



CONCEPT RETAIL TERMS AND CONDITIONS

1) SERVICES AND SUPPORT

a) Subject to the terms and conditions of this Agreement, Service Provider will use reasonable efforts to provide the Services (as defined herein). As part of the registration process, Customer will identify an administrative user name and password for Customer's account ("Account"). Customer may use the administrative user name and password to create standard users (each with a user password) up to the maximum number permitted in the Order Form. Service Provider reserves the right to refuse registration of, or cancel passwords it deems inappropriate. The Services shall consist of providing access to the Concept Retail authoring tool for the production of interactive web-based product displays as well as any customization work provided by Service Provider described in an Order Form as Professional Services.

b) Subject to the terms hereof, Service Provider will use reasonable efforts to provide Customer with support services during the support hours and via electronic mail or phone as indicated in any Order Form in accordance with Service Provider's standard practice.

c) Customer may use the Services for demonstration purposes only during a trial period. If Customer is using the services during such trial period, Section 2.4 shall not apply and Customer shall have no license to the Applications (as defined herein). Service Provider reserves the right to stop the trial period at any time for any reason or no reason.

2) RESTRICTIONS AND RESPONSIBILITIES

a) This is a contract for Services and, except as set forth in Section 2.4 the software will be installed, accessed and maintained only by or for Service Provider and no license is granted thereto. Except as explicitly set forth in Section 2.4 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 Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software; use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party.

b) Customer represents, covenants, and warrants that Customer will use the 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 Service Provider 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 Services. Although Service Provider has no obligation to monitor the content provided by Customer or Customer's use of the Services, Service Provider may do so and may remove any such content or prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

c) Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the 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 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) The Services enable Customer to create an SWF byte code file, XML data file, image files and other items that may be added by Service Provider from time to time (the "Applications"). Subject to the terms and conditions of this Agreement and payment of all fees, Service Provider grants to Customer a non-exclusive, non-transferable, royalty-free, limited, non-sublicensable, worldwide license to use the Applications in order to display Customer's merchandise on the websites authorized by this Agreement and only for the Service Term set forth in any Order Form. Customer agrees and acknowledges that the Order Form will limit the usage of the Applications to particular websites and/or for a limited period of time. In order to enforce such limitations, the Applications may contain a routine to verify compliance and notify Service Provider in instances where Customer is not in compliance with the Agreement.

3) 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).

b) The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required by law to be disclosed. In any event, Service Provider may collect data with respect to and report on the aggregate usage of and other aggregate measures of the Services' performance.

4) PAYMENT OF FEES

a) Customer will pay Service Provider the then applicable fees for the Services (the "Fees"). Currently applicable Fees are set forth in the Order Form. Service Provider reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

b) If Customer believes that Service Provider has billed Customer incorrectly, Customer must contact Service Provider no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Service Provider's Customer Support department.

c) Service Provider may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Service Provider thirty (30) days after the mailing date of the invoice, or the Services may be terminated. Unpaid invoices are subject to a finance charge of 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 Services other than U.S. taxes based on Service Provider's net income.



5) TERMINATION

a) Subject to earlier termination as provided below, this Service Agreement is for the initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as 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, Service Provider may also terminate this Service Agreement upon thirty (30) days' notice (or ten (10) days in the case of nonpayment), if Customer breaches any of the terms or conditions of this Service Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Service Provider may, but is not obligated to, delete archived data.

c) All sections of this Service Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

6) WARRANTY AND DISCLAIMER

Service Provider shall use reasonable commercial efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Service Provider or by third-party providers, or because of other causes beyond Service Provider's reasonable control, but Service Provider shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. If Customer has purchased Professional Services, such Services will be provided in a good and workmanlike manner. Service Provider does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. THE SERVICES ARE PROVIDED "AS IS" AND SERVICE PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

7) LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, SERVICE PROVIDER 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 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 SERVICE PROVIDER'S REASONABLE CONTROL, EVEN IF SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO SERVICE PROVIDER FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

8) U.S. GOVERNMENT MATTERS

Customer may not remove or export from the United States or allow the export or re-export of the 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, the software and documentation installed by Service Provider on Customer Equipment (if the Customer Hosting option on the Order Form has been checked) 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 Service Agreement and will be prohibited except to the extent expressly permitted by the terms of this Service Agreement.

9) MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Service Provider's prior written consent. Service Provider may transfer and assign any of its rights and obligations under this Agreement without consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Service Provider in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Any dispute or controversy arising out of or relating to this 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.