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Fluid, Inc.    Master Services Agreement

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This Master Services Agreement ("Master Agreement") is made by and between Fluid, Inc. ("Fluid") and the customer identified below ("Customer"). This Master Agreement incorporates the attached General Services Terms and Conditions and the following attachments and documents, which are incorporated herein by reference, which Customer has read and by which Customer agrees to be bound:

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| The attached Fluid Professional Services Terms and Conditions |
| The attached Fluid Subscription Services Terms and Conditions |

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## General Services Terms and Conditions

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These General Services Terms and Conditions (i) are part of the Master Agreement and incorporated therein by reference as though set forth in full, (ii) apply to all attachments to this Master Agreement and documents incorporated therein by reference and (iii) apply to each Fluid standard order form executed by both Customer and Fluid that incorporates this Master Agreement by reference (each, an "Order Form").

### 1. CONFIDENTIALITY.

- a) Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Notwithstanding the foregoing, nothing will be considered "Proprietary Information" of the Disclosing Party unless either it is or was disclosed in tangible or written form and is conspicuously marked "Confidential", "Proprietary" or the like. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, (ii) not to divulge to any third person any such Proprietary Information, and (iii) not to use the Proprietary Information except as necessary to provide or make use of Fluid's services.
  
- b) The Disclosing Party agrees that Section 1a shall not apply with respect to any information after five years following the disclosure thereof. The Receiving Party shall not be obligated under Section 1a with respect to information the Receiving Party can document: (i) is or has become readily publicly available without restriction through no fault of the Receiving Party or its employees or agents; or (ii) is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or (iii) was rightfully in the possession of the Receiving Party without restriction prior to its disclosure by the other party; or (iv) was independently developed by employees or consultants of the Receiving Party without access to such Proprietary Information. Furthermore, the Receiving Party may disclose Proprietary Information to the extent required by law, provided the Receiving Party uses reasonable efforts to give the Disclosing Party sufficient notice of such required disclosure to allow the Disclosing Party a reasonable opportunity to object to and to take legal action to prevent such disclosure. The terms and conditions, but not the existence, of this Master Agreement, in whole or part, is Proprietary Information; provided, however, that this Master Agreement may be disclosed as necessary in connection with a financing or change of control transaction.
  
- c) Except as otherwise authorized or required in furtherance of the purposes of this Master Agreement, promptly upon a request by the Disclosing Party at any time the Receiving Party will destroy or return to the Disclosing Party all Proprietary Information of the Disclosing Party and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof.
  
- d) Each party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its confidentiality obligations hereunder, which breach may result in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the

Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

## 2. TERM & TERMINATION.

- a) This Master Agreement commences on the Effective Date and will continue unless terminated in accordance with this Section 2a. Either party can terminate this Master Agreement for any or no reason by providing the other party thirty (30) days written notice at any point when Fluid is not then-obligated to provide and Customer is not then-entitled to receive any services from Fluid.
- b) All sections of this Master Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, indemnification and confidentiality obligations, warranty disclaimers, and limitations of liability. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

3. WARRANTY. FLUID'S SERVICES ARE PROVIDED "AS IS". FLUID DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING FLUID'S OWN SERVICES AS WELL AS CUSTOMER'S ECOMMERCE SOFTWARE, SERVICES AND PLATFORMS, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FLUID DOES NOT WARRANT THAT ITS SERVICES OR CUSTOMER'S ECOMMERCE SOFTWARE, SERVICES AND PLATFORMS WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

4. LIMITATION OF LIABILITY. EXCEPT FOR A BREACH OF SECTION 1 OR BODILY INJURY OF A PERSON, FLUID AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND PROPERTY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS MASTER AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLUID'S REASONABLE CONTROL, EVEN IF FLUID HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (D) FOR ANY MATTER CAUSED BY OR ARISING FROM CUSTOMER'S ECOMMERCE SOFTWARE, SERVICES AND PLATFORMS; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO FLUID UNDER THIS MASTER AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

5. U.S. GOVERNMENT MATTERS. Customer may not remove or export from the United States or allow the export or re-export of Fluid's services, or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, any software and documentation installed by Fluid on Customer's equipment are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer

software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Master Agreement and will be prohibited except to the extent expressly permitted by the terms of this Master Agreement.

