

## **FIRMSTEP G-CLOUD 11 SUPPLIER TERMS**

### **PLATFORM AND APP USER LICENCE AND SERVICES TERMS**

These licences and services terms (collectively, “**Supplier Terms**”) are supplemental to and shall be incorporated into the Call-Off Contract (“**Agreement**”) between Firmstep and the Licensee (each as defined below) under the G-Cloud 11 Framework Agreement RM1557xi (“**Framework Agreement**”).

In the case of any conflict or ambiguity between these Supplier Terms and any other provision of the Agreement, the other terms of the Agreement shall take precedence in accordance with clause 8.3 of the Framework Agreement.

These Supplier Terms consist of the Terms and Conditions, Schedule and Appendix attached.

## TERMS AND CONDITIONS

These Terms and Conditions apply to the grant by Firmstep to the Licensee of the right to access and to use the Platform and the Apps and the provision of the Services.

### 1 **Definitions**

1.1 In these Terms and Conditions (except where the context otherwise requires) the following words shall have the following meanings:

**“Apps”** means the Firmstep or third party apps made available via the Platform, and **“App”** means any one Firmstep or third party app made available via the Platform;

**“Authorised Users”** means those third parties and employees of the Licensee who are entitled to use the Platform for the Licensee’s business purposes under this Agreement;

**“Consultancy Services”** means services, other than Hosting Services or Support Services, provided under this Agreement;

**“Data Subject”**, **“Personal Data”** and **“Process”** shall have the same meanings as in the Data Protection Legislation;

**“Data Protection Legislation”** shall mean: (i) to the extent they remain applicable in the UK, the GDPR, the Law Enforcement Directive (*Directive (EU) 2016/680*) and any applicable national implementing laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of personal data and privacy; and (iii) all applicable law about the processing of personal data and privacy;

**“End User Licence Terms”** means the terms set out in Appendix 1;

**“Fault”** means a demonstrable fault, error or other problem with the Platform or with access to the Platform and/or Website which is capable of replication by Firmstep;

**“Firmstep”** means Firmstep Ltd (company number 04283951) whose registered office is at 15 Worship Street, London EC2A 2DT;

**“Hosting Services”** means the storage of Licensee Data and the provision of access to the Platform and such Licensee Data through the Website;

**“Intellectual Property Rights”** means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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;

**“Licensee”** means the Buyer as defined in the Call-Off Contract;

**“Licensee Data”** means the data input into information fields through the Platform by the Licensee, or by Firmstep on the Licensee’s behalf, including, where applicable, the Licensee Personal Data;

**“Licensee Personal Data”** means the types of Personal Data in relation to the categories of Data Subjects to be Processed by Firmstep under this Agreement, as described in Schedule 7 of the Call-Off Contract;

**“Platform”** means the Firmstep product incorporating an online technical platform through and on which Apps are made available by Firmstep to the Licensee, as further described in the Call-Off Contract and as made available through the Website;

**“Response Time”** means the target response time set out in the Schedule for the relevant Severity Level;

**“Schedule”** means the schedule attached to these Terms and Conditions;

**“Services”** means the Hosting Services, the Support Services and the Consultancy Services;

**“Services Commencement Date”** means the Start Date as defined in the Call-Off Contract or such other date as specified in the Call-Off Contract;

**“Severity Level”** means the severity level of a Fault, as set out in the Schedule;

**“Support Hours”** means 9am to 5pm UK time Monday to Friday excluding bank and public holidays in the UK;

**“Support Services”** means the services set out in clauses 4.1, 4.2 and 4.3;

**“Website”** means [www.firmstep.com](http://www.firmstep.com); and

**“Working Days”** means any day which is not a Saturday, Sunday or bank or public holiday in the UK.

## **2 Licence of and access to the Platform and the Apps**

- 2.1 Subject to these Terms and Conditions, Firmstep hereby grants to the Licensee a non-exclusive, non-transferable licence to access and use the Platform and to access the Apps through the Platform solely for the Licensee’s business purposes from the Services Commencement Date until this Agreement is terminated. The Licensee may sub-license its rights under this clause 2.1 to third parties provided that the Licensee ensures that any use by such third parties is solely for the Licensee’s business purposes.
- 2.2 Firmstep will provide the Licensee with user identification and passwords (**“Login Details”**) to enable access to the Platform via the Website.
- 2.3 The Licensee is responsible for keeping confidential all of the Licensee’s Login Details. If the Licensee becomes aware of any unauthorised access to the Platform, the Website and/or any Apps and/or the Licensee’s Login Details, the Licensee shall immediately notify Firmstep.
- 2.4 The Licensee shall be entirely responsible for all access to the Platform where access is facilitated by the Licensee’s Login Details whether such access is with or without the

Licensee's consent, including without limitation any fees incurred for access to or use of Apps.

### **3 Use of the Platform and Apps**

- 3.1 The Platform complies with the specification set out on the Website as amended from time to time.
- 3.2 The Licensee hereby agrees to and shall comply with and shall ensure that any Authorised Users comply with the End User Licence Terms, unless other terms are agreed in respect of a particular App (in which case the Licensee shall comply with such other terms in respect of its use of such particular App).
- 3.3 The Licensee shall not:
  - 3.3.1 disrupt, interfere with or restrict the use of the Platform, the Website and/or any App by other users including, without limitation, denial of service attacks, mailbombing, flooding or other deliberate attempts to overload the Platform, the Website and/or any App;
  - 3.3.2 upload, display or transmit any materials through the Platform and/or the Website which are false, offensive, defamatory, threatening, obscene, unlawful, which violate export control laws or which infringe the rights, including but not limited to Intellectual Property Rights, of any other person anywhere in the world;
  - 3.3.3 probe, scan or test the vulnerability of the Platform and/or any App or to attempt to circumvent or hack any user authentication or security controls in respect of the Platform and/or any App, or attempt to do so;
  - 3.3.4 reverse compile, disassemble, reverse engineer, decompile, copy, duplicate, modify or adapt any software or other code or scripts forming part of the Platform, the Website and/or any App (except to the extent permitted by law) or attempt to transmit to or via the Platform, the Website and/or any App any information that contains a virus, worm, Trojan horse or other harmful or disruptive component;
  - 3.3.5 attempt to obtain, or assist others in obtaining, access to the functionality of the Platform, except as permitted by this Agreement and save for end users that are accessing the results of the Licensee's use of the Platform for the Licensee's business purposes;
  - 3.3.6 change, modify, delete, interfere with or misuse any files or other data contained in the Platform, the Website and/or any App; or
  - 3.3.7 use the Platform, the Website and/or any App in contravention of any applicable law.
- 3.4 Firmstep shall provide the Hosting Services to the Licensee with effect from the Services Commencement Date for the remainder of the term of this Agreement in accordance with the Schedule.
- 3.5 The Licensee shall take a frequent and complete backup copy of the Licensee Data. Firmstep has the right (but no obligation) to inspect the content of the Licensee Data to ensure compliance with the Agreement.

- 3.6 It is the responsibility of the Licensee to maintain an appropriate internet connection to allow access to the Platform and the Apps.
- 3.7 The Licensee shall not undertake any penetration testing in relation to the Platform and/or any App without the prior written consent of Firmstep.

