

FluidStack – Terms of Supply for Third-Party Providers

These terms of supply ('**Terms of Supply**'), together with the Application, Non-Circumvention Policy, Privacy Notice, Data Protection Addendum and Service Level Agreement (together, the '**Agreement**'), set out the legal terms on which FluidStack Limited (company number 10985545) of 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ ('**FluidStack**') contracts with the individual or entity named in the Application ('**Third-Party Provider**').

1. Interpretation

- 1.1 The definitions and rules of interpretation at clause 16 apply in the Agreement.

2. FluidStack Services

- 2.1 FluidStack owns and operates the FluidStack Platform which, amongst other things, facilitates Customer's access to, and use of, Cloud Services supplied by Third-Party Provider. Third-Party Provider shall supply the Cloud Services and Support Services to FluidStack on the terms of the Agreement and in accordance with the Service Level Agreement for those particular Cloud Services.
- 2.2 Subject to the provisions of the Agreement, FluidStack shall, in accordance with the relevant Application (including the timeframes and specifications specified therein):
- (a) provide the Set-up Services;
 - (b) facilitate Customer access to, and use of, the Cloud Services; and
 - (c) perform Additional Services.
- 2.3 The Agreement, including, for the avoidance of doubt, the Non-Circumvention Policy, shall commence from the earlier of: (i) the introduction by FluidStack of Third-Party Provider to Customer (whether prospective or actual), or vice versa; and (ii) the date of the Application.
- 2.4 FluidStack may provide the FluidStack Services (or any part of them) through any of its Affiliates.

3. Cloud Services

- 3.1 Third-Party Provider hereby grants FluidStack a non-exclusive licence to, without prior notice to Third-Party Provider, for the duration set out in the Application:
- (a) advertise, list and provide details of the Cloud Services on the FluidStack Platform; and
 - (b) make the Cloud Services available to Customer via FluidStack Platform.
- 3.2 To the extent that Third-Party Provider is licensing the Cloud Services from a third party, Third-Party Provider acknowledges and agrees that Third-Party Provider is solely responsible for ensuring that it complies with those third-party licence terms and FluidStack shall not be responsible, nor accepts any liability, for any breach of those third-party licence terms.
- 3.3 Third-Party Provider shall indemnify FluidStack and Customer from and against any losses, damages, liability, costs (including legal fees) and expenses which FluidStack and/or Customer may incur or suffer as a result of or arising from any breach of its obligations under clauses 3 and 6.

4. **Third-Party Provider obligations**

4.1 Third-Party Provider shall:

- (a) provide the Cloud Services to FluidStack (in accordance with the Service Level Agreement), for use by Customer, with reasonable care and skill;
- (b) ensure the Cloud Services do not allow third parties to access Customer Data;
- (c) take full responsibility and accept all liability in respect of the provision of the Cloud Services;
- (d) implement adequate security measures to protect Customer Data;
- (e) not create, store, access, or transfer to Customer or any third party, or otherwise distribute, any malware;
- (f) comply with all applicable laws; and
- (g) carry out any data security and/or hardware compliance and/or software compliance assessments if reasonably requested by a Customer.

4.2 In the event of any breach (or alleged breach) of clause 4.1, FluidStack may without prior notice, suspend its listing of the Cloud Services (or any part of them) on the FluidStack Platform. FluidStack shall be entitled to maintain the suspension until Third-Party Provider is able to remedy its non-compliance with clause 4.1 and to demonstrate its future ability to comply with clause 4.1 to FluidStack's reasonable satisfaction.

4.3 Third-Party Provider shall provide the Cloud Services to FluidStack by the dates set out in the Application (each date a '**Milestone**').

4.4 If Third-Party Provider does not meet the Milestone(s), except where this default is due to an act or omission of FluidStack, FluidStack shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to refuse to accept any subsequent performance of the Cloud Services which the Third-Party Provider attempts to make;
- (b) to require a refund from the Third-Party Provider of sums paid in advance for: (i) Cloud Services that the Third-Party Provider has not yet provided; and/or (ii) Cloud Services that the Third-Party Provider has not adequately provided; and/or
- (c) to terminate the Agreement with immediate effect by giving written notice to the Third-Party Provider.

4.5 Third-Party Provider shall indemnify FluidStack and Customer against all claims, losses, costs or expenses incurred by FluidStack or Customer in consequence of any non-compliance by Third-Party Provider with the provisions in this clause 4.

