<u>**FluidStack – User Terms of Service**</u>

PARTIES

These terms of service are a legal agreement between the individual or entity named in the Order (**'User'**) and FluidStack Limited of 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ (**'FluidStack'**).

BACKGROUND

FluidStack's software platform (**'Platform'**) enables Users to utilise the graphics processing units (**'GPU'**) and other computing infrastructure of independent third parties (**'Hosts'**) for certain 'jobs' or for a set period of time. Users are able to make use of Hosts' GPU cloud infrastrcture via FluidStack's 'docker-based' application programming interface (**'API'**) and/or by virtual desktop access (**'VDA'**), accessible from the Platform.

These terms of service set out the basis on which FluidStack provides, and on which Users are permitted to use, the Platform, the API and VDA and the Support Services (as defined below).

These terms of service are to be read in conjunction with:

- each Order entered into by User;

- the Data Protection Addendum (as defined below);

- FluidStack's Standard Pricing Terms (as defined below); and

- the Acceptable Use Policy (as defined below).

(together, the '**Terms of Service**').

The User can review the Terms of Service at any time on this page. FluidStack reserves the right to change the Terms of Service at any time by posting updates to this page. If FluidStack make substantial changes, or if it is required to do so by law, FluidStack will notify the User of such change in advance to the email address associated with the User's account, but it is the User's responsibility to check this page from time to time to make sure it is aware of any changes to these Terms of Service.

The User can contact FluidStack at any time by emailing sales@fluidstack.io.

OPERATIVE PROVISIONS

1.   Definitions

1.1.   In these Terms of Service:

'Acceptable Use Policy'	has the meaning given to it in clause 2.3;
'API'	has the meaning given to it in the Background;
'Cloud Services'	means the GPU and other computing infrastructure provided by the Host and specified in the Order;
'Commencement Date'	means the date specified in the Order;

'Confidential Information'	means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
'Data Protection Addendum'	has the meaning given to it at clause 2.6;
'Data Protection Legislation'	means the Data Protection Act 2018, the GDPR, the Privacy and Electronic Communications Directive 2002/58/EC (as amended), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and all applicable laws and regulations relating to processing of personal data, including where applicable the guidance and codes issued by the Information Commissioner or other appropriate supervisory authority;
'GPU'	has the meaning given to it in the Background;
'Host'	has the meaning given to it in the Background;
'Intellectual Property Rights'	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case:

    (a)   whether registered or not;

    (b)   including any applications to protect or register such rights;

    (c)   including all renewals and extensions of such rights or applications;

    (d)   whether vested, contingent or future; and

    (e)   wherever existing;

'Operational Change'	means:

(a) the application of any software fix or patch, update, upgrade and/or service pack generally released by the relevant software owner or licensor;

(b) the application of any software fix or patch, update, upgrade and/or service pack necessary for the secure, lawful or otherwise proper functioning of the Cloud Services (or any part); and/or

(c) any modification in FluidStack's operational, technical, security or other means of delivering the Cloud Services or Platform which, when implemented, will not cause any alteration in the fees or have any directly adverse effect on the User's receipt or use of the Cloud Services or conflict with the Privacy Policy.

'Order'	means the order completed by the User for the Cloud Services;
'Platform'	has the meaning given to it in the Background;
'Support Services'	means those specific services selected by the User in the Order and as they are more fully described on the FluidStack website;
'Term'	means the term specified in the Order;
'User Data'	means all data, software, information (including Confidential Information) which, by the User's actions, are hosted on the Cloud Services; and
'VDA'	has the meaning given to it in the Background.

2. Provision of the Platform, Cloud Services, Support Services and API/VDA.

2.1. In consideration of the User agreeing to abide by these Terms of Service, FluidStack shall from the Commencement Date for the duration of the Term make available:

(a) the Platform;

(b) the Cloud Services;

(c) the Support Services; and

(d) the API and VDA.

