



## NUI Media

# MASTER SERVICE AGREEMENT – SAAS TECHNOLOGY

---

This **TECHNOLOGY MASTER SERVICES AGREEMENT** (the “**Agreement**”, “**MSA**”, “**SaaS Technology MSA**”) is executed, as designated, referred, and signed by the NUI Media Contract (a.k.a., “**Contract**”, “**Work Order**”).

**1. DEFINITIONS.** Certain capitalized terms, not otherwise defined on the Cover Page, have the meanings set forth in this Section 1 or in the body of this Agreement.

**1.1 “Application Documentation”** means text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operations the Application, which materials are designed to facilitate access to the Application Services and are provided by NUI Media to Client in accordance with the terms of this Agreement.

**1.2 “Application Services”** will mean the services ordered by Client through a Work Order and provided by NUI Media by means of access to certain content and use of the features and functionality of software applications available and accessible within the NUI Media web sites, solely to the extent set forth and further described in, and as limited by, the Work Orders executed by the Parties.

**1.3 “Authorized User”** shall mean an individual employee of Client to whom Client has assigned an identification number for access to the Application Services for Client’s own business purposes.

**1.4 “Capacity”** means the amount of data storage or file size limits specified on a given Work Order. If no data storage or file size is specified on a Work Order, then the file sizes and data storage shall be those set forth in the documentation provided by NUI Media or otherwise specified by NUI Media in its standard policies.

**1.5 “Client Date Signed” or “Execution Date”** is the official activation date for this Agreement, as specified by the associated NUI Media Work Order, signed by both NUI Media and the Client.

**1.6 “Confidential Information”** will mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the foregoing, for purposes of this Agreement, the Application Documentation will be deemed Confidential Information of NUI Media and the Aggregate Data shall not be considered Confidential Information.

**1.7 “Client Content”** will mean the data, media and content provided by Client for use with the Application Services and accessed through the Application Services.

**1.8 “Parties”** refers to NUI Media and Client, or their respective successors and assignees.

**1.9 “Work Order”** shall mean a document signed by both Parties identifying the type of Application Services to be made available by NUI Media pursuant to this Agreement, substantially in the same form as Schedule A attached hereto. Each Work Order shall be agreed upon by the Parties as set forth in Section 2.1.

## **2. ORDERING; ACCESS AND USE.**

**2.1 Work Orders.** The Application Services to be provided by NUI Media under this Agreement will be set forth in one or more Work Orders executed by the Parties from time to time during the Term. The Parties shall negotiate and sign each Work Order separately. Each Work Order shall set out a description of the applicable Application Services, the costs associated with such Application Services, the period of time Client will have access to the ordered Application Services (the “**Access Term**”), the Capacity level for such Application Services, the schedule of payments for the performance of such Application Services, and any unique additional terms. Each Work Order shall be attached to this Agreement and incorporated in this Agreement by reference.

**2.2 Provision of Access to Authorized Users.** Subject to the terms and conditions contained in this Agreement, NUI Media will permit Client and its Authorized Users a non-exclusive, non-transferable right to access the features and functions of the Application Services during the Access Term identified in the applicable Work Order, solely for use by Authorized Users in accordance with the terms and conditions of this Agreement. On or as soon as reasonably practicable after the Effective Date, NUI Media shall provide to Client the necessary passwords, security protocols and policies and network links or connections (the “**Access Protocols**”) to allow Client to access to the Application Services. NUI Media shall also provide Client the Application Documentation to be used by Client in accessing and using the Application Services. Client acknowledges and agrees that, as between Client and NUI Media, Client shall be responsible for all acts and omissions of Authorized Users, and any act or omission by



such Authorized Users which, if undertaken by Client, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Client. Client shall undertake reasonable efforts to make all such Authorized Users aware of the provisions of this Agreement as applicable to such Authorized User's use of the Application Services, and shall cause Authorized Users to comply with such provisions.

