

Master Services Agreement

[DIRECT SUPPLY]

1. FLUIDONE LIMITED

and

2. {{*}}

MSA v1.15

THIS AGREEMENT dated {{ }} is entered into by and between:

- (1) **FLUIDONE LIMITED** (Company Number 05296759) whose registered office is at 5 Hatfields, London, SE1 9PG ("**FluidOne**");

And

- (2) {{* }} (Company Number {{* }}) whose registered office is at {{* }} ("**Customer**").

(together the "**Parties**" and individually a "**Party**")

Recital:

Whereas, FluidOne is a telecommunications company which operates and supplies Ethernet, xDSL, Mobile, Managed IT Services, Unified Communications and Cloud services, as described in the individual Product Annex.

NOW, THEREFORE, for good and valuable consideration contained herein, the exchange, receipt, and sufficiency of which are acknowledged, the Parties agree as follows:

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1 DEFINITIONS

- 1.1 Save as otherwise provided, capitalised terms used in this Agreement will have the meanings ascribed thereto below:

Acceptable Usage Policy means the policy referred to in Clause 4.5;

Account Manager means the nominated FluidOne sales representative who provided the quotation for the Services and is the Customer's general point of contact at FluidOne;

Activation occurs on the date notified to the Customer by FluidOne as the date the relevant Service is available for use and 'Activated' will be construed accordingly;

Activation Charges mean those amounts payable by the Customer to FluidOne for the connection and Activation of a Service as set out in the relevant Order or as otherwise communicated to the Customer by FluidOne prior to installation of a Service;

Activation Date means the date on which the Service is Activated;

Affiliate means, in relation to either Party, a company which is a subsidiary or holding company of it, or any company which is a subsidiary of any such holding company, "holding company" and "subsidiary" having the meanings ascribed to them in section 1159 Companies Act 2006;

Agreement means the Terms and Conditions and the accompanying Product Annexes;

Authorised Personnel means any employee of the Customer whose details are contained in Clause 2.3, who the Customer has granted permission to sign and submit Orders on its behalf;

Authorised Representative means all employees, staff, subcontractors other workers, agents and consultants of FluidOne who are authorised by FluidOne to perform the Services;

Bandwidth means the rate, in bits per second, which data packets can be transferred over the Service. This is always quoted in bits per second (bps), never Bytes per second (Bps) and does not factor in packet overheads;

Bribery Act means the Bribery Act 2010;

BT means BT Group PLC and includes BT Retail, BT Wholesale and BT Openreach and any other sub-divisions of BT Group PLC as necessary;

Carrier means any supplier of telecommunications services to FluidOne where such services are used by FluidOne to provide the Services;

Charges means the Activation Charges and the Recurring Charges and any other charges set out in the Order or otherwise payable hereunder;

Confidential Information means all confidential information (however recorded or preserved) disclosed by a Party to the other Party including but not limited to:

- (a) the existence and terms of the Agreement;
- (b) any information that would be regarded as confidential by a reasonable business person relating to:
 - (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); and
 - (iii) any information developed by the Parties in the course of carrying out this Agreement;

Connection means the connection (or connections, if there is more than one) between the Network and Customer's network as specified in the Product Annex which is required in order to receive the Service. If there is more than one connection, "connection" shall be construed accordingly;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures means as defined in the Data Protection Legislation;

Customer Equipment means any hardware provided by the Customer to access the Service or connects to FluidOne 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 FluidOne to the Reseller 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;

FluidOne Core Network or **Core Network** means the telecommunications network owned and/or controlled by FluidOne in the provision of the Service;

FluidOne Portal means the portal at the following website:
www.dash.fluidone.com;

Initial Term means as set out in the Product Annex;

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;

Layer 2 means a Service provided by FluidOne without an IP address delivered over a private interconnection;

Layer 3 means a Service provided by FluidOne which is integrated onto FluidOne Core Network and provided with either a Private or Public IP address from the available addresses allocated to FluidOne;

Network means the FluidOne Core Network and any other network operated by or on behalf of FluidOne to provide the Services including any third-Party networks;

Network Availability means the CPE, when correctly connected and configured, is able ping one of FluidOne's DNS servers. These are currently 89.105.96.51 and 89.105.96.52, but may be subject to change from time to time;

Order means an order for the Services, in a form approved by FluidOne, which the Customer or its Authorised Personnel will complete, sign and submit via Adobe Sign, FluidOne Portal or API;

Order Acknowledgement Date means the date an Order has been stated as being accepted by FluidOne in writing to the Customer;

Order Committed Date means the date defined in Clause 2.6;

Product Annex means the linked documents below that describe the relevant Services that form part of each Order and may be amended from time to time:

DSL - <https://www.fluidone.com/products/FluidOne-Product-Annex-DSL-D.pdf>;

Ethernet - <https://www.fluidone.com/products/FluidOne-Product-Annex-Ethernet-D.pdf>;

Mobile - <https://www.fluidone.com/products/FluidOne-Product-Annex-Mobile-D.pdf>;

Unified Communications - <https://www.fluidone.com/products/FluidOne-Product-Annex-Unified-Communications-D.pdf>;

Cloud and Data - <https://www.fluidone.com/products/FluidOne-Product-Annex-Cloud-and-Data-D.pdf>;

Managed IT Services - <https://www.fluidone.com/products/FluidOne-Product-Annex-Managed-IT-Services.pdf>

WebTitan - <https://www.fluidone.com/products/FluidOne-Product-Annex-WebTitan.pdf>

Recurring Charges means those amounts payable by the Customer to FluidOne on a recurring basis for provision of the Service as set out in the relevant Order and excludes installation, set-up or other one-off charges;

