

**FLUIDONE TERMS AND CONDITIONS
FOR THE SUPPLY OF EQUIPMENT, SOFTWARE AND/OR SERVICES**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

"Agreement" means a contract governing the supply of items of Equipment, Software and/or Services formed comprising these terms and conditions, the provisions of any agreed Order, any applicable Third Party terms and conditions and any applicable specification or description issued by FluidOne and referred to in the Order.

"Charges" means the applicable charges for the Equipment, Software and/or Services as set out in the Order.

"Commencement Date" means the date Charges are to commence as set out in the Order.

"Customer" means the Customer identified in the Order.

"Effective Date" means the date on which FluidOne accepts the Customer's Order in accordance with clause 3.1.

"Equipment" means those items of hardware, audio visual equipment or other computer equipment and accessories including components, cables and consumables to be provided or procured by FluidOne as set out in the applicable Order.

"Initial Term" means the minimum initial term for any Services (if any) which runs from the Commencement Date as set out in the Order.

"Materials" means the information, content and software (if any) provided to FluidOne by the Customer from time to time for incorporation in the Website or which is otherwise the subject of the Services.

"Order" means a Customer's order on FluidOne's standard order form requesting FluidOne to supply Equipment, Software and/or Services as stated together with FluidOne's written confirmation of acceptance. Each Order represents a separate contract between FluidOne and the Customer unless the Order specifically indicates that it is a variation to a previous Order.

"FluidOne" means FluidOne Limited whose registered address is 5 Hatfields, London SE1 9PG, registered company number 05296759.

"Services" means those IT support, implementation/installation, monitoring, hosting (including cloud based hosting services), development, project management, consultancy or other information technology related services to be provided or procured by FluidOne as set out in the applicable Order.

"Site" means the Customer's premises at which the Equipment and/or Software may be installed and/or the Services may be carried out as indicated in the Order.

"Software" means those items of software (including accompanying user documentation) to be provided or procured by FluidOne as set out in the applicable Order.

"Third Party" means third party equipment manufacturers, software owners and service providers.

"Website" means the Customer's website if hosted by FluidOne as set out in the Order.

1.2 Interpretation: If there is any inconsistency or conflict between these terms and conditions and the provisions of any Order, the provisions of any Order shall take priority. Applicable Third-Party terms and conditions shall take priority over these terms and conditions so far as the supply of applicable Third Party items of Equipment, Software and/or Services are concerned.

2. GENERAL

All Orders are accepted subject to the following express terms and conditions. No addition or variation to these express terms whether contained in the Customer's standard terms and conditions or otherwise shall apply unless expressly agreed in writing by a duly authorised FluidOne representative and set out on a standard FluidOne Order. FluidOne reserves the right from time to time to amend and update these terms and conditions and any description of the Services. Such updated terms/description shall be published on www.FluidOne.co.uk and will apply to any new Orders or renewals accepted after that time. Where the changes are the result of Third Party changes outside FluidOne's control the Customer accepts that any such changes shall apply immediately.

3. ORDERS

3.1 All orders for Equipment, Software and/or Services shall be made or confirmed on a standard FluidOne Order, are subject to availability and to acceptance in writing by a FluidOne duly authorised representative.

3.2 FluidOne acts as a distributor/reseller of various Equipment, Software and/or Services on behalf of Third Parties. In some cases FluidOne will procure Equipment, Software and/or Services from the Third Parties for

supply to the Customer. FluidOne will remain responsible for performance by the Third Parties and the Customer is deemed to have consented to such procurement.

- 3.3 In some cases, Equipment, Software and/or Services will only be supplied subject to the contractual terms of such Third Parties. These may apply in the form of a parallel contract on the Third-Party terms directly between the Third Party in question and the Customer. Alternatively, the Third-Party terms may operate as a supplement to the terms set out in an Agreement and will take priority to the extent of any conflict but only in relation to the supply of the Third Party Equipment, Software and/or Services in question. Where Third Party terms are relevant the Customer will be notified in advance of such terms and by placing an Order will be deemed to have accepted these terms. Where this applies the Customer's remedies for any breach of such Third-Party terms by the Third Party shall be limited to those rights and remedies which the Third Party in question makes available and FluidOne shall have no additional liability.

