

NU XFORM

Terms and Conditions

These terms and conditions apply in respect of all work undertaken by NU-XFORM LTD.

Definitions and Interpretation

The definitions and interpretation set out in this Interpretation apply to the Contract:

"Agreement"	means the agreement entered into by the Parties incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;
"Client"	means any individual, company or business to whom we provide our services as specified in the Proposal including a person reasonably appearing to us to act with your authority. References to 'You', 'Your' and 'You're' references to the Client;
"Client Material"	means all Documents, information and materials provided by You relating to the Services including (without limitation), computer programs, information, materials, copy, data, reports and specifications;
"Commencement Date"	means the date of our acceptance of your order as notified to you under our account activation notice;
"Content"	Means any text, graphics, images, audio, video, software, hardware, data compilations, page layout, underlying code and software and any other form of information capable of being stored in a computer;

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“Contract”

means the Agreement made between Us and You for the supply of Services incorporated under these terms and conditions;

“Deliverables”

means all Documents, products, digital content and/or materials in any form, including computer programs, data, reports and specifications (developed by Us or our agents or subcontractors) and delivered in relation to the Services;

“Document”

means includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image, proof, disk or other device or record embodying information in any form;

“Fees”

means any and all sums due under the Agreement from You to Us, as specified in the Proposal;

**“Intellectual
Property Rights”**

means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“Nu-xform Ltd”

means a company incorporated in England and Wales with company number 13903522 and whose trading office is at 5 Robin Hood Lane, Sutton, Surrey, United Kingdom, SM1 2SW. References to ‘We’, ‘Us’, and ‘Our’ are references to NU-XFORM LTD

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“Physical Security Professional Services”	Means the provision of specialist consultancy to design and specify physical security solutions to mitigate identified threats
“Pre-existing Materials”	means all Documents, information and materials provided by Us relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications;
“Proposal”	means the form detailing cost and specification of services provided by Us to You;
“Services”	means the services provided by Us to You as set out in the Proposal to include but not be limited to: Smart Campus/ Building Professional Services and Physical Security Professional Services; and
“Smart Campus/ Building Professional Services”	means the provision of specialist consultancy to define tangible benefits and outcomes by integrating building systems and technology to meet specific use cases;

1. Application of Conditions

- 1.1. Subject to any variation of these terms and conditions the Contract excludes all other terms and conditions (including any Client terms of business offered by or on behalf of the Client, or implied by law, trade custom, practice or course of dealing).
- 1.2. We reserve the right to amend our terms and conditions at any time.
- 1.3. Your order for Services from us shall be deemed to be an offer by you to purchase the Services subject to these terms and conditions.
- 1.4. No order placed by you shall be deemed to be accepted by us until written confirmation is issued by us.

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- 1.5. You shall ensure that the terms of your Quotation Form are complete, accurate, and fit for purpose.
- 1.6. Any date proposed either by you or us for the provision of the Services is to be treated as an estimate only and we accept no liability for any failure to meet it.

2. Formation of the Contract

- 2.1. Your acceptance of our Proposal for Services from us constitutes an offer from you to purchase the Services specified in the Proposal, subject to these terms and conditions.
- 2.2. You will be deemed to have accepted our Proposal for Services on either; us receiving your signed Proposal Form, or similar express communication to Us that you have accepted the Proposal.
- 2.3. The Contract is deemed to commence on the earlier of:
 - 2.3.1. payment of the deposit invoice.
 - 2.3.2. an Account Activation Notice issued and executed by Us; or
 - 2.3.3. by provision of the Services.
- 2.4. Any Proposal is valid for a period of fourteen (14) days from its date, provided that We have not previously withdrawn it in writing.

3. Commencement, Period and Renewal of the Services

- 3.1. The Services shall be provided by Us to You from the date agreed by the parties and set out on Your Proposal.
- 3.2. This Contract shall automatically renew on the relevant Renewal Date for successive periods equal to the billing period set out in the Proposal, or for such period as subsequently agreed by us in writing.
- 3.3. If you do not want to renew your Contract, please contact hello@nuxform.com to terminate your contract in accordance with these terms and conditions.

4. Our Obligations

- 4.1. We shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to You, in accordance with the Proposal.
- 4.2. We shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only.

