

Terms & Conditions of Sale

Definitions

Agreement:	shall mean the Contract entered into between the Company and the Customer.
Authorised Personnel:	means a director or employee of the Customer, who the Customer has granted permission to sign Schedules on its behalf.
Customer:	shall mean the name of the business whose registered name is stated on the Schedule forming part of this Agreement and may also be referred to as 'you' and 'they'.
Company:	shall mean FluidOne Ltd Group of Companies (Registration Number 3105747) also known as 'FluidOne', 'us', and 'we'.
Confidential Information:	means all confidential information (however recorded or preserved) disclosed by a Party to the other Party including but not limited to: <ol style="list-style-type: none">a. the existence and terms of the Agreement;b. any information that would be regarded as confidential by a reasonable businessperson relating to:<ol style="list-style-type: none">I. the business, affairs, customers, clients, suppliers, plans of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs);II. the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party (or of any member of the group of companies to which the disclosing Party belongs); andIII. any information developed by the Parties in the course of carrying out this Agreement.
Contract:	shall mean the documents made available to the Customer via the Company's website portal upon acceptance, in writing by the Customer's authorised representative of the Quotation, including these Terms and Conditions, the Schedule(s) and any applicable Product Annexes.
Customer Equipment:	means any hardware provided by the Customer to access the Service or connects to Company owned and managed hardware.
Data Protection Legislation:	means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
Early Termination Charges:	means the amount equal to the Charges that would have been payable during the entire Initial Term less any Charges already paid by the Reseller for that Service, which will be charged by Customer to the Company for terminating a Contract prior to the expiry of the applicable Initial Term, other than validly terminated in accordance with the terms of a Contract.
Goods:	shall mean all those items of hardware/equipment, including network cabling, and software that the Company sources from an Supplier and delivers to Customer, and / or the Company agrees to include in this Agreement, as more fully described in the Schedule or Product Annex attached hereto.
Initial Term:	means the term as set out in any applicable Schedule.
Intellectual Property:	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Parties/Party:	shall mean the Company and the Customer.
Quotation:	shall mean the written statement and / or proposal provided by the Company to the Customer detailing the prices for the Goods and / or Services to be delivered by the Company, subject to these Terms and Conditions.

The Supply of Goods

Delivery & Storage

- a. Any time or date for delivery stated by the Company in the Schedule shall be treated by the Customer as an estimate only. Whilst every effort will be made to despatch the Goods to arrive at the Customer's premises on time, no liability can be accepted by the Company for failure to deliver the Goods within the stated times. The Company shall not be liable for any loss or damage whatsoever (including any indirect or consequential loss or loss of profit) arising directly or indirectly from any delay in the delivery of all or any of the Goods howsoever caused.
- b. The Company will accept no liability for shortage, damage to or non-delivery of Goods unless the Customer notifies the Company in writing within three business days of receipt of the Goods.
- c. If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer to provide similar Goods to replace those not delivered, such liability shall not exceed the price of the Goods contracted for. The Company shall not be liable for loss of profit or any other indirect or consequential loss with its liability (whether in contract or otherwise) not exceeding the price of the Goods in question.
- d. If for any reason the Customer cannot accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company may, at its sole discretion, store the Goods pending their actual delivery to the Customer. The Customer shall be liable to the Company for any storage cost including but not limited to the cost of insurance. The Company will invoice the Customer for the Goods on the date the Goods are put into storage and the standard Company's payment terms shall apply. The Customer will notify the Company in writing of the date when the Customer is ready to take delivery of the Goods at their premises as per the Schedule.
- e. Upon delivery of the Goods the Customer's representative shall be solely responsible for verifying that the correct number of boxes are signed for as per the delivery documentation, including signing any handheld devices presented by the delivery firm. The Company cannot accept any responsibility for any boxes or content missing upon installation by the Company. Any additional cost incurred to replace the content of the missing box or boxes will be at the Customer's expense.

Intellectual Property & Title

- a. No property or title to the Goods shall pass from the Company to the Customer unless and until the full amount of the value of the Goods as invoiced has been paid to the Company's bank account in full without recourse or the Company has received the full amount in cash.
- b. The Customer shall fully indemnify the Company against any loss or damage to the Goods prior to the passing of property or title whilst the Goods are in the Customer's custody, either on the Customer's premises or in storage
- c. Risk of damage to or loss of the Goods shall pass to the Customer at the time of delivery or, if the Customer fails to take delivery of the Goods, at the agreed time when the Company has tendered delivery of the Goods.
- d. the Company shall retain ownership of all Intellectual Property contained in the Services together with Intellectual Property in all training materials ("Deliverable") provided by FluidOne to the Customer.
- e. The Customer will notify the Company immediately if the Customer becomes aware of any unauthorised use of the Services or any of the Intellectual Property relating to the Services and will provide reasonable assistance to Company at Company's cost in defending Company's rights. The Customer will not have any rights to use the mark or logo of Company's or any member of the Company's Group, unless otherwise agreed in writing.
- f. Any Intellectual Property in the Customer Equipment will remain the property of the Customer and / or its licensors.
- g. Customer:
 - i. warrants that the receipt of the Services in accordance with the terms of any Order or Schedule does not and will not infringe any Intellectual Property rights of the Company or any third party; and
 - ii. will indemnify Company against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred or paid by Company arising out of or in connection with any claim brought against Company for actual or alleged infringement of a third party's Intellectual Property arising out of, or in connection with, the Customer's receipt or use of the Services and the deliverables.