2.2. The User shall at all times during the Term comply with FluidStack's acceptable use policy which governs the technical and other conditions for the User's access to, receipt of and use of the Platform, the Cloud Services, the API and VDA (as amended from time to time), and as at the date of these Terms of Service the latest version is available on the FluidStack website ('**Acceptable Use Policy**').

2.3. FluidStack shall not be responsible, nor accepts any liability, for delays, failures or loss of or damage to data arising from the transfer of data over the internet or other communications networks or facilities.

2.4. The User acknowledges that the Platform, the Cloud Services, the API and VDA are subject to the limitations, delays and other technical issues which are inherent in the use of third-party networks or communications facilities including the internet.

2.5.   To the extent that the Cloud Services are used to process Personal Data (which has the meaning given to it in the Data Protection Legislation), User appoints Host as a 'data processor' and contracts with Host on the terms and conditions set out in the data protection addendum ('**Data Protection Addendum**'), the latest version is available at FluidStack website. FluidStack is not a party to the Data Protection Addendum.

3.   Exclusions

3.1.   FluidStack shall not be responsible for and the User shall accept sole responsibility for the following matters:

(a)   the inputting and maintenance of the User Data and (except as otherwise expressly agreed by the parties) its security and integrity;

(b)   the taking of back-ups of the User Data or any other data (and the User acknowledges that the neither the Platform or Cloud Services include any dedicated data back up or disaster recovery facilities and that the User should ensure that it at all time maintain backups of all User Data);

(c)   the safety and integrity of any backups of the User Data; and

(d)   except as otherwise agreed under these Terms of Service, extracting, transferring or recovering any data (including any User Data) whether during or after the Term (or providing any assistance with any such activities).

3.2.   The User acknowledges and agrees that it is the User's responsibility for maintaining safe backups and copies of any User Data, including as necessary to ensure the continuation of the User's business(es). The User shall, without limitation, ensure that it backs up (or procures the back up of) all User Data regularly (in accordance with its needs) and extracts all necessary User Data from all Cloud Services prior to the termination or expiry of these Terms of Service or the cessation or suspension of any of the Cloud Services (including, when the specific job for which the User requires the Cloud Infrastructure is completed or when the period of time for which the Cloud Infrastructure is paid for by the User runs out).

3.3.   FluidStack provides the User with access to the Cloud Services via the API and/or VDA. FluidStack cannot guarantee that the Platform, the Cloud Services or the Support Services will meet the User's specific requirements and that the Cloud Services are or will be interoperable with or capable of working in conjunction with any other software or hardware, for which the User takes full responsibility.

3.4.   FluidStack shall provide the Platform, the API, the VDA and the Support Services in accordance with any laws applicable in the United Kingdom to the extent that they are general in nature or apply to a supply of services that are the same as or similar to the Services.

3.5.   The User shall be solely responsible for compliance with all laws applicable in its access to, receipt of and use made of the Platform, the Cloud Services, the Support Services, the API and VDA and shall further be solely responsible for compliance with all published policies, guidelines or industry codes of practice applicable to it but not having the force of law.

3.6.   Except to the extent FluidStack has direct obligations under applicable laws, the User acknowledges that FluidStack has no control over any User Data hosted on the Cloud Services and does not actively monitor or have access to the User Data. The User shall ensure (and are exclusively responsible for) the accuracy, quality, integrity and legality of the User Data and that its use (including use in connection with the Cloud Services) complies with all applicable laws and does not infringe the Host's or any third party's Intellectual Property Rights.

4.   Changes to the Platform, the Support Services, the API and VDA

4.1.   FluidStack may by notice in writing make any changes to the Platform, the Support Services, the API and VDA which are necessary to comply with any law applicable anywhere in the United

Kingdom or with any published policies, guidelines or codes of practice not having the force of law but which represent good practice.

4.2. FluidStack may at any time and without prior notice to the User implement any Operational Change provided that neither the work of implementing the Operational Change nor the consequences of the Operational Change will have a directly adverse effect on the User's access to, receipt of or use of the Platform, the Cloud Services, the API or VDA.