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- 4.3. Proposals for both Smart Campus/ Building Professional Services, and Physical Security Professional Services are bespoke Services for each individual Client.
- 4.4. Time shall not be of the essence for performance of the Services.

5. Your Obligations

5.1. You shall:

- 5.1.1. provide to Us, in a timely manner, such Client Material and other information as We may reasonably require and ensure that such information is accurate in all material respects;
- 5.1.2. ensure that all Client Material is owned by you, the Client, or, if not, ensure that You have permission from the legal owner to enable Us to legitimately use the Client material in the provision of the Services;
- 5.1.3. acknowledge that the late supply of Client Material may have an impact on Our ability to deliver the Services. If Our performance of Our obligations under the Contract is prevented or delayed by any act or omission of You, You're agents, subcontractors, consultants or employees, We shall not be liable for any costs, charges or losses sustained or incurred by You arising directly or indirectly from such prevention or delay;
- 5.1.4. agree that you will keep secure any login username and password given to you by Us, and not to pass on that information to any unauthorised person. In the event of your login and password being used by any unauthorised person, we accept no responsibility, and you will be liable for any additional charges arising from this breach;
- 5.1.5. acknowledge that it is your sole responsibility to make regular back-ups of your data and files used in connection with the Services. We or a third party may make independent periodic back-ups for server maintenance purposes however we hold no responsibility for backing up of any Client data or files.

5.2. You agree that you will not:

- 5.2.1. cause or permit or in any way assist in any unauthorised publication or any dissemination of defamatory material or any material which could be considered to be in breach of the civil or criminal laws of England and Wales;
- 5.2.2. commit any act whereby access is gained by you to any information or resources of any person, body corporate individual,

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partnership, government agency, national institution, charity or recognised organisation without first having obtained authority from those persons or institutions;

5.2.3. do any act or omission that has or purports to have the effect of bringing Us into disrepute or damaging our goodwill.

6. Indemnity

- 6.1. Without prejudice to any other rights or remedies which We may have against You, You agree to indemnify and keep us indemnified against:
- 6.2. all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any breach by you of this Contract.
- 6.3. all costs, charges or losses sustained or incurred by Us arising directly or indirectly from Your fraud, negligence, failure to perform or delay in the performance of any of Your obligations under the Contract, subject to Us confirming such costs, charges and losses to You in writing.
- 6.4. all losses, claims, costs or liabilities arising as a result of any action, claim or threatened claim that Our use of the Client Material in accordance with the Contract constitutes an infringement of the intellectual property rights of a third party.
- 6.5. all costs, claims, demands, liabilities, expenses, damages or losses arising out of any action brought or threatened against us by a third party which is caused by or arises from any action or omission of Ours carried out pursuant to your instructions.
- 6.6. You shall not, without the prior written consent of Us, at any time from the date of the Contract to the expiry of twelve (12) months after the last date of supply of the Services, solicit or entice away from Us any person who is, or has been, engaged as an employee, consultant or subcontractor of Us in the provision of the Services.

7. Fees

- 7.1. In consideration of the provision of the Services by Us, You shall pay the Fees as set out in the Proposal.
- 7.2. Unless otherwise stated in writing any Fees contained in the Proposal excludes:
 - 7.2.1. VAT, which We shall add to Our invoices at the appropriate rate;
 - 7.2.2. all additional work requested by You which is outside the scope of the Proposal.

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- 7.3. All Fees listed in the Proposal are estimates and are subject to final confirmation of technical specification, after commencement of the project and during the initial briefing meeting.
- 7.4. Without prejudice to any other right or remedy that it may have, if You fail to pay Us the Fees, We may:
 - 7.4.1. charge interest on such sum under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis until payment is made, whether before or after any judgment and You shall pay the interest immediately on demand; and
 - 7.4.2. suspend all Services until payment has been made in full.
- 7.5. Time is of the essence for any payment due under this Contract.
- 7.6. All sums payable to Us under the Contract shall become due immediately on its termination. This clause 7.6 is without prejudice to any right to claim for interest.
- 7.7. We may, without prejudice to any other rights we may have, set off any liability of You to Us against any liability of Us to You.