Trade Name & Mark

Indications of trade names or marks (other than those of the Company shown in documentation provided by the Company) are not restricted to indications of manufacture but may be indicative of general use of systems, machines etc, associated with the use of such Goods.

Cancellation of Goods

- a. To the extent permitted by law and / or as otherwise agreed by the Parties, the Company reserves the right not to accept cancellation of an order from the Customer.
- b. The Customer shall indemnify the Company against all costs and liabilities incurred by the Company as a result of such cancellation following an order acceptance.

Return of Goods

Any Goods undamaged, unopened and in a re-saleable condition as new may be returned by the Customer, by prior agreement in writing, approved by a director of the Company, who reserves the right to make a reasonable handling administration charge which the Customer agrees to pay upon receipt of the Company's invoice.

Warranty

- a. All Goods sold by the Company are warranted free from defects in materials and workmanship. If the Company shall receive a written complaint from a Customer in respect of Goods found to be defective in respect of materials or workmanship within 30 days of the delivery date to the Customer's premises, the Company, after it has had a reasonable time to investigate the same and examine the Goods in dispute, shall be entitled at its option to repair or replace the defective Goods or refund the purchase price.
- b. No claim will be accepted from the Customer in respect of any Goods supplied as per the Schedule, which have been repaired or altered in any way or have been the subject of any accident or damage caused by any innocent, wilful or negligent act or omission of the Customer, its employees or agents or through use contrary to the manufacturer's instructions by the Customer, its employees or agents or by circumstances beyond the control of the Company.

Health & Safety at Work Act 1974 and Consumer Protection Act 1987

In compliance with the above legislation the Company confirms the Goods supplied by the Company do not represent a hazard to the health and safety of the Customer's employees and agents when properly used for the purpose for which they are designed and provided also that the Customer or its employees or agents take reasonable precautions in their use.

The Supply of Services

The Services to be provided by the Company or its authorised sub-contractors are subject to the following:

- a. Response to service requests by an authorised person of the Customer and repair or replacement (at the option of the Company) of defective parts of the Goods specified in the Schedule.
- b. The Company will respond to service requests as detailed on the Schedule.
- c. Any of the Services which the Company agrees to provide at the Customer's request, outside of those hours as per the Schedule, will be charged at the Company's hourly rate in force at the time the Services are requested by the Customer.
- d. The Company will use its reasonable endeavours to provide the Services within estimated maximum response times as indicated in the Schedule.
- e. The Services provided by the Company may consist of the telephone, remote access or on-site support and may include travelling time.
- f. If the Company's representative is called to the Customer's premises and in the representative's reasonable opinion there is no sufficient reason for requesting such Services then the Company reserves the right to make an extra charge at the prevailing hourly rate for all time spent by the Company's representative, as a result of that call including travelling to and from the Customer's premises and the provisions of this Agreement shall apply to the extra charge as it would apply to any extra charges payable under this Agreement.
- g. All removed parts or components that have been permanently replaced in the Customer's Goods by the Company's representative, as well as all equipment, test equipment or tools which may be used in the performance, by the Company's representative, of the Services under this Agreement shall belong to the Company.

The Company's responsibilities under this Agreement do not include:

- a. Testing or repairing of electrical items external to the Goods supplied.
- b. Changing or altering the Goods from the manufacturers' specification or effecting a repair due to any inherent manufacturing or design fault of the component manufacturer or the modification replacement enhancement or adjustments necessitated by such fault.
- c. Providing accessories, supplies, operating materials or consumables (e.g. paper, toners, ink etc).
- d. Painting or refurbishing any of the Goods or furnishing the material.
- e. Maintenance of accessories, attachments, machines or other devices not described in the Schedule.
- f. Repairs or servicing as a result of accident, misuse, modification, fault or negligence on the part of the Customer, its employees', agents', contractors' or third party operators' errors or by external causes to the Goods such as, but not limited to failure or fluctuations of the electrical power, or causes outside of Company's and other than normal usage by the Customer.
- g. Re-siting the Goods to a location, other than at the Customer's premises specified in the Schedule or re-siting the Goods within the Customer's premises and any consequential Services necessitated by any such re-siting or re-installing.
- h. Saving, streaming, backing-up, conversion, patching, editing, re-configuring or restoration of any data program or operating system from any form of fixed or removable media, or other storage device for whatever reason necessitated, unless provided as a specific service.
- i. The recovery and liability for any data or programs, resulting from infection of viruses or malware however caused.

Access to Goods

The Customer shall allow the Company's representative to have full, free and uninterrupted access to the Goods at all reasonable times in order to carry out the Services, as detailed in the Schedule. Under such circumstances, the Company's representative(s) will comply with the Customer's approved health and safety policy and any other relevant policies and procedures that do not hinder the performance of the Company's representative.

Adequate Facilities

During the period of this Agreement, the Customer shall provide, at its own expense, for the use of the Company's representative, adequate working space within a reasonable distance of where the Goods are installed and shall make available at the Customer's premises, at its own expense, such ventilation, light, telephone and power supplies as the Company's representative may reasonably require to perform the Services. The Customer retains the right at all times to require the Company's representative to vacate the premises at any time in the event of a security threat.

Security, Integrity and Data Protection

The Customer shall be solely responsible for the security integrity and reliability of all programs and other information confidential sensitive or otherwise at the Customer's premises prior to, during and after such time as the Company's representative(s) are present at the Customer's premises performing the Services. It is a further condition, that the Customer ensures that all the programmes, applications and operating environments are of a release version or level which is compatible with the current level of hardware and are licensed for use by the Customer. Furthermore, both Parties agree that neither Party will misuse or disclose to others any confidential information about the others business activities unless agreed in writing by both Parties.

- a. The parties acknowledge that during the term of this Agreement the Customer is the Data Controller or the Controller (as applicable) and the Service Provider is the Data Processor or Processor (as applicable) in respect of any Personal Data.
- b. The Service Provider shall Process the Personal Data solely to the extent necessary to provide the Services in accordance with the terms of this Agreement and shall not Process the Personal Data for any purpose other than those expressly authorised by the Company unless such Processing is strictly required to comply with any Applicable Law to which the Company is subject,

in which case the Company shall inform the Customer of such legal requirement before processing unless the relevant law prohibits such disclosure on grounds of public interest.

- c. Each party warrants to the other that it will Process the Personal Data in compliance with the applicable Data Protection Law. The Company shall (and shall ensure that any of its Personnel) not do any act that puts the Customer in breach of its obligations under the applicable Data Protection Law.
- d. The Company warrants that, having regard to the state of technological development, the cost of implementing any measures and the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, it will take appropriate technical and organisational measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to the risk, including, inter alia, the measures set out in articles 1(a) to 1(d) of the GDPR.
- e. The Company warrants that the Personal Data will only be Processed within the United Kingdom for the purposes of the provision of the Services and the Company shall only transfer the Customer Data outside the EEA or to an International Organisation in accordance with the Customer's written instructions.
- f. The Company shall provide such reasonable information and assistance to the Customer as the Customer may reasonably require, and within the timescales reasonably specified by the Customer, to allow the Customer to: (i) comply with the rights of Data Subjects, including subject access rights, or with notices served by the Information Commissioner or any other law enforcement or regulatory authority; and (ii) comply with the Customer's obligations pursuant to the applicable Data Protection Law (including without limitation articles 32 to 36 of the GDPR in relation to the Customer Data, in each case taking into account the nature of Processing and the information available to the Company and provided that the Customer shall pay all reasonable expenses incurred by the Company in providing such assistance).
- g. The Company shall, within a reasonable period further to receipt of a written request from the Customer, provide to the Customer copies of the Customer Data set out in that request (in a format and on the media reasonably agreed between the parties), provided that the Customer shall pay all reasonable expenses incurred by the Company in providing such Customer Data.

Condition of Goods

- a. It is a condition of this Agreement that the Goods, as set out in the Schedule, shall be in good operational condition once installed and handed over by the Company's representative to the Customer.
- b. In the event of any delay, other than that caused by the Company, between the expiry of any warranty or licence in relation to any of the Goods referred to in the Schedule and the date when it is required to be afforded cover under this Agreement or if the Company agrees to maintain Goods which it has not supplied and such Goods are not in good operational condition at that time, then the provisions of this Agreement shall not apply until such time as the Goods are put into good operational condition to the Company's reasonable satisfaction and handed over to the Customer.
- c. The Company shall be entitled to make an additional charge at the Company's prevailing rate card for any remedial work required under this clause which may be requested in writing to be carried out by the Customer.

Peripheral Equipment

Any peripheral equipment, including but not limited to printers or scanners, supplied under this Agreement shall not be covered under replacement, repair or rectification of any user replaceable items or any of the following parts of that equipment: -drums mechanism including sprocket, spring feed platens, rollers, friction devices, print heads, ink jets or other mechanical imprinting heads paper or sheet feeding mechanisms, or trays, any options not specified in the attached Schedule, output collecting trays, mechanisms, any font cartridges, emulation cartridges connected to the equipment subsequent to its manufacturer. Any damage caused to the electric circuitry of the equipment as a result of the connection of any such peripherals to the Goods or by the connection to the Goods of any peripheral not manufactured by the manufacturer of the Goods shall also be excluded from any cover under this Agreement.

Sub-Contractors

The Company shall be entitled to sub-contract all or any part of its obligations under this Agreement to a third party subject to Customer's written consent.

Insurance

- a. All risks of loss of or damage to the Goods or to the Customer's premises, howsoever caused, shall be borne by the Customer save as provided herein. The Customer will take out third-party insurance with a reputable insurer in respect of (and will accept responsibility for any loss or damage to) the Service Equipment, during the Initial Term. Customer will provide the Company with a copy of such insurance upon request.
- b. All risks of loss of or damage to the Goods that had been removed from the Customer's premises by the Company for repair shall be borne by the Company during its period of absence from the Customer's premises.
- c. The Customer is advised to obtain insurance in respect of any liability excluded by the Company hereunder, including but not limited to the loss or corruption of data.

Removal of Goods During the period of this Agreement

The Customer shall in the event of wishing to remove any of the Goods from the Schedule shall be obliged to provide not less than three calendar months written notice to the Company of such removal expiring on any anniversary of the date of this Agreement. Any such written notice of removal of Goods not complying with this provision shall not be accepted by the Company.

Refurbishment

If, in the opinion of the Company any component (part or complete) of the Goods, subject to the Schedule, that can no longer be economically maintained, the Company will submit a quote for the refurbishment cost estimate (Work) to the Customer in writing. Such charge will be in addition to the stated annual charge in the Schedule. If such Work is authorised by the Customer within one (1) month, the item of Goods will subsequently remain covered under the provisions of this Agreement. If the Customer does not accept the quote for the Work, the Company reserves the right to delete the item concerned from the provisions of this Agreement with effect from the date the Company first notified the Customer with the quote for the Work and reduce the maintenance fees accordingly.

General

Terms and Conditions

- a. These Terms and Conditions shall apply to the supply of Goods and Services to be provided by the Company or any of its associated or subsidiary companies to the Customer as specified in the Schedule(s).
- b. All Quotations provided and Contracts for Goods and Services made by the Company shall be deemed to incorporate these Terms and Conditions which shall be deemed to have replaced any previously agreed Terms and Conditions contained in writing or otherwise submitted to the Customer by the Company.
- c. These Terms and Conditions should also be read and run in conjunction with the restrictions for each specific Goods and Services as detailed in the Schedule.
- d. Any formal notice required to be given hereunder shall be sent by first class recorded delivery addressed to the Party to be served or at its current registered office in relation to a limited company and be deemed to have been received two working days after posting.
- e. In the event that the Customer accepts the Quotation, subject to the Customer's purchase order, these Terms and Conditions will take precedent over the Customer's terms and conditions unless otherwise agreed between the Parties in writing.

Force Majeure

In the event that the Company is prevented from carrying out its obligations under this Agreement with the Customer as a result of any cause beyond its control such as but not limited to acts of god, war, strikes, lock-outs, flood and failure of third parties to deliver the Goods and / or Services, the Company shall be relieved of its obligations and liabilities under this Agreement for as long as such fulfilment is prevented.

Customer Obligations

The Customer shall:

- a. Utilise the Goods correctly in accordance with the manufacturers or Suppliers' operating manuals and instructions and with such operating supplies and consumables that are in accordance with the manufacturers' or Suppliers' requirements and promptly and regularly carry out all operations maintenance routines (if any) as are set out or referred to therein.
- b. Not allow any other person, firm or company, other than the Company's representative to adjust repair alter or upgrade or maintain the Goods except for the usual operators' maintenance routines (if any) as specified in the foregoing sub-clause.
- c. Notify the Company as soon as reasonably practicable if the Goods develop an operating fault provided that if the Customer shall fail to notify the Company in accordance with this sub-clause of any operating fault, the Company's liability under this Agreement shall be limited to such remedial work as would have been required had the fault been reported when it first arose and the Customer shall be liable for any additional Services or repairs which are necessitated as a result of the delay in reporting the defect or operating fault to the Company which may result in an extra charge to the Customer at the Company's prevailing rates.
- d. If during the continuation of this Agreement, or within a period of two (2) calendar years of the date of termination thereof, by whatever method either alone or as an agent for or in association with any other person, firm, company or organisation the Customer entices away or solicit or do business with any of the employees, sub-contractors, directors or representatives (the Engagement) of the Company, to the detriment of the Company, the Customer agrees to pay the Company an Engagement fee of £25,000 to cover the replacement costs, any other expenses incurred and any loss of income of such action, within 30 days of the Engagement.
- e. Comply with any rules and regulations set down by the Supplier of the Goods including but not limited to any Bandwidth usage.
- f. Acknowledge that the Company's liability under this Agreement is limited and the Company shall have no liability in respect of issues with the Goods or the supply of the Services where such issues have been notified by the Company to the Customer in writing but the Customer has failed within a reasonable time to rectify such issues to the extent that they affect the performance of the Services or the use of the Goods.

Charges and Payment Terms

- a. The charges for Goods, as specified in the Schedule will be invoiced upon delivery to the Customer's premises as per the Schedule, or into storage at the Customer's written request, are due for payment 30 days from date of invoice.
- b. The Company accepts payment by Direct Debit and where the Customer wishes to pay by any other means such as cheque, standing order or electronic payment i.e., BACS, a £10 monthly fee will be applicable unless otherwise agreed in writing between the Parties.
- c. The charges for Services will be made upon completion of the Services but the Company may require an advance payment or part payment as set out in the Schedule. Where the Services are provided covering an annual period the Company may request payment to be made by banker's standing order or direct debit at any time subject to the acceptance of the request by the Customer.
- d. In the event of any failure to honour any one or more standing order or direct debit payments the Company shall be entitled to treat such failure to make the payment(s) as a reason for withholding the Services.
- e. Any other charges under this Agreement will be invoiced by the Company to the Customer and payment shall be due within thirty (30) days from the date of invoice.
- f. Company will be entitled to impose a credit limit on the Customer and / or require payment of an increased security deposit and on written notice to the Customer may suspend or withhold any Services in excess of the credit limit or security deposit:
 - i. Where the Customer suffers a material and negative change in its financial or trading condition or in its credit rating; and / or
 - ii. Where Customer has failed to make payment of an undisputed due amount, and the Company has notified the Customer of the consequences non-payment, and the Customer has failed to make payment in cleared funds within 24 hours of such notification.
- g. Charges are exclusive of Value Added Tax or any other like taxes which will be payable by the Customer at the rate ruling at the tax point date.
- h. If any charge or additional charge under this Agreement, due from the Customer for the Goods and / or Services, shall not be paid within thirty (30) days after it becomes due then the Company reserves the right to suspend the Services hereunder until the amount due shall have been paid in full together with interest which may be charged at 5% above the bank base rate on any balance due from time to time, at the Company's discretion.
- i. Without prejudice to any other remedy, the Company may at any time by giving thirty (30) days written notice to the Customer vary any or all of its charges if for any reason the cost of the Company performing the Services under this Agreement are increased by any non-compliance by the Customer with the provisions of this Agreement provided that any such variation to the Company's charges shall be reasonable.
- j. Charges payable under this Agreement are subject to review at each anniversary of the commencement date of this Agreement shown in the Schedule.
- k. Any Pre-Pay fund amount shall be agreed between the Company and the Customer before commencement of this Agreement. During its course the fund may be 'Topped-Up' in multiples of amounts equal to the initial payment by the Customer. If at the end of this Agreement any funds are unused, they cannot be refunded but provided they are more than £100 ex VAT, the excess funds may be carried over to any other Services or Contract entered into with the Company. Otherwise, any Pre-Pay amount remaining in the fund at the end of this Agreement shall be non-refundable. Time and any material costs will be debited in amounts detailed in the Schedule from the Pre-Pay fund whenever required until either depleted or the end of this Agreement is reached. A monthly statement will be issued by the Company showing details of time and / or materials used. There is no surrender value of the Pre-Pay fund and no refunds will be given unless terminated as detailed herein. There is a minimum annual spend by the Customer equivalent to the initial value of the relevant Schedule.
- l. The Company reserves the right to modify the Charges in response to a change of Applicable Laws that materially affects the cost of delivery of the Services or as a result of a third-party cost increase ("Pass through Increase"). The Company will provide notice of the change and / or any consequent increase in the Charges along with a written explanation and the Charges will be amended from the date of such notice.
- m. In addition to the rights set out in the paragraph above, the Company shall be entitled to increase the Charges in by serving not less than thirty (30) days' written notice to the Customer.
- n. Without prejudice to clause 4.4 and 4.5, prior to the end of the stated end-date of the contract the Company will provide a revised quotation for the services to be extended at auto-renewal after which date this pricing will take effect on reaching the auto-renewal date.

Term & Termination

- a. This Agreement commences on the date of final signature of the Parties and will continue unless and until terminated by either Party by the giving of 90 days' written notice, with the Agreement terminating upon completion of the termination notice period.
- b. Each Contract will commence upon the Contract Effective Date and will continue for the applicable Initial Term set out in the relevant Schedule and thereafter for a Renewal Term and each successive Renewal Term unless and until terminated by either Party by giving no less than 90 days' written notice prior to the expiry of the Initial Term or subsequent Renewal Terms.
- c. In the event that the Customer wishes to terminate an Order under a relevant Schedule prior to the expiry of the Initial Term or any subsequent Renewal Terms, the Customer will be liable for Early Termination Charges.
- d. In the event that this Agreement is terminated as provided for herein:
 - I. each Order or Schedule then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such Sales Order, unless earlier terminated in accordance with the terms of such Order under a Schedule; and
 - II. Following the termination of the term of the last Schedule in force, each party shall return to the other all tangible or other property belonging to the other party then in its possession, custody or power (including all relevant Equipment but save for the Customer Data); and
 - III. Following the termination of the term of the last Schedule in force, the Company may destroy or otherwise dispose of any of the customer data in its possession at its discretion (subject to the terms of applicable Data Protection Legislation) unless the Company receives, no later than 30 days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of its customer data or its destruction. The Company shall use reasonable commercial endeavours to deliver or dispose of such customer data further to receipt of such a written request, provided that the Customer has at that time, paid all Charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Company in returning or disposing of customer data.
- e. Should notice be given from the Customer to the Company the Customer shall be liable for full contracted service at the point of commencement date of Services until the effective date of termination unless otherwise agreed by the Customer. Revision below the originally agreed minimum quantities shown on the applicable schedule shall only be permitted at the Company's sole discretion.