4. CHARGES

- 4.1 The Customer shall pay the Charges to FluidOne who shall submit invoices to the Customer as set out in the Order. All Charges are exclusive of Value Added Tax which will be payable by the Customer at the rate applicable from time to time.
- 4.2 Payments are due within 30 days of invoice date unless otherwise specified in the Order.
- 4.3 FluidOne reserves the right to revise the applicable Charges if the equipment or software the subject of the Services is changed or its location changes. FluidOne will notify the Customer of the proposed changes.
- 4.4 If any sum payable under an Agreement is not paid within 30 days of the due date then FluidOne reserves the right to suspend the provision of all or any of its obligations under the Agreement, subject always to FluidOne having previously notified the Customer of its intention to suspend services no less than 15 days prior to the commencement of such suspension.
- 4.5 FluidOne shall be entitled to charge interest on a daily basis at the 'statutory interest' rate laid down by the Late Payment of Commercial Debts (Interest) Act 1998 applicable from time to time in respect of any sum which is due and unpaid to run from the date or last date for payment thereof until receipt by FluidOne of the full amount whether before or after judgment. In addition where statutory interest has started to run, FluidOne shall be entitled to the fixed and other fees specified by section 5A of the 1998 Act.
- 4.6 FluidOne reserves the right to modify the Charges in response to a change of Applicable Laws that materially affects the terms of or any increase in the cost of delivery of the Services, or in response to increases in the charges to FluidOne in the Third-Party supply chain (pass through increase). FluidOne 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.
- 4.7 In addition to the rights set out in the paragraph above, FluidOne shall be entitled to increase the Charges for any Service once in any calendar year by serving not less than thirty (30) days' written notice on the Customer, provided that the percentage increase in the relevant Charge is no greater than the percentage increase in the CPI or 3% whichever is higher.

5. INTELLECTUAL PROPERTY

- 5.1 All copyright and other intellectual property rights in Equipment, Software and/or Services and any other items supplied pursuant to any Order will remain the property of FluidOne or the applicable Third Party unless expressly agreed otherwise in writing.
- 5.2 Where FluidOne or its sub-contractors expressly creates a Website on behalf of the Customer, the Customer shall own all intellectual property rights in terms of the 'look and feel' of that Website and have the perpetual right to use the same for the purposes of its business.
- 5.3 So far as Software and Services provided by Third Parties are concerned, the Customer shall be granted a non-exclusive licence to use the same for the period referred to in the Order. Use of such Software and Services may be subject to the terms of use of the Third Party in question, in which case the Customer's rights are expressly limited to those set out in the Third Party terms of use and the Customer agrees to be bound by such Third Party terms. FluidOne may treat the Customer's breach of any Third-Party terms as a breach of

the Agreement.

- 5.4 Except as expressly permitted by law the Customer must not seek to reverse engineer any Software nor create any software intended to replicate the facilities and functionality of the Software.
- 5.5 Subject to clauses 3.3 and 5.9, FluidOne will indemnify the Customer against liability in connection with any claim or action brought against the Customer to the extent that it is based on a claim that the Equipment, Software and/or Services as supplied to the Customer infringes a third party's copyright, trade mark or other intellectual property right effective in the United Kingdom.
- 5.6 The Customer retains all intellectual property rights in the Materials, and grants FluidOne a licence to such intellectual property rights to the extent required to perform its obligations pursuant to the Agreement.
- 5.7 The Customer shall indemnify FluidOne against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe any intellectual property rights of a third party.
- 5.8 The indemnities in clauses 5.5, 5.7 and 6.4 are subject to the indemnified party:
 - 5.8.1 promptly notifying the indemnifier in writing of any third party action or claim;
 - 5.8.2 making no admissions or settlements without the indemnifier's prior written consent;
 - 5.8.3 giving the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - 5.8.4 allowing the indemnifier (and/or any relevant Third Parties) complete control over the litigation and settlement of any action or claim.
- 5.9 The indemnity in clause 5.5 may not be invoked to the extent that the action or claim arises out of FluidOne's compliance with any specific directions, designs, or instructions of the Customer which directly cause the infringement.