**2.3 Provision of Capacity.** Subject to the terms and conditions contained in this Agreement, NUI Media agrees to provide Client the Capacity for the Application Services set forth in the applicable Work Order. In the event that Client exceeds the ordered Capacity, NUI Media shall use commercially reasonable efforts to provide such additional Capacity as may be required by Client. In the event NUI Media provides such additional Capacity, Client agrees to pay NUI Media for such additional Capacity provided by NUI Media in accordance with the terms of Section 5. Additionally, if and when the average banner file size of the impressions served by the Application Services exceeds the Avg. File Size Limit (e.g., banner size), as defined in the Work Order, a File Size Overage Fee (as defined in the Work Order) will be invoiced to the Client and due at the end of the Client's fiscal month. For example, if a Client has a Avg. File Size Limit of 30 KB, served 100,000,000 impressions during a given month with an average banner file size of 32 KB, the Client would pay a File Size Overage Fee of \$600.00, equal to 2 (KB overage) multiplied by 100,000,000 (impressions served) multiplied by the File Size Overage Fee Rate (per Work Order, \$0.000003), equal to \$600.00.

**2.4 Usage Restrictions.** Client will not (a) copy or duplicate the software used by NUI Media to provide the Application Services (the "**Application**"); (b) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Application is compiled or interpreted; (c) modify the Application Services or the Application documentation, or create any derivative product from any of the foregoing, except with the prior written consent of NUI Media; or (d) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Client's rights under Sections 2.1, except to a wholly-owned corporate affiliate, merger partner, or acquiror of the Client. Client will ensure that its use of the Application Services and the Application documentation and all Client Content complies with all applicable laws, statutes, regulations or rules. Client shall notify NUI Media immediately of any unauthorized use of any password or account or any other known or suspected breach of security. Client will only allow Authorized Users who have been assigned a unique user identification to access the Application Services.

**2.5 Retained Rights; Ownership.**

(a) Subject to the rights granted in this Agreement, Client retains all right, title and interest in and to the Client Content, and NUI Media acknowledges that it neither owns nor acquires any additional rights in and to the Client Content not expressly granted by this Agreement. Client is solely responsible for all Client Content. NUI Media further acknowledges that Client retains the right to use the Client Content for any purpose in Client's sole discretion. Subject to the foregoing, Client hereby grants to NUI Media a non-exclusive, non-transferable right and license to use the Client Content during the Term for the limited purposes of performing NUI Media's obligations under this Agreement.

(b) Subject to the rights granted in this Agreement, NUI Media retains all right, title and interest in and to the Application Services, any NUI Media content made available through the Application Services, and Client acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Client further acknowledges that NUI Media retains the right to use the foregoing for any purpose in NUI Media's sole discretion.

(c) Client represents and warrants that it has obtained all necessary rights, licenses, consents, waivers and permissions from advertisers, visitors, and others to allow NUI Media to store and deliver digital advertisements and otherwise operate the Application Services on Client's behalf and on behalf of its advertisers, and to use any data provided to or collected by NUI Media. Client further warrants that it will not collect any personally identifiable or sensitive information from any visitors to web sites served with Client's ads unless in full compliance with all applicable privacy and data collection laws, as well as the NUI Media Privacy Policy, located at <http://www.NUI Media.com/privacy-policy.php>, which is incorporated by reference herein.

**2.6 Data Retention.** Client acknowledges and understands that use of the Application Services will permit or require Client to provide certain of Client's data to NUI Media for purposes of processing or storage using the features and functions of the Application Services ("**Client Data**") utilized or enabled by the Client and modify the Client Data to create an aggregate, non-personally identifiable and **anonymized** version of the Client Data in order to provide the services to Client and others and add third party data to this modified Client Data (the "**Aggregate Data**"). During the term of this Agreement, NUI Media will make such Client Data available to Client through online access to the Application Services. All such Client Data shall be considered proprietary to Client, and NUI Media will not use such Client Data except as necessary to perform under this Agreement or as set forth in Section 6.2. Client acknowledges and agrees that, except as otherwise agreed between the Parties in an Addendum to this Agreement or in a separate written agreement, NUI Media will have no obligation to archive or back-up Client Data, nor will NUI Media have any



liability for any loss or corruption of Client Data, nor will NUI Media have any obligation under this Agreement to retain any Client Data after the expiration or termination of the Access Term.

**2.7 License to Usage Data.** Client acknowledges and agrees that NUI Media will need to use the Aggregate Data to provide certain advanced analytics and other services under the terms of this Agreement to Client and NUI Media's other clients. Therefore, Company hereby grants NUI Media the perpetual right to use, reproduce, modify, create derivative works, translate and otherwise commercially exploit the Aggregate Data (to the extent that Client has rights to the Aggregate Data) to provide the services to Client and to make NUI Media services available to other clients. NUI Media will only disclose Aggregate Data to third parties in aggregated form and/or anonymized in such a way as to ensure that the identity of the Client and end users cannot be determined.

### **3. ADDITIONAL NUI Media OBLIGATIONS.**

**3.1 Technical Support.** NUI Media provides certain limited support services as part of the Application Services. However, Client may request for NUI Media to provide additional technical support services related to Client's use of the Application Services. NUI Media agrees to provide such technical support services as are set forth in a Work Order. Until the Client has ordered technical support pursuant to a Work Order, NUI Media shall only provide the limited support it normally provides to its Clients generally as part of the Application Services.

**3.2 Training.** Client may request for NUI Media to provide training services related to Client's use of the Application Services. NUI Media agrees to provide such training services as are set forth in a Work Order. Until the Client has ordered training services pursuant to a Work Order, NUI Media shall have no obligation to provide training services to Client.

**3.3 Communication with Authorized Users.** As part of the provision of the Application Services, NUI Media may need to communicate with Authorized Users from time-to-time. Client hereby grants NUI Media the limited right to communicate with Authorized Users as may be necessary as part of the provision of the Application Services, in NUI Media's reasonable discretion.

#### **3.4 Maintenance And Agreed-Upon Downtime.**

**(a) Scheduled Maintenance.** NUI Media reserves a four (4) hour window from 12:01 a.m. until 4:00 a.m. Eastern Time every Wednesday morning for weekly maintenance, should the need for such maintenance arise. If it is determined during the window that the Scheduled Maintenance will run over the allotted 4-hour window, Customer will be notified immediately and receive regular updates until the maintenance is complete. During these schedule maintenance periods, the Services may be unavailable to Customer and Customer's Authorized Users. **(b)**

**Emergency Maintenance.** Occasionally NUI Media may need to perform emergency maintenance or upgrades. During performance of such emergency maintenance the Services will be unavailable to Customer and Customer's Authorized Users. Such occasions will be rare, and, except in extraordinary circumstances, NUI Media will notify Customer at least sixty (60) minutes prior to any emergency maintenance. Where practical, such emergency maintenance will be performed from 12:01 a.m. to 6:00 a.m. Eastern Time.

### **4. CLIENT OBLIGATIONS.**

**4.1 Authorized User Access to Services.** Subject to the terms and conditions herein, Client may permit any Authorized User to access and use the features and functions of the Application Services only through the Access Protocols. Client will ensure that any such Authorized User will be bound by a contractual, enforceable agreement, which agreement, will, by its terms, provide substantially the same or greater protections for NUI Media's Confidential Information, the Application Services, and the Application Documentation as are provided by the terms hereof.

**4.2 Client Assistance.** Client shall make available in a timely manner at no charge to NUI Media all content, graphic files, Client Content, Client Data or other information and resources of Client required by NUI Media for the performance of its obligations under this Agreement. Client shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such content, materials and information supplied by Client.

**4.3 Client Content.** Client and its Authorized Users shall have access to the Client Content and shall be responsible for all changes to and/or deletions of Client Content and the security of all passwords and other access protocols required in order to access the Application Services. Client hereby represents and warrants that it owns or otherwise has sufficient right to grant NUI Media access to and use the Client Content in accordance with the terms of this Agreement. Client will be solely responsible for the accuracy and completeness of the Client Content.

**4.4 Use of the Application Services.** Client will be solely responsible for (a) sending or storing material and/or Client Content containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (b) any act by any Authorized User, or other Client employee, contractor or agent that may



## NUI Media, Inc. Master Service Agreement – SAAS Technology (v.19)

interfere with or disrupt the integrity or performance of the Application Services or the data contained therein; or (c) any attempt by any Authorized User or other Client employee, contractor or agent to gain unauthorized access to the Application Services or its related systems or networks. Client shall indemnify NUI Media for all damages resulting from such Client responsibilities.

**4.5 Acceptable Use Policy.** Client agrees to abide by the terms and conditions contained in the NUI Media Acceptable Use Policy ("AUP") at all times. Client agrees that NUI Media may amend those terms and conditions at any time without prior notice. NUI Media agrees to maintain a link to the current AUP on the homepage of its corporate web site located at <http://www.nuimedia.com>. Notwithstanding the foregoing, in case of any conflict between the AUP and this Agreement, this Agreement shall govern.

**4.6 Digital Millennium Copyright Act.** To the extent the technology permits, NUI Media reserves the right to remove allegedly infringing trademarks and copyrighted material from the NUI Media System, pursuant to Section 202 of the Digital Millennium Copyright Act, Section 512 of the Copyright Act. Client agrees that NUI Media may amend procedures to respond to Digital Millennium Copyright Act ("DMCA") notices of infringement at any time without prior notice. NUI Media agrees to maintain a link to current DMCA procedures on the homepage of its corporate web site located at <http://www.nuimedia.com>.

**4.7 Mandatory Administrative Charges.** Client agrees to any reasonable charges, yet limited by Section 8.2, imposed by NUI Media on Client for actions taken by NUI Media to enforce and respond to DMCA notices related to Client and to enforce and respond to notices of violations of NUI Media's AUP and/or the AUP of its upstream transit providers by Client. With respect to this paragraph and the aforementioned DMCA procedures, Client will be notified of any DMCA or copyright violations and actions taken by NUI Media to remedy such violations, without incurring administrative charges. However, if Client exercises its rights under DMCA to provide a counter notification (as a respondent), then Client agrees to pay NUI Media administrative charges that will begin to accrue at the prevailing professional services rate on an actual time and materials basis, plus attorney fees (if applicable) until full resolution and/or settlement under the DMCA is reached with the complainant.

## 5. FEES AND EXPENSES; PAYMENTS.

**5.1 Fees.** In consideration for the access rights granted to Client and the Application Services performed by NUI Media under this Agreement, Client will pay to NUI Media, without offset or deduction, all fees required by a particular Work Order. Terms, calculations, and payments associated with the Application Services are monthly, recurring charges. Application Services fees are computed as the greater of the (a) non-creditable, non-refundable Minimum Subscription Fee, defined in the Work Order, due in advance on the monthly anniversary of the Actual Activation Date defined in the Work Order, or the (b) Usage Fee, calculated as (i) the cost-per-thousand rate ("CPM Rate") multiplied by (ii) the actual number of total advertising impressions served from the Client's Application Services during the fiscal month of the Client's contract term, divided by (iii) 1,000. If and when the Usage Fee (as defined in the Work Order) exceeds the Minimum Subscription Fee for a particular fiscal month, the excess of the Usage Fee over the Minimum Subscription Fee is invoiced and due at the end of the fiscal month, based on the day anniversary of the Actual Activation Date. Client acknowledges and agrees that for all Access Terms that are on a month-to-month basis, NUI Media will invoice Client on the Billing Date (as defined on the Work Order) set forth on the Work Order of the applicable month for that month's access. NUI Media will either charge Client as set forth in Section 5.3 or submit invoices to Client with respect to such fees according to the relevant payment schedules indicated on the applicable Work Order, and each invoiced amount will be due and payable upon receipt of the invoice by Client, less any disputed amounts as defined by Section 5.5. Notwithstanding the foregoing, any set-up fees listed on a particular Work Order, shall be due and payable upon execution of the applicable Work Order.

**5.2 Additional Capacity Fees.** In the event NUI Media provides Client with additional Capacity as contemplated by Section 2.3, NUI Media may invoice Client NUI Media's fees as defined in the Work Order(s) for such additional Capacity for the month for which such additional Capacity was provided and Client shall pay such amounts within thirty (30) days after receipt of such an invoice.

**5.3 Taxes.** Client will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on NUI Media's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services, provided that such charges are appropriately included in NUI Media's invoice per this Agreement and any related Work Orders. Client will make all required payments to NUI Media free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to NUI Media will be Client's sole responsibility, and Client will, upon NUI Media's request, provide NUI Media with official receipts issued by the appropriate taxing authorities, or such other evidence as NUI Media may reasonably request, to establish that such taxes have been paid.





**5.4 Late Payments; Interest; Payment in US Dollars.** Any portion of any amount payable hereunder that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. All payments to be made under this Agreement shall be made in US dollars.

**5.5 Invoice Disputes.** If Client disputes any portion of an invoice or any other amount due under this Agreement, Client shall notify NUI Media within thirty (30) days after receipt of the invoice or from the payment due date with an explanation of the nature of the dispute. Unless a written notice of a dispute as to invoiced or due amounts is received by NUI Media within such thirty (30) day period, the invoice or amount due shall be deemed correct and payable in full by Client.

**5.6 Credit Cards, Checks and Wire Transfers.** For accounts that are paid by credit card, Client authorizes NUI Media to charge recurring billing fees on the recurring Billing Date until the expiration or termination of this Agreement. Client must also execute the credit card authorization provisions in the Work Order, and may be required to sign updated credit card authorization forms from time to time at NUI Media's sole discretion. NUI Media will notify Client by E-mail of each automatic billing to their account. Accounts may also be paid by check drawn on a U.S. bank. No other checks will be accepted in payment. For accounts that are paid by check, Client agrees that NUI Media will e-mail an invoice at the beginning of each accounting period as outlined in the Work Order(s) and that payment is due net thirty (30) days from Client's receipt of a complete and accurate invoice. NUI Media will impose a charge for any check or other instrument that is returned for any reason by a financial institution. For accounts paid by wire transfer, also known as telegraphic transfer, Client will cause the full payment amount to be received by NUI Media's financial institution without deductions by Client's financial institution or any intermediary financial institution involved in such transfers net thirty (30) days from Client's receipt of a complete and accurate invoice.

## **6. TREATMENT OF CONFIDENTIAL INFORMATION.**

**6.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and will remain the sole property of the disclosing Party or such third party.

**6.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (a) to use Confidential Information disclosed by the other Party only for the purposes described herein; (b) that such Party will not reproduce Confidential Information disclosed by the other Party, and will hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (c) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (d) to restrict access to the Confidential Information disclosed by the other Party to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised treat such information in accordance with the terms of this Agreement; and (e) to return or destroy, pursuant to Section 10.5, all Confidential Information disclosed by the other Party that is in its possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, Client agrees that NUI Media may (i) collect aggregated statistical data regarding Client's use of the Application Services and provide such aggregated statistical data to third parties; (ii) analyze such aggregated statistical data for the purposes of researching and identifying trends among clients, advertisers and publishers and provide the results of such research to third parties, provided such data is not personally identifiable or Client identifying; and (iii) use Client Data to tune and optimize targeting and performance of the Application Services only for the Client. In addition, upon the express, prior written consent of Client, NUI Media may disclose to third parties information related to specific campaigns (including, but not limited to, advertiser, publisher and other third party activities) that NUI Media has identified as examples of best-in-class campaigns. In no event shall NUI Media provide to third parties specific data regarding Client or Client's Authorized Users without the express, prior written consent of Client.

**6.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 6.1 and 6.2 will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's



NUI Media, Inc. Master Service Agreement – SAAS Technology (v.19)  
rights under this Agreement, including to make such court filings as it may be required to do. Client also acknowledges and

agrees that NUI Media may freely use any comments, ideas and/or error reports provided by Client to NUI Media and such comments, ideas and/or error reports shall not be considered proprietary to Client, and may be used by NUI Media solely within its on-going product design and development process.

## 7. REPRESENTATIONS AND WARRANTIES.

**7.1 General Representations.** Each Party hereby represents and warrants (a) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (c) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

**7.2 Service Warranty.** NUI Media hereby represents and warrants that the Application Services will be provided in a workmanlike manner; provided, however, that NUI Media does not warrant any software underlying the Application Services will be error free or will operate without interruption.

**7.3 Warranties of Client.** Client represents and warrants that it has obtained all necessary rights, licenses, consents, waivers and permissions from advertisers, visitors, and others to allow NUI Media to store and deliver digital advertisements and otherwise operate the Application Services on Client's behalf and on behalf of its advertisers, and to use any data provided to or collected by NUI Media. Client further warrants that it will not collect any personally identifiable or sensitive information from any visitors to web sites served with Client's ads unless in full compliance with all applicable privacy and data collection laws, as well as the NUI Media Privacy Policy, located at <https://www.nuimedia.com/privacy-policy/>, which is incorporated by reference herein.

**7.4 Warranties of NUI Media.** NUI Media represents and warrants that it has obtained all necessary rights, licenses, consents, waivers and permissions to allow NUI Media to fulfill its obligations under this Agreement and that it will comply with all applicable privacy and data collection laws, as well as the NUI Media Privacy Policy at <https://www.nuimedia.com/privacy-policy/>

## 8. DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY.

**8.1 Disclaimer.** EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 7, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES, THE APPLICATION DOCUMENTATION, AND ALL SERVICES PERFORMED BY NUI Media ARE PROVIDED "AS IS," AND NUI Media DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION AND/OR DATA ACCURACY. NUI Media DOES NOT WARRANT THAT THE APPLICATION SERVICES OR ANY OTHER SERVICES PROVIDED BY NUI Media WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. NUI Media'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. NUI Media IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**8.2 Exclusions of Remedies; Limitation of Liability.** EXCEPT AS SET FORTH IN SECTION 9 HEREOF AND FOR CLAIMS OF BREACH OF CONFIDENTIALITY UNDER THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. EXCEPT AS SET FORTH IN SECTION 9 HEREOF, THE CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THE LESSER OF THE FEES PAID TO NUI Media BY CLIENT AND TEN THOUSAND DOLLARS (US \$10,000.00). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.



## NUI Media, Inc. Master Service Agreement – SAAS Technology (v.19)

**8.3 Essential Basis of the Agreement.** Client acknowledges and understands that the disclaimers, exclusions and limitations of liability set forth in this Section 8 form an essential basis of the agreement between the Parties, that the

Parties have relied upon such disclaimers, exclusions and limitations of liability, and that absent such disclaimers, exclusions and limitations of liability, the terms and conditions of this Agreement would be substantially different.

## 9. INDEMNIFICATION.

**9.1 Indemnification of Client.** NUI Media agrees to indemnify, hold harmless, and, at Client's option, defend Client from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Application Services and/or the Application Documentation infringes such third party's patents issued as of the Effective Date, or infringes or misappropriates, as applicable, such third party's copyrights or trade secret or other intellectual property (not including patent) rights under applicable laws of any jurisdiction within the United States of America, provided that Client promptly notifies NUI Media in writing of the claim, cooperates with NUI Media, and allows NUI Media sole authority to control the defense and settlement of such claim; provided that NUI Media will not settle any third-party claim against Client unless such settlement completely and forever releases Client from all liability with respect to such claim or unless Client consents to such settlement, and further provided that Client will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice. If such a claim is made or appears possible, Client agrees to permit NUI Media, at NUI Media's sole discretion, to enable it to continue to use the Application Services or the Application Documentation, as applicable, or to modify or replace any such infringing material to make it non-infringing. If NUI Media determines that none of these alternatives is reasonably available, Client shall, upon written request from NUI Media, cease use of, and, if applicable, return, such materials as are the subject of the infringement claim. This Section 9.1 shall not apply if the alleged infringement arises, in whole or in part, from (a) modification of the Application Services or the Application Documentation by Client, (b) combination, operation or use of the Application Services with other software, hardware or technology not provided by NUI Media, which are not intended to work with the Application Service, (c) use of a superseded or altered release of the Application Services or the Application Documentation, if such infringement would have been avoided by the use of a then-current release of the Application Services or the Application Documentation, as applicable, and if such then-current release has been made available to Client, or (d) related to the Client Content or collection of Client data (any of the foregoing circumstances under clauses (a), (b), (c), or (d) a "**Client Indemnity Responsibility**"). THIS SECTION STATES NUI MEDIA'S ENTIRE OBLIGATION AND LIABILITY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

**9.2 Client's Indemnity Obligations.** Client agrees to hold, harmless, indemnify, and, at NUI Media's option, defend NUI Media from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from a Client Indemnity Responsibility, provided that NUI Media promptly notifies Client in writing of the claim, cooperates with Client, and allows Client sole authority to control the defense and settlement of such claim; provided that Client will not settle any third-party claim against NUI Media unless such settlement completely and forever releases NUI Media from all liability with respect to such claim or unless NUI Media consents to such settlement, and further provided that NUI Media will have the right, at its option, to defend itself against any such claim or to participate in the defense thereof by counsel of its own choice.

## 10. TERM AND TERMINATION.

**10.1 Term.** The term of this Agreement will commence on the Execution Date (or Client Date Signed on the associated Work Order) and will continue until the earlier to occur of (a) a period equal to the Term (Months) on the associated Work Order; or (b) expiration of all Access Terms under all outstanding Work Orders and Addenda (the "**Initial Term**"), unless earlier terminated in accordance with this Section 10 or specific terms stated in the Client's associated Work Order. The Agreement will automatically renew for successive terms, as delineated in the associated Work Order, unless either Party provides written notice of its desire not to renew at least thirty (30) days prior to the expiration of the then-current term (the Initial Term, together with any renewal terms, collectively, the "**Term**").

**10.2 Termination for Breach.** Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. Such termination may be effected only through a written notice to the breaching Party, specifically identifying the breach or breaches on which such notice of termination is based. The breaching Party will have a right to cure such breach or breaches within thirty (30) days of receipt of such notice, and this Agreement will terminate in the event that such cure is not made within such thirty (30)-day period.

**10.3 Suspension of Access.** NUI Media may suspend access to the Application Services in the event any amount due under this Agreement is not received by NUI Media within thirty (30) days after it was due. NUI Media's right to



## NUI Media, Inc. Master Service Agreement – SAAS Technology (v.19)

discontinue the Application Services is in addition to, and not in lieu of, NUI Media's termination right described in this Agreement, and NUI Media's election to discontinue the Application Services will not operate as a waiver of those

rights. NUI Media reserves the right to terminate this Agreement in accordance with Section 10 at all times. In the event of suspension, Client must pay NUI Media a reactivation fee of \$200 as a condition of reactivation of the Application Services, in addition to full payment of the balance due on the account. Reactivation of the Application Services will only be performed during NUI Media's regular business hours. If Client is delinquent in its payments, NUI Media may, upon written notice to Client, modify the payment terms to require full payment before the further provision of the Application Services or require other assurances to secure Client's payment obligations hereunder. The Client is responsible for paying all costs of collection, including, but not limited to reasonable attorneys' fees and, where lawful, collection agency fees.

**10.4 Termination Upon Bankruptcy or Insolvency.** Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event (a) that the other Party becomes insolvent or unable to pay its debts when due; (b) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (c) the other Party discontinues its business; or (d) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

**10.5 Effect of Termination.** Upon any termination of this Agreement: (a) Client will immediately discontinue all use of the Application Services, the Application Documentation, and any NUI Media Confidential Information; (b) Client will delete any NUI Media Confidential Information from Client's computer storage or any other media including, but not limited to, online and off-line libraries; (c) NUI Media will delete any Client Confidential Information and Client Content from NUI Media's computer storage or any other media including, but not limited to, online and off-line libraries (d) return to NUI Media or, at NUI Media's option, destroy, all copies of the Application Documentation and any NUI Media Confidential Information then in Client's possession; and (e) promptly pay to NUI Media all amounts due and payable hereunder. Client agrees that, upon termination of this Agreement, amounts due and payable may not be prorated and such amounts are non-refundable.

**10.6 Survival.** The provisions of Sections 2.5, 2.6, 2.7, 6, 7.1, 7.3, 7.4, 8, 9, 10.5, 10.6, and 11 will survive the termination of this Agreement.

## 11. MISCELLANEOUS.

**11.1 Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

**11.2 Independent Contractors.** In making and performing this Agreement, Client and NUI Media act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

**11.3 Notices.** All notices required by or relating to this Agreement will be in writing by an authorized representative of the Party providing such notice and will be sent by means of certified mail, postage prepaid, to the Parties at their respective addresses set forth in the preamble to this Agreement, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile and/or other electronic communications provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices will be effective on the date indicated in such confirmation. In the event that either Party delivers any notice by means of facsimile transmission or other electronic means in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

**11.4 Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

**11.5 Assignment; Delegation.** Client shall not assign any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of NUI Media, except in the case of an assignment by the Client





NUI Media, Inc. Master Service Agreement – SAAS Technology (v.19)

to a merger partner or acquirer, and, absent such consent, any attempted assignment or delegation will be null, void and of no effect.

**11.6 No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether

express or implied, will confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**11.7 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

**11.8 Waiver.** No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

**11.9 Force Majeure.** Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, Internet access outside of NUI Media's control, war, terror, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

**11.10 Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF OR TO THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS. FOR PURPOSES OF ALL CLAIMS BROUGHT UNDER THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN FAIRFAX COUNTY, VIRGINIA.

**11.11 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

**11.12 Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

**11.13 Publicity.** In consideration for the rights granted under the terms of this Agreement, Client hereby grants NUI Media the right to reference Client as a Client of NUI Media during private sales presentations. NUI Media may not engage in other public marketing activities, such as placing the Client logo or naming the Client on NUI Media's web site, advertising, collateral, press releases, etc., without written approval by the Client.