Termination for Customer Fault

The Company may terminate a Schedule and / or this Agreement by written notice, to take effect forthwith if:

- a. the Customer commits a material breach of any Order or this Agreement and if capable of remedy such breach is not remedied within a period of seven (7) days following a written request by Company to remedy;
- b. the Customer has provided inaccurate or misleading information concerning its registered details or financial standing, or Company has reason to believe is likely create disruption or harm to the Network;
- c. the Customer fails to pay any overdue amount within thirty (30) days of the date of a reminder notice;
- d. the Customer fails or is unable to pay its debts when they become due;
- e. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- f. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that Customer with one or more other companies or the solvent reconstruction of that Customer;
- g. the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- h. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- i. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer (being a company, partnership or limited liability partnership);
- j. the holder of a qualifying floating charge over the assets of that Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- k. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- l. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- m. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 4.5.1;
- n. the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- o. the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- p. there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

Exit Management and Offboarding

- a. Upon the termination or expiry of any Schedule or this Agreement for any reason, the Company will provide such assistance as is reasonably requested by the Customer to facilitate the orderly handover of the Services to the Customer or any

replacement supplier (“**Termination Assistance**”). The Company shall be entitled to charge for such assistance at the day rates in force at the time.

- b. The purpose of the Termination Assistance to be provided by the Company is:
 - i. to enable Customer or a replacement supplier to take over the provision of Services or such part of the Services which are to be terminated or expire from the Company;
 - ii. to enable Company to cease supplying the Services or such part of the Services which are to be terminated or expire in an orderly manner;
 - iii. to minimise any disruption or deterioration of the Services, or failure to achieve the Service Levels, during and as a result of the handover from the Company and the commencement of the replacement Services.
- c. The parties acknowledge that the Company’s provision of Termination Assistance is subject to Customer performing their obligations under these Conditions and procuring that any replacement supplier performs their obligations under these Conditions.
- d. No later than ninety (90) days prior to the date of termination of a Schedule, the Customer shall submit a request for Termination Assistance to the Company. As part of this request, the Customer, working together with the replacement supplier, will specify the nature of the replacement services and the general methodology and desired timescales to achieve the transition from the Company provision of the Services to the provision of the replacement services by the replacement supplier. In doing so the Customer will take into account its own business requirements and the risk mitigation actions that it deems appropriate.
- e. Within one month of the request for Termination Assistance, the Company shall prepare and submit for Customer approval a draft of a plan for the provision of Termination Assistance (“Exit Plan”). The level of detail of the Exit Plan shall be reasonable but, in any event, sufficient to provide the procedures, requirements and responsibilities for an orderly transition of Services to Customer and / or the replacement service provider. The Exit Plan shall include a definition of the charges for the Transition Assistance.
- f. Upon Customer receipt of the draft Exit Plan, Customer shall within ten (10) Working Days, approve the Exit Plan or submit to the Company any reasonable changes that Customer requires to the draft Exit Plan. The Company shall then incorporate any reasonable changes requested by Customer and resubmit the draft Exit Plan for Customer approval.
- g. Approval by the Customer of the Exit Plan is agreed as also providing approval of the charges and the payment schedule specified by the Company.

Liability

This clause sets out the entire liability of the Parties to each other under this Agreement:

- a. Nothing in this Agreement will exclude or limit either Party’s liability:
 - i. for death or personal injury caused by or arising from negligence; or
 - ii. for fraud or fraudulent misrepresentation; or
 - iii. in respect of any other matter which for which liability cannot, be excluded or limited by applicable law.
- b. Subject to Clause 4.6(a), Company’s s aggregate liability for failure to provide any part of the Service in accordance with any Service Levels Agreed within the Schedules will be limited to the Service Credits (where applicable) set out in the applicable Schedules.
- c. Subject to Clause 4.6(a), and except as provided in Clauses 4.6(b), 4.6(d) and 4.6(e), Company’s total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Charges paid during the 12 months immediately preceding the date on which the claim arose.
- d. Subject to Clause 4.6(a), except in respect of the Service Credits (if applicable), stated and paid in accordance with the Service Level Agreement, the Company shall have no liability, in any circumstances, for any loss or damage, whether direct or indirect, which results or may result from:
 - i. Customer’s access to, or inability to access, the internet or use therefore for any purpose whatsoever; and / or
 - ii. (ii)any reliance on or use of information, service or goods purchased on or through the Service or the internet.
- e. Subject to Clause 4.6(a), the Company shall have no liability in contract, tort (including negligence or breach of statutory duty) for:
 - i. any loss of actual or anticipated profits, loss of contracts, downtime costs, loss of opportunity, loss of reputation, loss of business, loss of goodwill, loss of anticipated savings or wasted expenditure;
 - ii. losses or claims relating to the transmission or receipt of infringing or unlawful information or content of whatever nature transmitted via the Service;
 - iii. without derogating from the obligations contained in this Agreement, loss of, damage to or corruption of data, or files stored, transmitted, or used on the Service or the Company Network;
 - iv. loss or damage suffered as a result of any virus or other hostile computer program, denial of service, spamming, or hacking being introduced via the Service;
 - v. pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;