8. Intellectual Property Rights

- 8.1. You shall retain the ownership of any and all Intellectual Property Rights that may subsist in Client Material in order for Us to provide the Services. Throughout the Term of the Agreement, You shall be deemed to automatically grant a royalty-free, non-exclusive licence of any and all such rights to Us to use the same in accordance with the terms of the Agreement and the Services.
- 8.2. You must not reproduce, modify, copy, distribute or use for commercial purposes any Content without the prior written permission of Us until all outstanding Fees have been settled.
- 8.3. Upon receipt of all sums due under the Agreement, We shall assign the ownership of any and all Intellectual Property Rights that may subsist in anything produced by Us in the course of providing the Services.
- 8.4. In the event that the Client wishes to use the Deliverables and/or any of the Intellectual Property Rights for purposes outside of the scope of the Contract, prior to any such use the Client shall obtain the prior written agreement of Us on commercial terms to be agreed.
- 8.5. You acknowledge that it is not the obligation of Us to search for registered trademarks or to contact the Intellectual Property Office on behalf of You unless specifically requested, agreed by Us within the Contract and on receipt of an Account Activation Notice.

9. Liability

- 9.1. This clause sets out the entire financial liability of Us (including any liability for the acts or omissions of Our employees, agents, consultants, and subcontractors) to You in respect of:
 - 9.1.1. any breach of these terms and conditions;
 - 9.1.2. any use made by You of the Services, the Deliverables or any part of them;
 - 9.1.3. the Content of any information placed by You onto Our server
 - 9.1.4. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by S. 12 Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3. Nothing in these terms and conditions limits or excludes the liability of either party:
 - 9.3.1. for death or personal injury resulting from negligence; or
 - 9.3.2. for any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation.
- 9.4. Subject to clauses 12.2 and 12.3 We shall not be liable for:
 - 9.4.1. business losses such as loss of profits, income, revenue, anticipated savings, business, contracts, goodwill, or commercial opportunities; and
 - 9.4.2. loss of use, for example, including but not limited to Your website being unavailable; or loss of corruption of data, database, or software or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 9.5. Our total 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 the Contract shall be limited to an amount equal to the charges paid for the Services in the twelve months immediately preceding the event which gave rise to the claim.

10. Data Protection

- 10.1. You agree to comply with Your obligations as a data controller under the provisions of the Data Protection Act 1998.
- 10.2. You acknowledge and agree that We will be a data processor for the purposes of the Data Protection Act 1998.

10.3. We will only use your personal information as set out in Our Privacy Notice available from nuxform.com/privacy-policy

11. Termination (General)

- 11.1. Either party may terminate the Contract without liability to the other on giving the other no less than four (4) weeks written notice to the other party.
- 11.2. Without prejudice to any other rights or remedies which the parties may have either party may terminate the Contract immediately upon written notice in the event that:
 - 11.2.1. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) days of that party being notified in writing of the breach; or
 - 11.2.2. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract.

12. Termination by Us

- 12.1. We reserve the right to terminate this Contract with immediate effect and without the requirement of prior notification in the event;
 - 12.1.1. you do not pay any charge when due;
 - 12.1.2. there is a material breach of this Contract in any other way;
 - 12.1.3. any Fees payable under this Contract remain outstanding after a request to pay the Fees;
 - 12.1.4. We reasonably deem you a threat to the integrity of our business whether as a result of your actions or threats of such actions or due to any other reason which in our considered opinion would be against our business interest, then we reserve the right in our absolute discretion to terminate this Contract immediately without the requirement for prior notification.
 - 12.1.5. You suspend, or threaten to suspend, payment of Your debts or are unable to pay Your debts as they fall due or admit inability to pay Your debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either

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- 12.1.6. case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- 12.1.7. You suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of your business.
- 12.1.8. You go into liquidation or (in the case of an individual or firm become bankrupt) make a voluntary arrangement or an application is made to court, or an order is made, for a receiver or administrator to be appointed, or a floating charge holder over the assets of that other party, has become entitled to appoint or has appointed an administrative receiver;
- 12.2. We may terminate the Contract on one month's written notice if there is a change of "control" of the Client (as defined in section 574 of the Capital Allowances Act 2001).
- 12.3. Upon termination of this Contract, you shall remain liable for all Fees due or which would have been payable under this Contract.
- 12.4. On termination of this Contract, we will remove all materials held on our systems and remove all Your system privileges.
- 12.5. Subject to Our sole discretion after termination, if We agree that you may once again be reconnected to the Service, any reconnection will be subject to an administration Fee together with any outstanding Fees payable prior to the reconnection.