## 6. MISCELLANEOUS.

- a) Assignment. This Master Agreement is not assignable, transferable or sublicensable by either party except with the other party’s prior written consent. Notwithstanding the foregoing, either party may transfer and assign this Master Agreement without consent to an entity with which it merges or that acquires all or substantially all of its assets; provided that Customer may not assign to a competitor of Fluid without Fluid’s prior written consent.
- b) Waivers. No failure to exercise or delay in exercising any right under this Master Agreement will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. Any waivers or amendments shall be effective only if made in writing.
- c) Severability. If any provision of this Master Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Master Agreement shall otherwise remain in full force and effect and enforceable.
- d) Headings. The Section headings used in this Master Agreement and the attachments are intended for convenience only and shall not be deemed to supersede or modify any provisions.
- e) 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, 8<sup>th</sup> Floor  
San Francisco, CA 94108  
[legalnotice@fluid.com](mailto:legalnotice@fluid.com)

- f) Choice of Law. This Master Agreement shall be deemed to have been made in and shall be construed pursuant to the laws of the State of California without regard to conflicts of laws provisions thereof. This Master Agreement will not be governed or interpreted in any way by

referring to any law based on the Uniform Computer Information Transactions Act, even if that law is adopted in California. If Customer is outside of the United States, the parties agree that rights and obligations of the parties under this Master Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods.

- g) **Dispute Resolution.** Any dispute or controversy arising out of or relating to this Master Agreement shall be settled by final and binding arbitration in San Francisco, California, by a single neutral arbitrator mutually agreed upon by the parties, or in the event the parties are unable to agree within fifteen (15) days following notice of arbitration, by an arbitrator appointed by J•A•M•S/ENDISPUTE ("JAMS") in accordance with the rules and regulations of JAMS, or by any other body mutually agreed upon by the parties. Except as otherwise set forth herein, such arbitration shall be conducted in accordance with the then-existing rules (the "Rules") of JAMS and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; provided, however, that the law applicable to any such controversy shall be the law of California, regardless of its or any jurisdiction's choice of law principle. By entering into this provision, it is the parties intention to expedite, and limit the costs involved in, resolution of any future dispute, and therefore pre-hearing discovery shall be limited to production of key documents and, if appropriate, subpoena of not more than three (3) key witnesses, as determined by the arbitrator. In any action or proceeding to enforce rights under this Master Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
- h) **Force Majeure.** Non-performance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, earthquake, government acts or orders or restrictions, failure of supplier, or any other reason where failure to perform is beyond the reasonable control of and not caused by the negligence of the non-performing party.
- i) **Independent Contractors.** Fluid and Customer are independent contractors and not partners, joint ventures or otherwise affiliated and neither has any right or authority to bind the other in any way. Each party shall make no representations to the contrary to any third party.
- j) **Counterparts.** The parties agree that this Master Agreement may be signed by manual or facsimile signatures and in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- k) **Entire Agreement.** This Master Agreement constitutes the complete agreement between the parties concerning the subject matter hereof, and supersedes all prior or contemporaneous agreements or representations, written or oral. No other act, document, usage or custom shall be deemed to amend or modify this Master Agreement, including, but not limited to, the terms in any Customer purchase order or other ordering document.
- l) **Publicity.** No press release, publication or public announcement related to this Master Agreement shall be issued or made without the prior written approval of both parties, which may not be unreasonably withheld or delayed, provided, however that Fluid may issue a press release naming Customer as a Customer upon the launch of the services provided hereby. Subject to Customer's prior written approval of each use, which may not be unreasonably withheld or delayed, Fluid may use Customer's name and logo in Fluid's Customer listings and may place Customer's name and logo on Fluid's website and in collateral marketing materials

relating to Fluid's services. Customer hereby grants Fluid a limited license to use Customer's trademarks designated by Customer for such uses, subject to any Customer trademark/logo usage guidelines provided by Customer to Fluid.

EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS MASTER 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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Fluid, Inc. Professional Services Terms and Conditions

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These Professional Services Terms and Conditions shall govern the provision by Fluid of certain professional services described in one or more Order Forms and any statement(s) of work governing such services that are attached to and referenced by an Order Form (each a "Statement of Work"). These Professional Services Terms and Conditions and any Statement of Work are part of and shall be subject to the Master Agreement. Except as explicitly set forth herein, all of the terms, conditions and defined terms of the Master Agreement remain unchanged and apply with equal force and effect to these Professional Services Terms and Conditions and any Statement of Work. In the event of any conflict between these Professional Services Terms and Conditions or any Statement of Work, on the one hand, and the Master Agreement, on the other hand, these Professional Services Terms and Conditions or the Statement of Work will control. For the avoidance of doubt, if there are terms and conditions in the Master Agreement regarding subjects on which these Professional Services Terms and Conditions or any Statement of Work are silent, such silence will not constitute a conflict and the terms and conditions in the Master Agreement will control.

1. DEFINITIONS.

- a) "Deliverables" mean any and all Work Product that Fluid delivers to Customer as part of the Professional Services.
- b) "Work Product" means any software programs or tools, utilities, technology, processes, inventions, ideas, concepts, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Fluid or its personnel in connection with performing Professional Services.
- c) "Customer Property" shall mean: (i) all customer data and information; (ii) materials, work product, and content provided to Fluid by Customer or a third-party vendor (excluding Fluid) of Customer on behalf of Customer in connection with the performance of the Professional Services under the Master Agreement; (iii) Customer's name, logo(s), trademarks, service marks, trade dress and branding; and (iv) any intellectual property anywhere in the world relating to any of the foregoing.
- d) "Order Form" shall mean a Fluid standard order form executed by both Customer and Fluid that incorporates the Master Agreement by reference.
- e) "Professional Services" means any professional services Fluid is to provide to Customer pursuant to an Order Form. To avoid any doubt, Professional Services are not Pass Through Services (unless identified as such in a Statement of Work) and do not include any of Fluid's subscription services.
- f) "Customer-Specific Deliverables" means those Deliverables which consist of content, creative assets and designs, strategic plans and recommendations unique and specific to Customer, or ornamental and/or non-functional elements unique and specific to Customer, including but not limited to multimedia content, wireframes, layouts, mood boards, web site designs, logo treatments, color schemes, look-and-feel and graphic identity elements, web and social media copy and other text, and other elements that would be protected as Customer's trademarks, service marks, trade dress.

g) "Non-Specific Deliverables" means all of the Deliverables other than the Customer-Specific Deliverables.

## 2. RIGHTS AND RESTRICTIONS.

- a) Customer represents, covenants, and warrants that Customer will use any deliverables Fluid delivers as part of the Professional Services only in compliance with all applicable laws (including but not limited to policies and laws related to privacy, intellectual property, consumer and child protection, obscenity and defamation). Customer hereby agrees to indemnify and hold harmless Fluid against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of such deliverables.
- b) Customer shall retain all rights, title and interest, in and to the Customer Property. Fluid shall return to Customer any and all materials provided to Fluid by the Customer, including, without limitation, the Customer Property. Customer grants Fluid a limited license to use the Customer Property solely for the purposes of providing the Professional Services.

## 3. SERVICES.

- a) Subject to the terms and conditions described herein, Fluid will use reasonable commercial efforts to provide the Professional Services in material conformance with the specifications and schedule specified in any Statement of Work that describing such Professional Services. The addition of requirements not outlined in any Statement of Work or other changes in requirements require evaluation and are treated as new projects, with separate pricing, quotes, and charges.
- b) Customer understands that the Deliverable(s) are intended to operate with certain Customer technical data, computer facilities, files, documentation and other resources requested by Fluid for the performance of the Professional Services ("Customer Technology") and that Fluid's performance is dependent in part on the Customer's actions in providing the Customer Technology in a timely manner. Accordingly, the Customer will be responsible for and assumes the risk of any problems and delays resulting from the Customer Technology. Any dates or time periods relevant to Fluid's performance will be extended appropriately and equitably to reflect any delays due to the Customer if such delays affect Fluid's ability to timely perform the Customer's tasks specified in a Statement of Work describing the relevant Professional Services. Customer hereby grants Fluid a limited license to use all Customer Technology for the purposes of providing the Services.
- c) Fluid shall determine the time, place, methods, details and means of performing the Professional Services. Customer agrees to furnish access to any facilities, personnel and equipment reasonably necessary to facilitate Fluid's performance of the Professional Services, but, except as otherwise provided in a particular Statement of Work, Fluid shall be responsible to provide the tools, know-how and key individuals used in the project.

## 4. PROFESSIONAL SERVICES FEES.



- a) Unless specified otherwise in a Statement of Work, Customer will pay to Fluid the Professional Services Fees, actual out-of-pocket expenses, reasonable travel, sales taxes and other incidental expenses provided, performed or incurred in accordance with the provision of Professional Services in accordance with Section 4b.
- b) Fluid shall submit invoices to the Customer every two weeks. Payments are due thirty (30) days following the invoice date ("Due Date"). Without limiting any other remedies, payments not received by the due date shall bear interest, measured from the date such payment was due until the date such payment is paid, at the lesser of 1.5% percent per month and the maximum rate permitted by law.