Renewal Term means a period of twelve (12) calendar months;

Replacement Supplier means any supplier who replaces FluidOne as a provider of the same or similar services to the Customer at any time after the expiration or termination of this Agreement or any Order;

Service(s) means the service(s) specified on the relevant Order and/or Product Annex;

Service Credits means the credits with which FluidOne will reimburse the Customer where the service performance is below the agreed targets as set out in the relevant Product Annex;

Service Equipment or **CPE** means all and any equipment provided and/or installed at the Service Location by or on behalf of FluidOne in connection with the Services;

Service Equipment Charges mean those amounts payable by the Customer to FluidOne for the supply or hire of the Service Equipment as set out in the relevant Order or as otherwise communicated to the Customer by FluidOne prior to the installation of the Service Equipment;

Service Failure means where the Customer has raised a support call and the modem, when correctly connected and configured, does not respond to Pings or SNMP polling from FluidOne or a BT line test indicates a fault;

Service Level Agreement (SLA) means the set of performance indicators which FluidOne is required to meet as further described in the applicable Product Annex;

Service Location means any premises controlled by the Customer on which the Services are to be supplied listed in the Order, as amended from time to time;

Terms and Conditions means the terms and conditions contained in the main body of this master services agreement excluding the Product Annexes;

Territory means the UK and Member States of the European Union and the European Economic Area or any other territory agreed between the Parties in writing;

Wholesale Service means multiple Services purchased by a customer from FluidOne in order for such customer to supply its own multiple customers either via Layer 3 or Layer 2 technologies; and

Working Day means any day not being a Saturday or Sunday on which commercial banks are open for business in the City of London.

2 ORDER PROCESS

- 2.1 FluidOne will supply the Services and the Service Equipment (where applicable) to the Customer in accordance with the terms of this Agreement, and the applicable Order.
- 2.2 FluidOne requires each Order to be signed by Authorised Personnel and the Customer procures that each Order will be signed by Authorised Personnel.
- 2.3 The Customer warrants that the following persons whose details are contained in the table below have been granted permissions by the Customer as prescribed in the FluidOne Dash Portal and are authorised to sign and submit Orders on behalf of the Customer:

Main Account Holder		
Primary Forename:	{{*	}}
Primary Surname:	{{*	}}
Primary Email:	{{*	}}
Additional Account Holders		
Secondary Forename:	{{	}}
Secondary Surname:	{{	}}
Secondary Email:	{{	}}
Tertiary Forename:	{{	}}
Tertiary Surname:	{{	}}
Tertiary Email:	{{	}}
Quaternary Forename:	{{	}}
Quaternary Surname:	{{	}}
Quaternary Email:	{{	}}
<p>Please note that the nominated persons above will be given access to the FluidOne Dash Portal with full administrative capability, ability to see invoices, support tickets, order and cease services. These nominated users will also be able to create other users and assign the same permissions to those users (including the right to sign and submit Orders and create, edit or remove other administrative users).</p> <p>The above portal account settings and provisions of this Clause 2.3 will apply to all of the Customer's account codes and Orders relating to such account codes and any existing portal administrative accounts will be removed and discarded along with any incomplete entries when the above users are created in the FluidOne Dash Portal.</p>		

- 2.4 FluidOne may accept each Order at its own discretion and may require the Customer to provide satisfactory financial and credit information before acceptance.
- 2.5 Once an Order has been stated as being accepted by FluidOne in writing to the Customer ("**Order Acknowledgement Date**") the Order will form a separate Contract between FluidOne and the Customer and will incorporate

the relevant terms of the Product Annex and be governed by the terms of this Agreement.

- 2.6 An Order is committed when FluidOne notifies the Customer in writing (including by email) that:
- (a) a date has been set for the conduct of a site survey; or
 - (b) a date has been set for Activation of any part of the Services or for the installation of any equipment or part necessary for Activation of the Services; or
 - (c) FluidOne has confirmed acceptance of the Order in writing to the Customer.
- 2.7 FluidOne will issue such notification by email to the Customer's Authorised Personnel and the date of such notification shall (except in respect of Services which are mobile services as detailed in the Product Annex) be deemed to be the "**Order Committed Date**".

3 CONFLICT

- 3.1 The following descending order of priority shall apply in the event of any inconsistency or ambiguity in the following documents:
- (a) Order;
 - (b) Terms and Conditions; and
 - (c) Product Annex.
- 3.2 Subject to the above order of priority between documents, later versions of documents approved in writing by FluidOne will prevail over earlier ones if there is any conflict or inconsistency between them.

4 CUSTOMER OBLIGATIONS: SERVICE

- 4.1 FluidOne will have no liability to the Customer relating to the provision or performance of any Services to the extent that such Services are affected by failure by the Customer to comply with its obligations under this Clause 4 or any Customer obligation set out in the Product Annex.
- 4.2 The Customer will notify FluidOne in writing promptly after it becomes aware that it is in breach of this Clause 4. Where the Customer does not comply with Clause 4 or any other obligations under the applicable Order and such non-compliance results in or is likely to result in a Service Failure or period where there is no Network Availability, FluidOne will use reasonable endeavours to notify the Customer of the matter promptly so that the Customer can remedy the non-compliance within a reasonable period, and in any event no later than thirty (30) days from receiving notice of the matter from FluidOne. If the Customer does not remedy the non-compliance

FluidOne will have the right to immediately suspend the Services, at the Customer's expense, until non-compliance has been remedied to FluidOne's reasonable satisfaction. Where non-compliance is not remedied for three (3) or more months following notice of the matter by FluidOne, FluidOne will have the right to terminate the applicable Order or the applicable Services under that Order, and the Customer will pay the associated Early Termination Charges.