- vi. delays caused by, or arising from the negligent performance of, errors, or poor management by third party individuals or organisations beyond its control;
 - vii. any defect with the Services which arises as a result of defects with the Goods which the Customer has been made aware of in writing by the Company.
- f. The Customer shall indemnify the Company in respect of any claim for loss damage or injury caused by the Customer or occasioned on the Customer's premises and not caused by the acts or omissions of the Company to any of the Company's representative(s) or their property, occasioned by or arising from the possession, operation, use or modification of the Goods.
- g. The warranty in clause 2.6 above is given in place of all warranties, conditions terms, undertakings and obligations implied by statute, common law, custom, trade, usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law. The Company will use all the reasonable skill and care in its performance of this Agreement as would be expected of a professional company in the business of supplying and / or maintaining computer systems.
- h. Where the Company provides recommendations to the Customer the Company does so in good faith. However, it is the Customer's responsibility to take all reasonable steps to ensure that such recommendations will be of benefit to the Customer, and if necessary to seek independent advice to confirm or otherwise the Company's recommendations. Where the Customer has acted upon the recommendations of the Company, the Company's liability in the event that the Customer incurs a loss is limited to the value of the Services relating to the provision of such recommendation(s).

Assignment

- a. The Company may assign the benefit and / or burden of this Agreement and any Schedule upon written notice to Customer and may subcontract the provision of all or any part of the Service or Services to third parties.
- b. The Customer shall not assign, novate or grant an encumbrance over this Agreement, any Schedules, Product Annex or the rights and / or obligations hereunder, nor shall the Customer encumber, lease or lend the service equipment or submit them to be used by anyone other than the Customer's employees or agents without the prior written consent of Company.

Dispute Resolution

If any dispute arises in connection with any part of the Order, the Parties will first attempt to settle it as follows:

- a. the Parties will attend a conference call between a member of Company's finance team and the Customer's account manager within 7 Working Days of the dispute arising;
- b. failing resolution of the dispute at such conference call the Parties will hold a meeting between the respective account managers within 7 Working Days of the above conference call, or where an invoice is disputed, the date of notification of such dispute by the Customer;
- c. failing resolution of the dispute at such meeting, the matter will be escalated to a meeting between senior director of each Party which will be held within 7 Working Days of the first meeting.
- d. Each Party will use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both Parties.
- e. If the Parties are unable to settle any dispute by negotiation within the earlier of 21 Working Days of the dispute arising or within 3 Working Days of the conclusion of the second meeting, the Parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) (use Ombudsman Services) procedure to be completed within a further 45 days, or in default of agreement, through an ADR procedure as recommended to the Parties by the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators. The costs of the ADR procedure and the Arbitrator will be borne between the Parties equally.
- f. If the Parties are unable to settle any dispute by negotiation through ADR or either Party refuses or declines to follow ADR procedure as required under Clause 4.8(e), either Party may exercise its rights and remedies under this Agreement and to take such proceedings as it deems necessary pursuant to Clause 4.11.
- g. Nothing in this Clause 4.8 will prevent either Party from seeking injunctive or similar relief at any time if such action is necessary to preserve or protect its commercial or business interests under the Order or this Agreement.

Anti-Bribery

The Customer will, and procures that Authorised Personnel will:

- a. Comply with all applicable Bribery Act;
- b. not offer, promise, give, request, agree to receive, receive or accept a bribe or financial or other advantage or commit any corrupt act;
- c. have and will maintain in place throughout the term of all Orders its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with Bribery Act and relevant policies, and will enforce them where appropriate;
- d. not do or omit to do any act or thing which constitutes or may constitute an offence under Bribery Act;
- e. not do or omit to do any act or thing which causes or may cause Company and / or its group to be in breach of and / or commit an offence under any Bribery Act;
- f. not do or omit to do any act or thing which causes or may cause Company or any member of its group to be guilty of an offence under section 7 of the Bribery Act (or would or may do so if Company was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct); and
- g. provide Company and any member of its group (at the Customer's cost) with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any Bribery Act.

