

FLUENT TECHNOLOGY STANDARD TERMS AND CONDITIONS OF BUSINESS

(Version Date 21st February 2012)

INTRODUCTION

These terms and conditions (which together comprise the **Agreement**) are the terms upon which Fluent Technology Limited (referred to in this Agreement as **Fluent**) supplies software and services to its customers (**Customers**).

The **first section** of the Agreement consists of the **Base Terms**: these apply to every supply of software and services by Fluent to a Customer, without exception.

The **second section** consists of the **General Terms**, which are contractual terms which may or may not apply to particular Customers. The extent to which any of the General Terms apply to a specific Customer will be agreed by the Customer and Fluent and detailed in a contract information form (**Contract Information Form**).

Finally, the **third section** contains **Definitions** which explain the meaning of the defined terms used in this Agreement. Defined terms are identifiable throughout the Agreement by the capitalisation of their initial letters.

Specific commercial issues, such as prices, timetables for development or installation (where relevant) or types of software and/or services to be supplied, are agreed by Fluent and each Customer on a transaction by transaction basis, and are detailed in the **Contract Information Form**.

A specimen Contract Information Form is detailed at the **fourth section** of this Agreement.

BASE TERMS

1. SOFTWARE LICENCE TERMS

- 1.1. Fluent grants to the Customer on and subject to the terms and conditions of this Agreement a personal, non-exclusive, non-transferable and non-assignable licence from Acceptance for the Term to allow Users to access the Software and to use the Software in object code only (such use, the **Use**).
- 1.2. The Customer shall be solely responsible for its actions and the actions of its Users while using the Software. The Customer shall (and shall procure that any and all Users shall):
 - 1.2.1. not attempt to duplicate, modify or distribute any portion of the Software,
 - 1.2.2. not reverse engineer, decompile, disassemble, or adapt any portion of the Software, except as specifically permitted by applicable law (but then only if and to the extent that the Customer first notifies Fluent of the Customer's requirements regarding the inter-operability or functional compatibility before engaging in any such activity, and gives Fluent the opportunity to provide the Customer with the information necessary to achieve such inter-operability or compatibility),
 - 1.2.3. not use the Software to provide software related services to third parties (including in the operation of a service bureau),
 - 1.2.4. not attempt to obtain, or assist others in obtaining, unauthorised access to the Software;
 - 1.2.5. not remove any proprietary notices from the Software;
 - 1.2.6. abide by all local and international laws and regulations applicable to the Customer's Use of the Software, including all laws regarding the transmission of technical data exported from the United Kingdom through the Software;
 - 1.2.7. not upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Software or another's computer;
 - 1.2.8. ensure that the administration functionality of the Software is used in a proper manner by competent trained employees only or by persons under their supervision;
 - 1.2.9. not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability;
 - 1.2.10. comply with all regulations, policies and procedures of networks connected to the Software. The Customer acknowledges and agrees that Fluent neither endorses the contents of any User communications nor assumes any responsibility for any threatening, libellous, obscene,

harassing or offensive material contained therein, any infringement of third party intellectual property rights arising therefrom or any crime facilitated thereby.

- 1.3. The Customer acknowledges that, where the Software includes a SVG mapping module, the module uses the W3C SVG standard to provide vector based maps. To view these maps Origin currently requires the freely available Adobe SVG plug-in. Adobe have indicated that they will cease to support this plug-in, however current indications from Adobe are that they will continue to make it available indefinitely. In the event that the plug-in ceases to be available or will not run on a future operating system Fluent will use all reasonable endeavours either to upgrade the mapping to work with a supported technology, or (where Fluent, acting reasonably, believes that such upgrading of mapping will be unsuccessful or of inferior quality) to supply software development services to the Customer to assist with the development and/or integration of other third party mapping products. All such services will be supplied on a time and materials basis at Fluent's then standard rates.
- 1.4. Fluent and the Customer acknowledge that the following terms shall apply in relation to Users whom the Customer authorises to Use the Software as a registered and accredited User with a log-in ability and an account (each such a **Registered User**):
 - 1.4.1. the licence granted in clause 1.1 of these Base Terms shall permit no more than the agreed number of Registered Users to be concurrent/active on the Software at any one time;
 - 1.4.2. Fluent shall issue to the Customer, or shall authorise a Customer administrator to issue, a password for each Registered User and will maintain Customer passwords as confidential and will not disclose them to third parties provided that:
 - 1.4.2.1. the Customer shall procure that each Registered User shall maintain the confidentiality of its password, and the Customer shall ensure that each password is used only by the authorised Registered User;
 - 1.4.2.2. the Customer is entirely responsible for any and all activities of Registered Users;
 - 1.4.2.3. the Customer agrees to immediately notify Fluent upon becoming aware of any unauthorised use of any password of a Registered User or any other breach of security known to Customer;
 - 1.4.2.4. Fluent shall have no liability for any loss or damage arising from Customer's failure to comply with the requirements detailed in this paragraph 1.4.2;
 - 1.4.3. in relation to Users with read-only access to the Software and no password or log-in ability, the licence granted in clause 1.1 of these Base Terms permits access by an unlimited amount of such Users.

2. IMPLEMENTATION AND EXTRA SERVICES

- 2.1. Fluent will agree with the Customer the scope, timing and content of implementation services required by the Customer (such services, upon agreement by both parties in writing, the **Implementation Services**). The Parties will also agree Fees payable in respect of any Implementation Services (and in the absence of any such agreement, Fluent shall provide the Implementation Services on a time and materials basis at Fluent's then current rates).
- 2.2. Upon completion of the configuration and customisation agreed as part of the identification of the Implementation Services, Fluent and the Customer shall agree the form of acceptance tests required to demonstrate that the Software materially meets the requirements of the Functional Specification.
- 2.3. Upon identification of the Acceptance Tests, Fluent will submit the Software to the Acceptance Tests. Upon the Software completing the Acceptance Tests successfully, Fluent will commence the provision of the Services.
- 2.4. The Customer acknowledges that Fluent's ability to provide the Implementation Services is dependent upon:
 - 2.4.1. the reasonably full and timely co-operation of the Customer (which the Customer agrees to provide);
 - 2.4.2. the Customer's fulfilment of any requirements imposed on it as part of the agreement of the scope of the Implementation Services; and
 - 2.4.3. the accuracy and completeness of any information and data the Customer provides to Fluent.
- 2.5. The Customer acknowledges and agrees as reasonable that:
 - 2.5.1. where the Customer's failure to perform any task required of it by these clauses 2.1 to 2.5, and/or the Customer's delay or unreasonable withholding of approval, prevents Fluent from fulfilling the Implementation Services, Fluent shall be relieved from its obligation to provide the Implementation Services. Upon the Customer's subsequently remedying any such failure, delay or unreasonable withholding of approval the parties will act in good faith and use all reasonable endeavours to agree a new timetable for the provision of the Implementation Services. Upon such new timetable being agreed, Fluent and the Customer shall use all reasonable endeavours to comply with it **provided that** to the extent that Fluent, in meeting the requirements of the new timetable, reasonably determines that it needs to deploy extra resources to meet such timetable, the Customer shall pay Fluent in full for such extra resources on a time and materials basis at Fluent's standard rates applicable at that date; and
 - 2.5.2. where the Customer requires Fluent to provide any resources or services as part of the Implementation Services which are beyond the scope agreed in accordance with clause 2.1 of

these Base Terms, Fluent shall charge for any such resources or services on a time and materials basis at Fluent's standard rates applicable at that date.

- 2.6. Where the Customer requires any extra services which fall outside the scope of this Agreement, such services will be **Extra Services**. For the avoidance of doubt, the Extra Services will include:
 - 2.6.1. any services falling outside the scope of any Implementation Services, Maintenance Services and/or the Hosting Services as stated in the Contract Information Form;
 - 2.6.2. the provision of any bespoke customization, release or upgrade of the Software to the Customer, to the extent that the same is not provided to Fluent's other customers.
- 2.7. The Customer may from time to time specify certain Extra Services it requires Fluent to perform. As soon as reasonably practicable after such instruction (and in any case within 14 days), Fluent shall provide for the Customer's approval:
 - 2.7.1. a cost estimate (**Cost Estimate**), specifying in detail the estimated fees payable for the requested Extra Services;
 - 2.7.2. a project timetable (**Project Timetable**) for the fulfilment of the requested Extra Services.
- 2.8. Within 14 days of receipt of the Project Timetable and the Cost Estimate the Customer shall either notify Fluent of its approval, refuse the required services, or query the Cost Estimate and/or require such amendments to the Project Timetable as it may reasonably determine and Fluent will make any such amendment as soon as possible, and resubmit the Cost Estimate and/or the Project Timetable (as the case may be) for the Customer's approval, whereupon the provisions of this clause 2.8 shall reapply.
- 2.9. Upon notification of the Customer's approval, Fluent shall commence the provision of the Extra Services in accordance with the Project Timetable. The Customer shall pay Fluent in accordance with the Cost Estimate and the terms of this Agreement (or, where the Cost Estimate has not been approved but the Extra Services commenced, on a time and materials basis at Fluent's then standard rates).

3. **PRICES, TAXES AND PAYMENT**

- 3.1. The Fees will be agreed by Fluent and the Customer prior to entry into an Agreement and detailed in the Contract Information Form (and in the absence of any such agreement Fluent will provide the Software and/or Services on a time and materials basis at its then current rates).
- 3.2. Rates are fixed for the first Year. Fluent may increase the rates for subsequent Years by notification to the Customer no later than two months before the end of any Year, provided that any price adjustments are subject to a cap of either the increase (if any) in the all-items

retail price index (published by the Office for National Statistics), or 5%, whichever is the higher.

