

Cloud Hosting Terms and Conditions

1 DEFINITIONS.

- 1.1 The following definitions shall apply in this Schedule. Any reference in this Schedule to "day" will be a calendar day.

"Acceptable Use Policy"	lists prohibited uses of Cloud Services, and is published at: http://www.fluidone.com/acceptable-use-policy
"Affiliate"	means any legal entity that a party owns or that owns a party, with a 50% or greater interest.
"Cloud Services"	means one or more of the services or features made available to Customer under this agreement by FLUIDONE LIMITED and identified as Cloud Services in the Service Contract.
"Customer Data"	means all data, including all text, sound, software, or image files that are provided to FLUIDONE LIMITED by, or on behalf of, the Customer through your use of the Cloud Services
"Customer Solution"	means the application(s) that Customer runs with Cloud Services.
"Data Transfer Agreement"	means an agreement addressing the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, which, if required, will be separately agreed between the Parties.
"End User"	means any user of a Customer Solution, or any person permitted by Customer to access Customer Data hosted in Cloud Services or otherwise use the Cloud Services.
"Other Software"	is any software, data, service, website or other product licensed, sold or otherwise provided to Customer other than by FLUIDONE LIMITED as part of the Cloud Services described in this Schedule.
"Privacy Statement"	means the FLUIDONE LIMITED privacy statement available separately on request.
"Product"	means any Cloud Services and Software.
"SLAs"	means the commitments made by the FLUIDONE LIMITED regarding delivery or performance of the Cloud Services, as published in the service level agreements identified in Schedule 3.
"Section"	means a clause or section in this Schedule.
"Software"	means software provided to Customer as part of the Cloud Services for use with the Cloud Services.
"Subscription"	means an enrolment for Cloud Services for a defined Term
"Term"	means the duration of a Subscription, as detailed in the Service Contract

2 SCOPE

- 2.1 These terms and conditions represent Service Specific Terms and Conditions for the supply of Cloud Hosting Services by FLUIDONE LIMITED.
- 2.2 Service Contracts are formed following the process described in clause 3 of the Standard Terms of Business.

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- 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 USE OF CLOUD SERVICES.

- 3.1 **Right to Use.** FLUIDONE LIMITED grants to the Customer the right to access and use the Cloud Services and to install and use Software included with the Subscription, as further described in this agreement. Customer may create and maintain a Customer Solution, which it may permit third parties to access and use provided the Customer Solution adds material functionality to the Cloud Services and is not primarily a substitute for the Cloud Services. FLUIDONE LIMITED reserves all other rights.
- 3.2 **Manner of Use.** Customer may use the Product only in accordance with this Agreement. Customer may not reverse engineer, decompile, disassemble or work around technical limitations in the Product, except where applicable law permits it despite this limitation. Customer may not disable, tamper with or otherwise attempt to circumvent any billing mechanism that meters your use of the Product. You may not rent, lease, lend, resell, transfer, or sublicense any Product to or for third parties.
- 3.3 **End Users.** Customer shall control access by its End Users, and shall remain responsible for their use of the Product in accordance with this agreement. Without limitation, Customer will ensure End Users comply with the Acceptable Use Policy.
- 3.4 **Customer Data.** Customer is solely responsible for the content of its Customer Data. Customer will secure rights in Customer Data necessary for FLUIDONE LIMITED to provide the Cloud Services without violating the rights of any third party, or otherwise obligating FLUIDONE LIMITED to Customer or to any third party. FLUIDONE LIMITED does not and will not accept any obligations set forth in any separate license or other agreement that may apply to Customer Data or Customer use of the Products.
- 3.5 **Rights.** Customer agrees to secure the rights necessary to run all software (including the operating system) with the Cloud Services. Customer must not disable, tamper with or otherwise attempt to circumvent any billing mechanism that tracks your hourly use of the Cloud Services and the software contained therein.
- 3.6 **Software provided for Use within Cloud Services.** FLUIDONE LIMITED may provide Customer with the option of running Software within the Cloud Services (for example, in a virtual machine). Customer use of the Software is subject to proprietary license terms contained in the Software, as modified below:
- 3.6.1 Customer may use such Software only within the Cloud Services and only in conjunction with the permitted use of any applicable Cloud Services role. To the extent of any conflict between this paragraph and the proprietary license terms contained in the Software, this paragraph controls.
- 3.6.2 Customer has no other rights under the Software's license terms or under this agreement to run the software (for example, to run copies on on-premises servers or other devices unless Customer separately obtains the license to do so).
- 3.7 **Other Software.** FLUIDONE LIMITED may make Other Software available to the Customer for use with the Cloud Services. The use of such Other Software will be governed by separate terms between Customer and the third party providing the Other Software. For convenience, FLUIDONE LIMITED may include charges for the Other Software as part of Customer invoices for the Cloud Services. However, FLUIDONE LIMITED assumes no responsibility or liability whatsoever for the Other Software.
- 3.7.1 Customer is solely responsible for any Other Software that it may request FLUIDONE LIMITED to install for use with the Cloud Services. FLUIDONE LIMITED is not a party to and is not bound by any terms governing Customer's use of Other Software.
- 3.7.2 If Customer requests the install and uses any Other Software with the Cloud Services, then Customer and not FLUIDONE LIMITED, directs and control the installation and use of it in the Cloud Services through its actions (for example, through use of application programming interfaces and other technical means that are part of the Cloud Services). FLUIDONE LIMITED will not run or make any copies of such Other Software outside this agreement.
- 3.7.3 If Customer installs or uses any Other Software with the Cloud Services, Customer may not do so in any way that would subject FLUIDONE LIMITED intellectual property or technology to obligations beyond those included in this Agreement.
- 3.8 **Responsibility for accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with its use of the Cloud Services. Customer must promptly notify FLUIDONE LIMITED about any possible misuse of its accounts or authentication credentials, or any security incident related to the Cloud Services.
- 3.9 **Updates.** FLUIDONE LIMITED may make changes to the Cloud Services from time to time. FLUIDONE LIMITED will provide Customer with 12 months prior notice before removing any material feature or functionality, unless security, legal or system performance considerations require an expedited removal.

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4 SECURITY, PRIVACY, AND DATA PROTECTION.

- 4.1 **Security.** FLUIDONE LIMITED will maintain appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction. Current information on FLUIDONE LIMITED security practices can be provided on written request.
- 4.2 **Privacy and Data location.** Customer Data will be treated in accordance with the FLUIDONE LIMITED's Privacy Statement, available upon request. Subject to any restrictions set forth in the Privacy Statement and any separately agreed Data Processing Agreement, FLUIDONE LIMITED may transfer to, store, and process Customer Data in any country where facilities are used for the provision of the Cloud Services. FLUIDONE LIMITED is a data processor (or sub-processor) acting on Customer's behalf, and FLUIDONE LIMITED is appointed to do these things with Customer Data in order to provide the Cloud Services. Customer will obtain any necessary consent from End Users or others whose personal information or other data will be hosted in Cloud Services.
- 4.3 **Ownership of Customer Data.** As between the parties, Customer shall retain all right, title and interest in and to Customer Data. FLUIDONE LIMITED shall acquire no rights in Customer Data, other than the right to host the Customer Data, including the right to use and reproduce Customer Data within FLUIDONE LIMITED systems solely for such hosting purposes.
- 4.4 **Use of Customer Data.** FLUIDONE LIMITED will use Customer Data only to provide the Cloud Services. This use may include troubleshooting to prevent, find and fix problems with the operation of the Cloud Services. It may also include improving features for finding and protecting against threats to users. FLUIDONE LIMITED shall not use Customer Data or derive information from it for any advertising or other commercial purposes without Customer consent.
- 4.5 **Third party requests.** FLUIDONE LIMITED will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as the Customer directs or unless required by law. Should a third party contact FLUIDONE LIMITED with a demand for Customer Data, the third party will be asked to contact Customer directly and FLUIDONE LIMITED may provide basic contact information to the third party to facilitate this. If compelled to disclose Customer Data to a third party, FLUIDONE LIMITED must use commercially reasonable efforts to notify Customer in advance of a disclosure unless legally prohibited. Customer is responsible for responding to requests by a third party regarding its use of Cloud Services.
- 4.6 **Subcontractors.** FLUIDONE LIMITED may use other companies to provide services on its behalf. Any such subcontractors will be permitted to obtain Customer Data only to deliver the Cloud Services, and they shall be prohibited from using Customer Data for any other purpose. FLUIDONE LIMITED remains responsible for its subcontractors' compliance with the obligations set forth in this Agreement.
- 4.7 **Compliance with law.** FLUIDONE LIMITED will comply with all laws applicable to the provision of the Cloud Services, including applicable security breach notification laws, but not including any laws applicable to Customer or its industry that are not generally applicable to information technology services providers. Customer will comply with all laws applicable to the Customer Solution, Customer Data, and use of the Cloud Services, including any laws applicable to Customer or its industry.

5 PURCHASING CLOUD SERVICES.

- 5.1 Cloud Services may be ordered by the Customer by establishing a Service Contract as described in clause 3 of the Terms of Business. The Service Contract shall reference the Cloud Services of Schedule 1 required by the Customer, and detail the applicable recurrent and non-recurrent charges from Schedule 2, unless otherwise agreed between the Parties.
- 5.2 Each Service Contract shall have a minimum Term of 3 years. Thereafter, the Service Contract shall continue unless and until cancelled by either party in writing by the provision of at least 35 days notice expiring at the end of a calendar month.
- 5.3 FLUIDONE LIMITED will invoice any set up charges detailed in the Service Contract upon execution of the Service Contract by both Parties. Any other non-recurrent changes will be invoiced following their completion, unless otherwise agreed and detailed in the Service Contract.
- 5.4 Charges for the Cloud Services detailed in the Service Contract will be due and payable quarterly in advance. The amount invoiced will be one quarter of the annual hosting Charge identified in the Service Contract, as amended in accordance with its terms. Any other recurrent charges will also be due and payable quarterly in advance.
- 5.5 Charges may be varied in accordance with the terms detailed in the Service Contract. At the end of the minimum Term of a Service Contract, FLUIDONE LIMITED reserves the right to increase the annual hosting charges recognising the shorter commitment period, and shall notify the Customer no less than 60 days prior to the end of the minimum Term of the proposed revised Charges applicable for any extension beyond the minimum Term.
- 5.6 Any Service Credits claimed by the Customer in accordance with Schedule 1 will be shown as a credit on the next applicable invoice raised by the FLUIDONE LIMITED.

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6 TERMINATION AND SUSPENSION.

- 6.1 **Customer Data return and deletion.** Customer may extract and/or delete Customer Data at any time. When a Subscription expires or terminates, FLUIDONE LIMITED will retain any Customer Data that has not been deleted for at least 60 days so that Customer may extract it. Customer shall remain responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, all Customer Data, including any cached or back-up copies, will be deleted within 60 days of the end of the retention period. Customer agrees that FLUIDONE LIMITED has no additional obligation to continue to hold, export or return Customer Data and no liability whatsoever for deletion of Customer Data pursuant to these terms.
- 6.2 **Regulatory.** In any country where any current or future government regulation or requirement presents a hardship to FLUIDONE LIMITED operating the Cloud Services without change, and/or causes FLUIDONE LIMITED to believe this agreement or the Cloud Services may be in conflict with any such regulation or requirement, FLUIDONE LIMITED may change the Cloud Services or terminate the Agreement. If FLUIDONE LIMITED uses this subsection 6.2 of the Agreement to change the Cloud Services, then Customer may give one month's notice to terminate this Agreement within three months of the change.
- 6.3 **Suspension.** FLUIDONE LIMITED may suspend use of the Cloud Services if: (1) reasonably needed to prevent unauthorized access to Customer Data; (2) Customer fails to respond to a claim of alleged infringement under Section 6 within a reasonable time; (3) Customer does not pay amounts due under this agreement; or (4) Customer does not abide by the Acceptable Use Policy or violates other terms of this agreement. A suspension will apply to the minimum necessary part of the Cloud Services and will be in effect only while the condition or need exists. FLUIDONE LIMITED will give notice before suspending, except where FLUIDONE LIMITED reasonably believes that it needs to suspend immediately. We will give at least 30 days' notice before suspending for non-payment. If Customer does not fully address the reasons for the suspension within 60 days thereof, FLUIDONE LIMITED may terminate the Subscription and delete the Customer Data without any retention period.

7 WARRANTIES.

- 7.1 **Limited warranty.** FLUIDONE LIMITED warrants that the Cloud Services will meet the terms of the SLAs during the Term. Customer's only remedies for breach of this warranty are those in the SLAs.
- 7.2 **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
- any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
 - any problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement, or resulting from events beyond our reasonable control;
 - any problems caused by the failure to meet minimum system requirements;
- 7.3 **DISCLAIMER.** OTHER THAN THIS WARRANTY, FLUIDONE LIMITED PROVIDES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THESE DISCLAIMERS WILL APPLY TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

8 DEFENCE OF CLAIMS.

- 8.1 **Defence.** FLUIDONE LIMITED will defend Customer against any claims made by an unaffiliated third party that the Product infringes its patent, copyright or trademark or makes unlawful use of its trade secret. Customer will defend FLUIDONE LIMITED against any claims made by an unaffiliated third party that (1) any Customer Solution or Customer Data you provide directly or indirectly in using the Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret or (2) arise from violation of the Acceptable Use Policy.
- 8.2 **Limitations.** FLUIDONE LIMITED's obligations in subsection 8.1 will not apply to a claim or award based on: (1) Customer Solution, Customer Data, Other Software, modifications made by Customer to the Product, or materials you provide or make available as part of using the Product; (2) your combination of the Product with, or damages based upon the value of, Other Software, data or business process; (3) your use of a FLUIDONE LIMITED trademark without express written consent, or use of the Product after notification by FLUIDONE LIMITED to stop due to a third-party claim; or (4) Customer of the Product to, or use for the benefit of, any unaffiliated third party.
- 8.3 **Remedies.** If FLUIDONE LIMITED reasonably believe that a claim under subsection 8.1 may bar Customer use of the Product, FLUIDONE LIMITED will seek to: (1) obtain the right for Customer to keep using it; or (2) modify or replace it with a functional equivalent. If these options are not commercially reasonable, FLUIDONE LIMITED may terminate Customer rights to use the Product and then refund any advance payments for unused Subscription rights.
- 8.4 **Obligations.** Each Party must notify the other promptly of a claim under this Section 8. The party seeking protection must (1) give the other sole control over the defence and settlement of the claim; and (2) give

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reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defence and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

9 EXCEPTIONS TO LIMITATION OF LIABILITY.

- 9.1 The limits of liability detailed in this Agreement apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 8 or clause 12.5 of the Terms of Business; or (2) violation of the other's intellectual property rights.

10 MISCELLANEOUS.

- 10.1 **Acquired rights.** Customer will defend FLUIDONE LIMITED against any claim that arises from (1) any aspect of the current or former employment relationship between Customer and any of its current or former personnel or contractors or under any collective agreements, including, without limitation, claims for wrongful termination, breach of express or implied employment contracts, or payment of benefits or wages, unfair dismissal costs, or redundancy costs, or (2) any obligations or liabilities whatsoever arising under the Acquired Rights Directive (Council Directive 2001/23/EC, formerly Council Directive 77/187/EC as amended by Council Directive 98/50/EC) or any national laws or regulations implementing the same, or similar laws or regulations, (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the United Kingdom) including a claim from Customer's current or former personnel or contractors (including a claim in connection with the termination of their employment by FLUIDONE LIMITED following any transfer of their employment to FLUIDONE LIMITED pursuant to such laws or regulations). Customer shall pay the amount of any resulting adverse final judgment (or settlement to which Customer consents). This section provides FLUIDONE LIMITED's exclusive remedy for these claims. FLUIDONE LIMITED will notify Customer promptly in writing of a claim subject to this section. FLUIDONE LIMITED must (1) give Customer sole control over the defence or settlement of such claim; and (2) provide reasonable assistance in defending the claim. Customer will reimburse FLUIDONE LIMITED for reasonable out of pocket expenses that FLUIDONE LIMITED incurs in providing assistance.
- 10.2 **Modifications.** FLUIDONE LIMITED may modify this Schedule at any time by notifying you in accordance with clause 10 of the Terms of Business. Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately, and by continuing to use the Cloud Services Customer will be bound by the modified terms. All other modified terms will be effective 30 days from notification of the changes, unless the changes are significant and material in which case Customer may give 30 days' notice of termination of the Agreement.

11 STANDARD TERMS OF BUSINESS

- 11.1 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.
- 11.2 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>

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SCHEDULE 1

CLOUD HOSTING SERVICE LEVEL AGREEMENT

1 INTRODUCTION

- 1.1 Customer recognises that FLUIDONE LIMITED is using the services of a subcontractor to provide the Cloud Hosting Services. The subcontractor is Microsoft.
- 1.2 Service Level Agreements shall apply to the various named elements of the Services if specified and provided within each Service Contract. Within each Service Level Agreement, Service Credits are detailed. Where Service Credits are received from the subcontractor, these will be transmitted to Customer in full. The Service Credits detailed are agreed to be the sole remedy of the Customer for any failure by the FLUIDONE LIMITED to meet the performance levels detailed in the Service Level Agreements.
- 1.3 The various named elements subject to Service Level Agreements are as follows (where in each case the controlling text is given in the referenced source). These elements are only applicable if the Service in question is incorporated in the Service Contract.

2 CLOUD SERVICES, VIRTUAL MACHINES AND VIRTUAL NETWORK

- For Cloud Services, Customer will have external connectivity at least 99.95% of the time.
- For all Internet-facing Virtual Machines Customer will have external connectivity at least 99.95% of the time.
- For Virtual Network, Customer will have 99.9% Virtual Network Gateway availability.
- For full details, see: <http://go.microsoft.com/fwlink/?linkid=296425&clcid=0x409>

3 STORAGE

- At least 99.9% of the time, FLUIDONE LIMITED will successfully process correctly formatted requests that are received to add, update, read and delete data. Storage accounts will have connectivity to our Internet gateway.
- For full details, see: <http://go.microsoft.com/fwlink/p/?linkid=159705&clcid=0x409>

4 SQL DATABASE

- SQL Database customers will have connectivity between the database and the Internet gateway. SQL Database will maintain a "Monthly Availability" of 99.9% during a billing month. "Monthly Availability Percentage" for a specific customer database is the ratio of the time the database was available to customer to the total time in the billing month. Time is measured in 5-minute intervals in a 30-day monthly cycle. Availability is always calculated for a full billing month. An interval is marked as unavailable if the customer's attempts to connect to a database are rejected by the SQL Database gateway.
- For full details, see: <http://go.microsoft.com/fwlink/p/?linkid=159706&clcid=0x409>

5 BACKUP

- We guarantee at least 99.9% availability of the backup and restore functionality of the Windows Azure Backup service. Availability is calculated over a monthly billing cycle.
- For full details, see: <http://go.microsoft.com/fwlink/p/?linkid=285729&clcid=0x409>