (c) arising from a dispute between Customer and any client of Customer, except to the extent such dispute arises solely due to FourthWall's breach of this Agreement (each of (a) - (c), a "Claim Against FourthWall") and will pay all settlements entered into and damages awarded against FourthWall as a result of a Claim Against FourthWall.

- *Indemnification Procedures.* Customer will immediately take control of the defense and investigation of the claim and will employ counsel reasonably acceptable to FourthWall to handle and defend the same, at Customer's sole cost and expense. Customer will not settle any Claim Against FourthWall without the FourthWall's prior written consent, which will not be unreasonably withheld or delayed. FourthWall will provide reasonable assistance in the defense of any Claim Against FourthWall.



➤ TERM AND TERMINATION.

- *Term.* This Agreement will commence on the date signed by Customer and will continue until terminated in accordance with this Agreement. The term of each Sales Order will be specified in the applicable Sales Order.
  - *Cancellation.* FourthWall agrees to process any reasonable cancellation or pause as promptly as reasonably feasible.
  - *Payment Due Upon Termination or Cancellation:* Upon such termination or cancellation, all outstanding amounts owed to FourthWall hereunder and not yet paid shall become due and payable in accordance with the applicable Sales Order.
  - *Termination for Breach.* Without prejudice to any other remedies and in addition to any other termination rights herein, this Agreement may be terminated by either party if the other party commits a material breach of this Agreement and such breach remains uncured 30 days after written notice of such breach is delivered to such other party, with a material breach including Customer's failure to pay, when due, any fees due to FourthWall.
- *Effect of Termination or Expiration.* The expiration (as distinct from the termination) of this Agreement will not terminate any Sales Order that is then in effect and not otherwise terminated and, the terms and conditions of this Agreement will continue in effect with respect to any such Sales Order until its expiration or termination. Subject to the preceding sentence, upon expiration or termination of this Agreement for any reason: (a) all Sales Orders hereunder will terminate, and all rights and licenses granted by FourthWall hereunder to Customer will immediately cease; and (b) Customer will immediately cease use of any Services and, within thirty (30) days after termination or expiration of this Agreement, return to FourthWall or, at FourthWall's written request destroy, all FourthWall Confidential Information in Customer's possession or control.

➤ GENERAL.

- *Governing Law.* These terms and your use of the website shall be governed by the laws of the state of Georgia, without regard to principles of conflict of laws. Exclusive venue for any action arising out of or in connection with this agreement shall be in Atlanta, Georgia. The parties each hereby consent to the jurisdiction and venue in Atlanta, Georgia, and waive any objections to such jurisdiction and venue.
- *Delay in Performance.* If FourthWall's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, FourthWall shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay, and FourthWall's obligation to perform will be extended by the same number of days as Customer's contingent action is delayed.
- *Conflicting Terms in Customer Sales Orders.* Notwithstanding the content of any Customer purchase order or any other document or record generated by Customer (other than an executed FourthWall Sales Order), whether in writing or electronic, relating to the subject



matter of this Agreement, the terms of this Agreement will govern and any conflicting, inconsistent, or additional terms contained in such documents will be null and void.

- *Notice.* All communications required or otherwise provided under this Agreement will be in writing and will be deemed given when delivered (a) by hand, (b) by registered or certified mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service; to the address set forth for the applicable party on the first page of this Agreement, as may be amended by the party by written notice to the other party.

- *Assignment.* Neither party may assign, transfer or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed; provided that upon prior written notice to the other party, either party may assign this Agreement, in whole, to a successor of all or substantially all of the assets of that party through merger, reorganization, consolidation or acquisition. If a party makes any attempted assignment, transfer or other conveyance in violation of the foregoing, the attempted assignment, transfer, or other conveyance will be null and void.

- *Interpretation.* For purposes of this Agreement, (a) the words "include," "includes" and "including" will be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same may not apply a presumption that the terms of this Agreement will be more strictly construed against one party than against another.

- *Severability.* In case any one or more of the provisions of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

- *Entire Agreement.* This Agreement, together with each FourthWall Sales Order, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto.

- *Publicity.* Customer agrees to serve as a customer reference for FourthWall. Additionally, Customer shall permit FourthWall to feature Customer in a press release upon execution of this Agreement and shall permit FourthWall to feature Customer in marketing materials following the implementation of the Hosted Services. FourthWall and Customer agree to collaborate on public announcements and marketing materials, and shall refrain from issuance or distribution of marketing materials without first obtaining the prior written consent of the other party, which shall not be unreasonably withheld.

- *Amendment; Waiver.* This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving.

- *Force Majeure.* Neither party will be liable for delay or failure in performing any of its obligations (other than payment obligations) hereunder due to causes beyond its reasonable





control, including an act of nature, war, natural disaster, governmental regulations or orders, epidemics or pandemics, terrorism, communication or utility failures or casualties or the failures or acts of third parties.

- *Equitable Relief.* Each party acknowledges that a breach by a party of Section Non-Disclosure and Confidentiality may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

- *No Third-Party Beneficiaries.* This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and, except as expressly set forth in Section 9 (Indemnification), nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

- *Relationship of Parties.* Nothing in this Agreement will constitute or be deemed to constitute a partnership between the parties hereto or constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party will have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

- *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

- **DEFINITIONS.** Capitalized terms used but not defined elsewhere in this Agreement have the meanings set forth below.

- “Agreement” means these terms of service, all FourthWall Sales Orders, and all exhibits or attachments in any of the foregoing.

- “Customer” means the customer entity executing the FourthWall Sales Order.

- “Customer Materials” means, any data, lists or other materials provided by Customer to FourthWall to perform the Services.

- “FourthWall” means the FourthWall entity executing the FourthWall Sales Order, or if no entity is set forth, FourthWall Media, Inc., a Delaware company.





- “FourthWall Sales Order” means an order form specifying the Service(s) to be provided hereunder that is executed by the parties, including any addenda and supplements thereto.
- “Laws” means any and all applicable laws, rules, regulations, court orders or industry self-regulatory guidelines.
- “Reports” means any reports or other deliverables containing Data that may be provided by FourthWall to Customer.
- “Services” means any of the services that are described in a FourthWall Sales Order and described in FourthWall website: *www.fourthwall.tv/products...* **“Our Products”**.