5. **Payment**

5.1 FluidStack shall pay to Third-Party Provider the fees payable as agreed between Third-Party Provider and FluidStack for the supply of the Cloud Services monthly in arrears via the payment method indicated to FluidStack in the Application (or as otherwise notified to FluidStack by Third-Party Provider in writing).

5.2 The time it takes for Third-Party Provider to receive payment from FluidStack will depend on the payment method selected by Third-Party Provider.

5.3 Third-Party Provider is solely responsible for the accuracy and completeness of the payment

method information provided to FluidStack.

- 5.4 FluidStack shall accept no liability for delays in payments or loss suffered by Third-Party Provider as a result of incorrect payment method information provided by Third-Party Provider or delays in processing by Third-Party Provider's payment method provider or processor where FluidStack has correctly made payment to the payment method as provided by Third-Party Provider.
- 5.5 Third-Party Provider's payment method may involve the use of third-party payment service providers. These service providers may charge additional fees when processing payments, including deducting charges from the amount paid by FluidStack to Third-Party Provider. FluidStack is not responsible for any such fees and disclaims all liability in this regard. Third-Party Provider's payment method may also be subject to additional terms and conditions imposed by the applicable third-party payment service provider and Third-Party Provider acknowledges it will review any such terms and conditions prior to using the payment method.

6. **Warranties**

- 6.1 Each of the parties represents and warrants to the other that it has full power and authority to enter into and perform its obligations under the Agreement.
- 6.2 Third-Party Provider represents and warrants to FluidStack that:
- (a) it has the right, power and authority to grant FluidStack the rights set out in the Agreement, including provision of the Cloud Services;
 - (b) it will provide complete and accurate information about the Cloud Services, including information about the capacity levels, data and security controls, technical specification and other information that is pertinent for Customer's use of the Cloud Services;
 - (c) it will not interfere with or manipulate Customer's use of the Cloud Services or Customer Data;
 - (d) it shall supply the Cloud Services to FluidStack in accordance with any laws applicable in the United Kingdom and wherever the Cloud Services is geographically located, including applicable AI regulations;
 - (e) the access to, receipt of and use of the Cloud Services will not infringe the intellectual property rights of any third party; and
 - (f) Customer's use of the Cloud Services will be uninterrupted and error-free and that it will meet the claimed technical and security specifications.
- 6.3 Other than as set out in the Agreement, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

7. **Data protection**

- 7.1 FluidStack processes the personal data of Third-Party Provider's end-users in order to, amongst other things, establish and verify accounts and provide FluidStack Services.
- 7.2 All personal data shall be processed by FluidStack in accordance with the Privacy Notice.
- 7.3 Third-Party Provider agrees it shall comply with the terms of the Data Protection Addendum in respect of any Customer Data that is personal data received in connection with the supply of the Cloud Services.

8. Intellectual property rights

- 8.1 FluidStack or its licensors shall retain ownership of all intellectual property rights in the FluidStack Services and in any materials created by FluidStack (or anyone acting on its behalf) in the course of providing the FluidStack Services.
- 8.2 Third-Party Provider shall retain ownership of all intellectual property rights in Third-Party Provider Data.
- 8.3 Customer shall retain all ownership of intellectual property rights in Customer Data.
- 8.4 FluidStack may use any feedback and suggestions for improvement relating to the FluidStack Services provided by Third-Party Provider without charge or limitation.
- 8.5 Third-Party Provider agrees that FluidStack may refer to Third-Party Provider being a supplier of FluidStack for marketing purposes, including by displaying Third-Party Provider's company (or trading) name, logo and/or any other non-confidential company information (**'Third-Party Provider Details'**) on FluidStack's website or in any other promotional material that FluidStack may create from time to time, including but not limited to adverts and case studies (**'Promotional Purposes'**). Third-Party Provider grants to FluidStack a perpetual non-exclusive licence to use Third-Party Provider Details for Promotional Purposes.
- 8.6 Third-Party Provider shall indemnify, keep indemnified and hold harmless FluidStack and/or Customer from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by it or by Customer as a result of or in connection with any action, demand or claim that the transmission, receipt, copying, installation, use, possession or other utilisation of Third-Party Provider Data or Cloud Services infringes the intellectual property rights of any third party.

9. Confidentiality

- 9.1 Each party agrees that it may use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under the Agreement and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 10.
- 9.2 Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under the Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 10 as if it were a party.
- 9.3 Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 9.4 Third-Party Provider acknowledges and agrees that by providing the Cloud Services, Third-Party Provider may have access to Customer Confidential Information and that Third-Party Provider shall not disclose, in any circumstance, the Customer Confidential Information including all know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind.
- 9.5 Third-Party Provider shall indemnify FluidStack and Customer from and against any losses,

damages, liability, costs (including legal fees) and expenses which FluidStack and/or Customer may incur or suffer as a result of or arising from any breach of its obligations under this clause 10.

