

# Terms and Conditions

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Terms & Conditions, terms shall have the same meanings as in the FLUIDONE LIMITED Standard Terms of Business, and in addition, the following terms shall have the following ascribed meanings:

**"Acceptable Use Policy"** or "AUP" means FLUIDONE LIMITED's policy concerning the use of Services via or which involve access to the Internet which can be found at the following url: <http://tinyurl.com/kwe8aog> or as otherwise notified to Customer by Operational Notice from time to time;

**"Change"** means any amendment, variation or other change to the Services made in accordance with clause 8;

**"Chargeable Support"** means the on-site, maintenance and support provided by FLUIDONE LIMITED as set out in Clause 25 of these Terms & Conditions as amended by FLUIDONE LIMITED from time to time or as set out in the relevant Service Contract;

**"Connection Notice"** means an Operational Notice from FLUIDONE LIMITED that the Service ordered has been installed by FLUIDONE LIMITED pursuant to the Service Contract;

**"Customer IP"** means Intellectual Property owned or licensed by the Customer and used for the purposes of these Terms & Conditions;

**"Customer Property"** means property of the Customer which is brought onto the Data Centre premises, including the Hardware;

**"Customer Representative"** means the person named as such in the Service Contract or such other person as may be appointed by the Customer from time to time and notified to FLUIDONE LIMITED by Operational Notice;

**"Data Centre"** the third party location or locations used to house computer systems and associated components, such as telecommunications and storage systems;

**"Data Centre Rules and Regulations"** means the Rules and Regulations concerning the use of Data Centres operated by Third Party Providers as provided to Customer which can be found at the following url: <http://tinyurl.com/mz72867>, or as otherwise notified to Customer by Operational Notice from time to time and/or displayed on the FLUIDONE LIMITED Website from time to time;

**"ECT Overage"** means any time when the electricity consumption in the Rack Accommodation exceeds the Electricity Consumption Threshold;

**"ECT Default Notice"** means the Legal Notice that may be served by FLUIDONE LIMITED on the Customer in the event that the Customer has received an Operational notice from FLUIDONE LIMITED related to any ECT Overage and the Customer has not remedied such ECT Overage within 24 hours after its receipt of such Operational Notice;

**"Electrical Power"** means the provision of electricity to the Rack Accommodation;

**"Electricity Consumption Threshold"** or "ECT" means the number of kW for the Rack Accommodation identified in the Service Contract;

**"Excused Outage"** any outage, unavailability, delay or other degradation of Service related to, associated with or caused by: scheduled maintenance events, Customer actions or inactions, over 70% utilization of any telecommunications circuit, Customer provided power or equipment, any third party excluding any third parties directly involved in the operation and maintenance of the FLUIDONE LIMITED network, but including without limitation, Customer's end users, third party network providers, traffic exchange points controlled by third parties, fibre cuts by third parties or any power, equipment or services provided by third parties, or a Force Majeure Event;

**"Force Majeure Event"** means an event beyond the reasonable control of a Party which prevents a Party from performing its obligations under these Terms & Conditions, including, without limitation, war, riot, invasion, act of foreign enemies, hostilities, acts of terrorism or sabotage, civil war, rebellion, revolution, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component of such matter or failure of a utility, service or transport network or default or failure to perform by suppliers, earthquake, flood, fire, explosion, epidemic, or other natural physical diFluidOne Limitedter or severe weather;

**"Future Service Provider"** means any service provider or service providers that the Customer appoints on the termination of these Terms & Conditions (or any part thereof) to replace FLUIDONE LIMITED in providing any or all of the Services (or services similar to the Services) or part thereof;

**"Hardware"** means all physical telecommunications, networking and computer equipment (including but not limited to switches, routers, cables, servers, racks, cabinets and peripheral accessories) used by

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FLUIDONE LIMITED in order to deliver the Services to the Customer as may be set out in a Service Contract;

**"Implementation Plan"** means such implementation, migration and project plan as may be agreed between the Parties and as may be set out in a Service Contract;

**"Initial Term"** means the period specified in the relevant Service Contract or in Clause 3.1;

**"Intellectual Property"** means all intellectual property rights wherever in the world and howsoever arising, including copyright, patents, trade marks, service marks, design rights, rights to sue for passing off, rights in databases, domain names, business names, trade secrets and know how, semi-conductor topography rights and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;

**"Legal Notice"** means a notice in writing in the English language delivered by hand, sent by recorded delivery post or by facsimile transmission to the relevant postal address or facsimile number of the other Party set out on the first page of these Terms & Conditions and shall not be effective by email transmission;

**"Operational Notice"** means a notice in writing in the English language delivered by email transmission to the email address of the other Party;

**"Party"** or **"Parties"** means a party or the parties to these Terms & Conditions as the context dictates;

**"Personal Data"** shall have the meaning given to that term in the Data Protection Legislation;

**"POP Services"** means services typically provided by companies in the primary business of providing carrier-neutral interconnections, such as Telecity, Equinix, Interxion and Telehouse, including without limitation, furnishing of space, racks and pathway to parties for the purpose of such party's placement and maintenance of computer, and/or communications equipment and connections with the communications cable and facilities of other parties in the Data Centre

**"Rack Accomodation"** means the area provided to the Customer within a Data Centre as detailed within a Service Contract

**"Remote Hands"** means the on-site, maintenance and support provided by FLUIDONE LIMITED for simple equipment fixes as set out in Clause 24 of these Terms & Conditions as amended by FLUIDONE LIMITED from time to time

**"Service"** or **"Services"** means any services to be supplied to the Customer by FLUIDONE LIMITED as described in a Service Contract;

**"Service Commencement Date"** means the date upon which the Service ordered by the Customer has been installed pursuant to the Service Contract and billing commences;

**"Service Contract"** means an order for the supply of Data Centre Services placed by a Customer with FLUIDONE LIMITED following the process described in clause 3 of the FLUIDONE LIMITED Terms of Business;