6. **CONTENT**

- 6.1 Where FluidOne is providing Website hosting Services, it shall update the Website with Materials provided from time to time by the Customer, but no more than once in any month during the term of the Agreement unless otherwise agreed.
- 6.2 The Customer shall ensure that the Materials (including any Materials transmitted using FluidOne's e-mail services) do not infringe any applicable laws, regulations or third party rights (including material which is Equipment, Software or Services for the purposes of mass, unsolicited marketing or otherwise reasonably considered to be inappropriate ("**Inappropriate Content**").
- 6.3 FluidOne shall include only the Materials on the Website. The Customer acknowledges that FluidOne has no control over any content placed on the Website by visitors to the Website and does not monitor the content of the Website or the Customer's use of other Services. FluidOne reserves the right to remove content from the Website or to otherwise suspend Services where it reasonably suspects any Material constitutes Inappropriate Content. FluidOne shall notify the Customer if it becomes aware that Material may constitute Inappropriate Content.
- 6.4 The Customer shall indemnify FluidOne against all damages, losses and expenses arising as a result of any action or claim that the Materials or any other material transmitted using the Services (including any Materials transmitted using FluidOne's e-mail services) constitutes Inappropriate Content.
- 6.5 FluidOne may include a statement regarding its hosting and/or development of the Website on the home page of the Website in a form to be agreed.

7. **CONFIDENTIALITY**

- 7.1 Neither party shall use or disclose to any person (other than to those employees who need to know the same) any confidential information concerning the products, customers, business, accounts, finance or contractual

arrangements or other dealings, transactions or affairs of the other party which may come to its knowledge in the course of providing or receiving the Equipment, Software and/or Services. Each party shall use its reasonable endeavours to prevent the unauthorised publication or disclosure or any such information and shall ensure that its employees are aware of and comply with the confidentiality obligations contained in this clause.

7.2 The provisions of clause 7.1 shall not apply to any information to the extent that it:

7.2.1 is already public knowledge or becomes so at a future date (otherwise that as a result of breach of the Agreement) other than through a breach of clause 7.1; or

7.2.2 was rightfully in possession of the disclosing party prior to the Effective Date; or

7.2.3 is lawfully received from a third party (with full right to disclose);

7.2.4 is independently developed by the disclosing party without access to or use of the confidential information of the other party; or

7.2.5 is required to be disclosed by law or by a court of competent jurisdiction or in accordance with the rules of any recognised stock exchange.

7.3 Where FluidOne is providing Services from its own or Third Party premises which involve the storage of or access to Customer data it will ensure that reasonable security measures are in place at the applicable location to preserve the security and confidentiality of Customer data.

8. TIMING

8.1 FluidOne shall use reasonable endeavours to adhere to any times or dates quoted in writing when accepting the Order but the Customer acknowledges that such times and dates are estimates only and that the time of delivery or performance is not of the essence.

8.2 FluidOne shall not be liable for any delays in implementing any project plan referred to in an Order resulting from the Customer's failure to fulfil any of its obligations set out in such project plan. FluidOne reserves the right to invoice the Customer for any additional expenses reasonably incurred by FluidOne as a result of such delays.

8.3 FluidOne reserves the right to cancel a pre-scheduled visit to a Site at any time in case of an emergency situation where an engineer is required to attend another customer site provided that FluidOne shall endeavour to rearrange such visit as soon as reasonably possible.

9. RISK AND TITLE

9.1 Risk in the Equipment and Software shall pass to the Customer on delivery to the Customer's Site.

9.2 Title to the Equipment shall remain with FluidOne or its suppliers until payment in full has been made by the Customer. Title to the Software and the media on which it is supplied remains at all times with FluidOne or the applicable proprietary owners. The scope of any Software licence is as expressly specified in the Order or applicable referenced specification.

