

Software Professional Services Terms and Conditions

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions (“**Conditions**”), words and expressions shall have the same meanings as assigned to them in the FLUIDONE LIMITED Terms of Business, except or as additionally detailed below:

“Additional Professional Services	any additional Professional Services to be provided by FLUIDONE LIMITED to the Customer at the request of the Customer pursuant to the terms of the Services Contract;
“Customer Data”	the Customer’s Confidential Information and any other information belonging to the Customer;
“Customer’s Confidential Information”	all information, whether in written or any other form, concerning the Customer which has been or may be disclosed to FLUIDONE LIMITED by or on behalf of the Customer in the course of the discussions leading up to or the entering into or performance of the Services Contract and which is identified as confidential or is clearly by its nature confidential, including the terms of the Services Contract, and any information relating to the Customer's business, technology, its technical and marketing strategies, the Professional Services and any Additional Professional Services;
“Deliverables”	Such Documents, software, data, configurations and materials identified within the Service Contract as being supplied to the Customer as a result of the Professional Services
“Document”	includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
“Live”	Production environment in which the software will be used by end-users or customers
“Maximum Commitment”	means the maximum financial liability of the Customer for any Professional Services contracted on a time and materials basis in a Service Contract. The initial value is detailed in the Service Contract, and this can be updated from time to time in writing by the Customer
“Professional Services”	the software development/IT consultancy services to be provided by FLUIDONE LIMITED as set out in the Services Contract, together with any Additional Professional Services or other Professional Services which FLUIDONE LIMITED provides, or agrees to provide, to the Customer from time to time;
“Term”	the term of the Services Contract as determined in accordance with paragraph 3 of the Services Contract;
“UAT”	User Acceptance Testing. Testing environment prior to release to Live stage.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 SCOPE

- 2.1 These terms and conditions represent Service Specific Terms and Conditions for the supply of Software Professional Services by FLUIDONE LIMITED.
- 2.2 Service Contracts are formed following the process described in clause 3 of the Standard Terms of Business.
- 2.3 Where a Master Services Agreement (MSA) is in force between FLUIDONE LIMITED and the Customer, any special terms detailed within it shall have precedence over the terms in these Conditions.

3 PROFESSIONAL SERVICES

- 3.1 The Customer hereby agrees to engage FLUIDONE LIMITED and FLUIDONE LIMITED hereby agrees to provide the Professional Services as an independent contractor on the terms and conditions set out in the Service Contract.
- 3.2 FLUIDONE LIMITED shall provide from time to time when requested by the Customer:

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- 3.2.1 consultancy Professional Services
 - 3.2.2 project management Professional Services
 - 3.2.3 software programming Professional Services.
 - 3.2.4 quality assurance testing Professional Services
 - 3.3 Any Professional Services to be undertaken by FLUIDONE LIMITED pursuant to this Schedule shall be jointly agreed between the parties and shall be set out in a Service Contract describing:
 - 3.3.1 the nature of such Professional Services;
 - 3.3.2 the time schedules pursuant to which such work will be undertaken and completed;
 - 3.3.3 the time and other resources which FLUIDONE LIMITED will devote to such work;
 - 3.3.4 the amount and/or method of calculation of the fees of FLUIDONE LIMITED for such work;
 - 3.3.5 any process or criteria used by the Customer to accept the Professional Services.
 - 3.3.6 Any Deliverables to be provided as part of the Professional Services
 - 3.3.7 Any additional expenses required, including purchase of a third party software or licensing;
 - 3.3.8 Any inputs or other contributions required from the Customer to enable and/or facilitate the Professional Services
 - 3.4 In requesting Professional Services from FLUIDONE LIMITED, it is the Customer's responsibility to clearly define the scope of the activity needing to be undertaken, and the skillsets required, and the timescales generally required. FLUIDONE LIMITED will produce an estimate and will assist where it can with such definition, but responsibility of the full service required shall remain with the Customer.
 - 3.5 Where work is to be carried out in whole or in part on a time and materials basis, the Service Contract will specify for the time and materials element a Maximum Commitment. The Maximum Commitment will represent the entire financial liability of the Customer for such work, and the Customer is not obliged to make payment for any work carried out exceeding such limit without giving express written permission unless otherwise agreed pursuant to Clause 6
 - 3.6 If FLUIDONE LIMITED determines that the Maximum Commitment is not sufficient to cover the expected future work, FLUIDONE LIMITED will bring this to the attention of the Customer, who will either increase the Maximum Commitment by notice in writing, or instruct a cessation of the work.
 - 3.7 If the Service Contract is to be carried out on a time & materials basis:
 - 3.7.1 Any timetable of work and/or delivery dates relating to the whole and each part of the Service Contract shall be deemed to be estimates only and shall be charged in accordance with Clause 6 of these Terms and Conditions unless otherwise agreed in writing between FLUIDONE LIMITED and the Customer.
- FLUIDONE LIMITED gives no undertaking to complete the whole or any part of the Services for a fixed or ascertainable sum and, if such sums are referred to in relation to the Service Contract, they shall be deemed to be estimates only.
- 3.7.2 the supply shall be deemed complete and accepted upon provision of the ordered services.

4 FLUIDONE LIMITED OBLIGATIONS AND WARRANTIES

- 4.1 FLUIDONE LIMITED will provide the Professional Services with all due skill and care and in accordance with the prevailing practice in the industry from time to time.
- 4.2 FLUIDONE LIMITED shall use reasonable endeavours to meet any performance dates specified in the Services Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Professional Services.
- 4.3 FLUIDONE LIMITED warrants that it shall:
 - 4.3.1 ensure that all of its personnel engaged hereunder shall have the necessary skills, expertise and diligence to undertake such work;
 - 4.3.2 allocate sufficient resources and personnel to ensure it complies with all of its obligations under this Services Contract;
- 4.4 FLUIDONE LIMITED warrants to the Customer that:
 - 4.4.1 it has, and will retain throughout the Term, all right, title and authority to enter into the Services Contract and to perform all of its obligations under the Services Contract;

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- 4.4.2 it has obtained and will maintain in force all necessary registrations, authorisations, consents and licences to enable it to fulfil its obligations under this Services Contract and that FLUIDONE LIMITED complies with, and shall continue to comply with, all applicable data protection legislation (including for the avoidance of doubt the Data Protection Act 1998);
- 4.4.3 the personnel who will from time to time provide the Professional Services are all employees of FLUIDONE LIMITED or have contracted with FLUIDONE LIMITED on terms which include an undertaking to keep all of the Customer's Confidential Information acquired during the provision of Professional Services to or on behalf of FLUIDONE LIMITED confidential

5 CUSTOMER OBLIGATIONS AND WARRANTIES

- 5.1 The Customer warrants and undertakes that it has full power, capacity, authority and the absolute right to enter into, execute and deliver the Services Contract and to carry out all its obligations under the Services Contract.
- 5.2 The Customer shall:
 - 5.2.1 co-operate with FLUIDONE LIMITED in all matters relating to the Professional Services;
 - 5.2.2 provide FLUIDONE LIMITED, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as reasonably required by FLUIDONE LIMITED solely to the extent that this is necessary for FLUIDONE LIMITED to have such access in order to provide the Professional Services pursuant to the Services Contract.
 - 5.2.3 provide to FLUIDONE LIMITED, in a timely manner, such information as FLUIDONE LIMITED may reasonably require and ensure that it is accurate in all material respects;
 - 5.2.4 inform FLUIDONE LIMITED of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - 5.2.5 ensure that all information and content provided by them to FLUIDONE LIMITED in order for FLUIDONE LIMITED to provide the Professional Services shall comply with all relevant legislation, regulations, codes of practice, guidance and other requirements from time to time relevant to the provision of such Professional Services and shall not infringe the intellectual property rights of any third person. In all cases, the costs of such compliance shall be borne by the Customer.
- 5.3 If FLUIDONE LIMITED performance of its obligations under the Services Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, FLUIDONE LIMITED shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

6 CHARGES

- 6.1 All charges shall be set out in a Service Contract and shall be applied as follows:
 - 6.1.1 For any projects exceeding the value of £20,000, FLUIDONE LIMITED shall produce an estimate cost and submit it to the Customer for approval. In consideration of the provision of the Professional Services by FLUIDONE LIMITED, the Customer shall sign a Sales Order Form accepting the estimate. FLUIDONE LIMITED shall invoice 50% of the estimate charge upon signature of the Sales Order Form. For the avoidance of doubt, FLUIDONE LIMITED shall not commence any services unless a duly signed Order Form is received from the Customer and the Customer settled the invoice
 - 6.1.2 For any projects of value less than £20,000, FLUIDONE LIMITED shall produce an estimate and submit it to the Customer. The Customer shall accept an estimate charge by signing a Sales Order Form. FLUIDONE LIMITED shall invoice 50% of the estimate charge. If the Customer reaches 80% of the estimate cost of the project, the Customer shall be notified accordingly and give a written approval for FLUIDONE LIMITED to continue with the project. For the avoidance of doubt, FLUIDONE LIMITED shall not commence any services unless a duly signed Order Form is received from the Customer and the Customer settled the invoice.
 - 6.1.3 For any changes of value less than £2,000 requested by the Customer, FLUIDONE LIMITED shall produce an estimate on time and material basis and submit it to the Customer for approval. Customer shall sign a Sales Order Form accepting the estimate. FLUIDONE LIMITED shall invoice the Customer upon completion of the change implementation for the actual time spent on the project, and where applicable provide details of time reporting where/if different from the original estimated value.
- 6.2 Where Professional Services are provided on a time and materials basis:
 - 6.2.1 For projects described in clause 6.1.1, FLUIDONE LIMITED shall invoice the Customer at the end of each sprint and provide the Customer with a report against the estimate fee agreed. The charges payable shall be calculated in accordance with the daily fee rates as set out in the Services Contract. If the total estimate is reached, a new estimate shall be produced for the remainder of the project and 50% of that estimate shall be approved and paid by the Customer in order for FLUIDONE LIMITED to continue with the remaining project

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scope.

- 6.2.2 Where Professional Services are provided for a fixed price, the total price for the Professional Services shall be the amount set out in the Services Contract. The total price shall be invoiced by FLUIDONE LIMITED in instalments, 50% on order and 50% on completion of the work, or as otherwise detailed in the Services Contract.
- 6.2.3 FLUIDONE LIMITED's standard daily fee rates for each individual person are calculated on the basis of a seven and a half hour day, worked between 9.00 am and 5.30 pm on weekdays (excluding public holidays), except that:
- 6.2.4 After 5.30pm on weekdays and on Saturdays, the referenced rates are multiplied by 1.5; and
- 6.2.5 On Sundays and public holidays, the referenced rates are doubled;
- 6.2.6 all charges quoted to the Customer shall be exclusive of VAT, which FLUIDONE LIMITED shall add to its invoices at the appropriate rate; and
- 6.2.7 FLUIDONE LIMITED shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned.
- 6.2.8 No fees shall be charged for days that are not spent on performing the Professional Services due to statutory and annual holidays, sickness or temporary absence for any other reason.
- 6.2.9 Any time spent to attend progress meeting held by the Customer by FLUIDONE LIMITED staff shall be deemed chargeable
- 6.3 If the Customer approved the design and the initial estimate for the development services but later suspends the Project, FLUIDONE LIMITED shall have the right to invoice for the time and material element in respect of the design provision.

7 EXPENSES

- 7.1 Unless otherwise specified on a Service Contract, the fee rates specified do not include travel, hotel or subsistence expenses or the cost of materials and external services necessarily incurred in providing the Professional Services. Expenses shall include, but not be limited to, the following headings:
 - Public transport (standard class) or taxi where practical provision does not exist
 - Private car mileage at HMRC mileage rates
 - Tolls, parking, congestion charges (but not fines)
 - Meals
 - Overnight accommodation
 - Telecommunications charges (including internet)
- 7.2 Travel by air shall require the pre-approval of the Customer. In such a case, air travel shall be undertaken at the relevant Economy Class rate, except where such fares are not available due to short notice or other reasons. Costs arising from the provision of medical, visa or similar documentation that are requirements or recommendations of either the Customer's country or the United Kingdom Foreign & Commonwealth Office shall be allowable travel expenses
- 7.3 Such expenses shall be invoiced to the Customer at cost. Copies of receipts will not routinely be attached to such invoices, but copies of specific invoices can be made available upon request.
- 7.4 Time spent by FLUIDONE LIMITED staff in travelling to the Customer site or elsewhere on behalf of the Customer will be charged on an hourly pro rata basis, unless otherwise specified in the Service Contract.
- 7.5 The Customer shall pay for additional expenses incurred in favour of the Customer, including but not limited to purchase/lease specific hardware and software necessary for the rendering of the Services under these Terms and Conditions. The expenses may include third party software licensing, additional or specific hardware components purchase required for the provision of particularly agreed Services under these Terms and Conditions. These expenses shall be specifically agreed in writing upon in advance by the Customer and separately stated in invoices.

8 INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 8.1 Except where otherwise agreed, the provisions of this clause 8 shall apply to each Services Contract.
- 8.2 The Customer shall retain title to and all intellectual property rights in all documents, materials, ideas, data or other information which constitute the pre-existing proprietary items of the Customer and which are provided or made available to FLUIDONE LIMITED for the purposes of the Services Contract.
- 8.3 FLUIDONE LIMITED shall retain title to and all intellectual property rights in all documents, materials, ideas, data

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or other information which constitute the pre-existing proprietary items of FLUIDONE LIMITED and which may be made available under the Services Contract.

- 8.4 To the extent that any document, material, idea, data or other information constitutes an original item developed by FLUIDONE LIMITED under a Services Contract, such original item shall be classed as FLUIDONE LIMITED property and title thereto and all intellectual property rights therein shall be vested in FLUIDONE LIMITED.
- 8.5 With effect from the full payment of any applicable charges, and within any identified licence limits, the Customer is granted subject to the Agreement a worldwide, royalty-free, non-transferable, perpetual and irrevocable licence to use any Deliverables from the Services Contract for its own internal purposes only.
- 8.6 Where Deliverables incorporate Customer pre-existing proprietary items, Customer grants a royalty-free, transferable, perpetual, licence to FLUIDONE LIMITED to use, modify and adapt such items but only for use with the Deliverables.
- 8.7 Nothing in the Service Contract shall be interpreted to prevent FLUIDONE LIMITED from using any experience acquired during the performance of the Service Contract with the Customer when undertaking work on its own behalf or for other Customers at any time in the future.
- 8.8 FLUIDONE LIMITED shall be entitled to make and retain a copy of all work prepared under the Service Contract.
- 8.9 FLUIDONE LIMITED and the Customer agree that they will not disclose to any person, firm or company any secret or confidential information or methods of working which may be revealed by one to the other for the purpose of the Service Contract without the consent in writing of the other.

9 PERSONNEL

- 9.1 The parties shall each appoint a representative who shall have full authority to take all necessary decisions regarding the provision of the Professional Services including the variation of the Service Contract.
- 9.2 The parties shall procure that their representatives shall meet at project team meetings to discuss, monitor and minute the provision of the Professional Services. The parties agree that any representatives of the Customer may be required at and may attend such meetings, as agreed for the purposes of any Professional Services being supplied to them accordingly.
- 9.3 The allocation of FLUIDONE LIMITED staff to the Professional Services is a matter for FLUIDONE LIMITED alone. However, if the Customer requests that any member of FLUIDONE LIMITED staff should cease to perform the Services, it shall notify FLUIDONE LIMITED in writing and state the reasons for the request. If FLUIDONE LIMITED agrees to the request (such agreement not to be unreasonably withheld) the said staff member shall be removed within a reasonable period and FLUIDONE LIMITED shall provide a suitably qualified replacement.

10 PROGRESS AND APPROVAL

- 10.1 For any software development services FLUIDONE LIMITED will request the Customer's written approval of the UAT or Live environment within 30 days of the software release.
- 10.2 If the Customer does not reject the Services pursuant to Clause 10.1, FLUIDONE LIMITED shall consider the Services as duly accepted.

11 CUSTOMER'S DATA

- 11.1 FLUIDONE LIMITED shall take all necessary steps to ensure that the Customer Data which comes into its possession or control in the course of providing the Professional Services is protected in accordance with the Customer's IT security, privacy and data protection policy and in particular FLUIDONE LIMITED will not:
 - 11.1.1 use the Customer's Data nor reproduce the Customer's Data in whole or in part in any form except as may be required by this Services Contract;
 - 11.1.2 disclose the Customer's Data to any third party or persons not authorised by the Customer to receive it, except with the prior written consent of the Customer; or
 - 11.1.3 alter, delete, add to or otherwise interfere with the Customer's Data (save where expressly required to do so by the terms of this Services Contract); and
 - 11.1.4 to the extent that any data or information belonging to the Customer is personal data within the meaning of the Data Protection Act 1998, FLUIDONE LIMITED will comply with the requirements of clause v18 of the FLUIDONE LIMITED Standard Terms of Business.

12 LIABILITY

- 12.1 FLUIDONE LIMITED shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete,

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incorrect, inaccurate, or arising from their late arrival or non-arrival, or any other fault of the Customer.

- 12.2 In the event of any action for infringement or other proceedings being taken against FLUIDONE LIMITED in respect of any material used by FLUIDONE LIMITED in accordance with the Customer's instructions or with the Customer's consent, the Customer agrees to indemnify FLUIDONE LIMITED against all costs or damages (including legal costs, disbursements and fees) which may be incurred by FLUIDONE LIMITED by reason of such action or proceedings.
- 12.3 Where FLUIDONE LIMITED is agreeing to supply Services acquired or licensed from a third party supplier, the Customer acknowledges that FLUIDONE LIMITED's obligations to supply and ability to deliver is dependent upon the performance of that supplier and that FLUIDONE LIMITED will, in no event, incur any greater liability to the Customer than the liability of that Supplier to FLUIDONE LIMITED.

13 STANDARD TERMS OF BUSINESS

- 13.1 The FLUIDONE LIMITED Standard Terms of Business applicable at the date of contract are hereby incorporated by reference into any Service Contract entered into by FLUIDONE LIMITED which also incorporates these IP Services Terms and Conditions.
- 13.2 The current version of the FLUIDONE LIMITED Terms of Business can be found at:

<http://www.FluidOne Limited.co.uk/sites/default/files/FluidOne Limited-standard-terms-of-business.pdf>