- 4.3 Unless otherwise agreed in an Order, FluidOne and/or carriers will not be responsible for assessing the Customer's space, facilities, computer and/or transmission capacity requirements, the Customer will be solely responsible for assessing its requirements, and for the avoidance of doubt, FluidOne will have no liability under or in connection with any Order to the extent that the Customer's stated requirements are inadequate or are otherwise not fit for purpose.
- 4.4 The Customer will indemnify FluidOne, its representatives, agents and subcontractors in respect of all and any costs, damages, liabilities, expenses, interest, penalties, fines and losses (whether direct, indirect or consequential losses), including any legal and other professional costs and expenses, and, in each case, including as a result of proceedings or actions or claims brought or threatened against, FluidOne, as a result of the Customer's breach of this Agreement.
- 4.5 The Customer will not (and will procure that each member of its staff and personnel will not) use any Service:
 - (a) in breach of FluidOne's then current Acceptable Usage Policy from time to time detailed at: <http://www.fluidone.com/documents/usage.pdf>
 - (b) in breach of any reasonable instructions given by FluidOne.
- 4.6 FluidOne will have the right to examine, from time to time, the Customer's use of the Services and the nature of the data/information that the Customer is transmitting or receiving via the Services where such examination is necessary: (i) to protect and/or safeguard the integrity, operation and functionality of FluidOne's (and neighbouring) networks; and/or (ii) to comply with police, judicial, regulatory or governmental orders, notices, directives or requests.
- 4.7 For the purposes of Clause 17.7(a) any breach by Customer of the provisions of 4.5(a), 4.8, 4.9 and 4.12 will be deemed a material breach of this Agreement and of the relevant Order.
- 4.8 Save where expressly permitted in this Agreement, the Customer will not otherwise licence, sell, resell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make use of the Services and/or the Service Equipment.
- 4.9 The Customer will not under any circumstance modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by the Copyright, Designs and Patents Act 1988 or the Intellectual Property Act 2014 or any other Intellectual Property in the

Services except and only to the extent that it is expressly permitted by this Agreement or required by applicable law.

- 4.10 The Customer will conduct its business without detriment to FluidOne and the good name, goodwill and reputation of FluidOne and will avoid deceptive, misleading or unethical practices, advertising or publications that are, or might be, detrimental to FluidOne, FluidOne services or the public.
- 4.11 The Customer will ensure that it has obtained all necessary licences or permits necessary for the use of the Services and it will pay all taxes and other amounts payable by it in connection with any delivery or use of the Services.
- 4.12 The Customer is not granted any right, licence or interest in any Intellectual Property of FluidOne or FluidOne licensors unless expressly stated otherwise in this Agreement.
- 4.13 The Customer warrants and represents that:
- (a) it has full power and authority to enter into and perform this Agreement, and that its entry into and performance of this Agreement will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party, and undertakes that it will not, during the term of this Agreement, enter into any contract or accept any obligation inconsistent or incompatible with its obligations under this Agreement or any Order;
 - (b) it has obtained all necessary licences or permits necessary for the use of the Services and it will pay all taxes and other amounts payable by it in connection with any delivery or use of the Service
 - (c) it will not introduce any viruses, and will not allow any viruses to be introduced, to the Network;
 - (d) it will comply with all applicable laws, rules and regulations of governmental entities, having jurisdiction over such performance, including any data protection and privacy laws and regulations, health and safety legislation and environmental legislation; and
 - (e) upon FluidOne's request, it will immediately give FluidOne all assistance, cooperation and information necessary in order for FluidOne to comply with its obligations under the Regulation of Investigatory Powers Act 2000 and all laws regarding data protection and data retention.

5 SERVICE SUSPENSION/ALTERATION

- 5.1 Without prejudice to its other rights or remedies hereunder or generally at law, FluidOne may suspend provision of the Services or any part thereof without liability to the Customer:
- (a) forthwith on written notice to the Customer (i) where FluidOne reasonably believes the Customer is in breach of Clause 4; and/or (ii) FluidOne has a right to terminate the Agreement or any Order,

irrespective of whether it delays or waives for a time its right to do so; and/or (iii) the Customer fails to pay any Charges in accordance with the relevant Order, subject to FluidOne giving the Customer at least fourteen (14) days prior written notice of the breach and the Customer fails to make payment during the notice period and such notice expires; and/or (iv) FluidOne is required to comply with an order, instruction or request of a Government, court, agency or other competent administrative or regulatory authority, provided that FluidOne has given the Customer reasonable written notice; and/or (v) where FluidOne reasonably believes the Customer is in breach of any of the Customer obligations set out in the relevant Product Annex; and/or

(b) where temporary suspension of Services is required for the purpose of operational or technical reasons. FluidOne will reinstate the Services suspended under this Clause as soon as reasonably practicable.

5.2 FluidOne will reinstate the Service suspended under Clause 5.15.1(a) in its absolute discretion which will in any event be subject to payment by Customer of an admin charge of £150 and any direct pass through costs incurred by FluidOne as a result of suspension and/or reinstatement. If FluidOne has not reinstated a Service suspended under Clause 5.1 within a period of thirty (30) days from the date of suspension, the Order relating to such Services will terminate automatically at the expiry of such 30 day period, in which event the provisions of Clause 17 will apply.

5.3 FluidOne will be entitled to terminate, suspend or modify a Service and related Order, without any liability, if any consent, licence or authorisation which FluidOne requires in order to provide that Service is not obtained, is withdrawn or otherwise cancelled or the provision of the Service would result in FluidOne being in breach of contract to a third Party. In the event of a modification to the Service that is materially detrimental to the Service, the Customer will have the right to terminate the Order in question upon written notice to FluidOne, such notice to have immediate effect. FluidOne will use its reasonable endeavours to give the Customer reasonable notice prior to such termination or modification taking effect. Any Charges paid in advance for the terminated Services in respect of the period after termination will be refunded to the Customer save to the extent that these are in respect of committed Carrier charges that cannot be recovered by FluidOne from the Carrier.

6 CHARGES AND CREDIT TERMS

6.1 Invoices will be issued by email to the Customer "accounts" email address supplied to FluidOne on the relevant Order Form. It is the Customer's responsibility to ensure a valid email address is maintained and notified to FluidOne for this purpose. FluidOne will not be liable for disruption of the Service as a result of the failure to maintain or to notify FluidOne of changes to this email address.

6.2 Where FluidOne accepts an Order, it may be subject to a credit check and/or payment of a security deposit and/or payment, prior to Activation, of all Charges due in respect of the Initial Term. Any security deposit paid by the

Customer to FluidOne will be held by FluidOne as security for payment of the Charges and of any other amounts due under this Agreement. On termination of an Order or this Agreement, FluidOne may apply the security deposit against any amounts owed and the balance refunded to the Customer. Security deposits paid by the Customer will not attract interest.

- 6.3 FluidOne 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:
- (a) Where the Customer suffers a material and negative change in its financial or trading condition or in its credit rating; and/or
 - (b) Where Customer has failed to make payment of an undisputed due amount and FluidOne 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.
- 6.4 FluidOne 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.
- 6.5 Prices stated or quoted by FluidOne do not include VAT. VAT will be added to invoices and is payable by the Customer.
- 6.6 FluidOne may invoice the Customer for the Activation Charges and the first instalment of the Recurring Charges at any time following processing and acceptance of the Order (save for leased lines which are invoiced following the Activation Date). Activation of the Services will be subject to payment by the Customer of this invoice. Thereafter, the Recurring Charges will accrue daily with effect from the Activation Date and will be invoiced in advance at the frequency agreed on the Order.
- 6.7 The Customer will make payment of all amounts duly invoiced under this Agreement within thirty (30) calendar days of the invoice date, such payment to be made in full, without deduction or withholding except as required by law, save where an Order specifies some other due date for payment of Charges. Save as specifically permitted by FluidOne by way of credits under this Agreement, the Customer will not be entitled to any credit, set-off or counterclaim against FluidOne.
- 6.8 Concerning Charges which the Customer agrees will be paid by direct debit, the Customer will ensure that it has sufficient funds available for collection of each direct debit payment and will not cancel such direct debit instruction or take or fail to take any other action that results in payment failure. Any failure to comply with these provisions may result in suspension of Services under Clause 5 and may (at FluidOne's discretion) incur an additional processing fee of £75.
- 6.9 Where the Customer disputes any amount due under an invoice the Customer will notify FluidOne in writing within three calendar months of the date of

issue of the relevant invoice, such notification to provide a detailed account of why the invoice is disputed, including all calculations. All undisputed parts of an invoice will be payable in accordance with Clause 6 and the Parties will act in good faith and use reasonable endeavours to resolve the disputed sum following the dispute resolution procedure in Clause 21.1. A Customer may not dispute any invoices that are more than three calendar months old and the Customer will be deemed to have accepted such invoices as correct after such period.

- 6.10 FluidOne may, at its sole discretion, charge interest on any overdue amounts payable from the due date until the date of payment in full, whether before or after judgement, at the rate of five (5) percent per annum above the base rate of NatWest plc.
- 6.11 The Customer agrees that FluidOne may without notice assign to the benefit of a third Party ('Assignee'), its rights, title and interest, in whole and in part to receive the Charges and any other payments made by the Customer pursuant to an Order.
- 6.12 FluidOne will also charge for debt collection should it be necessary, following failure to pay by the Customer. This will be carried out by an agency registered with the Financial Conduct Authority. In this event the Customer agrees that additional Charges will be levied to cover the costs of the debt collection agency.
- 6.13 Where Services are provided to an overseas Customer the price quoted will be subject to currency fluctuations and hence Service charges will be linked to the local currency at the Service Location. FluidOne reserves the right to amend the charge in line with these fluctuations by 1 (one) months' notice. This change can be made at any time, even during the Initial Term.
- 6.14 For 95th percentile billing FluidOne will measure the Bandwidth throughout on a 5-minute average, taking the highest of the download or upload value. The top 5% of values in the billing calendar month will be discarded, leaving the value of the 95% as the data usage rate, in Mb/s, for the month. Where the 95% value exceeds the committed data rate the difference between the committed and 95% usage rates will be charged at the overage rate. Where no overage rate is specified on the Order form this will be £40 per Mb/s.
- 6.15 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, 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.
- 6.16 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 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 between (a) the later of the Commencement Date and the date of any previous increase and (b) the date of the relevant increase.

7 WHOLESALE SERVICES

If the Customer wishes to order Wholesale Services, it will enter into a separate reseller agreement with FluidOne.

8 DEALER

- 8.1 If the Customer has contacts who may be interested in purchasing services directly from FluidOne, and FluidOne wishes to be introduced to such contacts with the willingness to pay the Customer a commission if such contacts purchase services from it, then the Customer will first enter into a separate dealer agreement with FluidOne.
- 8.2 If the Customer was introduced to FluidOne by a third-party company, the Customer understands, accepts and agrees that FluidOne may pay that third Party an introducer fee or commission for the introduction.

9 RESALE

- 9.1 The Customer will not be permitted to resell the Services or use the Services as a basis for the provision of services to its own customers. If it wishes to resell the Services, it will enter into a separate reseller agreement with FluidOne.