#### **4 Support Services**

- 4.1 In respect of the Platform, with effect from the Services Commencement Date for the term of the Agreement, Firmstep shall provide the Licensee with the following support services:
  - 4.1.1 access to an online support database on a 24/7 basis;
  - 4.1.2 where there is a Fault, the Licensee may contact Firmstep via email giving notice of such Fault (setting out a summary of the nature and circumstances of the Fault) and Firmstep shall respond during Support Hours and use reasonable efforts to resolve the Fault within a reasonable time and in accordance with the Schedule; and
  - 4.1.3 where the Fault involves a complete failure of the Platform or inability to access the Platform, the Licensee may contact Firmstep via its telephone helpdesk facility giving notice of such Fault (setting out a summary of the nature and circumstances of the Fault) and Firmstep shall respond during Support Hours and use reasonable efforts to resolve the Fault within a reasonable time and in accordance with the Schedule.
- 4.2 Firmstep may in its entire discretion resolve a Fault by providing a bug fix, workaround, patch or other minor modification to the Platform.
- 4.3 In respect of any App, Firmstep shall provide the Licensee with the following support:
  - 4.3.1 responses to general questions concerning use of the App; and
  - 4.3.2 assistance in the diagnosis and correction of problems encountered in using the App.
- 4.4 Firmstep shall not be liable to provide Support Services where any Fault results from or is connected with:
  - 4.4.1 the Licensee's failure to implement recommendations in respect of or solutions to Faults previously advised by Firmstep;
  - 4.4.2 any repair, adjustment, alteration or modification of the Platform or maintenance of the Platform by any person other than Firmstep or its authorised agents without Firmstep's prior written consent;
  - 4.4.3 use of the Platform, Website and/or App outside the terms of this Agreement or any applicable End User Licence Terms; and/or
  - 4.4.4 loss of any data used in conjunction with the Platform.
- 4.5 Firmstep reserves the right:
  - 4.5.1 to monitor requests for Support Services and levels of support requested and, if it is found that an excessive number of inappropriate requests for

Support Services are being made to Firmstep, to notify the Licensee of that fact and either temporarily or permanently to stop providing Support Services to the Licensee whereupon the Licensee shall investigate the number of requests being made and the reasons for such requests and Firmstep may in its entire discretion assist the Licensee to find out the reasons for the number of requests for Support Services and to reduce the number of such requests; and

- 4.5.2 to refuse to supply Support Services in respect of any alleged fault which could have been resolved by the Licensee following any instructions set out in any related documentation provided to the Licensee or the online support database.
- 4.6 Firmstep reserves the right to charge the Licensee an additional sum (being at its standard consultancy rates for the time being) for the provision of support or other services in any of the following circumstances: namely, where:
  - 4.6.1 support or other services are provided in respect of any Fault resulting from or connected with any of the circumstances set out in clause 4.4;
  - 4.6.2 any assistance, support or other services are provided by Firmstep in relation to any matter referred to in clause 4.5;
  - 4.6.3 performance of the Support Services is made more difficult or costly as a result of the Licensee's failure to inform Firmstep of a problem as soon as reasonably practicable.

## **5 Intellectual Property Rights**

- 5.1 The Licensee acknowledges that:
  - 5.1.1 Firmstep owns, or is licensed to use, all copyright and other Intellectual Property Rights of whatever nature in and relating to the Platform, the Website and any Apps provided by Firmstep (rather than by third parties);
  - 5.1.2 where the Apps are provided by third parties, Firmstep has no responsibility for, and gives no warranty in respect of, the content of any such App made accessible to the Licensee through the Platform; and
  - 5.1.3 Firmstep owns all copyright and other Intellectual Property Rights developed and/or created by Firmstep and/or on Firmstep's behalf in connection with the provision of any Consultancy Services provided under this Agreement.
- 5.2 Firmstep warrants that the use and licence of the Platform and the Website in accordance with the terms of this Agreement will not infringe the copyright belonging to any third party.
- 5.3 The Licensee hereby grants to Firmstep a non-exclusive, non-transferable licence to use the Licensee Data solely for the purpose of carrying out its obligations under this Agreement.
- 5.4 The Licensee warrants that the use and licence of the Licensee Data in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights belonging to any third party.

## **6     Warranties**

- 6.1     Firmstep shall provide the Services with reasonable care and skill.
- 6.2     Save as expressly set out in this Agreement, the Licensee's sole remedy against Firmstep for any failure to provide the Services in accordance with clause 6.1 above shall be to require Firmstep to correct such failure free of additional charge and within a reasonable time.
- 6.3     Firmstep is committed to maintaining the security of the Platform and has appropriate procedures in place to safeguard the Platform. However Firmstep does not warrant that the platform will be entirely free from viruses, trojan horses, bugs, omissions or errors, or that deficiencies or defects in the platform will be corrected.
- 6.4     EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION AS TO QUALITY, PERFORMANCE OR FITNESS OR SUITABILITY FOR PURPOSE) IN RESPECT OF THE PLATFORM, THE WEBSITE AND THE APPS AND PROVISION OF THE SERVICES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

## **7     Limitation of Liability**

- 7.1     The payments due under this Agreement have been negotiated and agreed on the basis that the parties may exclude or limit their liability to each other as set out in this Agreement. The parties each confirm that they will themselves bear or insure against any loss for which the other party has limited or excluded liability under this Agreement.
- 7.2     THE LICENSEE ACCEPTS AND AGREES THAT ANY RESULTS OR DATA OBTAINED THROUGH USE OF THE PLATFORM AND/OR THE APPS ARE DEPENDENT ON THE DATA INPUT AND THEREFORE, SAVE AS EXPRESSLY SET OUT IN THIS AGREEMENT, FIRMSTEP SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE WHATSOEVER RESULTING DIRECTLY OR INDIRECTLY FROM THE USE OF THE RESULTS WHICH ARE DERIVED FROM INPUT DATA WHICH IS INCORRECT OR INACCURATE IN ANY RESPECT.

## **8     Termination**

- 8.1     Upon termination of this Agreement for any reason:
  - 8.1.1     the provisions of clauses 7, 8, and 10 shall continue in force; and
  - 8.1.2     all amounts then owed to Firmstep (including, but not limited to, any fees incurred but not yet invoiced) shall immediately become due and payable.

## **9     Data Protection**

- 9.1     The Licensee hereby consents to Firmstep using Amazon Web Services (or such other the third party hosting provider as may be listed in Schedule 7 of the Call-Off Contract) within the EEA or UK to carry out its Hosting Services obligations under this Agreement.

- 9.2 The Licensee acknowledges and further consents to Firmstep transferring Licensee Personal Data outside the European Economic Area for the purposes of maintaining and using relevant IT systems, provided that any such transfer meets the relevant requirements under Articles 44 – 50 of the General Data Protection Regulation. Firmstep will not otherwise transfer the Licensee Personal Data outside of the European Economic Area without the prior written consent of the Licensee, unless required to do so by law.
- 9.3 The Licensee acknowledges that it is responsible for obtaining any necessary consent for Personal Data to be submitted or uploaded to, or Processed via, the Platform and warrants that it will obtain such consent from or on behalf of any relevant individual prior to submitting, uploading or allowing their Personal Data to be Processed via the Platform.
- 9.4 The Licensee hereby indemnifies Firmstep and will keep Firmstep indemnified against all losses, damages, costs or expenses and any other liabilities (including legal fees) incurred or awarded against Firmstep, or agreed to be paid by Firmstep as part of any settlement negotiated and/or approved by the Licensee, arising as a result of any third party claim brought against Firmstep in connection with: (a) the Licensee's failure to obtain the appropriate consent for Firmstep to Process Personal Data as anticipated under this Agreement; and/or (b) Firmstep's Processing of Personal Data in accordance with the Licensee's instructions and its obligations under this Agreement.

## **10 Audit**

- 10.1 Notwithstanding the provisions in relation to audit elsewhere in this Agreement, the Licensee shall (or shall ensure its authorised representatives shall):
- 10.1.1 be accompanied by a member of Firmstep at all times whilst on site during any audit; and
- 10.1.2 comply with Firmstep's relevant IT and security policies whilst carrying out any audit.

## **11 General**

- 11.1 Except as expressly set out in this Agreement, the Licensee shall not be entitled to assign or sub-contract this Agreement nor any of its rights or obligations hereunder nor to grant sub-licences in relation to use of the Platform or Services.
- 11.2 Each party represents and undertakes that it is entering this Agreement as principal and not as agent for any other party. In performance of obligations under this Agreement, the status of each party including its employees and agents shall be that of independent contractor and not of employees, agent or fiduciary of the other party. Neither party shall have any right or authority to make any commitments for or on behalf of the other party.