**"Service Credit"** means credits calculated in accordance with the relevant Service Level Agreement;

**"Service Level Agreement"** or **"SLA"** means the agreement setting out the committed Service Levels and Service Credits relevant to the Services as detailed at the end of this agreement;

**"Service Levels"** means the committed levels of service specified in the Service Level Agreement relevant to the Services;

**"Service Order Change"** or **"SOC"** means an order for a Change placed by a Customer with FLUIDONE LIMITED under the terms of these Terms & Conditions and incorporating the terms and conditions of these Terms & Conditions;

**"Software"** means the software, if any, used by FLUIDONE LIMITED in order to deliver the Services to the Customer as set out in a Service Contract;

**"FLUIDONE LIMITED IP"** means all Intellectual Property owned by or licensed to FLUIDONE LIMITED and which is used for the provision of the Services;

**"FLUIDONE LIMITED Representative"** means the person in the Service Contract or such other person as may be appointed by FLUIDONE LIMITED from time to time and notified to the Customer by Operational Notice;

**"FLUIDONE LIMITED Service Desk"** means a service desk or service desk capability provided by FLUIDONE LIMITED or a third party sub-contractor of FLUIDONE LIMITED to support Customers;

**"Special Conditions"** means terms set out in a Service Contract that apply solely to the Services set out in that Service Contract;

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**"Term"** means the Initial Term and any Secondary Term;

**"Third Party Providers"** means providers of certain facilities, including data centres, which are owned and operated by third parties and leased or provided on a service contract to FLUIDONE LIMITED;

**"Tier-1 Network"** means an Internet Protocol (IP) network, provided to Customer as a Service by FLUIDONE LIMITED, that participates in the Internet solely via settlement-free interconnection, also known as settlement-free peering;

## 2. SCOPE OF AGREEMENT

- 2.1. These terms and conditions ("**Terms & Conditions**") represent Service Specific Terms and Conditions for Data Centre Services provided by FLUIDONE LIMITED.
- 2.2. 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 Data Centre Services Terms and Conditions.
- 2.3. The current version of the FLUIDONE LIMITED Terms of Business can be found here: <http://tinyurl.com/n47ypbjf>.
- 2.4. Service Contracts are formed following the process described in clause 3 of the Standard Terms of Business.

## 3. PROVISION OF SERVICES

- 3.1. FLUIDONE LIMITED shall provide the Data Centre Services in any Service Contract formed which incorporates these terms and conditions. The Data Centre Services consist of the following Services, as further described below:
  - 3.1.1. Rack Accommodation
  - 3.1.2. Power
  - 3.1.3. IP Connect Bandwidth
  - 3.1.4. Internet access
  - 3.1.5. Remote Hands Service
- 3.2. Rack Accommodation at the FLUIDONE LIMITED Data Centre will be provided in racks 800mm (width) by 1200mm (depth) by 47u (height). Rack Accommodation will be supplied as full racks (47u), half racks (22u) and quarter racks (11u), as specified on the Order. Racks will include:
  - 3.2.1. Combination or key lock
  - 3.2.2. 12 Port Patch Panel
  - 3.2.3. 2 x 8 Way Intelligent PDU (1 x A/1 x B)
  - 3.2.4. 32amp (A+B) commando sockets in 800mm underfloor void.
- 3.3. Power will be provided in kW, as specified on the Order, to a limit of 5KW per rack, averaged over the Rack Accommodation. The total power specified on the Order shall represent the Electricity Consumption Threshold.
- 3.4. The Customer may at no time allow the electricity consumption within the Rack Accommodation to exceed the Electricity Consumption Threshold.
- 3.5. In the event of an ECT Overage, the Customer agrees to take immediate action upon receipt of notice of such ECT Overage from BT to power down items of equipment in the Rack Accommodation in order to cause power consumption in the Rack Accommodation to be at or below the Electricity Consumption Threshold. The Customer's failure to remedy an ECT Overage within 24 hours after its receipt of an ECT Default Notice shall be considered a breach of the Data Centre Rules and Regulations.
- 3.6. Connectivity will be provided via BT IP Connect into the BT MPLS cloud, either via a single or Secure+ connection with bandwidth all as specified in the Service Contract.
- 3.7. Internet access will be provided with Committed Bandwidth as specified on the Order. Internet Access is provided for the establishment of private networks by the Customer and not for general access to the Internet. For the avoidance of doubt, FLUIDONE LIMITED does not act as an Internet Service Provider by the limited supply of Internet Access under these Terms and Conditions.
- 3.8. Bursting above the Committed Bandwidth is allowed and has the effect of raising the bandwidth charge

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for the month in which it occurs by an additional amount equivalent to the same price per Mbps as is represented by the charge for the Committed Bandwidth. For example, if the Committed Bandwidth is exceeded by 10% in a specific month, the charge for that month will be 110% of the monthly charge for the Committed Bandwidth.

- 3.9. The Remote Hands Service is defined in section 20 of these Terms and Conditions. If the Remote Hands Service is not ordered at the time of the Data Centre Services, BT's Supplier will make reasonable endeavours to provide the Services within two weeks of order.
- 3.10. Any other Services required by the Customer in conjunction with the installation or operation of the Data Centre Services will be as described or referenced in the Service Contract.
- 3.11. Providing that such changes do not result in any reduced performance or functionality of the Services, FLUIDONE LIMITED reserves the right to make changes to the terms of the Service Contract and the Services as it deems necessary from time to time upon Operational Notice to the Customer solely in order to reflect:
  - 3.11.1. technical and/or operational matters; and/or
  - 3.11.2. changes to applicable laws, regulations or industry practice;

### 4. TERM

- 4.1. Unless otherwise specified in the Service Contract:
  - 4.1.1. the Initial Term shall begin on the Service Commencement Date and its duration shall be as defined on the Service Contract; and
  - 4.1.2. on the expiry of the Initial Term, each recurring Service in the Service Contract shall renew for periods of twelve (12) months each in duration (each a "Secondary Term"), unless either Party issues a Legal Notice to terminate not less than ninety (90) days prior to the expiry of the Initial Term or any Secondary Term.