13. Termination by you

- 13.1. You can terminate this Contract:
 - 13.1.1. At any time within the first 30 days of the Commencement Date and receive a full refund, less any domain name registration charges or charges for additional services not included in the Quotation Form. We reserve the right in these circumstances to also charge for work carried out up to this point.
 - 13.1.2. At any time after the first 30 days of the Commencement Date however unless notice is given in accordance with clause 17 (notice) and received prior to the next Renewal Date this Contract shall automatically renew for the next period and no refund will be payable to you. You will remain liable for all charges to the end of the Contract period.
- 13.2. You must notify us of termination by delivering to our contact address or email a completed Account Cancellation Notice which can be obtained from us on request.

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13.3. Your completed Account Cancellation Notice if sent by email should be sent to hello@nuxform.com

13.4. On termination of the Contract for any reason:

13.4.1. You shall immediately pay to Us all outstanding unpaid invoices and any accrued interest and, in respect of Services supplied but for which no invoice has been submitted, We may submit an invoice, which shall be payable immediately on receipt;

13.4.2. The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13.4.3. On termination of the Contract (however arising), the following clauses shall survive and continue in full force and effect: 6 (Indemnity), 7 (Fees), 11 (Intellectual Property Rights), 12 (Liability), 13 (Data Protection); and 18 (Confidentiality).

14. Notice

14.1. Any notice required to be given under the Contract shall be in writing and shall be delivered personally, sent by email in accordance with clause 16.3, or sent by prepaid first-class post, recorded delivery or by commercial courier to the other party or as otherwise specified by the relevant party by notice in writing to the other party.

15. Confidentiality and Our Property

15.1. You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by Us, Our employees, agents, consultants or subcontractors and any other confidential information concerning Our business or its products which You may obtain.

15.2. You may disclose such information:

15.2.1. To Your employees, officers, representatives, advisers, agents or subcontractors (on a need-to-know basis) such information for the purposes of carrying out Your obligations under the Contract; and

15.2.2. as may be required by law, court order or any governmental or regulatory authority.

15.2.3. You shall ensure that Your employees, officers, representatives, advisers, agents or subcontractors to whom You discloses such information comply with this clause.

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15.2.4. You shall not use any such information for any purpose other than to perform Your obligations under the Contract.

15.2.5. All materials, equipment and tools, drawings, specifications and data supplied by Us to You (including Pre-existing Materials and Our Equipment) shall, at all times remain the exclusive property of Us, but shall be held by You in safe custody at Your own risk and maintained and kept in good condition by You until returned to Us, and shall not be disposed of or used other than in accordance with Our written instructions or authorisation.

16. Force Majeure

16.1. We shall have no liability to You for any breach of these terms and conditions or the Contract if We are prevented from, or delayed in performing, Our obligations under the Contract or from carrying on Our business by acts, events, omissions or accidents beyond Our reasonable control, including (without limitation):

16.2. strikes, lockouts or other industrial disputes, failure of a utility service or transport network, act of God, insurrection, war, riot, civil commotion, pandemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, lighting, explosion, subsidence, weather of exceptional severity, acts of omission or default of persons whom We are not responsible for (including other telecommunication providers) suppliers or subcontractors.

17. Warranty

17.1. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

18. Waiver

18.1. No failure, delay, act or omission by either party in exercising any right or remedy under these terms and conditions or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.

19. Severability

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19.1. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

20. Variation

20.1. No variation of the Contract or these terms and conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

21. Assignment

21.1. You shall not, without the prior written consent of Us, assign any of Your rights or obligations under these terms and conditions to any other person, business, or company.

21.2. We may transfer or assign any of our rights under these terms and conditions and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent.

22. Relationship of the Parties

22.1. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

23. Entire Agreement

23.1. The Contract constitutes the whole Agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

24. Rights of Third Parties

24.1. No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

24.2. Any third party who is not a party to the Contract will have no rights under, in connection with, or to enforce or rely on any provision of these terms and conditions.

25. Jurisdiction

25.1. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.

25.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract.