

**ICA Reference No. A**

This Agreement (“ICA”) is effective as of the earlier of the first execution of this ICA and the work initiation of the first CWS (defined below), by and between Fluid, Inc. (“Fluid”) with a principal place of business at 222 Sutter Street, Eighth FL, San Francisco, CA 94108 and the Contractor, and its successors and assigns. The parties agree as follows:

**1 Definitions**

- “Contractor Work Scope” means a document, attached hereto as an Exhibit, which identifies the project deliverables and other terms and conditions of the work product produced by the Contractor for Fluid.
- “Work Product” shall mean the deliverables set forth in the Contractor Work Scope attached hereto as an Exhibit (The Contractor Work Scope, as amended from time to time by the parties, referred to as the “CWS”).
- “Proprietary Information” or “Confidential Information” shall mean any information disclosed by a party to the other party in connection with this Agreement which is disclosed in writing, orally or by inspection and is identified as “Confidential” or “Proprietary” or which the other party has reason to believe is treated as confidential by the party including but not limited to all code, inventions, algorithms, product/component designs, know-how and ideas and all other business, technical and financial information. Proprietary Information” shall also mean any Proprietary or Confidential Information relating not only to Fluid or the Contractor, but also for any past, current, or prospective Fluid client that is disclosed by Fluid to the Contractor.

2 **Services:** The Contractor agrees to perform the services and to deliver the Work Product described in the attached CWS. The parties acknowledge that the CWS is an initial document subject to further refinement regarding scope and timing of services.

3 **Changes:** If Fluid requests a material change or modification to the project scope, the Contractor will reasonably and in good faith consider and accommodate the proposed change. The Contractor agrees to accept any reasonable change proposed by Fluid where Fluid, upon prior notification by the Contractor to Fluid of any additional expense, agrees to bear that extra expense and pay for the specific additional work required by such change as outlined in section 5. No changes will be made to the Work Product without Fluid’s prior specific written approval.

4 **Acceptance:** When the Contractor believes it has appropriately completed a Deliverable (as defined in the Contractor Work Scope), the Contractor will deliver it to Fluid. Fluid will accept or reject the Deliverable within the number of working days specified in the attached Exhibit after delivery. Failure to give notice of acceptance or rejection within that period will constitute acceptance. Fluid may reject the Deliverable only if the Deliverable fails to meet the requirements stated in the CWS or if it is otherwise reasonably unacceptable. If Fluid rejects the Deliverable, the Contractor will correct the failures specified in the rejection notice within 15 days of the rejection notice. When it believes that it has made the necessary corrections, the Contractor will again deliver the Deliverable to Fluid and the acceptance/rejection/correction provisions above shall be reapplied until the Deliverable is accepted by Fluid; provided, however, that upon the third or any subsequent rejection, the Contractor or Fluid may terminate this Agreement by 15 days notice unless the Deliverable is accepted during the notice period.

**5 Payment Terms and Procedures.**

The following will apply unless specified otherwise in a Contract Work Scope: Contractor shall invoice twice monthly: once for the 1st – 15th of the month and again for the 16th – 31st. Each payment will be made in U.S. dollars in and from the United States and will be delivered no later than sixty (60) days from the date of receipt. No payment will be made unless in accordance with the procedures outlined herein.

Each invoice from Contractor to Fluid will contain for the following information:

- Contractor name and mailing address
- Tax ID number (if the Contractor is not incorporated, social security number)
- Specific Fluid Contract ID
- Date of Invoice
- Description and dates of services

- 6 Reporting Time:** Contractor agrees to report hours worked under any active Contractor Work Scope as requested by Fluid including reporting time electronically to Fluid's time tracking software. When requested Time reports are due each Monday before Noon.
- 7 Time of Performance:** Time is of the essence. The Contractor agrees that it shall regularly and diligently perform the work according to the schedule set forth in the Contractor Work Scope. The Contractor further agrees that they will resolve key issues in a timely manner.
- 8 Ownership Rights and License:** As between the parties, Contractor hereby assigns to Fluid all rights, title and interest, in and to the Deliverables including all intellectual property rights arising from performance of this Agreement. All documents, drawings, files, models and data prepared by the Contractor under this Agreement shall be considered the property of Fluid upon payment for services performed by the Contractor. Said documents and materials shall be delivered to Fluid by the Contractor at the completion or termination of the project.
- 9 Further Assurances:** The Contractor shall, and shall cause its employees and agents to, sign, execute and acknowledge or cause to be signed executed and acknowledged any and all documents and perform such acts as may be necessary for the purposes of perfecting the assignments described in the "Ownership Rights and License" section and obtaining, enforcing and defending the rights performed thereto.
- 10 Termination:** Fluid reserves the right to terminate this Agreement at any time by written notice to the Contractor whether or not the Contractor is in default. Upon receipt of a termination notice, the Contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver, or otherwise make available to Fluid, all data, specifications, drawings, reports, drawings, files, summaries, and such other information and materials as may have been accumulated by the Contractor in performing services authorized hereunder, whether completed or in progress. If this Agreement is terminated in whole or in part by Fluid for reasons of default by Contractor, an equitable adjustment in compensation shall be made, but (1) no amount shall be allowed for unperformed services, and (2) any payment due to the Contractor at the time of termination may be adjusted to the extent of any additional costs to Fluid occasioned by the Contractor's default. If termination is effected by the Contractor, without default, an equitable adjustment in compensation shall be made by agreement between the Contractor and Fluid. If either party should materially breach a material provision of this Agreement, the other party may terminate this Agreement upon 30 days written notice, or 15 days in the event of Fluid's failure to make a payment, unless the breach is cured within this notice period. Any accrued rights to payment and any remedies for breach of this Agreement shall survive termination of this Agreement pursuant to this "Termination" section. This Agreement will remain in effect until terminated in accordance with the express terms of this Agreement.
- 11 Warranties and Disclaimer:** Except as listed in the Contractor Work Scope, the Contractor represents and warrants to Fluid that: (i) the Contractor has not assigned, transferred, licensed, pledged or otherwise encumbered any Deliverables in a manner inconsistent with the terms of this Agreement or agreed to do so, (ii) the Contractor has full power and authority to enter into and perform this Agreement, (iii) the Contractor is not aware of any actual or potential violation, infringement or misappropriation of any third party's rights (or any claim or potential claim thereof) by the Deliverables, (iv) the Contractor is not aware of any questions or challenges (or any potential basis therefore) with respect to the validity of any claims of any existing patents or patent applications relating to the Deliverables, (v) neither the Contractor's entering nor performing this Agreement will violate any right of or breach any obligation to any third party under any agreement or arrangement between the Contractor and such third party, (vi) to the best of the Contractor's knowledge, no licenses, permissions or releases of third party rights are necessary for the Contractor's development of or Fluid's production or distribution of the Deliverables or other currently anticipated exercise of its rights hereunder in accordance with the terms of this Agreement, (vii) all copyrightable matter licensed or assigned hereunder has been or will be created after the date of this agreement

by persons who were employees or subcontractors of the Contractor at the time of creation and no third party has or will have “moral rights” or rights to terminate any assignment or license with respect thereto, and (viii) the Contractor has and will obtain agreements with its employees and contractors sufficient to allow it to provide Fluid with the assignments and licenses to intellectual property rights developed by them for the Contractor. The Contractor further warrants that its services performed hereunder will be performed in a good and workmanlike manner and that the deliverables will perform and function substantially in accordance with the specifications therefore. The Contractor further warrants that no pre-release or beta software will be used in the performance of the services, without prior written approval from Fluid. Fluid represents and warrants to the Contractor that: (i) Fluid has full power and authority to enter into and perform this Agreement and (ii) neither Fluid's entering nor performing this agreement will violate any right or breach any obligation to any third party under any agreement or arrangement between Fluid and such third party.

- 12 **Advertising:** The Contractor may not use the Fluid’s name for any promotional or marketing purposes or as a client reference except with Fluid’s prior written approval. Upon Fluid’s prior written approval, the Contractor may use portions of the work product for promotional purposes.
- 13 **Confidentiality and Proprietary Information:** Each party shall treat as confidential all Proprietary Information received from the other party, shall not use such Confidential Information except as expressly permitted under this Agreement, and shall not disclose such Confidential Information to any third party without the other party’s prior written consent. Each party shall take reasonable measures to prevent the disclosure and unauthorized use of Confidential Information of the other party. This obligation includes not only information that Contractor receives concerning Fluid, but also any information that Contractor receives regarding any of Fluid’s past, current, or prospective clients. Notwithstanding the above, the restrictions of this “Confidentiality and Proprietary Information” section shall not apply to information that: (i) was independently developed by the receiving party without any use of the Confidential Information of the other party and by employees or other agents of (or independent contractors hired by) the receiving party who have not been exposed to the Confidential Information; (ii) becomes known to the receiving party, without restriction, from a third party without breach of an obligation of confidentiality and who had a right to disclose it; (iii) was in the public domain at the time it was disclosed or becomes in the public domain through no act or omission of the receiving party; or (iv) was rightfully known to the receiving party, without restriction, at the time of disclosure. Contractor acknowledges that all code, inventions, algorithms, product/component designs, know-how and ideas and all other business, technical and financial information it obtains from Fluid is the confidential property of Fluid. Notwithstanding the foregoing, all Proprietary Information developed by or for Contractor and designated as owned by or assigned Fluid in connection with this Agreement shall be deemed Proprietary Information of Fluid.
- 14 **Court Order.** In the event a party is required to disclose Proprietary Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, such party shall provide notice as soon as is reasonably practicable to the disclosing party and shall provide reasonable assistance to the disclosing party to obtain a protective order or otherwise prevent public disclosure of such Proprietary Information and such Proprietary Information shall only lose its confidentiality protection for purposes of such legal disclosure. Except as expressly and unambiguously allowed herein, the Contractor will hold in confidence and not use or disclose any Proprietary Information and shall similarly bind its employees in writing.
- 15 **Indemnity:** The Contractor will indemnify and hold harmless Fluid, its shareholders, officers, employees and agents against all liability, damages, fees and costs including reasonable attorneys' fees, and losses arising out of, any claim, suit or proceeding brought against Fluid arising from the death of or injury to any person, from damage to or destruction of property, any claim of infringement of any patent, copyright or other proprietary right of any third party relating to the any Deliverable and/or any breach by the Contractor, its agents, or its employees of its representations, warranties and covenants contained in this Agreement.
- 16 **Limited Liability:** EXCEPT FOR A BREACH OF THE NON-DISCLOSURE AGREEMENT BETWEEN Contractor AND Fluid SET FORTH IN THE “Confidentiality and Proprietary information” SECTION AND THE PARTIES’ INDEMNIFICATION OBLIGATIONS, NEITHER PARTY SHALL BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR ANY LOST PROFITS, OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