5. TERM/TERMINATION.

- a) The term for Professional Services, if applicable, will be set forth in the Statement of Work governing the provision of such Professional Services.
- b) If either party materially breaches a Statement of Work, the other party may terminate such Statement of Work by giving the breaching party thirty (30) days (or, solely in the case of non-payment ten (10) days) written notice of such breach, unless the breach is cured within the notice period. If any payment is overdue by more than ten (10) days Fluid may suspend work and reallocate staff to other projects. A breach of any terms and conditions governing Fluid's other services provided to Customer (if any) does not provide the non-breaching party the right to terminate Professional Services.
- c) Notwithstanding anything set forth herein, Customer shall have no rights to any Deliverables for which Customer has not paid in full. All sections which by their nature should survive termination of the Master Agreement or any part hereof will survive termination, including, without limitation, accrued rights to payment, Section 7 (except that Customer's license will terminate if termination results from a breach by Customer), and Section 8.

6. WARRANTY. Fluid represents warrants and agrees: to perform the Professional Services in a good and professional manner by employees of Fluid having a level of skill commensurate with the requirements of these terms and conditions and the applicable Statement of Work. Customer's sole remedy, and Fluid's entire liability, for breach of the foregoing will be to either bring the Professional Services substantially into conformance with the described warranty or, if such remedy is impractical, in Fluid's sole opinion, to refund any equitable portion of the fees paid for such Professional Services.

7. INTELLECTUAL PROPERTY. Subject to the terms and conditions of the Master Agreement and payment of all applicable fees, (i) Fluid grants to Customer a non-exclusive, transferable, royalty-free, perpetual, worldwide license to use the Non-Specific Deliverables and to make derivative works of the same for Customer's business purposes, but only for Customer's own benefit and (ii) Fluid assigns to Customer all rights, title and interest in and to the Customer-Specific Deliverables, including all rights under patent, trademark and copyright law, which shall reside solely in Customer (for the avoidance of doubt, such rights shall not include any rights to the Work Product other than the license granted herein). As between the parties, except as set forth herein, Fluid shall retain all rights, title and interest, in and to the Work Product (including but not limited to the Deliverables), including all intellectual property rights therein.

8. OTHER PROVISIONS.

- a) Non-Solicitation of Personnel. During the term of the Master Agreement, and for a period of one (1) year thereafter, Customer will not directly or indirectly solicit the employees of Fluid without the prior written consent of Fluid.
- b) General Skills & Knowledge. Notwithstanding anything to the contrary in the Master Agreement, Fluid shall not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of performing the Professional Services specified under the Master Agreement.
- c) Modifications and Master Agreement Precedence. Notwithstanding anything to the contrary in the Master Agreement, change requests for a Statement of Work may be effective if approved by a project lead as set forth in such Statement of Work via electronic mail.
- d) Access to Analytics Services for Aggregated Reporting. During the term of the Master Agreement, Customer will provide Fluid with access credentials for those analytics services which Customer uses to monitor the performance of the websites, services, media properties and/or applications in which the Deliverables are deployed or integrated, so that Fluid may collect data with respect to and report on , in an anonymous and aggregated basis, usage of and other measures of customer behavior patterns, ecommerce best practices and emerging trends.

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Fluid, Inc.    **Subscription Services Terms and Conditions**

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These Subscription Services Terms and Conditions shall govern the provision by Fluid of certain subscription services described in one or more Order Forms. These Subscription Services Terms and Conditions are part of and shall be subject to the Master Agreement. Except as explicitly set forth herein, all of the terms, conditions and defined terms of the Master Agreement remain unchanged and apply with equal force and effect to these Subscription Services Terms and Conditions. In the event of any conflict between these Subscription Services Terms and Conditions and the Master Agreement, these Subscription Services Terms and Conditions will control. For the avoidance of doubt, if there are terms and conditions in the Master Agreement regarding subjects on which these Subscription Services Terms and Conditions are silent, such silence will not constitute a conflict and the terms and conditions in the Master Agreement will control.