- 3.3. Unless otherwise agreed by Fluent and the Customer and recorded in the Contract Information Form, the Customer agrees to pay all invoiced Fees and additional charges (including expenses) within thirty days of Fluent's invoice date. Time shall be of the essence in relation to the Customer's obligation so to pay, and in the event that the Customer fails to pay any sum when due:
 - 3.3.1. Fluent may suspend the provision of the Software (including, where the Software is provided as Software as a Service, the Software as a Service) to the Customer (and any such suspension will not constitute a termination of the Agreement and Fluent may require the Customer to pay a reconnection fee to recommence the provision of the Software, together with all relevant Fees);
 - 3.3.2. Fluent may by written notice terminate forthwith the licence granted at clause 1.1 of these Base Terms, whereupon the Customer will promptly cease use of the Software and return any property of Fluent to Fluent and Fluent shall have no liability for any such action.
- 3.4. All Fees and any additional charges shall be exclusive of value added tax or any other tax, duty, levy, fee or charge which shall be added to invoices at the rate applicable at the date of invoice and which shall be payable by the Customer.
- 3.5. Without prejudice to any other rights or remedies available to Fluent, Fluent shall be entitled to levy interest on any Fees or additional charge overdue at the rate of eight per cent (both before and after judgment) and to recover all costs and expenses incurred by Fluent in collecting the amount unpaid.

4 INTELLECTUAL PROPERTY RIGHTS

- 4.1. Fluent shall licence the use of the Software to the Customer in accordance with the provisions of clause 1 of these Base Terms. The Customer acknowledges that it hereby acquires only the right to access and Use the Software in accordance with this Agreement, and that all Intellectual Property Rights in the Software (including the source code of the Software, and any Intellectual Property Rights created as part of the customisation and/or configuration of the Software and/or provision of any Extra Services) belong to and shall remain vested in Fluent or where relevant Fluent's licensors. Nothing in this Agreement shall confer on the Customer or any User any right, title or interest in the Software (except the rights of use as set out in this Agreement), or to any source code within the Software.
- 4.2. The Software may include components licensed to Fluent by third parties. To the extent that the terms of any such license impose any obligation on the Customer which is in addition to any obligation imposed on the Customer by this Agreement (**Third Party Obligation**) the

Customer undertakes fully to comply with and fulfil all requirements of any such Third Party Obligation.

4.3 In the event that the Customer's use of the Software is held by a court of competent jurisdiction or is believed by Fluent to infringe the Intellectual Property Rights of any third party, Fluent shall have the option, acting at all times reasonably and in good faith and at its sole expense, as soon as reasonably practicable to:

4.3.1 modify or amend the Software or the infringing part(s) thereof in order to avoid any further infringement;

4.3.2 procure for the Customer the right to continue using the Software or infringing part(s) thereof;

4.3.3 substitute the Software or infringing part(s) thereof with other software or documentation suitable for the provision of the Software in accordance with this Agreement and this shall be Fluent's sole liability, and the Customer's sole remedy, for infringement of Intellectual Property Rights of any third party.

4.4 For the avoidance of doubt, Fluent shall have no liability in this regard in the event of any claim of infringement arising from:

4.4.1 Fluent's compliance with the designs, specifications, instructions, or technical information of the Customer or any third party;

4.4.2 modifications made by the Customer or a third party to the Software; or

4.4.3 the Customer's non-compliance with this Agreement.

4.5 The Customer warrants that it is able to grant to, and hereby grants to, Fluent for the Term a non-exclusive, world-wide, royalty-free licence to use the Customer's IPRs to the extent necessary for Fluent to perform its obligations under the Agreement. Customer shall indemnify Fluent and keep Fluent at all times fully and effectively indemnified against and any all loss, liability, cost or expense (including reasonable legal expenses) howsoever incurred by Fluent and whether directly or indirectly arising out of any breach of this clause 4.4.

5 **WARRANTIES AND LIABILITY**

5.1 Fluent warrants to the Customer that:

5.1.1 the Software will function in accordance with the Functional Specification for a period of 90 days after Acceptance; and

5.1.2 the Services will be provided in a professional manner in accordance with software industry standards.