## Schedule

### 1 **Service levels**

- 1.1 When notified by the Licensee of any Fault in accordance with clause 4, Firmstep shall acknowledge such notification and shall use reasonable efforts to provide such acknowledgement within the relevant Response Time.
- 1.2 Firmstep shall use reasonable efforts to investigate a Fault of Severity Level 1 within 2 Working Days and shall use reasonable efforts to provide a solution within 5 further Working Days.
- 1.3 Firmstep shall use reasonable efforts to resolve a Fault of Severity Level 2 by providing a solution in the next revision of the Platform or within 1 month, whichever is the sooner.
- 1.4 Firmstep shall use reasonable efforts to correct a Fault of Severity Level 3 in the next scheduled revision of the Platform.
- 1.5 Firmstep may in its discretion resolve a Fault by providing a bug fix, workaround, patch or other minor modification to the Platform.

### 2 **Availability**

- 2.1 Firmstep shall use reasonable efforts to ensure that access to the Hosting Services is available at least 99.95% for non-legacy platform solutions. The Hosting Services will not be deemed unavailable during any Licensee-caused or third party-caused outages or disruptions, or outages or disruptions attributable in whole or in part to Force Majeure events (as defined in the Framework Agreement), or any of the events set out in clause 4.4.

### 3 **Target Response Times**

Severity Level	Description	Target Response Time
1	Platform has a defect which prevents use of any documented function	2 Support Hours
2	Platform has a defect which does not reduce capabilities but makes it inconvenient to use.	4 Support Hours
3	Platform has a minor Fault that does not affect the operational capabilities of the Platform.	16 Support Hours

## **Appendix 1**

### **End User Licence Terms**

- 1 Firmstep grants to the Licensee a non-exclusive, non-transferable licence to use the App solely for the Licensee's business purposes including the right to sub-licence to end users solely for the Licensee's business purposes.
- 2 The Licensee shall not:
  - 2.1 reverse compile, disassemble, reverse engineer, decompile, copy, duplicate, modify or adapt any software or other code or scripts forming part of the App or create derivative works based on the whole or any part of the App;
  - 2.2 attempt to obtain, or assist others in obtaining, access to the functionality of the App, except as permitted by this Agreement and save for third parties that are accessing the results of the Licensee's use of the App for the Licensee's business purposes;
  - 2.3 use the App in contravention of any applicable law; or
  - 2.4 access and/or use the App other than through Firmstep's app platform.
- 3 For the avoidance of doubt, the Licensee has the right to make backup copies of the App to the extent such copies are reasonably necessary for the Licensee's own operational security and use within the scope of this Agreement.
- 4 The Licensee acknowledges that under this licence it does not acquire ownership of any Intellectual Property Rights of whatever nature in and relating to the App.
- 5 NEITHER FIRMSTEP NOR ANY LICENSOR OF THE APP GIVE ANY WARRANTIES TO THE LICENSEE IN RESPECT OF THE APP. WITHOUT LIMITATION TO THE FOREGOING, NO WARRANTY IS GIVEN THAT THE APP WILL BE FREE FROM VIRUSES, TROJAN HORSES, BUGS, OMISSIONS OR ERRORS, OR THAT DEFICIENCIES OR DEFECTS IN THE APP WILL BE CORRECTED.
- 6 THE LICENCE TO USE THE APP GRANTED UNDER THIS AGREEMENT IS BETWEEN THE LICENSEE AND FIRMSTEP. THE LICENSOR OF THE APP IS NOT A PARTY TO THIS AGREEMENT AND ACCEPTS NO LIABILITY TO THE LICENSEE FOR ANY LOSS WHETHER DIRECT OR INDIRECT AND WHETHER IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OR USE OF THE APP.