10 PERSONNEL

- 10.1 FluidOne will make available an Account Manager throughout this Agreement. FluidOne will use personnel who are reasonably skilled and competent to carry out the Services but may otherwise select and change personnel from time to time in its discretion.
- 10.2 The Customer will appoint and notify FluidOne of a point of contact to act as a point of contact for the administration and conduct of matters concerning the Order and Services, who will be the person stated on the Order unless otherwise notified to FluidOne in writing.
- 10.3 The Parties do not intend that the entry into, performance and/or termination and/or expiry of this Agreement or any Order will constitute a "relevant transfer" (as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**Transfer Regulations**"). Notwithstanding this, in the event that there is a "relevant transfer" (as defined by the Transfer Regulations) either on entry, during or on the expiry or termination of this Agreement or any Order, the Parties agree that the provisions of Clauses 10.4 to 10.5 inclusive will apply.
- 10.4 Subject to the provisions of Clause 10.5, in the event that the contract of employment of any employee or former employee of the Customer, supplier

to Customer or any collective agreement between the Customer and any trade union, has effect either during or on or after the expiry or termination of this Agreement as if originally made between FluidOne and that employee, former employee or the relevant trade union (as the case may be) in accordance with the provisions of the Transfer Regulations, FluidOne may terminate that contract of employment or collective agreement forthwith and the Customer hereby agrees to indemnify FluidOne and to keep FluidOne indemnified against and to keep FluidOne harmless at all times from any claims, actions or proceedings and all loss, damage, costs, charges and expenses (including, but without limitation, legal and other professional costs on an indemnity basis) suffered or incurred by FluidOne which arise from:

- (a) the employment of any such employee or former employee by FluidOne;
- (b) any claim or claims by any such employee, former employee or by any employee representative in relation to any act or omission of the Customer which is deemed to be (or alleged to be deemed to be, whether correctly or not) an act or omission of FluidOne by virtue of the Transfer Regulations;
- (c) any claim or claims by any such employee, former employee or by any employee representative in relation to any failure to inform or consult with appropriate representatives of Customer or any Replacement Supplier or otherwise comply in all respects with Regulations 10 and 10A of the Transfer Regulations; and/or
- (d) any claim or claims by any such employee, former employee or by any employee representative in relation to the termination of any such contract of employment or collective agreement (including, but without limitation, any claim for breach of contract or unfair dismissal).

10.5 In the event of a "relevant transfer" (as defined by the Transfer Regulations), the Customer agrees to inform and consult with appropriate representatives of any affected employees and otherwise comply in all respects with the Regulations 10 and 10A of the Transfer Regulations. The Customer hereby agrees to indemnify FluidOne fully and to keep FluidOne indemnified against any claims, actions or proceedings and all loss, damage, costs, charges and expenses (including, but without limitation, legal and professional costs on an indemnity basis) suffered or incurred by FluidOne which arise from Customer failing to accord with its obligations under this Clause 10.5.

11 INTELLECTUAL PROPERTY

11.1 FluidOne 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.

11.2 The Customer will notify FluidOne 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 FluidOne at FluidOne's cost in defending FluidOne's rights. The Customer will

not have any rights to use the mark or logo of FluidOne or any member of the FluidOne Group, unless otherwise agreed in writing.

11.3 Any Intellectual Property in the Customer Equipment will remain the property of the Customer and/or its licensors.

11.4 Customer:

- (a) warrants that the receipt of the Services in accordance with the terms of any Order does not and will not infringe any Intellectual Property rights of FluidOne or any third party; and
- (b) will indemnify FluidOne 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 FluidOne arising out of or in connection with any claim brought against FluidOne 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 Deliverable.

12 SUB-CONTRACTORS

12.1 FluidOne shall use commercial endeavours to manage its sub-contractors who it uses to carry out the Services in a manner consistent with a competent telecommunications service provider. FluidOne shall remain responsible and liable for the acts of omissions of sub-contractors who have been instructed directly or indirectly by FluidOne how to install the Service or any part of the Service. However, it is acknowledged and agreed by the parties that FluidOne shall not, to the extent permitted by law, be liable to the Customer for claims by the Customer in contract, tort (including negligence) or breach of statutory duty for any acts or omissions of any FluidOne sub-contractors during installation of any part of the Service for the Customer at the Service Location when direct instruction on how to install the Service or any part of the Service has been provided by the Customer ("**Installation Claims**"), save that this Clause 12.1 shall not exclude FluidOne's liability to Customer in respect of (all or part of) Installation Claims to the extent that FluidOne is able to seek and obtain reimbursement from the relevant sub-contractor in respect of (all or part of) such Installation Claims pursuant to the relevant sub-contract.

12.2 FluidOne may assign the benefit and/or burden of this Agreement and any Order upon written notice to Customer and may subcontract the provision of all or any part of the Service or Services to third parties.

12.3 Customer shall not assign, novate or grant an encumbrance over this Agreement, any Order, Product Annex and/or Order or the rights and/or obligations hereunder, nor shall the Customer encumber, lease or lend the Service Equipment or CPE or submit them to be used by anyone other than

the Customer's employees or agents without the prior written consent of FluidOne.