- 5.2 Fluent shall not be liable for any breach of this Agreement (including any breach of the warranties in this clause 5) for any breach or loss suffered by the Customer or other third party if and to the extent that such breach and/or loss arises from the following: the incorrect use, abuse or corruption of the Software; any use of or access to the Software by any User which is not expressly permitted by this Agreement; any failure by the Customer to follow Fluent's reasonable instructions and/ or advice; or the act or omission of any third party provider of any product, service or solution.
- 5.3 In the event that Fluent receives written notification from the Customer of any breach of the warranty set out in clause 5.1, Fluent shall as soon as reasonably possible and in any event within 30 days of the date of such notification and at its own expense use reasonable endeavours to remedy the same. The Customer shall reasonably cooperate with Fluent, at no out-of-pocket cost to the Customer, in remedying the alleged breach, including but not limited to providing reasonably sufficient information to Fluent to enable it to isolate and correct any claimed non-compliance of the Software with the Functional Specification.
- 5.4 Fluent makes no warranty or representation not expressly set forth in this Agreement. To the maximum extent permitted by law, and except for the warranties expressly set forth herein, Fluent disclaims any and all other warranties and conditions, whether express, implied, or statutory, including but not limited to implied warranties (if any) of merchantability, fitness for a particular purpose and satisfactory quality.
- 5.5 Fluent's liability will be limited as follows:
- 5.5.1 nothing in this Agreement shall limit Fluent's liability for death or personal injury caused by the negligence of Fluent or its employees, or for any liability which may not be limited under governing law;
- 5.5.2 subject to clause 5.5.1 above, Fluent shall not be liable in contract, tort, or in relation to breach of statutory duty or any other right of action for the following losses:
- 5.5.2.1 loss of, damage to or corruption or destruction of, data or other information belonging to the Customer or any other third party;
- 5.5.2.2 loss of or damage to software;
- 5.5.2.3 any economic losses, including loss of revenues, profits, contracts, goodwill, reputation, business, use of money or anticipated savings;
- 5.5.2.4 loss of use or downtime;
- 5.5.2.5 damages relating to the procurement by the Customer of any substitute products or services; and

- 5.5.2.6 any special, incidental, indirect or consequential losses (whether or not such loss or damage is of the type specified in clauses 5.5.2.1 to 5.5.2.5 above);
- 5.5.3 subject to clause 5.5.1 above, the aggregate liability of Fluent in respect of any loss or damage suffered by the Customer and arising out of or in connection with this Agreement shall not exceed the amount of the total Fees actually paid in accordance with this Agreement by the Customer to Fluent at the point in time that such liability is incurred (and for the avoidance of doubt the Customer will act at all times to mitigate any such loss or damage).
- 5.6 The Customer agrees and acknowledges:
- 5.6.1 that it is in a better position than Fluent to foresee and evaluate any potential damage or loss which the Customer may suffer in connection with the Software and/or the Services;
- 5.6.2 that Fluent cannot adequately insure its potential liability to the Customer; and
- 5.6.3 that the Fees payable by the Customer have been calculated on the basis that Fluent shall exclude liability in accordance with the provisions of this clause 5.
- 5.7 In relation to Third Parties, the Customer acknowledges and accepts as reasonable that:
- 5.7.1 Fluent excludes all liability to the maximum extent permitted by applicable law for any loss whatsoever incurred by the Customer as a result of any act or omission of any Third Party, or of the failure, suspension and/or termination of any facility or service provided by any Third Party, or the breach by any Third Party of any relevant Third Party Licence (each such act, omission, failure, suspension or termination a **Third Party Breach**); and
- 5.7.2 any Third Party Breach shall not constitute a breach by Fluent of the provisions of this Agreement.
- 5.8 Each provision of this clause 5 shall be construed separately and shall continue and survive even if for any reason one or other of those provisions is held invalid or unenforceable in any circumstances.

6 **CONFIDENTIALITY AND DATA PROTECTION**

- 6.1 In relation to either Party, **Confidential Information** as used in this Agreement shall mean any and all information relating to that Party (or to any holding company and/or subsidiary of that Party, as those terms are defined by the Companies Act 2006 (as amended)) which is disclosed before or after the Commencement Date by that Party (**Discloser**) to the other Party (**Recipient**), and which is provided, either directly or indirectly, in writing, orally or by inspection, and being any and all information which is specified as confidential or which a reasonably prudent person should know is expected to be treated as confidential (including financial information, customer lists, business forecasts, sales and merchandising, and

marketing plans and information). For the avoidance of doubt Fluent's Intellectual Property Rights (to the extent disclosed to the Customer) constitute Confidential Information of Fluent.