- 9.6 Third-Party Provider shall not access Customer Data or any cloud infrastructure used by the Customer in connection with the Cloud Services without prior written consent from FluidStack.

10. Exclusions

- 10.1 FluidStack, to the fullest extent permitted by law, does not accept any responsibility or liability for the following matters:

- (a) acts of unauthorised access to the Cloud Services which is outside of its control;
- (b) any misuse of the Cloud Services by Customer, including:
 - (i) any kind of use that is in breach of any applicable laws or the Acceptable Use Policy which governs the technical and other conditions for Customer's access to, receipt of and use of the Cloud Services;
 - (ii) use of the Cloud Services to create, store, access, transfer to any third party or otherwise distribute any code or device intended to interfere with or having the effect of interfering adversely with, the operation of any hardware or software, including any bugs, worms, logic bombs, Trojan horses or any other such programs; or
 - (iii) use of the Cloud Services in a manner which infringes Third-Party Provider's or any third party's intellectual property rights.

- 10.2 FluidStack:

- (a) does not promise that the FluidStack Services shall be uninterrupted or error-free;
- (b) does not, unless otherwise agreed, promise that the FluidStack Services are compatible with third party software or equipment; and
- (c) shall not be liable, nor be required to fix, any problem, defect or error caused by any equipment or third-party software used in connection with the FluidStack Services.

- 10.3 To the maximum extent permitted by applicable law, Third-Party Provider accepts that the FluidStack Services are on an 'as is' basis, without warranty of any kind, either express or implied.

- 10.4 FluidStack shall use reasonable endeavours to notify Third-Party Provider in advance of scheduled maintenance but Third-Party Provider acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

- 10.5 FluidStack shall not be responsible or liable to the Third-Party Provider for payment of the fees described in clause 5 to the extent that the Customer to whom the Cloud Services are supplied defaults on its payment to FluidStack in respect of those Cloud Services.

11. Liabilities

- 11.1 Notwithstanding any provision in the Agreement, neither party excludes or limits any liability for:

- (a) personal injury or death to the extent that results from the negligence of a party or any person for whom it is responsible at law;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability to the extent the same cannot be excluded or limited by law.

- 11.2 Subject to clause 11.1, FluidStack shall not be liable to Third-Party Provider in respect of:
- (a) the matters described in clause 10; or
 - (b) any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with the Agreement or any activities related to the Agreement.
- 11.3 Subject to clauses 11.1 and 11.2, the FluidStack's maximum aggregate liability to Third-Party Provider for all and any claims of whatever nature and whether based on contract, tort (including negligence), breach of statutory duty or otherwise arising out of or in connection with the Agreement or any activities related to the Agreement shall be to a sum equal to the fees paid or payable by FluidStack to Third-Party Provider in the previous 12 months.
12. **Termination**
- 12.1 FluidStack may terminate the Agreement immediately and deactivate Third-Party Provider's account if Third-Party Provider commits a material or persistent breach of the Agreement, the FluidStack Services are discontinued, or where the provision of the Cloud Services or FluidStack Services become unlawful. FluidStack will use reasonable endeavours to provide Third-Party Provider with notice in advance; however, Third-Party Provider acknowledges that this may not be possible in all circumstances. For the avoidance of doubt, breach by Third-Party Provider of clause 4.3 shall be a material breach.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if a receiver or similar officer is appointed for the other party or its property; the other party makes a general assignment for the benefit of its creditors; the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law; the other party becomes insolvent or is liquidating, dissolving or ceasing business operations (or any equivalent or similar action is taken in another jurisdiction).
- 12.3 Upon termination:
- (a) all rights granted to Third-Party Provider and by Third-Party Provider under the Agreement shall immediately terminate (including, for the avoidance of doubt, any rights granted to Customers to access the Cloud Services); and
 - (b) Third-Party Provider must cease all activities authorised by the Agreement.
13. **Other Important Terms**
14. Third-Party Provider **can review the Agreement at any time on FluidStack's website. FluidStack reserves the right to change the Agreement at any time by posting updates to its website. If FluidStack makes any changes, or if it is required to do so by law, FluidStack will notify Third-Party Provider of such change in advance to the email address associated with Third-Party Provider's account**, and such changes shall take effect fourteen (14) days after notification. If Third-Party Provider does not agree with the changes, it may terminate the Agreement by providing FluidStack with notice with such fourteen (14) day period, otherwise Third-Party Provider will be deemed to have accepted the changes.
15. Third-Party Provider **can contact FluidStack at any time by emailing sales@fluidstack.io**.
- 15.1 Third-Party Provider may not assign, transfer, sub-license or deal in any other manner with any or all of its rights or obligations under the Agreement, without FluidStack's prior written consent. FluidStack reserves the right to transfer, assign, sub-contract or deal in any other manner with any