9.3 If payment in full is not made in accordance with the Agreement FluidOne may notify the Customer to return the Equipment and Software and/or cease using it or the Services within the period specified in the notice. If such requirement is not immediately complied with, FluidOne shall be entitled at any time and without further notice to retake possession of the whole or any part of the Equipment and Software (and for that purpose to enter the Customer's premises) and to terminate the Customer's ability to use the Services without prejudice to any other remedy that may be available to FluidOne.

10. DATA BACK UP

10.1 Where specified in the relevant Service specification FluidOne or its Third Party provider, will keep a regular backup of the Website/Materials which can be used in the event of a hard drive, server or other technical failure. Such back-up will be stored separately and securely and will, if necessary be used to restore operations as soon as reasonably possible.

- 10.2 The Customer must take reasonable steps to ensure that adequate procedures are in place in accordance with best computing practice with regard to the regular taking of back-up copies of data. Before performing Services FluidOne will, where necessary, take data back-ups in accordance with good industry practice or recommend that the Customer does so. FluidOne does not warrant that it or its suppliers will necessarily be able to recover or reconstitute Customer data during the performance of the Services.

11. EXCLUSIONS FROM SERVICES

- 11.1 The Services shall not include support resulting from the following:
- 11.1.1 damage resulting from accident, or misuse on the part of the Customer, its employees or any third party;
 - 11.1.2 the Customer's failure to operate/use the Equipment/Software in accordance with relevant user instructions;
 - 11.1.3 damage resulting from failure or fluctuation of power supply, air conditioning or humidity controls;
 - 11.1.4 damage resulting from the attachment of equipment or software which do not form part of the Equipment, Software or Services supplied by FluidOne;
 - 11.1.5 fire, flood, war, earthquake, act of vandalism, or other similar occurrence;
 - 11.1.6 addition, modification or adjustment to the Equipment or Software by any party other than FluidOne.
- 11.2 The Services shall not include:
- 11.2.1 support for items supplied by a third party prior to the Effective Date unless FluidOne have expressly agreed to take on responsibility; or
 - 11.2.2 any services not expressly included in the description of the relevant Services as referred to in the Order.
- 11.3 FluidOne may agree to provide services to the Customer as a result of circumstances referred to in clauses 11.1 and/or 11.2 in line with its current hourly rates as set out in an Order or as a variation to an Order.
- 11.4 FluidOne reserves the right to refuse to provide Services in respect of any item of Equipment, which, in its reasonable opinion, is deemed to be beyond economic repair.

12. WARRANTIES

- 12.1 The Customer acknowledges that the Equipment, Software and certain Services are proprietary to FluidOne's suppliers and are re-sold or licensed by FluidOne to its customers. Accordingly FluidOne, to the extent that it is entitled to do so, shall pass on to the Customer the benefit of rights and remedies under any warranties applicable to the Equipment, Software and/or Services given by the Third Parties in question. The Customer acknowledges that Equipment, Software and/or Services provided by Third Parties are warranted against the applicable Third Party's specifications. Whilst FluidOne may have recommended particular items of Equipment, Software and/or Services provided by Third Parties using its skill and experience, any such recommendation will have been based on information made available to it as to the Customer's requirements and budget. The Customer acknowledges that the Equipment, Software and Services are not guaranteed to operate entirely uninterrupted or error free. Where any Service comprises the provision of Third Party virus checking or other similar software, the Customer further acknowledges that such software does not guarantee to identify and protect against 100% of viruses and other software code which is intended to damage computer systems or impair their operation.
- 12.2 FluidOne shall provide its own Services in a timely manner using reasonable skill and care in accordance with good industry practice. It will employ only suitably qualified and experienced personnel to provide the Services.
- 12.3 The warranties in clauses 12.1 and 12.2 are subject to the following conditions:
- 12.3.1 FluidOne being notified as soon as reasonably possible and in any event within 14 days of the Customer first discovering any problem with the Equipment, Software and/or Services as supplied

and FluidOne or the relevant Third Parties being afforded a reasonable opportunity to correct any problem;