6.2 Each Party agrees that:

6.2.1 it will not use any Confidential Information of the other Party for any purpose, nor disclose any such Confidential Information to any third party without the other Party's prior consent (and in the event that such consent is given Recipient will ensure, prior to such disclosure, that each such third party is made aware of the confidential nature of the Confidential Information and agrees in writing to be bound by conditions of secrecy no less strict than those set out in this Agreement);

6.2.2 it shall disclose Confidential Information of the other Party only to those of its employees who need to know such information, and that it will procure that such employees agree, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement;

6.2.3 without affecting any rights or remedies that Discloser may have, that damages would not be an adequate remedy for any breach by Recipient of the provisions of this Agreement and Discloser shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this letter by Recipient and that no proof of special damages shall be necessary for the enforcement of this Agreement;

6.2.4 in the event that it is Recipient, it will give notice to Discloser of any unauthorized use or disclosure of the Confidential Information by it, and/or any employee of it and/or any third party to whom it has disclosed Confidential Information, as soon as reasonably practicable after becoming aware of the same, and that it will provide all reasonable assistance to Discloser in remedying any such unauthorized use or disclosure of the Confidential Information; and

6.2.5 that its obligations hereunder shall survive for a period of six years from the date of last disclosure to it of Confidential Information of the other Party.

6.3 Information shall not be deemed to be Confidential Information to the extent that:

6.3.1 it was in the public domain at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient;

6.3.2 it was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time it was communicated to Recipient by Discloser;

6.3.3 it was communicated by the Discloser to an unaffiliated third party free of any obligation of confidence; or

- 6.3.4 the communication was in response to a valid order by a court or other governmental body or was otherwise required by law.
- 6.4 Each of Fluent and the Customer shall in the performance of their obligations imposed by this Agreement at all times comply with any provision of the DPA which binds them (including in relation to the Customer Data).
- 6.5 As between the Customer and Fluent, the Customer shall own Customer Data. Except as permitted in this Agreement, Fluent will not edit, delete or disclose the contents of the Customer Data unless authorised by the Customer or unless Fluent is required to do so by law or in the good faith belief that such action is necessary to conform to applicable laws or comply with legal process served on Fluent.
- 6.6 The Customer acknowledges that certain personal information of its employees and contractors may be communicated to Fluent in the course of the execution and performance of the Agreement and hereby warrants that it has obtained the consent of its employees and contractors for the processing of such personal data by Fluent for the purposes of the performance of the Agreement, and for the purposes of contacting the Customer in relation to other goods and services which may be of interest to Customer. All such personal data will, at all times, be processed in accordance with Fluent's privacy policy in force from time to time (available at www.fluenttechnology.com/Privacy-policy.aspx).
- 6.7 Fluent may provide user statistical information such as usage or traffic patterns in aggregate form to third parties, but such information will not include personally identifying information. The Customer consents to, and warrants that it has obtained all consents necessary to allow, Fluent's accessing Customer Data to respond to service or technical problems with the Software. The Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data.
- 6.8 Fluent reserves the right to establish a maximum amount of memory or other computer storage and a maximum amount of Customer Data that the Customer may store, post or transmit on or through the Software.
- 6.9 Fluent shall retain the Customer Data for a minimum period of ninety days after expiration or termination of this Agreement, unless otherwise agreed with the Customer. The Customer may request that Fluent conduct a mass export of the Customer Data, and Fluent may agree to provide such services at its then current rates.

7 TERM AND TERMINATION

- 7.1 This Agreement shall commence on the Commencement Date and continue, subject to earlier termination in accordance with this clause 7, for the Term. At the end of the Term, , the Agreement shall continue in force for successive periods equal in length to the Term until terminated by either Party giving two months' written notice.

- 7.2 If either Party materially breaches or materially fails to observe (together **Breach**) any provision of this Agreement the other Party may (if the Breach is capable of remedy) give notice of the Breach and the Party in breach shall have 28 days from receipt of the notice in which to remedy the Breach. Should the Breach fail to be remedied in this period or if the Breach is not capable of remedy, then the Party not in breach may terminate the Agreement with immediate effect.
- 7.3 If either Party becomes insolvent or bankrupt or (being a company) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction) the other Party may without replacing or reducing any other of its rights terminate the Agreement with immediate effect by written notice.
- 7.4 Upon expiration or the earlier termination of this Agreement the licence granted in accordance with clause 1 of these Base Terms will terminate, unless expressly otherwise agreed by Fluent in writing.
- 7.5 The provisions of clauses 4, 5, 6, 7 and 8.8 of these Base Terms will survive expiration or termination of this Agreement.

8 **GENERAL**

- 8.1 Except for a Party's payment obligations, neither Party shall be liable for delay in performing the obligations or for the failure to perform obligations if the delay or failure results from any cause beyond its reasonable control (including acts of God, fire, explosion, war, terrorism, embargo, and any governmental action (**Force Majeure Event**)). The Party claiming a Force Majeure Event shall take all action which is reasonable under the circumstances to overcome any such cause of prevention or delay and to proceed with the performance of its obligations hereunder. Notice of any Force Majeure Event and any abatement thereof shall forthwith be given to the other Party by the Party claiming the benefit of this clause 8.1.
- 8.2 A person who is not a party to the Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 8.3 The Customer may not transfer, assign or novate the whole or any part of the Agreement or the benefit of it or any right under it without Fluent's prior written approval.
- 8.4 A failure at any time to enforce any provision of the Agreement shall in no way affect the right at a later date to require complete performance of the Agreement, nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision, or be a waiver of the provision itself.
- 8.5 Nothing in this Agreement shall create or shall be deemed to create a partnership or the relationship of employer and employee between the Parties.

- 8.6 Any variation of this Agreement shall be made in writing and executed by the Parties.
- 8.7 If any provision of Agreement or part thereof should be found to be invalid, ineffective or unenforceable under any applicable statute or regulation, the remainder of the provisions shall stand in full force and effect.
- 8.8 The Agreement is governed by Northern Irish law. All disputes, claims or proceedings between the parties relating to the validity construction or performance of this Agreement shall be subject to the jurisdiction of the courts of Northern Ireland to which the parties hereto irrevocably submit.

GENERAL TERMS

1. MAINTENANCE SERVICES

1.1. General Description

1.1.1. The Maintenance Services may include some or all of the following:

1.1.1.1. (unless otherwise agreed and stated in the Contract Information Form) software maintenance releases (applied by Fluent outside of business hours), including at Fluent's sole discretion patches and fixes in respect of the Software;

1.1.1.2. service monitoring – monitoring of the Software to ensure availability;

1.1.1.3. disaster recovery support – in the event of server/service failure reinstating the Software;

1.1.1.4. user support – telephone/email support Monday to Friday 9am to 5pm excluding public/bank holidays to the Customer's system administrators to provide help and assistance with both technical queries and system functional queries;

1.1.1.5. data maintenance support – functionality is provided to allow the Customer's system administrators to update existing or add new datasets. In addition, in some circumstances, such as when a new dataset is large or complex, Fluent will provide support to the Customer's administrators with uploading/configuring new or existing datasets. In these cases any such work will be costed and implemented on a time and materials basis at Fluent's then standard rates; and

1.1.1.6. where applicable, geographic configuration support for the number of boundaries and backgrounds included in the Software at the point of Acceptance. In the event that the Customer notifies Fluent that it wishes to add new geographic boundaries in the future, Fluent shall provide support thereto to the Customer, and any such work will be costed and implemented on a time and materials basis at Fluent's then standard rates.

1.2. First line Technical Support

1.2.1. Fluent's support may include:

1.2.1.1. email and a telephone help-desk to provide first-line technical support for the Software to the Customer; and

1.2.1.2. via remote diagnosis and (where reasonably possible) correction of faults by code updates.

1.2.2. Fluent shall only provide support in respect of software as currently forming part of the Software.

1.2.3. Fluent will respond to all support requests as quickly as is reasonably possible and aims to support the following target response times (unless otherwise agreed by Fluent and the Customer) once a request from the Customer has been recorded:

Priority	Initial Target Response	Target Resolution
A – Critical	Within 2 hours	Within 4 hours thereafter
B – Significant impact	Within 4 hours	Within 8 hours thereafter
C – Minor impact	Within 4 hours	Within 24 hours thereafter
D – Low priority	Within 24 hours	By agreement.

1.3. Customer Obligations

1.3.1. During the Term the Customer shall:

- 1.3.1.1. provide Fluent (so far as the Customer is able) upon reasonable request with a documented example of any fault in respect of which a request for diagnosis and rectification has been made by the Customer; and
- 1.3.1.2. co-operate fully with Fluent’s personnel in the diagnosis of any fault in the Software and perform such tests of the Software as Fluent shall request in the evaluation of any request for support by the Customer.

1.4. Exclusions

1.4.1. Fluent will not be obliged to diagnose and rectify any fault in the Software resulting from:

- 1.4.1.1. any modifications of the Software made by any person other than Fluent;
- 1.4.1.2. minor defects in the Software which do not significantly affect or impair the Use of the Software;
- 1.4.1.3. any incorrect or improper use of the Software, or any use of the Software for any purpose for which it was not designed; or
- 1.4.1.4. the failure by the Customer to implement recommendations in respect of any solutions to faults previously advised by Fluent.

1.4.2. Fluent may, upon the Customer’s request, diagnose and (where possible) rectify any fault described in clause 1.4.1, and the Customer will pay for any such work on a time and materials basis at Fluent’s then current rates.

2. HOSTING SERVICES

2.1. General Description

2.1.1. The Hosting Services may include the following:

- 2.1.1.1. managed operating system maintenance patching and backups of both the operating system and the data;
- 2.1.1.2. port monitoring, so that in the event of failure of the Software as a Service then the system will automatically try to correct itself and notify an engineer;

- 2.1.1.3. secure hosting environment with fully redundant network and services(resilient routers, switches, DNS etc);
- 2.1.1.4. resilient power and bandwidth providers, so that if the data centre loses internet access from the primary provider then a secondary provider automatically provides service in order to try to ensure no down time);
- 2.1.1.5. fully managed firewall for server protection;
- 2.1.1.6. up to an agreed amount per month of out-going internet traffic (incoming is free).

2.2. Availability and Maintenance

- 2.2.1. Fluent will use all reasonable endeavours to ensure that the Software as a Service is available for use for 99.5% of the time in any one month.
- 2.2.2. In the event of non-availability of the Software as a Service, the Customer shall contact Fluent, and the provisions of clause 1.2 of these General Terms shall apply at Fluent's discretion.
- 2.2.3. From time to time Fluent may need to carry out scheduled maintenance on the Software as a Service, which may require its temporary suspension. Any such suspension shall not constitute non-availability for the purposes of clause 2.2.1 above, provided that Fluent uses reasonable endeavours to keep disruption to a minimum, and to carry out work during periods of low activity.
- 2.2.4. The Customer and Fluent agree that the amount of Fees payable for, and the quality commitments given by Fluent in relation to, the provision of the Software as a Service and the Support Service (including in particular the hosting services detailed in this clause 2) have been calculated on the amount of usage of the Software as a System as envisaged by the parties at the Commencement Date. In the event that such usage materially increases, including where Fluent has to procure additional hardware to meet the Customer's usage requirements, then, Fluent reserves the right to increase the Fee thereafter to take into account any usage increase. The Customer acknowledges that Fluent's right to do so is reasonable and undertakes to pay such increased Fee. Fluent will monitor usage of the Software as a Service, and will discuss any scalability requirements of the Customer upon the Customer's reasonable request.
- 2.2.5. In order for the continued upgrading of data centre facilities, the Customer acknowledges and agrees that changes may be made to the provision of the hosting services, URLs and IP addresses. In each case Fluent will use reasonable endeavours to give reasonable advance notice and use reasonable endeavours to minimise the effect (if any) that such change will have on the provision of the Services.
- 2.2.6. If during the Term the Customer wishes to discontinue the Hosting Services and move the hosting to a third party, Fluent shall provide support and assistance to the Customer to help facilitate the move (subject always to Fluent being able to review the licensing and maintenance arrangements and costs in order to facilitate the new hosting infrastructure and the continued supply of Services not included in this clause 2, to amend its charges where it

reasonably deems necessary to do so and also to charge for time spent supporting the move on a time and materials basis at Fluent's then standard rates).

- 2.2.7. The Customer shall (and shall procure that any and all Users shall):
 - 2.2.7.1. not store, distribute or transmit any material to the Software that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images, or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities, or
 - 2.2.7.2. not transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability and Fluent may remove any violating content posted on the Software as a Service or transmitted through the Software as a Service, without notice to the Customer.
- 2.2.8. Fluent will maintain the Software as a Service at a reputable third party ISP and hosting facility, to be subject to commercially reasonable security precautions to prevent unauthorised access to the Software as a Service. The Customer acknowledges that, notwithstanding such security precautions, use of or connection to the internet provides the opportunity for unauthorised third parties to circumvent such precautions and illegally gain access to the Software as a Service and Customer Data. Accordingly, and notwithstanding any other provision of this Agreement, Fluent cannot and does not guarantee, and will not be liable in any way to the Customer or any other party for the privacy, security or authenticity of any information transmitted over the internet (including any Customer Data submitted through the Software as a System).
- 2.2.9. The Customer acknowledges that Fluent's provision of the Software as a Service is contingent upon compliance with the hosting facility network provider's acceptable use policy, as Fluent shall communicate to the Customer (**AUP**). In order to enable Fluent's continued provision of the Software as a Service and the Services, and irrespective of any other provision of this Agreement, the Customer agrees and acknowledges as reasonable that:
 - 2.2.9.1. the Customer will comply both with any obligation imposed on Fluent by, and with the exercise of any right afforded the network provider by, the AUP, in each case as if the Customer were Fluent for the purposes of the AUP;
 - 2.2.9.2. Fluent may suspend the provision of Software as a Service and/or the Services without telling the Customer and without liability (provided that Fluent shall, where practicable, give the Customer reasonable prior notice) if:
 - 2.2.9.2.1. the Software as a Service is being used in violation of the AUP;
 - 2.2.9.2.2. the Customer does not cooperate with the network provider's investigation of any suspected violation of the AUP;

2.2.9.2.3. there is an attack on servers or other event for which Fluent reasonably believes that the suspension of the Services is necessary to protect the Customer or the network; or

2.2.9.2.4. if required by law or regulation or as compelled by a law enforcement or government agency;
and

2.2.9.3. the Customer will indemnify and keep indemnified Fluent against any and all loss, liability, cost or expense (including reasonable legal expenses) howsoever incurred by Fluent and whether directly or indirectly arising out of any breach of the AUP or a breach of a third party's rights by the Customer, any User or any User's content, data or equipment.

DEFINITIONS

1 In this Agreement the following words shall have the following meanings:

Acceptance means (where no Implementation Services are being provided) the Commencement Date, or (where Implementation Services are being provided) the point in time at which the Software as a Service fulfils the Acceptance Tests, as detailed in clause 2 of the Base Terms.

Acceptance Tests means the tests devised in accordance with clause 2 of the Base Terms.

Commencement Date means the date specified as such in the Contract Information Form.

Contract Information Form means the contract information form agreed by Fluent and each Customer, and incorporating the terms of this Agreement (in the format as detailed in the fourth section of this Agreement, as the same may be amended by Fluent from time to time).

Customer Data means any and all data, information and material entered by or on behalf of the Customer (including by any User) into the Software in accordance with this Agreement.

Customer IPRs means any Intellectual Property Rights belonging or licensed to the Customer the use of which by Fluent is required in order to enable Fluent to provide the Software in accordance with this Agreement (but excluding any Intellectual Property Rights licensed to the Customer by Fluent under the terms of this Agreement).

DPA means the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003.

Extra Services means the services described at clause 2 of the Base Terms.

Fees means the fees payable by the Customer to Fluent in accordance with this Agreement, as stated in the Contract Information Form.

Functional Specification means either (in the event that the Customer requires customization as part of the Implementation Services) the specification of functionality as agreed by the Customer and Fluent in writing, or (in event that no such customisation is required) Fluent's specification for the Software from time to time existing.

Hosting Services means the services detailed in clause 2 of the General Terms.

Implementation Services means the services agreed in accordance with clause 2.1 of the Base Terms.

Intellectual Property Rights means patents, patent applications, and patent rights, copyrights, copyright applications, and copyright registrations, trademarks, trademark applications, trademark registrations, and trademark rights, trade secrets, and all other intellectual property and proprietary information rights as may exist now or hereafter come into existence, all modifications, continuations, renewals, and extensions of any of the foregoing, and all claims, actions, causes of action, damages, costs, expenses, profits, penalties, recoveries, and remedies relating to any past, present, or future infringement of any of the foregoing, arising under the laws of any country, state, or jurisdiction in the world.

ISP means a third party internet services provider selected to host the Use of the Software as a Service in accordance with this Agreement.

Maintenance Services means the services detailed in clause 1 of the General Terms.

Parties means the parties to this Agreement and **Party** shall mean either of them.

Registered User shall have the meaning given in clause 1 of the Base Terms.

Services means each of the Implementation Services, the Hosting Services, the Extra Services and the Maintenance Services.

Software means the Software provided by Fluent as stated in the Contract Information Form and (where Fluent provides the Software as Software as a Service) shall include the Software as a Service.

Software as a Service means the facility by which the Customer can Use the Software via ISP in accordance with this Agreement.

Term means the term of this Agreement as specified in the Contract Information Form.

Third Party means any third party licensing or providing directly or indirectly to Fluent any element of the Software (including any component service, software, hardware or facility).

Third Party Licence means any agreement between Fluent and a Third Party.

Use shall have the meaning given it in clause 1.1 of the Base Terms.

User shall mean any user of the Software (and shall include Registered Users, where the provisions of clause 1.4 of the Base Terms apply).

Year means the period of a calendar year commencing either on the Commencement Date or any anniversary thereof.

2 In this Agreement (except where the context otherwise requires) reference to a clause means a reference to a clause of this Agreement; the clause headings are included for convenience only and shall not affect the interpretation of this Agreement; use of the singular includes the plural and vice versa; use of any gender includes the other genders; any reference to a statute, statutory provision or subordinate legislation (**legislation**) shall (except where the context otherwise requires) be construed as referring to such legislation as amended and enforced from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation and any former legislation which it re-enacts, consolidates or enacts in rewritten form; any phrase introduced by the term **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

CONTRACT INFORMATION FORM

COMMENCEMENT DATE	<i>[insert required commencement date here]</i>
SOFTWARE	<i>[insert details of licensed software here: are there any restrictions on user numbers?]</i>
FEES	<i>[insert details of fees, and details of payment dates, here]</i>
TERM	<i>[insert length of initial term here]</i>
SERVICES	<i>[are implementation services, maintenance services, or hosting services required? If so, insert details here. Also insert any indicative/summary milestones for the provision of services here. Finally, if only consultancy services and no software is being provided, make this clear here]</i>
ANY OTHER PROVISIONS	<i>[insert any other specific required provisions here]</i>
<p>The contents of this contract information form incorporate Fluent Technology Limited's standard terms and conditions of business, a copy of which is available upon request and can be found at www.fluenttechnology.com/Terms.aspx .</p>	