- 17 **Relationship of the Parties:** It is understood that Contractor is an independent contractor in the performance of this Agreement and not an employee of Fluid. Contractor shall furnish all labor, materials, equipment, supervision and insurance needed to provide the Services. Nothing contained herein shall be construed to imply an employment, joint venture or principal and agent relationship between the parties, and neither party shall have any right, power or authority to create any obligations, express or implied, on behalf of the other. Contractor shall not be entitled to participate in any plans, benefits or distributions, intended for Fluid employees. Contractor agrees that Fluid will make no deductions from any compensation paid to Contractor for, and Contractor shall have full and exclusive liability for, the payment of any taxes and/or contributions for unemployment insurance, workers' compensation or any other employment-related costs or obligations, related to the provision of the Services. The Contractor acknowledges and affirms that carries adequate commercial and business insurance coverage. . The Contractor shall obtain and maintain a broad form Commercial General Liability Insurance policy providing for coverage of at least \$USD 1,000,000 for each occurrence. Fluid shall not provide any insurance coverage of any kind for Contractor, Contractor's employees, or contract personnel.
- 18 **Assignment:** Neither this Agreement nor any rights or duties hereunder may be assigned or delegated to any other person or entity by Contractor without the express written consent of Fluid. Any such purported assignment or subcontract shall be void.
- 19 **Dispute Resolution:** Any dispute, controversy or claim arising out of or relating to this Agreement or to a breach thereof, including its interpretation, performance or termination, shall be finally resolved by arbitration. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association, which shall administer the arbitration and act as appointing authority. The arbitration, including the rendering of the award, shall take place in San Francisco. For the purposes of this arbitration, the provisions of this Agreement and all rights and obligations thereunder shall be governed and construed in accordance with the laws of the State of California. The decision of the arbitrators shall be binding upon the parties hereto, and the expense of the arbitration (including without limitation the award of attorneys' fees to the prevailing party) shall be paid as the arbitrators determine. The decision of the arbitrators shall be executory, and judgment thereon may be entered by any court of competent jurisdiction. Notwithstanding anything contained in this "Dispute Resolution" section, each party shall have the right to institute judicial proceedings against the other party or anyone acting by, through or under such other party in order to enforce the instituting party's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.
- 20 **Notices.** All notices, requests, demands, waivers and other communications required or permitted to be given under this Master Agreement shall be in writing (with a copy to Fluid via email at the email address set forth below) and shall be deemed to have been duly given if delivered personally, via overnight courier, by confirmed facsimile transmission or mailed, certified or registered mail, postage prepaid, return receipt requested to (i) the address(es) set forth on the signature pages hereto if sent to Customer and (ii) the address (and email address for the copy) set forth below if sent to Fluid. Such notice will be deemed to have been given as of the date the written notice was delivered, or three (3) days after the written notice was mailed or sent, whichever is earlier.

Fluid, Inc.  
Office of the CEO  
222 Sutter Street, 8th Floor  
San Francisco, CA 94108  
[legalnotice@fluid.com](mailto:legalnotice@fluid.com)

21 **Miscellaneous:**

- 21.1 The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
- 21.2 No changes or modifications or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties.
- 21.3 In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

- 21.4 This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to the conflicts of laws provisions thereof. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys fees. Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
- 21.5 Except as otherwise expressly stated in this Agreement, the rights and remedies of a party set forth herein with respect to failure of the other to comply with the terms of this Agreement (including, without limitation, rights of full termination of this Agreement) are not exclusive, the exercise thereof shall not constitute an election of remedies and the aggrieved party shall in all events be entitled to seek whatever additional remedies may be available in law or in equity.
- 21.6 No liability or loss of rights hereunder shall result to either party from delay or failure in performance (other than payment) caused by force majeure, that is, circumstances beyond the reasonable control of the party affected thereby, including, without limitation, acts of God, fire, flood, war, government action, compliance with laws or regulations (including, without limitation, those related to infringement), strikes, lockouts or other serious labor disputes, or shortage of or inability to obtain material or equipment.
- 21.7 Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement

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