- 12.3.2 the Equipment, Software and/or Services having been used in accordance with the accompanying operating or usage instructions;
 - 12.3.3 the Equipment and Software not having been modified or repaired otherwise than by FluidOne or applicable Third Parties unless otherwise authorised in writing in advance by FluidOne;
 - 12.3.4 the Customer co-operating fully regarding identifying the cause of the problem and its resolution.
- 12.4 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform this Agreement, and that those signing this Agreement are duly authorised to bind the party for whom they sign.
- 12.5 Additional charges may be payable by the Customer should any problem notified not in fact exist or if the problem has been caused by the Customer not complying with any of the matters set out in clause 12.3.

13. DUTIES OF THE CUSTOMER

The Customer shall:

- 13.1 be responsible for the accuracy and completeness of the Materials;
- 13.2 promptly notify FluidOne of any defect in or malfunction with the Equipment, Software and/or Services;
- 13.3 keep and operate the Equipment and Software within the conditions specified by FluidOne and the relevant Third Parties;
- 13.4 co-operate fully with FluidOne by making available adequate working space and power supplies, telecommunications facilities and environmental conditions at its own expense at the Site for FluidOne engineers to perform the Services;
- 13.5 ensure that all Customer employees are appropriately skilled and trained;
- 13.6 ensure that all Customer employees are aware of best practice in relation to protecting data and computer systems from unauthorised access and computer viruses particularly when opening e-mail attachments and clicking on any links to web sites. FluidOne cannot be held responsible if the Customer's computer systems or data is compromised as a result of the action of the Customer's employees;
- 13.7 comply with the provisions of the General Data Protection Regulation 2016 and any related data protection legislation;
- 13.8 provide FluidOne at least 48 hours' notice prior to any cancellations of pre-scheduled on-Site service calls (FluidOne reserves the right to render a charge where such notice is not provided);
- 13.9 ensure that those who contact FluidOne to request the provision of Services are appropriately authorised to do so.

14. LIMITATION OF LIABILITY

- 14.1 Neither party excludes or limits liability to the other party for:
 - 14.1.1 fraud or fraudulent misrepresentation;
 - 14.1.2 death or personal injury caused by negligence;
 - 14.1.3 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
 - 14.1.4 any matter for which it would be unlawful for the parties to exclude liability.
- 14.2 Subject to clause 14.1, neither party shall in any circumstances be liable howsoever arising (and whether for

breach of contract, negligence, misrepresentation or otherwise) for:

- 14.2.1 any consequential or indirect losses; or
 - 14.2.2 any loss of anticipated profits, business, revenue, or goodwill;
 - 14.2.3 any loss arising as a result of inability of the Customer or its customers/clients to access or use the Equipment, Software or Services.
- 14.3 Subject to clauses 14.1 and 14.2, FluidOne's aggregate liability for damage to tangible property under an Agreement shall be limited to a sum equivalent to 100% of the total amounts paid by the Customer to FluidOne under such Agreement in the 12 months preceding the last event giving rise to the claim for any one event or series of events arising out of a single cause.
- 14.4 FluidOne's liability for Equipment, Software and/or Services which are the subject of Third Party terms is limited as per clause 3.3 and 12.1.
- 14.5 In respect of all claims other than those governed by clauses 14.1, 14.3 and 14.4, the maximum aggregate liability of FluidOne howsoever arising under or in connection with an Agreement shall not in any circumstances exceed a sum equivalent to 125% of the total amounts paid by the Customer to FluidOne under such Agreement in the 12 months preceding the last event giving rise to the claim.
- 14.6 Except as expressly provided in the Agreement all conditions, warranties or representations, express or implied, statutory or otherwise, relating to the performance, condition or quality of the Equipment, Software and/or Services or otherwise relating to the performance by FluidOne of its obligations under the Agreement are hereby excluded.