1. DEFINITIONS.

- a) "Fluid Experience" means Fluid's web-based authoring tools that assist internet retailers in the production and distribution of interactive web-based product displays and assortments.
- b) "Fluid Social" consists of two modules:
  - i) "Fluid Socialize" means Fluid's Web-based authoring tools that enable internet retailers to a) display interactive widgets on third-party websites subject to restrictions herein and b) offer social shopping functionality.
  - ii) "Fluid Fan Shop" means Fluid's Web-based authoring tools that enable internet retailers to create shoppable applications within their Facebook Fan Page.
- c) "Fluid Configure" means Fluid's web based authoring tools that assists internet retailers in managing and selling custom manufactured products.
- d) "Fluid Adapter" means a single interface to accept a single data feed that delivers information to Fluid's web-based tools.
- e) "Fluid Runtime Components" means the SWF, XML, Javascript, image files that retailers create with Fluid's Subscription Services and that can be used to render visual components and enable social shopping.
- f) "Customer Property" means: (i) all customer data and information; (ii) materials, work product, and content provided to Fluid by Customer or a third-party vendor (excluding Fluid) of Customer on behalf of Customer in connection with the performance of the Subscription Services; and (iii) any intellectual property anywhere in the world relating to any of the foregoing.
- g) "Subscription Services" means, collectively, any Fluid subscription service(s) to which Customer is entitled to receive access pursuant to an Order Form. To avoid any doubt, Subscription Services are not Pass Through Services.
- h) "Implementation Services" means Fluid's then-current standard services for the implementation of the Subscription Services ordered by Customer.

- i) "Software" means, collectively, (i) the source code, object code or underlying structure, ideas or algorithms of the Subscription Services; (ii) any software, documentation or data related to the Subscription Services or any modifications, derivations, or customizations made thereto; and (iii) Fluid's pre-existing developer stock technology related to the Subscription Services and any modifications, derivations, or customizations made thereto.

## 2. SERVICES AND SUPPORT.

- a) Subject to the terms and conditions of the Master Agreement, Fluid will use reasonable efforts to provide access to the Subscription Services during the Service Term (as defined below).
- b) Subject to the terms hereof, Fluid will use reasonable efforts to perform the Implementation Services commencing on the Work Initiation Date and concluding by the Estimated Completion Date indicated in the applicable Order Form.
- c) Subject to the terms hereof, Fluid will use reasonable efforts to provide Customer with support for the Subscription Services during the support hours via electronic mail or phone as indicated in any Order Form in accordance with Fluid's standard practice.

## 3. RESTRICTIONS AND RESPONSIBILITIES.

- a) Customer may only use the Subscription Services and the Fluid Runtime Components for the website domain(s) indicated in the Order Form under which such Subscription Services are purchased (the "Authorized Domain"); provided that, if Customer has purchased Fluid Social, Facebook.com and Twitter.com shall also be Authorized Domains.
- b) This is a contract for services only and, except as specifically set forth herein, the Software will be installed, accessed and maintained only by or for Fluid and no license is granted thereto. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Subscription Services, the Software or the Fluid Runtime Components; modify, translate, or create derivative works based on the Subscription Services, the Software or the Fluid Runtime Components; or copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Subscription Services, the Software or the Fluid Runtime Components; use the Subscription Services, the Software or the Fluid Runtime Components for timesharing or service bureau purposes or otherwise for the benefit of a third party.
- c) Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Subscription Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "Equipment"). Customer shall be responsible for ensuring that such Equipment is compatible with the Subscription Services (and, to the extent applicable, the Software). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

- d) Subject to the terms and conditions of the Master Agreement and these Subscription Services Terms and Conditions and payment of all applicable fees, Fluid grants to Customer a non-exclusive, non-transferable, royalty-free, limited, non-sublicensable, worldwide license to use the Fluid Runtime Components in order to display Customer's merchandise on the Authorized Domain(s) for the duration of the Service Term. Customer agrees and acknowledges that the Order Form and the Master Agreement limit the usage of the Fluid Runtime Components to particular websites and/or for a limited period of time. In order to enforce such limitations, the Fluid Runtime Components may contain a routine to verify compliance and notify Fluid in instances where Customer is not in compliance with the Master Agreement.
- e) Customer may only use the Subscription Services for demonstration purposes during a trial period. If Customer is using the Subscription Services during such trial period, Section 3d shall not apply and Customer shall have no license to the Fluid Runtime Components. Fluid reserves the right to stop the trial period at any time for any reason or no reason.
- f) Customer may not access the Subscription Services or the Software, or use the Fluid Runtime Components, if Customer is a direct competitor of Fluid, except with Fluid's prior written consent. In addition, Customer may not access the Subscription Services or the Software, or use the Fluid Runtime Components, for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.
- g) Customer represents, covenants, and warrants that Customer will use the Subscription Services, the Software and the Fluid Runtime Components only in compliance with all applicable laws (including but not limited to policies and laws related to privacy, intellectual property, consumer and child protection, obscenity and defamation). Customer hereby agrees to indemnify and hold harmless Fluid against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of the Subscription Services, the Software and the Fluid Runtime Components. Although Fluid has no obligation to monitor the content Customer submits through the Subscription Services or directly to Fluid (the "Customer Data") or Customer's use of the Subscription Services, the Software and the Fluid Runtime Components, Fluid may do so and may remove any such content or prohibit any use of the Subscription Services, the Software and the Fluid Runtime Components it believes may be (or alleged to be) in violation of the foregoing. Customer hereby grants to Fluid a non-exclusive, royalty-free, non-sublicensable, worldwide license to use the Customer Data as necessary for Fluid to provide the Subscription Services.
- h) Customer shall retain all rights, title and interest, in and to the Customer Property. Fluid shall return to Customer any and all materials provided to Fluid by the Customer, including, without limitation, the Customer Property. Except for Customer Property, Fluid owns all rights, title and interest, in and to the Subscription Services, the Software and the Fluid Runtime Components, including all intellectual property rights therein. Customer grants Fluid a limited license to use the Customer Property solely for the purposes of providing the Subscription Services.
- i) Notwithstanding anything to the contrary in the Master Agreement, Fluid may collect data with respect to and report on the aggregate usage of and other aggregate measures of the Subscription Services' performance.

#### 4. PAYMENT OF SUBSCRIPTION AND IMPLEMENTATION FEES.

- a) Customer will pay Fluid the then-applicable Annual Subscription Fees for the Subscription Services and the Implementation Services Fees which are set forth in the applicable Order Form. Fluid reserves the right to change the Annual Subscription Fees or applicable charges for the Subscription Services and to institute new charges and fees for the Subscription Services at the end of the initial Service Period (as defined in Section 5 Term and Termination) or then-current Renewal Period (as defined in Section 5 Term and Termination) upon thirty (30) days prior notice to Customer (which may be sent by email). All payment obligations are noncancelable and all amounts paid are nonrefundable.
- b) Fluid charges and collects in advance for the use of the Subscription Services. Fluid charges and collects for the Implementation Services as set forth in the schedule in the applicable Order Form. Fluid will invoice Customer for Annual Subscription Fees due, and each invoice is due and payable thirty (30) days following the invoice date, unless other payment terms are specified in the applicable Order Form. If Fluid has not received payment within five (5) days after the due date, interest shall accrue on past due amounts at the rate of one and one half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Customer shall be responsible for all taxes associated with Subscription Services and the Implementation Services other than U.S. taxes based on Fluid's net income.
- c) If Customer believes that Fluid has billed Customer incorrectly, Customer must contact Fluid no later than 60 days after payment due date in order to receive an adjustment or credit. Inquiries should be directed to Fluid's Customer Support department.

#### 5. TERM AND TERMINATION.

- a) Subject to earlier termination in accordance with the terms of this Section 5, the Subscription Services will continue for the duration of the Service Period specified in the applicable Order Form, and shall automatically renew for additional periods of the same duration as the Service Period or for one year if the Service Period is greater than one year (each, a "Renewal Period") (the Service Period and all Renewal Periods, the "Service Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.
- b) In addition to any other remedies it may have, either party may terminate the Subscription Services upon thirty (30) days' notice (or ten (10) days in the case of nonpayment), if the other party breaches any material term or condition governing the Subscription Services. Fluid reserves the right, in its discretion, to terminate only the specific Subscription Service related to the breach. Customer will pay in full for the Subscription Services up to and including the last day on which the Subscription Services are provided. Upon any termination, Fluid may, but is not obligated to, delete archived data. A breach of any terms and conditions governing Fluid's other services provided to Customer (if any) does not provide the non-breaching party the right to terminate Subscription Services. All sections which by their nature should survive termination of the Master Agreement or any part hereof will survive termination, including, without limitation, accrued rights to payment.

6. WARRANTY. Fluid shall use reasonable commercial efforts consistent with prevailing industry standards to maintain the Subscription Services. Subscription Services may be temporarily

unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Fluid or by third-party providers, or because of other causes beyond Fluid's reasonable control, but Fluid shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. Fluid does not make any warranty as to the results that may be obtained from use of the Subscription Services.