
Fluid, Inc. Service Level Terms and Conditions

These Service Level 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 Service Level Terms and Conditions. In the event of any conflict between these Service Level Terms and Conditions and the Master Agreement, these Service Level 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 Service Level Terms and Conditions are silent, such silence will not constitute a conflict and the terms and conditions in the Master Agreement will control.

01. DEFINITIONS.

- A) “Business Day” means Monday through Friday excluding Federal Bank holidays. Business Minutes and Business Hours are minutes and hours during a Business Day respectively.
- B) “Customer Website” means the internet domain where business is conducted directly between the Subscription Service(s) Customer and end consumers.
- C) “Downtime” means any period of time during Service Hours in which Customer is entitled to access but is unable to transmit or receive information from the Subscription Services due to a problem with the Subscription Services.
- D) “Monthly Service Hours” means the total of the Service Hours within the Service Month.
- E) “Problem” means a failure of the Subscription Service(s) to function properly.
- F) “Problem Report” means submission of request for support from customer via <http://support.fluidretail.com> or support@fluidretail.com detailing the problem being encountered and its impact on the customer’s use of the Subscription Services.
- G) “Problem Priority” shall have meaning as set forth below:
 - i) “Priority 1” means a condition whereby the Subscription Service(s) is unavailable in a post-launch production environment and prevents multiple end users of the Customer Website from conducting business and a workaround has not been implemented in such a way that the issue has been mitigated.
 - ii) “Priority 2” means a condition whereby a feature is not working or a substantial performance problem exists which causes the Subscription Service(s) to perform poorly, impacting multiple end users of the Customer Web Site.
 - iii) “Priority 3” means a condition whereby the Subscription Service(s) malfunctions but end user use of the Customer Web Site is not substantially impacted.
 - iv) “Priority 4” means a condition that causes little or no impact on the performance of the Subscription Service(s), but Customer requires assistance or advice on using the Subscription Service(s).
- H) “Required Service Level” shall mean a service level of 99.5% measured monthly.
- I) “Scheduled Downtime” means Downtime due to (i) upgrades of hardware or software, (ii) upgrades to increase capacity, (iii) daily backups and other daily processing, and (iv) other activity to maintain or improve the Subscription Services and supporting systems, for which

Customer has been given forty-eight (48) hours advance notice. Downtime will be scheduled during non-business hours whenever possible.

- J) "Service Hours" means 24 hours a day, seven days a week, excluding Scheduled Downtime.
- K) "Service Month" means the period beginning on the first business day of the calendar month and ending on the last business day of the calendar month.
- L) "Service Level" means a percentage calculated by subtracting the aggregate number of hours of Service Outage (or fraction thereof) from the Monthly Service Hours (each within a Service Month), and dividing the remainder by the Monthly Service Hours in such Service Month.
- M) "Service Outage" means any period of Downtime that has been reported to Fluid, is experienced by multiple Fluid customers during Service Hours, and is not related any of the following:
 - i) Any content or code update to the Customer Data performed or approved by Customer;
 - ii) Suspension of access to Subscription Service(s) for performance of illegal activities, spamming, or virus propagation by Customer;
 - iii) Virus, worm, Trojan horse, or other contaminating or destructive feature contained in Customer Data;
 - iv) Scheduled Downtime; or
 - v) Attacks including, but not limited to, denial of services, viruses and hacking that are due to Customer's policies, actions or negligence.
 - vi) Issues relating to the use of unsupported web browsers or web browser versions. A list supported web browser versions can be found at http://www.fluid.com/terms/sla_supported_platforms.html .

02. **AVAILABILITY OF SERVICES.** Fluid will maintain a Service Level in its Subscription Service(s) equal to or greater than the Required Service Level.

03. **DETECTION OF SERVICE OUTAGE.** Fluid will make commercially reasonable efforts to resolve each Problem reported under the terms of the Agreement that is found by Fluid to be due to a defect or error in the Subscription Service(s). If the Problem reported by Customer is not due to a problem in the Subscription Service(s), Fluid will so notify Customer.

04. **RESPONSE TIME.** Fluid shall respond to the Problem Report according to the Response Times described in the sections below.

- A) Priority 1. Fluid will begin to investigate Priority 1 problems within thirty (30) Business Minutes of receiving the Problem Report.
- B) Priority 2. Fluid will begin to investigate Priority 2 problems within four (4) Business Hours of receiving the Problem Report.
- C) Priority 3. Fluid will begin to investigate Priority 3 problems within one (1) Business Day of receiving the Problem Report.

D) Priority 4. Fluid will begin to investigate Priority 4 problems within two (2) Business Days of receiving the Problem Report.

05. **TERM.** The Service Level Terms and Conditions are coterminous with the Subscription Services for which they are ordered.
06. **SERVICE CREDIT.** If the Service Level of a Subscription Service during a Service Month is less than the Required Service Level, then Fluid will credit Customer 1/30th of the prorated Annual Subscription Fees paid for such Subscription Service for the month in which such shortfall occurred (a "Service Credit") for each cumulative 8 hours of Service Outage beyond the number of hours that would yield the Required Service Level. Such Service Credits shall be applied only to the month following the month in which the Service Outage occurred; provided, however, that the Service Credits shall not exceed the total of pro-rated Annual Subscription Fees paid by Customer for the relevant Subscription Service for that month. The foregoing is Customer's exclusive remedy if the Service Level of a Subscription Service is less than the Required Service Level.