- 12.4 The Customer agrees that FluidOne may without notice assign to and/or for the benefit of a third party Assignee, its rights, title and interest, in whole and in part, to receive the Charges and any other payments made by the Customer pursuant to the Order.
- 12.5 Where FluidOne assigns any of its rights, title and interest in the Charges to an Assignee pursuant to Clause 12.4:
- (a) the Assignee will not be liable for or be required to perform any of FluidOne's obligations to Customer under the Agreement, Product Annex and/or Order, such obligations being retained by FluidOne.
 - (b) For the avoidance of doubt, Service Credits, rebates or price reductions, if applicable, will be independent of the Customer's obligation to pay the Charges and will not have the effect of reducing the Charges payable.
- 12.6 Customer's obligation to pay the Charges and liability therefor will continue notwithstanding, and will not be affected by, released and/or reduced as a result of any of the following: (i) any breach under or in connection with the Agreement, Product Annex and/or Order and/or any wrongful or negligent act or omission by or on behalf of FluidOne; (ii) any dispute between FluidOne and the Customer; (iii) any change or revision to the Agreement, Product Annex and/or Order; (iv) any termination or suspension of the Agreement, Product Annex and/or Order (or any function thereof), in each case in whole or in part for any reason whatsoever; (v) any accident or damage to and/or loss of any Service Equipment or CPE for any reason whatsoever. This will not affect any right the Customer may have to bring a claim in damages against FluidOne directly.

13 LIABILITY

- 13.1 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.
- 13.2 Subject to Clause 13.1, FluidOne's aggregate liability for failure to provide any part of the Service in accordance with the Service Levels and SLA will be limited to the Service Credits set out in the Service Level Agreement.
- 13.3 Subject to Clause 13.1, and except as provided in Clauses 13.2, 13.4, 13.5 and 13.6, FluidOne'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.

- 13.4 Subject to Clause 13.1, except in respect of the Service Credits stated and paid in accordance with the Service Level Agreement, FluidOne shall have no liability, in any circumstances, for any loss or damage, whether direct or indirect, which results or may result from:
- (a) Customer's access to, or inability to access, the internet or use therefore for any purpose whatsoever; and/or
 - (b) any reliance on or use of information, service or goods purchased on or through the Service or the internet.
- 13.5 Subject to Clause 13.1, FluidOne shall have no liability in contract, tort (including negligence or breach of statutory duty) for:
- (a) 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;
 - (b) losses or claims relating to the transmission or receipt of infringing or unlawful information or content of whatever nature transmitted via the Service;
 - (c) without derogating from the obligations contained in Clause 14, loss of, damage to or corruption of data, or files, stored, transmitted, or used on the Service or the FluidOne Network;
 - (d) 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;
 - (e) pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.
- 13.6 Notwithstanding any other provision of this Agreement or any provision contained in a Order, neither Party will be entitled to recover compensation or make a claim under this Agreement or under an Order in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement, under a Order, or otherwise.
- 13.7 Each Party ("**Party 1**") will notify the other Party ("**Party 2**") in writing of any actual or alleged failure, defect or issue with the Service that may give rise to a claim against Party 2, as soon as reasonably practicable. Without prejudice to the foregoing, Party 2 will not be liable to Party 1 in respect of any such failure, defect or issue unless (i) the relevant failure, defect or issue has been notified by Party 1 to Party 2 within 60 days of Party 1 becoming aware of the failure, defect or issue; and (ii) Party 2 has been given a reasonable opportunity to rectify it.
- 13.8 Each Party will notify each other of their intention to bring a claim in connection with this Agreement (other than any claim for Service Credits which will be governed by the Service Level Agreement) within 12 months of

the failure or circumstances giving rise to the claim taking place Subject to Clause 13.1, neither Party will be liable to the other in respect of any claim or claims that have not been notified to a Party in accordance with this Clause 13.8.

13.9 The Customer is advised to obtain insurance in respect of any liability excluded by FluidOne hereunder, including but not limited to the loss or corruption of data.

13.10 Risk of Loss Insurance – the Customer will take out third-party insurance with a reputable insurer approved by FluidOne in respect of (and will accept responsibility for any loss or damage to) the Service Equipment or CPE, during the Initial Term. Customer will provide FluidOne with a copy of such insurance upon request.

13.11 If any third party makes a claim, or notifies an intention to make a claim, against the indemnified Party under any indemnity provided under this Agreement ("**Party 1**") which may reasonably be considered likely to give rise to a liability under the indemnity ("**Claim**"), Party 1 will:

- (a) as soon as reasonably practicable, give written notice of the Claim to the indemnifying Party ("**Party 2**"), specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Party 2 (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) give Party 2 and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of Party 1, so as to enable Party 2 and its professional advisers to examine them and to take copies (at Party 2's expense) for the purpose of assessing the Claim; and
- (d) subject to Party 2 providing security to Party 1 to Party 1's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as Party 2 may reasonably request to avoid, dispute, compromise or defend the Claim.

14 DATA PROTECTION

14.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 14 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

14.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the FluidOne is the Processor. The scope, nature and purpose of processing by FluidOne, the duration of the

processing and the types of personal data and categories of data subject are set out below:

PROCESSING BY THE PROCESSOR

a) **SUBJECT MATTER OF PROCESSING**

Customer personal data is used to fulfil the requirements of an order placed by the Customer with FluidOne. Contact details are used to make commercial arrangements, communicate details of the order through delivery and for ongoing support and account management for the duration of the contract.

b) **NATURE AND PURPOSE OF PROCESSING**

Customer personal data is used to fulfil the requirements of an order placed by the Customer with FluidOne. Contact details are used to make commercial arrangements, communicate details of the order through delivery and for ongoing support and account management for the duration of the contract.

When placing an order with the 3rd Party supplier of the service, details of the Customer are entered as the relevant site contact for the order. At the discretion of the Customer, the site contact may be a 3rd Party or end user of the service (i.e. a building manager or the Customer's customer).

c) **DURATION OF THE PROCESSING**

Data processing will take place for the duration of the Agreement subject to any arrangements for the earlier return or destruction of data as set out in this Agreement.