Confidentiality and Non-solicitation

- a. Each Party will:
 - i. keep all Confidential Information relating to the other Party confidential;
 - ii. will disclose such Confidential Information only to its personnel having a need to know for the purposes of this Agreement; and
 - iii. will use such Confidential Information only for the purpose of exercising its rights or performing its obligations hereunder.
- b. A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 4.10(b), it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- c. The Customer will keep confidential all passwords, logon codes and other access methods. Company will not be liable for any disclosure by Customer of the same, whether intentional or otherwise.
- d. The Customer and Company will keep confidential the contents of this Agreement and document. No part of this Agreement or document contents may be used, copied, disclosed or conveyed to any person in any manner whatsoever without prior written permission from the other Party, save to the Customer's or Company's advisors.
- e. With regard to the Freedom of Information Act and where applicable the Freedom Of Information Scotland Act (the "Acts"), if any requests for information are received in respect of any dealings Company has with the Customer including in respect of any contract that Company has agreed or may agree with the Customer, expect that any non-public financial information, the price payable for goods and services supplied or to be supplied together with terms and conditions of trade are treated as "trade secrets" the disclosure of which would have a material adverse effect on our commercial interests because of a reduction in our "competitive edge" and therefore such information should be considered exempt from disclosure in accordance with the exemptions contained in the Acts including in Part 2, Section 43 in the case of the Freedom of Information Act and Section 33 in the case of the Freedom of Information Scotland Act. The Customer will consult with Company regarding any requests for information received by the Customer which relate to any dealings Company has with the Customer and which may encompass such trade secrets save as required by law.
- f. This Agreement may be amended, modified, or varied only by an agreement in writing signed by a statutory director listed on Companies House from both Parties.
- g. Neither Party will act in a manner which expresses or implies a relationship other than that of independent contractor or have any authority to bind the other Party.
- h. For the term of this Agreement (and if expiring at a later date, from the term of any Order) and a period of one year thereafter, the Customer and their Affiliates will not entice or endeavour to entice away from Company or Employ, or make any offers of Employment to, any Significant Person who is or has been a director of or employed or engaged by Company at any time during the term of this Agreement or term of any Order, except as may be agreed between the Parties. "Employ" or "Employment" means the engagement of such a person as an employee, director, subcontractor or independent contractor to carry out duties which are identical or substantially similar to the duties for which such person has been employed or engaged by Company to carry out. For the purpose of this Agreement, "Significant Person" will mean any director of Company or employee or sub-contractor of Company holding a sales, operational or managerial position (excluding for the avoidance of doubt any Company personnel having a purely secretarial role) and having a material involvement with the Customer at any time during the period of 12 months prior to any such enticement, offer of Employment or Employment.
- i. The estimate of the impact that breach of Clause 4.10 would have is herein specified as liquidated damages in the amount of one year's salary or remuneration of any such employee or director at the date of leaving Company to join the other Party. The Parties accept that this is a reasonable estimate of loss, and each Party agrees to pay the same in the event of each and every breach by it of this Clause 4.10. This provision is without prejudice to the right of each Party to seek injunctive relief.

Notices

- a. Unless provided otherwise in this Agreement, any notice or other communication to be given under this Agreement will be in writing, signed by or on behalf of the Party giving it (which may include an electronic signature) and may be served by (i) delivering it by hand or sending it by a recorded postal delivery service to the address and for the attention of the relevant Party whose details are set out in the Order or (ii) to the email addresses set out below:

For Company:

Email: brighton@fluidone.com

Copied To: brightonaccounts@fluidone.com

Post:

For the attention of: Managing Director

Address: FluidOne, CNC House, Lady Bee Enterprise Centre, Albion Street, Southwick, BRIGHTON, BN42 4BW

For Customer:

Email: The email address of a current 'Main Contact' of the Customer as listed in the FluidOne Brighton portal.

Post:

Address: The Customer's primary billing address as advised to FluidOne.

- a. Any Notice will be deemed to have been served:
 - i. if delivered by hand, at the time and date of delivery;
 - ii. if sent by post, at the expiration of 2 Working Days after the envelope containing the same was delivered into the custody of the postal authorities;
 - iii. if sent by email, as soon as reasonably practical upon transmission provided that no error message is received or generated within 48 hours of being sent, provided that where, in the case of delivery by hand, such delivery or transmission occurs after 6pm on a Working Day or on a day which is not a Working Day, service will be deemed to occur at 9am on the next following Working Day.

Miscellaneous

- a. If any provision hereof shall be held to be invalid illegal or unenforceable the validity and enforceability of the remaining provisions shall not be in any way be affected or impaired thereby.
- b. Waiver by the Company of any breach of these conditions or any granting of time or indulgence by the Company to the Customer shall in no way affect the rights of the Company hereunder.
- c. All headings are for convenience only and do not form part of these terms & conditions.
- d. The following descending order of priority shall apply in the event of any inconsistency or ambiguity in the following documents:
 - i. Schedules;

Authority

The Company requires each Schedule to be signed by Authorised Personnel and the Customer procures that this Agreement and each Schedule shall be signed by Authorised Personnel.

Variation to Terms

- a. Except where explicitly detailed in this Agreement or a Schedule, no variation, amendment, modification and addition to or cancellation of any provision of this Agreement shall be effective unless agreed in writing by a duly authorised representative of Customer and Company.
- b. Either Party can propose amendments to this Agreement or a Schedule at any time by providing written notice of such proposed amendments and their publication to the other party in accordance with Clause 4.11. The Parties shall then discuss the proposed amendments which shall not become effective or binding unless agreed in writing by both parties, such agreement not to be unreasonably withheld or delayed.
- c. Variations to terms are stated here otherwise none are agreed nor in effect.

Governing Law and Jurisdiction

This Agreement along with the applicable Schedule(s), Product Annex will be governed and construed in accordance with the Laws of England and Wales, and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.