or all of its rights or obligations under the Agreement, without notifying Third-Party Provider or receiving their consent.

- 15.2 Except in relation to any indemnity given in favour of Customer, the Agreement does not give rise to any rights for third party to enforce any term of the Agreement.
- 15.3 The Agreement, and all documents referred to in it, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.4 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 15.5 The Agreement and any dispute or claim arising out of, or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 15.6 The parties irrevocably agree that this Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall:
- (a) where Third-Party Provider is based in the UK, be subject to the exclusive jurisdiction of the courts of England and Wales; and
 - (b) where Third-Party Provider is based outside of the UK, be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

16. Definitions

'Acceptable Use Policy'	means the latest version of the acceptable use policy which governs the technical and other conditions for Customer's receipt of, access to, and use of the FluidStack Services and Cloud Services available on FluidStack's website;
'Additional Services'	means the additional services (including additional features or functionality) and deliverables specified in a relevant Application (if any).
'Affiliate'	means, in respect of any entity, any entity that directly or indirectly controls, is controlled by or is under common control with that entity within the meaning set out in section 1124 of the Corporation Tax Act 2010;
'Application'	means the application process for provision of Cloud Services to FluidStack by Third-Party Provider;
'Cloud Services'	means the computing infrastructure provided by Third-Party Provider and as are more particularly specified in the Application;

'Confidential Information'	means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party;
'Customer'	means the customer of the Cloud Services;
'Customer Confidential Information'	means any and all confidential information (whether in oral, written or electronic form) including technical or other information obtained by Third-Party Provider in its supply of the Cloud Services to Customer relating to Customer's business, finance or technology, know-how, Customer Data, intellectual property rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with Customer;
'Customer Data'	means all data, software, information (including Confidential Information) which, by Customer's actions, are hosted or processed on the Cloud Services;

'Data Protection Addendum'	means the data protection addendum applicable to the particular Cloud Service;
'FluidStack Platform'	means the software-as-a-service platform known as 'FluidStack';
'FluidStack Services'	means the Set-up Services, facilitating access to, and use of, Cloud Services by Customer, and Additional Services;
'Force Majeure'	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under any agreement between Third-Party Provider and FluidStack (provided that an inability to pay is not Force Majeure), including any matters relating to transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet;
'Non-Circumvention Policy'	means the latest version of the non-circumvention policy available on FluidStack's website;
'Privacy Notice'	means the latest version of the privacy notice available on FluidStack's website;
'Service Level Agreement'	means the service level agreement agreed between FluidStack and Third-Party Provider in respect of particular Cloud Services;
'Set-up Services'	means the set-up services and deliverables specified in the Application;

'Support Services'	means the support services provided by Third-Party Provider to FluidStack in respect of the Cloud Services; and
'Third-Party Provider Data'	means all data, software and information (including Confidential Information) which, by Third-Party Provider's actions, are hosted on any part of the Cloud Services by Third-Party Provider.

- 16.1 In the event of any conflict in respect of the provisions of the Agreement, the following order of priority shall prevail (in descending order of priority): (i) the Application; (ii) the Data Protection Addendum; and (iii) these Terms of Supply.
- 16.2 Any obligation of FluidStack under the Agreement to comply or ensure compliance with any law shall be limited to compliance only with laws where FluidStack is established.
- 16.3 If a Third-Party Provider Affiliate enters into an Application:
- (a) all references to the "Third-Party Provider" in the Agreement or in the Application shall refer to the Third-Party Provider Affiliate;
 - (b) the Third-Party Provider Affiliate shall be deemed to have entered into a separate agreement with FluidStack under the same terms as the Agreement, which shall apply *mutatis mutandis*; and
 - (c) the contract between FluidStack and the Third-Party Provider Affiliate shall be enforceable by FluidStack and the Third-Party Provider Affiliate only, and FluidStack will have no liability towards the Third-Party Provider in respect of such Application.