### 5. IMPLEMENTATION

- 5.1. Upon installation of the Service ordered in any Service Contract, FLUIDONE LIMITED will deliver a Connection Notice to Customer. The Service Commencement Date shall be the first to occur of the following:
  - 5.1.1. the date of the Connection Notice; or
  - 5.1.2. the date Customer begins actually using the Service.
- 5.2. The Customer shall have a period of three (3) Business Days from the Service Commencement Date to test the Service and to advise FLUIDONE LIMITED if the Service is not installed or functioning properly. In the case of a non-functioning Service FLUIDONE LIMITED will investigate the report and correct the Service as required. If the Service non-functioning was solely the fault of FLUIDONE LIMITED then the Service Commencement Date shall be adjusted to the date when the Service is correctly functioning.
- 5.3. If any Service Contract is altered (including, without limitation, any changes in the configuration or build-out of Rack Accommodation) at Customer's request after FLUIDONE LIMITED's acceptance of a Service Contract and such alteration results in a delay in the delivery of Service to Customer, billing for such Service shall commence no later than the original anticipated Service Commencement Date.
- 5.4. If an Implementation Plan is annexed to the Service Contract, FLUIDONE LIMITED and the Customer shall act in accordance with that Implementation Plan, but it is agreed that any such timescales given shall be estimated, and time shall not be of the essence for any date specified.
- 5.5. In the event that the Parties need to amend the Implementation Plan in respect of any Services, the Parties shall, as soon as reasonably practicable, agree in writing any amendments that need to be made to the Implementation Plan in respect of the relevant Services and FLUIDONE LIMITED shall provide the Services in accordance with such amended Implementation Plan.

### 6. HARDWARE

- 6.1. If the Hardware is owned or provided by the Customer:
  - 6.1.1. The risk of physical loss or damage to the Hardware shall be with the Customer and the Customer shall ensure that appropriate insurance cover exists to cover all risks of physical loss or damage to such Hardware; and
  - 6.1.2. The Hardware shall be used by FLUIDONE LIMITED only for the purposes set out in the Service

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Contract and FLUIDONE LIMITED shall ensure that each item of the Hardware is used in a proper manner.

### 7. DATA CENTRE SERVICES AND RACK ACCOMODATION

- 7.1. The Customer may not assign, underlet, part with, hold on trust or share possession of the whole or any part of the Rack Accomodation or grant any rights over the Rack Accomodation to any third parties.
- 7.2. The Customer may only place, install and maintain computer, switch and/or communications equipment which may interconnect with the communications cable and facilities of other tenants within the Data Centre. At all times the placement, installation and maintenance of such equipment must not fall outside the Data Centre Rules and Regulations.
- 7.3. The Customer will be granted a licence to use the Rack Accomodation and be permitted reasonable access to the premises twenty four (24) hours per day seven (7) days per week. FLUIDONE LIMITED reserve the right to access the Rack Accomodation at any time for any business purpose.
- 7.4. In no event may the Customer have the right or ability to provide POP Services.
- 7.5. Customer agrees that an access card fee may be imposed at the rate of £120.00 per access card and that this access card fee is subject to increases from time-to-time during the Term.
- 7.6. Electrical power
  - 7.6.1. The Customer may at no time allow the electricity consumption within the Rack Accomodation to exceed the Electricity Consumption Threshold.
  - 7.6.2. In the event of an ECT Overage, the Customer agrees to take immediate action upon receipt of notice of such ECT Overage from FLUIDONE LIMITED to power down items of equipment in the Rack Accomodation in order to cause power consumption in the Rack Accomodation to be at or below the Electricity Consumption Threshold. The Customer's failure to remedy an ECT Overage within 24 hours after its receipt of an ECT Default Notice shall be considered a breach of the Data Centre Rules and Regulations.

### 8. SERVICES CHANGE CONTROL PROCEDURE

- 8.1. Either party may at any time discuss a Change with the other Party.
- 8.2. Where a written request for a Change is received from the Customer, or FLUIDONE LIMITED itself proposes a Change, FLUIDONE LIMITED shall, unless otherwise agreed, prepare and submit a Service Order Change to the Customer. Each SOC shall include all details required for the Change including but not limited to: variations to Services, necessary variations to Charges and effect of the Change on existing Services and any Implementation Plan.
- 8.3. The Parties shall meet as soon as reasonably practicable following the issue of the SOC to discuss the Change set out in the SOC in good faith in order to settle and agree the terms of the SOC.

### 9. OBLIGATIONS OF FLUIDONE LIMITED

- 9.1. FLUIDONE LIMITED shall perform the Services in accordance with these Terms & Conditions, except where prevented by an Excused Outage.
- 9.2. FLUIDONE LIMITED shall provide the Services using appropriately qualified personnel who shall act at all times in a timely and efficient manner, in good faith and with due diligence.
- 9.3. The Customer acknowledges and agrees that in providing the Services, FLUIDONE LIMITED may utilise Third Party Providers.
- 9.4. FLUIDONE LIMITED shall provide Remote Hands to the Customer upon request in accordance with Clause 24.
- 9.5. FLUIDONE LIMITED shall ensure that:
  - 9.5.1. it has in place all licences and other consents required in respect of any Software to be provided by FLUIDONE LIMITED which is owned by third parties;
  - 9.5.2. it fully maintains such licences and consents throughout the Term, including any agreed extension thereof by way of payment of any licence or renewal fees in a timely fashion;
  - 9.5.3. such licences and consents are entered into, and remain, on terms which permit the use of the Software by FLUIDONE LIMITED and the Customer for the provision and receipt of the Services and otherwise in the manner contemplated by these Terms & Conditions; and

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9.5.4. it fully complies with all terms and conditions of such licences and consents throughout the Term.

### 10. OBLIGATIONS OF THE CUSTOMER

#### 10.1. The Customer shall:

- 10.1.1. comply with all of these Terms & Conditions, and not use the products or Services for any unlawful purpose;
- 10.1.2. co-operate fully with FLUIDONE LIMITED in relation to all matters relating to the Services or these Terms & Conditions;
- 10.1.3. appoint and make available the Customer Representative to liaise with FLUIDONE LIMITED in relation to any matter concerning the Services or these Terms & Conditions;
- 10.1.4. provide, in a timely manner, all information and resources which are reasonably requested or required by FLUIDONE LIMITED in order to provide the Services under these Terms & Conditions, including any Software or Hardware to be provided by the Customer;
- 10.1.5. be responsible for any obligation or liability arising out of transactions of any kind entered into between the Customer and any third party accessing or acting on or in reliance on the Service, and information from the Customer or any third party.

#### 10.2. The Customer shall ensure that:

- 10.2.1. it has in place all licences and other consents required in respect of any Software to be provided by the Customer which is owned by third parties;
- 10.2.2. it fully maintains such licences and consents throughout the Term, including by way of payment of any licence or renewal fees in a timely fashion;
- 10.2.3. such licences and consents are entered into, and remain, on terms which permit the use of the Software by the Customer and FLUIDONE LIMITED for the provision and receipt of the Services and otherwise in the manner contemplated by these Terms & Conditions; and
- 10.2.4. it fully complies with all terms and conditions of such licences and consents throughout the Term and immediately notifies FLUIDONE LIMITED in the event of any breach thereof;
- 10.2.5. it, at its sole cost and expense, puts and keeps the Rack Accommodation and the Customer Property in good and substantial repair and condition
- 10.2.6. it does not make or cause to be made any alterations, additions, improvements or replacements to the Rack Accommodation

#### 10.3. Customer shall:

- 10.3.1. ensure that all information provided by the Customer to FLUIDONE LIMITED is complete, up-to-date and accurate in all material respects;
- 10.3.2. ensure that any Hardware or other equipment (if any) provided by the Customer to FLUIDONE LIMITED is in good working order and suitable for the purposes for which it is to be used in relation to the Services and conforms to all applicable law and regulations;
- 10.3.3. provide FLUIDONE LIMITED and its personnel with such access to the Rack Accommodation and to its relevant information, records and other material as is necessary to provide the Services or exercise its rights under the Agreement;
- 10.3.4. strictly comply with the Acceptable Use Policy, the Data Centre Rules and Regulations and any other lawful instructions and directions which may be given or issued by FLUIDONE LIMITED, its Affiliates or any Third Party Provider in relation to the performance of these Terms & Conditions, including, but without limitation, any access and security requirements in connection with any premises provided by FLUIDONE LIMITED or any Third Party Provider;
- 10.3.5. not make any statement, warranty or representation about the Services to any third party, and ensure that its customers or any third party Customer allowed to use the Services (provided it is licensed to do so) complies with the terms of these Terms & Conditions;
- 10.3.6. obtain and maintain all necessary licences and consents and comply with all applicable laws, rules and regulations in relation to the receipt of the Services;

#### 10.4. Customer is not permitted to perform penetration testing (or any other form of intrusive or non-intrusive security / stress testing) without written authorisation from FLUIDONE LIMITED. The Customer must take all reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure. This includes but is not limited to:

- 10.4.1. ensuring no broadcast storms, spanning tree loops occur over the Services;
- 10.4.2. informing FLUIDONE LIMITED in the first instance in case of a DOS/DDOS attack. In the event

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of such an incident, FLUIDONE LIMITED is willing to work with the Customer to alleviate the situation as quickly as possible. However, FLUIDONE LIMITED reserves the right to shut down the Customer's connectivity for a reasonable period of time to prevent service degradation to other Customer networks;

- 10.4.3. if using BGP peering, only announcing ranges officially allocated to them by FLUIDONE LIMITED or a regional internet registry. Customers are not permitted to announce IP ranges from any other provider(s) through their FLUIDONE LIMITED peering.
- 10.5. Notwithstanding any other provision of these Terms & Conditions, FLUIDONE LIMITED shall not be liable for any costs, charges, claims, losses, damages or expenses of any kind whatsoever, in the event that the performance of the Services by FLUIDONE LIMITED or the fulfilment of any of its other obligations under these Terms & Conditions, is prevented, hindered or delayed by any act or omission of the Customer or its employees, consultants, subcontractors or agents, including any failure to provide required Software or Hardware in accordance with any Implementation Plan or agreed timescales. In particular, to the extent that the same is caused directly or indirectly by any such act or omission of the Customer or its employees, consultants, subcontractors or agents, FLUIDONE LIMITED shall not be liable for any failure by FLUIDONE LIMITED to achieve:
  - 10.5.1. any milestones under any Implementation Plan; or
  - 10.5.2. any Service Levels (and the Customer shall be not be entitled to the deduction of any related Service Credits in relation thereto),

### 11. CHARGES AND PAYMENT

- 11.1. The Customer shall pay the Charges to FLUIDONE LIMITED as set out in this Clause and in accordance with the relevant Service Contract or Clause 24 (Remote Hands).
- 11.2. Unless the Customer advises FLUIDONE LIMITED that a Service has not been installed and/or is not functioning properly in accordance with clause 4.2, billing for the Service will commence from the applicable Service Commencement Date.
- 11.3. FLUIDONE LIMITED will charge quarterly in advance for all Services except for Charges that are dependent upon variable usage which will be billed in arrears.
- 11.4. In addition to the Charges, FLUIDONE LIMITED shall be entitled to be reimbursed for its expenses properly and necessarily incurred in the performance of the Services, other than:
  - 11.4.1. travel expenses incurred as a result of FLUIDONE LIMITED personnel travelling to and from FLUIDONE LIMITED's usual place of work at FLUIDONE LIMITED's offices, or to and from the Rack Accommodation; or
  - 11.4.2. Subsistence expenses incurred whilst performing the Services at FLUIDONE LIMITED's usual place of work at FLUIDONE LIMITED's offices.
- 11.5. FLUIDONE LIMITED reserves the right to increase the Charges once per calendar year for any Service. FLUIDONE LIMITED will provide Legal Notice of any such increase. If the Charges are increased by more than ten per cent (10%) (or the rate set out in the relevant Service Contract if such rate is specified) in any one calendar year, the Customer may terminate the affected Service without liability by serving Legal Notice to terminate on FLUIDONE LIMITED within thirty (30) days of the relevant price increase Legal Notice, and such termination shall be effective ninety (90) days following receipt by FLUIDONE LIMITED of the Legal Notice to terminate and the price increase shall not take effect during such period.
- 11.6. FLUIDONE LIMITED will invoice and the Customer will pay all greenhouse gas trading scheme (including the CRC Energy Efficiency Scheme) (a "Scheme") costs incurred by FLUIDONE LIMITED for the provision of the Rack Accommodation.

### 12. SERVICE LEVELS & SERVICE CREDITS

- 12.1. FLUIDONE LIMITED shall provide the Services so as to meet the Service Levels. In order for BT's Supplier to investigate any reported issues, Customer agrees to provide supporting information as reasonably requested.
- 12.2. Where the origin of the fault is unclear, FLUIDONE LIMITED will provide assistance to the Customer in order to determine the origin of the fault. If it is confirmed that the fault does not lie with Services provided by FLUIDONE LIMITED under this Service Schedule a charge will be made to the Customer at the hourly rates for Chargeable Support.
- 12.3. Services are subject to the following Service Levels. In the event FLUIDONE LIMITED does not achieve a

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particular Service Level in a particular period, FLUIDONE LIMITED will issue a Service Credit to Customer as set forth below upon Customer's request. To request a credit, Customer must contact FLUIDONE LIMITED within 30 days of the end of the period for which a credit is requested. In no event shall the total amount of credits issued to Customer per period exceed the monthly recurring charge for the affected Service.

- 12.4. **Electrical Power:** FLUIDONE LIMITED shall provide uninterrupted Electrical Power the premises from at least one of the A+B power distribution units 100% of the time
  - 12.4.1. In the event of any Electrical Power outage for reasons other than Customer actions or omissions. Customer will be entitled to a credit against the service charge of an amount equivalent to **8 hours** of the monthly service charge. If there is a subsequent or multiple subsequent outages (within the following 12 months of the first outage) then the Customer will be entitled to a service credit equivalent to **16 hours** of the monthly service charge.
- 12.5. **Temperature:** the temperature of the Rack Accommodation will be maintained between 20 Degrees Celsius and 32 Degrees Celsius averaged across all of the temperature sensors located in the return air plenums attached to the CRAC units situated within the area of which the Rack Accommodation forms part.
  - 12.5.1. In the event of FLUIDONE LIMITED failing in its Temperature SLA's then the Customer will be entitled to receive a service credit equivalent to **8 hours** of the monthly service charge.
- 12.6. **Relative Humidity:** the relative humidity of the Rack Accommodation will be maintained between 40% and 60% averaged across all of the temperature sensors located in the return air plenums attached to the CRAC units situated within the area of which the Rack Accommodation forms part.
- 12.7. In the event of FLUIDONE LIMITED failing in its Temperature SLA's then the Customer will be entitled to receive a service credit equivalent to **8 hours** of the monthly service charge.
- 12.8. The Customer's sole financial remedy in relation to FLUIDONE LIMITED's failure to meet the Service Levels shall be as set out in this clause 12 and the Customer shall have no right to recover additional damages in respect of such failure nor any right to terminate any Order nor any of the Services affected.

### 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. The Customer acknowledges and agrees that FLUIDONE LIMITED is the owner or licensee of the FLUIDONE LIMITED IP and that except as specified in Clause 13.2 nothing in these Terms & Conditions shall confer on the Customer any right, title or interest in the FLUIDONE LIMITED IP.
- 13.2. Subject to FLUIDONE LIMITED obtaining all necessary consents from any third party licensors, FLUIDONE LIMITED hereby grants to the Customer a non-exclusive, non-transferable, non-sub licensable, royalty-free licence (unless expressly provided in the Service Contract) to use the FLUIDONE LIMITED IP solely for the purposes of and to the extent necessary to receive and obtain the full benefit of the Services during the Term.
- 13.3. FLUIDONE LIMITED acknowledges and agrees that the Customer is the owner or licensee of the Customer IP, and that except as expressly specified in Clause 13.4, nothing in these Terms & Conditions or otherwise shall confer on FLUIDONE LIMITED any right, title or interest in the Customer IP.
- 13.4. Subject to the Customer obtaining all necessary consents from third party licensors, the Customer hereby grants to FLUIDONE LIMITED a non-exclusive, non-transferable, royalty-free licence during the Term to use such of the Customer IP as relates to the Services for the purposes of and to the extent necessary to perform the Service Contract.
- 13.5. All materials created in the provision of the Services (including configuration and use of the Services and related documentation) shall remain the Intellectual Property of FLUIDONE LIMITED and the Customer acknowledges it shall be granted a limited, non-exclusive, non-transferable, non-sub licensable licence only in such Intellectual Property during the Term.
- 13.6. Except as permitted by applicable law or as expressly permitted under these Terms & Conditions, the Customer shall not copy, de-compile or modify any Services (including provision of software and documentation) without the prior written consent of FLUIDONE LIMITED.

### 14. INSURANCE

- 14.1. The Customer will effect, procure and maintain insurance policies with a reputable insurers throughout the duration of this Service for the following;
  - 14.1.1. public liability insurance against liability in respect of personal injury, death, property damage



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and the consequences arising therefrom, for not less than £5 million for any one occurrence; and

- 14.1.2. property damage insurance against loss or damage to any Customer Equipment (or any other assets owned or controlled by the Customer within the Data Centre), for not less than their combined replacement value.
- 14.2. The Customer will provide FLUIDONE LIMITED on request a copy of certificate of insurances to evidence that the insurance referred to in clause 14.1 is in full force and effect.
- 14.3. If the Customer fails to provide satisfactory evidence of insurance, FLUIDONE LIMITED may require the Customer to amend its insurance or to purchase, at the Customer's expense, insurance to meet the Customer's obligations under this clause 14.

### 15. WARRANTIES AND INDEMNITIES

#### 15.1. FLUIDONE LIMITED warrants that:

- 15.1.1. it has the full capacity and authority to enter into and perform the Service Contract and the Service Contract is executed by a duly authorised representative of FLUIDONE LIMITED; and
  - 15.1.2. it owns or has obtained valid licences and/or consents to use any Intellectual Property rights (excluding any Customer IP) reasonably necessary for the fulfilment of all its obligations under the Service Contract.
- 15.2. In the event that a claim, demand or action for the infringement or alleged infringement of any Intellectual Property rights is made in respect of any Software provided by FLUIDONE LIMITED under the Service Contract or in respect of the Services, or, in the reasonable opinion of FLUIDONE LIMITED, such claim, demand or action is likely to be made, then, provided always that the Customer has used the Software and/or the Intellectual Property Rights in accordance with and as permitted by the Service Contract, FLUIDONE LIMITED shall at its own expense:
- 15.2.1. modify or replace the relevant Software without adversely affecting the Services, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Software; or
  - 15.2.2. procure a licence to validly use any such Software; or
  - 15.2.3. vary the Services without reducing the performance or functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Services or, if the same is not technically or commercially viable:
    - (a) propose a Change pursuant to these Terms & Conditions; or
    - (b) where possible, terminate the affected part of the Services without prejudice to the continuation of the remainder of the Service Contract,
  - 15.2.4. and the foregoing shall represent the entire liability of FLUIDONE LIMITED with regard to the infringement of any Intellectual Property rights by the use or possession of any Software provided by FLUIDONE LIMITED or in connection with the provision of the Services.
- 15.3. The Customer warrants that:
- 15.3.1. it has the full capacity and authority to enter into and perform the Service Contract and the Service Contract is executed by a duly authorised representative of the Customer;
  - 15.3.2. it has the authority to grant any rights to be granted to FLUIDONE LIMITED under the Service Contract, including the right to provide the Software and Hardware to FLUIDONE LIMITED as indicated in the Service Contract and for the same to be used in the provision of the Services and otherwise in connection with the Service Contract;
  - 15.3.3. it will comply with and use the Services in accordance with the terms of these Terms & Conditions, all applicable laws, rules and regulations and any relevant Data Centre Rules and Regulations and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws or in breach of the Acceptable Use Policy;
  - 15.3.4. it owns or has obtained valid licences and/or consents to use, and where necessary to licence to FLUIDONE LIMITED, any Intellectual Property rights reasonably necessary for the fulfilment of all its obligations under the Service Contract, including any third party licences and consents in respect of any Software to be provided by the Customer; and
  - 15.3.5. FLUIDONE LIMITED's use in the provision of the Services or otherwise in connection with the Service Contract of any third party materials, including any Hardware or Software, supplied by the Customer to FLUIDONE LIMITED for use in the provision of the Services or otherwise in connection with the Service Contract shall not cause FLUIDONE LIMITED to infringe the rights,

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including any Intellectual Property Rights, of any third party.

- 15.4. The Customer shall fully indemnify and keep indemnified FLUIDONE LIMITED and/or its Group Companies against any and all claims, demands, actions, reasonable costs and expenses (including reasonable legal costs and disbursements), losses and damages arising from or incurred by reason of any breach by the Customer of the warranties contained in Clause 16, including, for the avoidance of doubt, any and all claims, demands, actions, reasonable costs and expenses (including reasonable legal costs and disbursements), losses and damages arising from or incurred by FLUIDONE LIMITED or its Group Companies by reason of the provision by the Customer, and use by FLUIDONE LIMITED, of:
  - 15.4.1. any Customer IP in the provision of the Services or pursuant to the Service Contract; and
  - 15.4.2. any Hardware or Software or other infrastructure provided by the Customer to FLUIDONE LIMITED in the provision of the Services pursuant to the Service Contract.
- 15.5. Each Party shall use all reasonable endeavours to mitigate loss and liabilities which are the subject of the indemnity in this Clause and nothing in this Clause shall diminish either Party's obligation to mitigate such losses.
- 15.6. The Customer agrees to waive, release, and forever discharge, any and all rights and/or claims which the Customer has or may have, or may hereafter accrue to the Customer against Digital Realty Trust, its officers, directors, and employees for any and all damages, injuries (excluding death), and/or claims which may be sustained by the Customer directly or indirectly arising out of the Customer's use of the Rack Accommodation save that nothing in these terms and conditions shall be construed as excluding or limiting Digital Realty's liability for personal injury or death arising from its negligence or the negligence of persons under its control. This release and discharge includes, but is not limited to, claims for personal injury, death, property damage, economic loss, breach of contract, lost wages, contribution indemnity, indemnity, punitive damages, negligence, or any other legally recognisable claim arising out of the Customer's use of the Rack Accommodation (including all legal costs associated with such claims).

## 16. SYSTEM CONFIGURATION

- 16.1. FLUIDONE LIMITED reserves the right to modify its network, system configurations or routing configuration. Unless specifically set out in a Service Contract, nothing in these Terms & Conditions shall create or vest in the Customer any right, title or interest in a Service, its configuration, or associated addresses (including IP addresses, domain names or telephone numbers) provided by FLUIDONE LIMITED. FLUIDONE LIMITED may at its sole discretion and without liability, change or modify the features and functionalities of a Service or modify or replace any hardware or software in its network or in equipment used to deliver any Service over its network provided that this does not have a material adverse effect on the Service or the agreed Service Levels.
- 16.2. In the event that FLUIDONE LIMITED assigns to Customer an IP address as part of the Services, such IP address shall (to the extent permitted by law) revert to FLUIDONE LIMITED after termination of the Service Contract for any reason whatsoever, whereupon Customer shall cease using such address. At any time after such termination, FLUIDONE LIMITED may re-assign such address to another user.
- 16.3. In the event that FLUIDONE LIMITED obtains a domain name for the Customer, FLUIDONE LIMITED shall act as an agent for Customer in dealing with the relevant domain naming registration authority. The contract for the domain name shall be between Customer and the relevant domain naming registration authority and Customer agrees that they shall be solely responsible for renewals, legal, technical, administrative, billing or other requirements imposed by the relevant domain name registration authority (and relevant costs thereof).
- 16.4. FLUIDONE LIMITED give no warranty that the domain name requested will not infringe the rights of any third party and all such enquiries shall be the responsibility of the Customer, and the domain name shall form Customer IP for the purposes of these Terms & Conditions.

## 17. SECURITY

- 17.1. FLUIDONE LIMITED will provide and maintain in good working condition card reader(s), scanner(s) and/or other access device(s) as selected by FLUIDONE LIMITED for access to the Data Centre and Rack Accommodation.
- 17.2. FLUIDONE LIMITED shall promptly inform the Customer if it discovers any breach of security relating to the Customer's data and if caused by a failure in FLUIDONE LIMITED systems, shall use all commercially reasonable endeavours to remedy such breach.
- 17.3. Customer shall promptly inform FLUIDONE LIMITED if it suspects or uncovers any breach of security

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relating to the Services, and if caused by a failure in Customer's systems, shall use all commercially reasonable endeavours to remedy such breach.

- 17.4. For a security breach however occurring, FLUIDONE LIMITED may in its sole discretion, suspend relevant Services while such security breach is investigated and resulting system or procedural changes made.

### 18. MISUSE AND FRAUDULENT USE OF SERVICES.

- 18.1. The Services shall at all times be used by the Customer in compliance with applicable law and the Acceptable Use Policy. FLUIDONE LIMITED may in its sole discretion and in addition to its other rights under the Agreement, suspend relevant Services of the Customer while Acceptable Use Policy breach allegations are investigated.
- 18.2. The Customer shall remain responsible for the use of the Services under its control, including any use by third parties (whether fraudulent or invited by Customer).

### 19. LIMITATION OF LIABILITY

- 19.1. Save for the indemnities granted under these Terms & Conditions, which shall be unlimited, and subject to clauses 12.3 and 12.5 of the Terms of Business, the aggregate liability of FLUIDONE LIMITED in respect of any claim, loss, damage, costs or expenses arising out of the performance of its obligations under the Service Contract (whether in contract, tort (including negligence or breach of statutory duty) or otherwise) shall be limited to the total value of the recurring Charges paid or payable by the Customer to FLUIDONE LIMITED pursuant to the Service Contract in the 12 month period immediately preceding the relevant claim or £500,000 whichever is the lower.
- 19.2. FLUIDONE LIMITED shall not be liable for any damages whatsoever to Customer's Hardware or property resulting from the installation, configuration, repair or removal of Hardware carried out by FLUIDONE LIMITED or by its contractors unless such damage is caused by FLUIDONE LIMITED's wilful misconduct or negligence and subject always to the limitations of liability in Clause 19.1.

### 20. TERMINATION OR SUSPENSION FOR CAUSE

- 20.1. FLUIDONE LIMITED may immediately terminate the Services in whole or part (or suspend the Services until the event giving cause is remedied) or terminate the Service Contract without liability, by giving Legal Notice to the Customer, if any of the following events occurs:
- 20.1.1. the Customer fails to pay the undisputed portion of any invoice by the due date;
- 20.1.2. the Customer violates any law, rule or regulation applicable to the Services; or
- 20.1.3. the Customer engages in conduct that breaches the Acceptable Use Policy or in FLUIDONE LIMITED's reasonable opinion, causes or is likely to cause damage to FLUIDONE LIMITED's network, Hardware or third parties using such network or Hardware or the Customer engages in any fraudulent use of the Services.
- 20.1.4. the Customer engages in conduct that breaches the Data Centre Rule and Regulations;
- 20.1.5. the Customer has failed to remedy an ECT Overage within 24 hours after its receipt of an Operational Notice and FLUIDONE LIMITED has issued an ECT Default Notice to Customer
- 20.2. Either Party may terminate the Service Contract immediately on Legal Notice to the other Party if any of the following events occurs:
- 20.2.1. the other Party commits a material breach of the Service Contract which (in the case of a breach capable of remedy) has not been remedied within thirty (30) days of the receipt by the other Party of a Legal Notice specifying the breach and requiring its remedy;
- 20.2.2. an order is made or a petition is presented for the bankruptcy of the other Party, a meeting is convened for the purposes of winding up, dissolution, administration, or a receiver or manager is appointed, a Party ceases or threatens to carry on business or is unable to pay its debts as required or any event analogous to these described in this clause occurs in relation to the other Party;
- 20.3. The parties have agreed that FLUIDONE LIMITED will suffer loss and damage if any or all of the Services are terminated early in accordance with this clause and therefore agree that if FLUIDONE LIMITED does terminate in response to any of the items in Clause 20, the Customer will pay the following sums which are a genuine pre-estimate of the losses to be suffered by FLUIDONE LIMITED:
- 20.3.1. any third party cancellation charges related to the installation and/or termination of the Service; and the non-recurring Charges (including any non-recurring Charges that were waived by

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FLUIDONE LIMITED at the time of the Service Contract) for the terminated Service which FLUIDONE LIMITED is required to pay; plus

- 20.3.2. 95% of the remaining Charges which would have been incurred by Customer from the effective date of termination to the end of the Term less a discount of 5% for each whole year remaining subject to a minimum charge of 75% of the remaining Charges.
- 20.3.3. FLUIDONE LIMITED shall issue an invoice to the Customer for any monies payable under this clause and the Customer shall pay such invoice in accordance with Clause 12 of these Terms & Conditions.
- 20.3.4. In the event that FLUIDONE LIMITED suspends a Service in accordance with this agreement, FLUIDONE LIMITED shall be entitled to issue an invoice to the Customer for a reasonable Service restoration fee and the Customer shall pay such invoice in accordance with clause 12 of these Terms & Conditions.

### 21. CONSEQUENCES OF TERMINATION

- 21.1. On termination of the Service Contract, unless otherwise agreed between the Parties in writing, FLUIDONE LIMITED shall use reasonable endeavours to provide a reasonable level of assistance to the Customer and/or any Future Service Provider to ensure the smooth transition of the Services by FLUIDONE LIMITED to the Customer and/or the Future Service Provider to enable the provision of such services or similar services by the Customer and/or the Future Service Provider.
- 21.2. FLUIDONE LIMITED shall respond to all reasonable questions about the Services which may be asked by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or any Future Service Provider (or potential Future Service Provider) to conduct due diligence.
- 21.3. The Customer shall pay to FLUIDONE LIMITED, in advance, an amount equal to the costs and expenses that FLUIDONE LIMITED will reasonably incur in complying with FLUIDONE LIMITED's obligations under this clause, as notified by FLUIDONE LIMITED to the Customer in writing.
- 21.4. The Customer shall, at the Customer's sole cost and expense, promptly remove all the Customer Property.
- 21.5. If any property not belonging to FLUIDONE LIMITED remains in the Rack Accomodation 10 days after the expiry or earlier termination of the Term, the Customer shall be deemed to have abandoned such property and to have duly authorised FLUIDONE LIMITED to sell such property as FLUIDONE LIMITED may desire without liability for compensation or damages to the Customer in the event that such property is the property of the Customer; and in the event that such property is the property of someone other than the Customer, the Customer shall hold FLUIDONE LIMITED harmless from all claims arising out of, in connection with, or in any manner related to any removal, exercise or dominion over and/or disposition of such property by FLUIDONE LIMITED. The provisions of this Clause shall survive the expiration or early termination of this agreement.
- 21.6. The Customer shall remove all alterations or additions made to the Rack Accomodation and the Rack Accomodation reinstated to the same state and condition as if such alterations or additions had not been made.
- 21.7. The provisions of this Clause shall survive the termination of the Service Contract.

### 22. SERVICE CONTENT

- 22.1. FLUIDONE LIMITED provides only network access to the internet and other networks as set out on the applicable Service Contract. FLUIDONE LIMITED does not operate, monitor or control the information, services, opinions or other content of the internet or other networks. The Customer agrees that it shall make no claim whatsoever against FLUIDONE LIMITED relating to the content of the internet or other connected networks respecting any information, product, service or software ordered through or provided by virtue of the access, and Customer will hold FLUIDONE LIMITED harmless from any and all claims (including claims by governmental entities seeking to impose penal sanctions) related to such content attributable to the Customer, its agents, employees or users.

### 23. REMOTE HANDS SERVICE DESCRIPTION

- 23.1. FLUIDONE LIMITED provide technical remote hands services only within a FLUIDONE LIMITED provided data centre facility. The Remote Hands service involves a technician, on-site at a FLUIDONE LIMITED provided data centre location, in contact with the customer, performing simple equipment "fixes".
- 23.2. FLUIDONE LIMITED shall in no event be responsible for the repair, configuration or tuning of equipment,

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or for installation of Customer's equipment (although FLUIDONE LIMITED will provide reasonable assistance to Customer in such installation at Customer's request).

- 23.3. The technician must be able to resolve the issues without any specialised equipment and Customer technical contact must be available remotely during Technicians attendance. The activities typically require 30 minutes or less to complete.
- 23.4. The technician will make reasonable endeavours to attend the Rack Accomodation within timescales determined by the severity of the problem giving rise to the visit, as follows:

Severity	Description	Contact	Business Hours Time to On Site	Outside Business Hours Time to On Site
1	Site down	NOC	15 mins	1 hour
2	Site degraded	NOC	1 hour	2 hours
3	Maintenance required	NOC	2 hours	Next Business Day
4	Planned task	NOC	5 days	5 days

23.5. Example Tasks

- 23.5.1. Adding, removing, or verifying a emarcation
- 23.5.2. Label equipment and cable connections
- 23.5.3. Plug in a console port for remote management by customer
- 23.5.4. Power cycling and soft booting
- 23.5.5. Escorted access service
- 23.5.6. Accepting equipment deliveries and storing within facility or Customer private data-hall area
- 23.5.7. Toggling a switch/pushing a button
- 23.5.8. Swap, connect, reconnect cabling within the colocation/data hall space
- 23.5.9. Installing, replacing, or removing equipment modules using standard industry tools (work activities include only those that are not warranty affecting and do not require vendor/product specific training)
- 23.5.10. Relaying status of LEDs
- 23.5.11. Provide visual verification to assist during troubleshoot
- 23.5.12. Putting up a loop when needed for remote testing

- 23.6. Cancellation. Once ordered this service may be cancelled, however the full charges will apply. If Customer technical contact is unavailable once technician is on-site then the call will be closed and an alert sent to this affect. Customer will be charged for applicable cost. If Customer still requires Remote Hands a new request will need to be submitted.

23.7. Charges.

- 23.7.1. Time is charged at the Hourly Rate. Minimum incident time is one hour with additional time charged in 30 minute blocks at the Hourly Rate, invoiced in arrears.
- 23.7.2. Time is charged from the time the technician leaves the office or (out-of-hours) home.

## 24. CHARGEABLE SUPPORT SERVICE DESCRIPTION

- 24.1. FLUIDONE LIMITED provide chargeable support services only within a FLUIDONE LIMITED provided data centre. Chargeable Support are requests for support that involves support of a more in-depth or regular nature than Remote Hands Services. Chargeable support will often require advance planning and possibly require specialised personnel. Requests for Chargeable Support should be made through the Help Desk or your Account Manager and will be managed by the generation of a Service Contract.