5. Misuse of the Cloud Services, the Platform, the API and/or VDA

5.1. The User shall at all times use the Cloud Services, the Platform, the API and/or VDA in a responsible and respectful manner and shall not overload any part of the Cloud Services, including the GPU, to such an extent that it causes physical damage to the Cloud Services.

5.2. The User shall be responsible for any acts of unauthorised access to the Platform, the API, the Cloud Services and VDA where such access is gained by unauthorised use of a User's account. The User shall be required to inform FluidStack immediately on becoming aware of any unauthorised access.

5.3. The User shall not use or allow the Platform or the Cloud Services to be used in order to license, sell, rent, transfer, host, outsource or permit timesharing or the provision of service bureau facilities to any third party based on the Cloud Services.

5.4. The User shall comply with any law applicable to it in its access to, receipt of or use of the Cloud Services and Platform, the API and VDA.

5.5. The User may not perform any security testing of the Cloud Services, the Platform, the API and VDA or of any infrastructure or facilities whatsoever used to provide the Cloud Services, including network discovery, port/service identification, vulnerability scanning, password cracking, remote access testing or penetration testing.

5.6. If the User fails at any time to comply with the Acceptable Use Policy or clauses 5.2 *to 5.4* (inclusive) in any respect FluidStack reserves the right without prior notice to suspend the User's access to or use of the Platform, the Cloud Services, the API or VDA either completely or to the extent FluidStack in its sole discretion deems necessary to ensure a safe and secure manner of providing its services to its customers in general. FluidStack shall be entitled to maintain the suspension until the User is able to remedy its non-compliance with the Acceptable Use Policy and clauses 5.2 *to 5.4* (inclusive) and to demonstrate its future ability to comply with the Acceptable Use Policy and such clauses to FluidStack's reasonable satisfaction.

5.7. The User shall not use the Platform, the Cloud Services, the API or VDA, or allow any unauthorised third party, to create, store, access, transfer to any third party or otherwise distribute any code or device intended to interfere with or having the effect of interfering adversely with, the operation of any hardware or software, including any bugs, worms, logic bombs, Trojan horses or any other such programs; or any other material which:

(a) is unlawful;

(b) fails to comply with the Acceptable Use Policy;

(c) [is in breach of any of FluidStack's obligations under the Privacy Policy;]

(d) is or contains material which is harmful, obscene, defamatory, infringes the Host's rights, including the Host's Intellectual Property Rights or any third party's rights or Intellectual Property Rights;

(e) is or contains material which is of a harassing or offensive nature;

(f) contains sexually explicit or other offensive material;

(g) promotes the use of unlawful violence against a person or property; or

(h)   is or contains material which is discriminatory based on race, origin, belief, sexual orientation, physical or mental disability, age or any other illegal category.

5.8.   In the event of any breach (or alleged breach) of clause 5.6, FluidStack may without prior notice:

(a)   disable or suspend access to or use of the Platform, the Cloud Services or to any part of them that allows access to or use of any material which is causing (or is alleged to cause) a breach of clause 5.6; and/or

(b)   [delete any User Data that is causing (or is alleged to cause) a breach of clause 5.6].

5.9.   The User shall indemnify FluidStack against all claims, losses, costs or incurred by FluidStack in consequence of any non-compliance by the User with the provisions in this clause 5 or with the Acceptable Use Policy.

6.   Access to the Platform, the API and VDA

6.1.   The API is intended to be used as an interface between: (a) the Platform, comprising FluidStack's relevant products or services and any other features, content, or applications offered or operated by FluidStack from time to time; and (b) the Cloud Services.

6.2.   The VDA provides remote access to the virtual desktop of the Cloud Services accessible from the Platform.

6.3.   FluidStack grants the User a non-exclusive, revocable and non-transferable licence, to use the Platform, the API and VDA and the Cloud Services, subject to the restrictions on use in these Terms of Service.

6.4.   The User agrees:

(a)   to access the API only using the API key that FluidStack provides the User with; and

(b)   to keep the API key secure and that it is responsible for any use of the API using its key.

6.5.   To the maximum extent permitted by applicable law, the User accepts that the Platform, the API and VDA is provided on an 'AS IS' basis and that:

(a)   the API and VDA may not be free of bugs or errors and that the existence of bugs or errors shall not constitute a breach of these Terms of Service;

(b)   the User remains responsible for the User's own hardware, content and any other data uploaded through the API or VDA;

(c)   FluidStack accepts no responsibility for any loss or damage arising out of any virus or other malicious code;

(d)   FluidStack accept no responsibility for any liability that arises in connection with anyone else unlawfully obtaining access to the Users account in order to abuse the nature and intent of the Platform, the API and/or VDA (although this does not include where FluidStack obtain access to the Users account as FluidStack are permitted to under these Terms of Service); and

(e)   FluidStack accept no responsibility for any liability that arises in connection with the theft of the Users username or password by unauthorised third parties.

6.6.   FluidStack do not promise that the Platform, the API and VDA shall be:

(a)   uninterrupted or error free; or

(b)   compatible with third party software or equipment

6.7.   FluidStack shall not be liable, nor be required to fix, any problem arising from:

(a)   any modification made to any part of the Platform, the API or VDA by anyone other than FluidStack without FluidStack's express prior written consent; or

(b)   any defect or error wholly caused by any equipment or third party software used in connection with the API or VDA.

7.   Payment

7.1.   The User shall pay the fees set out in the Order.

7.2.   FluidStack accepts the following credit cards and debit cards: [*insert details*]. FluidStack does not accept cash.

7.3.   FluidStack will do all that it reasonably can to ensure that all of the information given to FluidStack by the User when paying for access to the Cloud Services through the Platform and the Support Services is secure by using an encrypted secure payment mechanism. However, in the absence of negligence on FluidStack's part, any failure by FluidStack to comply with these Terms of Service or Schedule 3 or breach by FluidStack of its duties under applicable laws, FluidStack will not be legally responsible to the User for any loss that it may suffer if a third party gains unauthorised access to any information that the User gives us.

7.4.   Unless stated to the contrary, all fees are exclusive of VAT or other charges imposed by law from time to time, and the User shall in addition pay such VAT and other charges at the rate and in the manner prescribed by law from time to time.

7.5.   The fees are subject to change at any point of time in accordance with FluidStack's standard pricing terms for any service or activity (as amended from time to time), and as at the date of these Terms of Service the latest version is available at the FluidStack website.

8.   Warranties

8.1.   Each of the parties warrants to the other that it has full power and authority to enter into and perform its obligations under these Terms of Service.

8.2.   FluidStack warrants to the User that:

(a)   it has the right, power and authority to grant the User the rights set out in these Terms of Service and to access and use the Platform;

(b)   it will provide the Platform using reasonable care and skill; and

(c)   the access to, receipt of and use of the Platform will not infringe the Intellectual Property Rights of any third party.

8.3.   FluidStack has carried out such reasonable due diligence to verify and ensure that the capacity levels, data and security requirements of the Cloud Services selected by the User prior to the Commencement Data are as stated in the Order Form, however, the User acknowledges and agrees that FluidStack does not supply the Cloud Services and FluidStack does not warrant that the User's use of the Cloud Services, VDA or access to the API will be uninterrupted or error-free or that it will meet the User's specific requirements. FluidStack does not warrant that the Cloud Services are or will be interoperable with or capable of working in conjunction with any other software or hardware, for which the User takes full responsibility.

8.4.   The User warrants and represents to FluidStack that it has done such reasonable due diligence of the Cloud Services prior to the Commencement Date and take sole responsibility for their suitability for the User's own intended purposes. The User acknowledges that FluidStack is making available a general service made available to its customers generally and that it is not making a bespoke service available specifically for the User's individual requirements.

8.5.   Other than as set out in these Terms of Service all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness

for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

9.   Data protection

Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under the Privacy Policy, and as at the date of the Terms of Service the latest version is available at the FluidStack website.

10.   [Systems monitoring

FluidStack may monitor, collect, store and use information on the use and performance of the Cloud Services and/or the Platform (including User Data) to detect threats or errors to the Services and/or FluidStack's operations [and for the purposes of the further development and improvement of the FluidStack's services, provided that such activities at all times comply with the Privacy Policy.]

11.   Intellectual Property Rights

11.1.   FluidStack or its licensors shall retain ownership of all Intellectual Property Rights in the Platform and in any materials created by FluidStack (or anyone acting on its behalf) in the course of providing the Platform, whether those materials are provided to the User or not.

11.2.   The User shall retain ownership of all Intellectual Property Rights in the User Data.

11.3.   The User shall indemnify, keep indemnified and hold harmless FluidStack and/or the Host from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by it or by the Host as a result of or in connection with any action, demand or claim that the transmission, receipt, copying, installation, use, possession or other utilisation of the User Data in accordance with these Terms of Service infringes the Intellectual Property Rights of any third party.

12.   Confidentiality

12.1.   Each party agrees that it may use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under these Terms of Service and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 12.

12.2.   Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under these Terms of Service provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 12 as if it were a party.

12.3.   Each party may disclose any Confidential Information relating to the other party required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.

12.4.   The User shall indemnify FluidStack against any losses, damages, liability, costs (including legal fees) and expenses which FluidStack may incur or suffer as a result of or arising from any breach of the User's obligations under this clause 12.

13.   Liabilities

13.1.   Notwithstanding any provision in these Terms of Service, neither party excludes or limits any liability for:

(a) personal injury or death to the extent that results from the negligence of a party or any person for whom it is responsible at law;

(b) fraud or fraudulent misrepresentation;

(c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any other liability to the extent the same cannot be excluded or limited by law.

13.2. Subject to clause 13.1, FluidStack shall not be liable to the User in respect of:

(a) any loss of profit, business, contracts, opportunity, goodwill, revenues, anticipated savings or similar loss, or any loss of use, destruction or corruption of software or data (including User Data), or any claims or losses by third parties (and in each case, whether these losses are direct, indirect, special or consequential); and/or

(b) any indirect, special or consequential loss or damage (whether for loss of profit or otherwise),

of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with these Terms of Service or any activities related to these Terms of Service.

13.3. Subject to clauses 13.1 and 13.2, FluidStack's maximum liability to the User for all and any claims of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with these Terms of Service or any activities related to these Terms of Service shall be limited to a sum equal to the fees paid by the User to FluidStack [for the Term].

13.4. The User take full responsibility and shall accept all liability in respect of the use it makes of the Cloud Services and the results it achieves from them.

14. Termination

14.1. FluidStack may terminate these Terms of Service immediately and deactivate the User's account if the User commit a material or persistent breach of these Terms of Service, the Platform and Cloud Services are discontinued, or where the provision of the Cloud Services and Platform become unlawful. FluidStack will use reasonable endeavours to provide the User with notice in advance; however, the User acknowledges that this may not be possible in all circumstances.

14.2. Upon termination:

(a) all rights granted to the User under these Terms of Service shall immediately terminate (including, for the avoidance of doubt, any rights granted to Users to access the Cloud Services);

(b) the User must extract all necessary User Data from all Cloud Services; and

(c) the User must cease all activities authorised by these Terms of Service.

15. Other Important Terms

15.1. The User may not assign, transfer, sub-license or deal in any other manner with any or all of their rights or obligations under these Terms of Service, without FluidStack's prior written consent. FluidStack reserve the right to transfer, assign, sub-contract or deal in any other manner with any or all of FluidStack's rights or obligations under these Terms of Service, without notifying the User or receiving their consent.

15.2. Except in relation to the indemnities specified in clause 11.4 and 12.4, these Terms of Service gives rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Service.

15.3. No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under these Terms of Service shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under these Terms of Service shall prevent any future exercise of it or the exercise of any other right, power or remedy.

15.4. These Terms of Service and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

15.5. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, these Terms of Service, its subject matter or formation (including non-contractual disputes or claims).