15. TERM AND TERMINATION

- 15.1 Subject to termination or cancellation under clauses 15.2 or 15.3, each Agreement shall come into force on the Effective Date and so far as ongoing Services are concerned shall continue in force for the Initial Term of 36 months and then shall extend for additional 12 month periods ("Renewal Term") unless terminated by either party giving the other 90 days written notice prior to the expiry of the Initial Term or unless otherwise set out in the applicable Order.
- 15.2 Either party may terminate an Agreement in part or in whole to the extent of any future performance obligations or rights by notice in writing to the other party where the other party is in material breach of the Agreement and, where remedy is possible, such breach has not been remedied within 30 days of notice of such breach.
- 15.3 FluidOne may immediately on written notice:
- 15.3.1 cancel or terminate any Order (or part thereof) and require the return of the applicable Equipment and/or Software for which payment in full has not yet been received and is overdue;
 - 15.3.2 terminate the ongoing provision of Services if a receiver, manager or liquidator is appointed over the whole or any part of the business or assets of the Customer, the Customer makes an assignment for the benefit of its creditors, any proceedings are commenced by or against the Customer under any bankruptcy or insolvency legislation, the Customer becomes unable to pay its debts as they fall due, or an order is made or a resolution passed for the dissolution or winding up of the Customer.
- 15.4 Immediately following termination or expiry of the licence for any Software (for whatever reason) the Customer will cease using and, as FluidOne directs, return to FluidOne or destroy that Software and accompanying documentation and any copies thereof and certify in writing to FluidOne that it has done so. This requirement applies to all copies of Software and documentation in whatever form.
- 15.5 Termination of an Agreement or cancellation of any Order (or part thereof) shall be without prejudice to the accrued rights and obligations of the parties.
- 15.6 Rights and obligations which by their nature are intended to survive will remain in effect after termination or cancellation (including clauses 1 (Definitions and Interpretation), 4 (Charges), 5 (Intellectual Property), 6.5 (Confidentiality), 14 (Limitation of Liability), 16 (Data Protection) and 17 (Miscellaneous)).

- 15.7 On termination of an Agreement or cancellation of any Order (or part thereof) for any reason, the Customer shall immediately pay any outstanding unpaid invoices. FluidOne shall submit invoices for any Equipment, Software and/or Services that it has supplied or which it was contracted to supply, but for which no invoice has been submitted, and the Customer shall pay these invoices upon receipt.
- 15.8 Upon completion by FluidOne of any Services comprised in an Order, the termination of an Agreement or cancellation of any Order (or part thereof), the Customer will promptly return to FluidOne all software, documentation and manuals used by FluidOne for performing the work or Services or any other items belonging to FluidOne which the Customer has no right to retain.

16. DATA PROTECTION

- 16.1 The following definitions apply to this clause:

the terms **"data controller"**, **"data processor"**, **"data subject"**, **"Personal Data"** and **"processing"** bear the respective meanings given them in the General Data Protection Regulation 2016 and **"data protection principles"** means the data protection principles set out in the Regulation.

"data" includes Personal Data.

"Customer Personal Data" means any Personal Data provided by or on behalf of the Customer. The Customer acknowledges that FluidOne and any relevant Third Parties will be acting as a data processor, rather than as a data controller, in respect of all such processing activities which FluidOne and any relevant Third Parties carry out under an Agreement.

- 16.2 FluidOne and any relevant Third Parties shall:

- 16.2.1 comply with the provisions of the Regulation as they apply to data processors. FluidOne shall not appoint any sub-processor without the prior written consent of the Customer.;

- 16.2.2 only carry out any processing of any Customer Personal Data on the Customer's documented instructions;

- 16.2.3 implement appropriate technical and organisational measures designed to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage. FluidOne will periodically review the security arrangements to ensure that they remain appropriate and update them as reasonably necessary;

- 16.2.4 only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject. FluidOne will execute whatever documentation is reasonably required in order to ensure an adequate level of protection for the rights and freedoms of data subjects including, where appropriate, the standard 'model' contractual clauses approved by the European Commission for the transfers of personal data from the European Economic Area to data processors established in third countries

- 16.2.5 at the choice of the Customer, delete or return all personal data to the Customer when the Services come to an end;

- 16.2.6 maintain such records as required by the Regulations. Upon request, FluidOne shall make the records available to the Customer and any relevant supervisory authority;

- 16.2.7 reasonably co-operate with the Customer on a timely basis to facilitate the Customer's compliance with all applicable data protection legislation;

- 16.2.8 notify the Customer within 48 hours of becoming aware of a personal data breach. Such notice shall contain reasonable details of the extent of the breach and its likely cause as well as measures taken or proposed to be taken to address the breach and its effects;

- 16.3 The security measures implemented by FluidOne and appointed Third Party processors should be appropriate for most businesses and the limited information that they typically hold relating to their employees and customers. However, additional measures may be required if the information held and processed by the Customer is particularly sensitive such as medical records, information related to children or records of financial transactions. The volume of personal data held may also necessitate that additional measures should

be taken. It is the Customer's responsibility to seek specific advice if additional measures may be necessary as FluidOne will not necessarily be aware of exactly what personal data a Customer is processing.

- 16.4 FluidOne shall promptly notify the Customer in writing of any notices received in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.

17. STAFF RECRUITMENT

Both parties hereby agree that for the period of each Agreement and for 12 months after its termination or expiry for any reason, neither party shall employ, or seek to offer employment to an employee of the other party who has been involved in the receipt or provision of the Services save by mutual written consent.

18. MISCELLANEOUS

- 18.1 **Force Majeure:** FluidOne shall not be liable for delay in or failure to perform obligations if that delay or failure is caused by circumstances or events beyond its reasonable control.
- 18.2 **Waiver:** Failure by either party to exercise or enforce any of its rights under an Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 18.3 **Entire Agreement:** Each Agreement sets out all the terms agreed between the parties relating to the subject matter of the Agreement and supersedes any previous agreement between the parties relating to the same subject matter. Each party acknowledges that in entering into the Agreement it does not rely upon, and neither of the parties shall be bound by, or liable to the other party for, any representation or misrepresentation made by it or by any person on its behalf which is not expressly contained in or referred to in the Agreement.
- 18.4 **Variation:** Any variation of the Agreement must be in writing and signed by or on behalf of both parties. For this purpose writing includes e-mail.
- 18.5 **Sub-contracting and Assignment:**
- 18.5.1 FluidOne shall be entitled to sub-contract any or all of its obligations under an Agreement to suppliers and sub-contractors. FluidOne shall, except as provided by clauses 3.3 and 12.1, be responsible for the acts and omissions of the suppliers and sub-contractors to the same extent as if it had carried out the obligations itself pursuant to this Agreement.
- 18.5.2 Subject to clause 18.5.1, neither party shall assign, sub-license or otherwise transfer this Agreement or all or any of its rights and obligations under this Agreement without the prior consent in writing of the other (such consent not to be unreasonably withheld or delayed). The right to assign rights in Software and/or Services provided by Third Parties may be subject to restrictions imposed by the Third Party. The rights granted to the Customer are not to be used in connection with the provision of commercial IT services to third parties.
- 18.6 **Severability:** If and to the extent that any provision of an Agreement is illegal, void or unenforceable for any reason, the remaining provisions or parts of the relevant provision (as the case may be) shall remain in full force and effect and the Agreement shall then be construed with such amendments as are necessary in order to make the provision valid and enforceable to achieve so far as possible the original intention as set out in the Agreement.
- 18.7 **Notices:**
- 18.7.1 Any notice given to a party under or in connection with an Agreement shall be in writing and delivered by recorded delivery, courier or sent by email to the other party at the address or email address and for the attention of the addressee as set out in the Order.
- 18.7.2 A notice shall be deemed to have been received:
- (a) if sent by recorded delivery at the time recorded by the delivery service; or
 - (b) if sent by courier, on the date and at the time of signature of the courier's delivery receipt; or

(c) if sent by email, when transmitted to the addressee; provided that if transmission is on a day which is not a working day or after 5pm, it is deemed to be duly given and received on the next working day.

18.8 **Third Party Rights:** No person other than a party to an Agreement shall have any rights to enforce any term of this Agreement.

18.9 **Governing Law:** Each Agreement shall be governed and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.