TYPES OF PERSONAL DATA

Customer: Name, Professional title, Business email address, Business telephone number, Business address.

End User/3rd Party (as extension of Customer for site contact purposes): Name, Business email address, Business telephone number, Business address.

CATEGORIES OF DATA SUBJECT

a) Customer data and such End User/3rd Party personal data (as extension of Customer for site contact purposes) as the Customer provides.

14.3 Without prejudice to the generality of Clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the FluidOne for the duration and purposes of this Agreement.

14.4 Without prejudice to the generality of Clause 14.1, the FluidOne shall, in relation to any Personal Data processed in connection with the performance by FluidOne of its obligations under this Agreement:

- (a) process that Personal Data only on the documented written instructions of the Customer unless the FluidOne is required by Domestic Law to otherwise process that Personal Data. Where the FluidOne is relying on Domestic Law as the basis for processing Personal Data, the FluidOne shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the FluidOne from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (e) the Customer or the FluidOne has provided appropriate safeguards in relation to the transfer;
- (f) the data subject has enforceable rights and effective legal remedies;
- (g) FluidOne complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (h) FluidOne complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (i) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (j) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (k) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Domestic Law to store the Personal Data; and
- (l) maintain complete and accurate records and information to demonstrate its compliance with this Clause 14.

14.5 The Customer consents to FluidOne appointing a third-party processor of Personal Data under this Agreement on the basis that FluidOne has entered

or (as the case may be) will enter with the third-party processor into a written agreement.

15 FORCE MAJEURE

- 15.1 Neither Party will have any liability or be deemed to be in breach of this Agreement or the Order, for any delays or failures in performance of this Agreement which results or arises from circumstances beyond the reasonable control of that Party, including without limitation acts of God; epidemic or pandemic and including, without limitation, any effects arising from or in connection with an epidemic or pandemic, including, but not limited to, any actions, recommendations, announcements or restrictions, related to its subject matter (whether made by a government body, authority, public health organisation or other similar official body) which affects a Party's performance of its obligations under this Agreement; regulations, or laws of the government; war; civil commotion; destruction of network or connection facilities or materials by fire, flood, earthquake, explosion, storm or other natural disaster; labour disturbances; epidemic; pandemics and failure of public utilities or common carriers ("**Force Majeure Event**").
- 15.2 Provided it has complied with Clause 15.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event, each Party shall not be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3 Each Party shall immediately notify the other Party of a Force Majeure Event and of the period for which such inability is expected to last.
- 15.4 Each Party shall use reasonable endeavours to minimise the duration of any failure to perform its obligations and where the fault cannot be rectified within 30 days the Parties agree to discuss termination of any subsisting Agreement or Order.
- 15.5 For the avoidance of doubt a Force Majeure Event shall include circumstances where FluidOne personnel must self-isolate under government guidance or where such personnel contract Covid-19. Where personnel must self-isolate, FluidOne's obligations under the Agreement shall be extended accordingly.

16 INSURANCE

- 16.1 FluidOne confirms and undertakes that as a reputable service provider, it has in place the following insurance policies (together the "**Policies**") in relation to potential liabilities under this Agreement which it shall maintain until the termination of this Agreement and for two years thereafter:
- (a) Public liability insurance with cover of £10 million;

- (b) Product liability insurance with cover of £10 million;
- (c) Employers' liability insurance with cover of £10 million;
- (d) Professional indemnity insurance with cover of £10 million;
- (e) Director's liability insurance with cover of £5 million.

16.2 The Customer confirms and undertakes that, as a reputable business, it has in place the following insurance policies in relation to potential liabilities under this Agreement:

- (a) Professional indemnity insurance with cover of £10 million;
- (b) Public liability insurance with cover of £10 million.

17 TERM AND TERMINATION

17.1 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.

17.2 Each Order will commence upon the Order Committed Date and will continue for the applicable Initial Term set out in the Product Annex and thereafter for a Renewal Term and each successive Renewal Term unless and until terminated in accordance with this Clause 17.2 or the terms of the relevant Product Annex ("**Term**").

17.3 FluidOne will not accept any notice to terminate this Agreement (and this Agreement cannot be terminated by the Customer by notice) where overdue undisputed invoices remain unpaid. Such invoices must be settled in full prior to termination. Current invoices will not prevent termination provided they are received within the thirty (30) calendar day payment term.

17.4 Except as permitted under this Agreement or in the Order, the Customer will not be entitled to terminate an Order for any Service suspended under Clause 5 and any notice purporting to terminate the same will be of no effect. Charges will continue to accrue during the period of suspension unless and until the Order is deemed terminated or otherwise terminated by FluidOne pursuant to this Agreement.

17.5 Notice of termination of an Order by the Customer in accordance with this Clause 17 must be given by the Customer using the online form and process located at the FluidOne Portal. Notice of termination via email will only be accepted where the online form is not available in which event the Customer must email FluidOne with a request to terminate the Order at: cancel@fluidone.com. Such email must contain the Customer's name and details of the Service being cancelled, the site address, service description and FluidOne Order number. No other method of notice of termination will

be accepted or effective. Upon emailing cancel@fluidone.com, the Customer will be sent an acknowledgement of receipt within 4 hours, containing a "Ticket ID". The Customer must retain this ticket ID as evidence of the cancellation submission via email.

Disputed Invoices

- 17.6 If there is a valid dispute relating to any final invoice, such dispute must be notified in writing to accounts@fluidone.com in accordance with Clause 7. Any credit due will be applied by FluidOne to the final invoice before termination of Service. If a refund is due, this will be paid by FluidOne by BACS transfer to a nominated bank account supplied in writing by Customer. For the avoidance of doubt, the rental charges outlined in the Order for Service Equipment or CPE and services delivered and accepted by the Customer are considered non-disputable for the purposes of this Clause 17.

Termination for Customer Fault

- 17.7 FluidOne may terminate an Order 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 FluidOne to remedy;
 - (b) the Customer has provided inaccurate or misleading information concerning its registered details or financial standing, or FluidOne 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 and/or fails at any time to comply with Clause 6.
 - (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 17 (c) to Clause 17 (j) (inclusive);
- (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).

17.8 FluidOne may terminate a Order and/or this Agreement by written notice, to take effect forthwith if any material breach of the Acceptable Usage Policy is committed (excluding for the avoidance of doubt any technical breaches that are not knowingly made by the Customer or do not cause FluidOne any damage).

Effects of Termination

17.9 On termination or expiry of an Order, howsoever occasioned:

- (a) All amounts invoiced to Customer under that Order or this Agreement will become immediately due and payable;
- (b) The Customer will permit FluidOne and its Authorised Representatives access to each Service Location to remove the Service Equipment.

- 17.10 In the event of termination by FluidOne under Clause 17.7, which takes effect during the Initial Term, the Customer will immediately become liable for all Recurring Charges scheduled for payment (being all Recurring Charges that would have been payable) during the remainder of that Initial Term (which amount the Customer agrees represents a reasonable pre-estimate of FluidOne's losses);
- 17.11 Termination or expiry of this Agreement will be without prejudice to the accrued rights and liabilities of either Party.

18 SURVIVAL

- 18.1 Subject to Clause 19, Parties' obligations under the following Clauses will survive the termination or expiration of this Agreement and include any other terms of this Agreement which by their nature extend beyond its expiration or termination:

Clause 1	Definitions
Clause 13	Liability
Clause 19	Confidentiality and Non - Solicit
Clause 16	Insurance
Clause 14	Data Protection
Clause 11	Intellectual Property
Clause 24	Governing Law and Jurisdiction

19 CONFIDENTIALITY AND NON-SOLICIT

- 19.1 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.
- 19.2 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 19.2, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 19.3 The Customer will keep confidential all passwords, logon codes and other access methods. FluidOne will not be liable for any disclosure by Customer of the same, whether intentional or otherwise.
- 19.4 The Customer and FluidOne 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 FluidOne's advisors.

- 19.5 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 FluidOne has with the Customer including in respect of any contract that FluidOne 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 FluidOne regarding any requests for information received by the Customer which relate to any dealings FluidOne has with the Customer and which may encompass such trade secrets save as required by law.
- 19.6 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.
- 19.7 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.
- 19.8 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 FluidOne 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 FluidOne 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 FluidOne to carry out. For the purpose of this Agreement, "**Significant Person**" will mean any director of FluidOne or employee or sub-contractor of FluidOne holding a sales, operational or managerial position (excluding for the avoidance of doubt any FluidOne 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.
- 19.9 The estimate of the impact that breach of Clause 19.8 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 FluidOne 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 19. This provision is without prejudice to the right of each Party to seek injunctive relief.

20 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 FluidOne and/or its group to be in breach of and/or commit an offence under any Bribery Act;
- (f) Without prejudice to Clause 0, not do or omit to do any act or thing which causes or may cause FluidOne 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 FluidOne 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 FluidOne 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.

21 DISPUTE RESOLUTION

21.1 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 FluidOne'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.

21.2 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.

21.3 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.

21.4 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 21.3, either Party may exercise its rights and remedies under this Agreement and to take such proceedings as it deems necessary pursuant to Clause 22.

21.5 Nothing in this Clause 21 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.

22 NOTICES

22.1 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 FluidOne:

Email: contact@fluidone.com

Copied To: accounts@fluidone.com

Post

For the attention of: Finance Team, FluidOne Limited

Address: 5 Hatfields, London, SE1 9PG

For Customer:

Email: {{* }}

Copied To: {{ }}

Post

For the attention of: {{* }}

Address: {{* }}

22.2 Any Notice will be deemed to have been served:

- (a) if delivered by hand, at the time and date of delivery;
- (b) 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,
- (c) 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.

23 GENERAL TERMS

23.1 This Agreement and each Order contains the entire agreement between the Parties in respect of the Services and supersedes and replaces any prior written or oral agreements, representations, or understandings between the Parties.

23.2 Save as expressly set out in this Agreement or any Order, all representations, warranties, conditions or other terms (whether written or oral, express or implied by statute, common law or otherwise) including, without limitation, implied terms as to fitness for purpose, quality or merchantability are hereby excluded.

23.3 If any provision of this Agreement is held by a court or any governmental agency or authority to be invalid, void, or unenforceable, the remainder of this Agreement will nevertheless remain legal, valid, and enforceable.

23.4 FluidOne's failure to exercise or enforce, or any delay in exercising or enforcing, any right or benefit conferred by this Agreement will not be deemed to be a waiver of any such right or benefit nor operate so as to bar

the exercise or enforcement thereof or of any other right or benefit on any later occasion.

- 23.5 No variation of this Agreement or any Order will be effective unless it is in writing and signed by the Parties. their Authorised Representatives or Authorised Personnel.
- 23.6 Save where expressly provided otherwise, for the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to and does not give any person who is not Party to it any right to enforce any of its provisions.
- 23.7 Nothing in this Agreement will be construed as creating any form of partnership or relationship of agency or joint venture between the Parties.
- 23.8 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. No counterpart shall be effective until each Party has provided to the other at least one executed counterpart.

24 GOVERNING LAW AND JURISDICTION

- 24.1 This Agreement along with the applicable Product Annex and Order 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.

Signatures: