

# GCloud 11 Terms & Conditions

Kirona Enterprise Mobile Applications & Dynamic Scheduling

# Kirona Solutions Limited

## Supplier Terms

### 1. INTERPRETATION

1.1 In these terms and conditions expressions have the meaning ascribed in Schedule 3 (Glossary and Interpretations) of Section 8 of the Framework Agreement (General Governance).

1.2 The following additional definitions and rules of interpretation in this clause apply in these terms and conditions.

**Authorised Users:** those employees and independent contractors of the Buyer who are entitled to use the G-Cloud Services under a Call-Off Contract (including these terms and conditions), as further described in clause 3.2(b).

**Business Day :** any day which is not a Saturday, Sunday or public holiday in the UK.

**Buyer Account Team:** the individuals appointed by the Buyer from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this Call-Off Contract. The initial members of Buyer Account Team are listed in the Order Form.

**Buyer's Project Manager:** the member of the Buyer Account Team appointed in accordance with clause 6(c). The Buyer's Project Manager at the Effective Date is named in the Order Form.

**Off-boarding Services:** the Off-boarding services (if any) set out in the relevant Order Form.

**On-boarding Services:** the On-boarding services set out in the Implementation Plan and the relevant Order Form

**Service Level Arrangements:** the service level arrangements set out in the Service Definition(s).

**Services :** the G-Cloud Services (including any Additional Services) set out in the relevant Order Form, the On-boarding Services and the Off-boarding Services.

**Software :** the Supplier's proprietary software as described in the relevant Order Form and provided solely through the G-Cloud Services, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Buyer.

**the Supplier Account Team:** the individuals appointed by the Supplier from time to time who shall serve as the Buyer's primary contacts for the Buyer's activities under this agreement. The initial members of the Supplier Account Team are listed in the Order Form.

**the Supplier's Project Manager:** the member of the Supplier's Account Team appointed in accordance with clause 2.2. the Supplier's Project Manager at the Effective Date is named in the Order Form.

1.3 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.4 A **person** includes a corporate or unincorporated body (whether or not having separate legal personality).

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Words in the singular shall include the plural and vice versa.

- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraph of the relevant schedule.

## **2. ON-BOARDING SERVICES**

- 2.1 The Supplier shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement including but not limited to the Supplier Account Team.
- 2.2 The Supplier shall appoint the Supplier's Project Manager, who shall have the authority to contractually bind the Supplier on all matters relating to this agreement. The Supplier shall use reasonable endeavours to ensure continuity of the Supplier's Project Manager, but has the right to replace him/her from time to time where reasonably necessary in the interests of the Supplier's business.
- 2.3 The Supplier shall perform the On-boarding Services in accordance with the Implementation Plan. The Supplier shall use reasonable endeavours to meet the performance dates set out in the Implementation Plan, but any such dates shall be estimates only, and time shall not be of the essence in this agreement.
- 2.4 On delivery of each Deliverable, the Buyer shall be able to access the Deliverable online. Within five days of the Supplier's delivery to the Buyer of any Deliverable, the Buyer shall review the Deliverable to confirm that it functions in material conformance with the applicable portion of the Service Definition. If the Deliverable fails in any material respect to conform with the applicable portion of the Service Definition, the Buyer shall give the Supplier a detailed description of any such non-conformance ( "**Error(s)**" ), in writing, within the five-day review period.
- 2.5 With respect to any Error(s) contained in any Deliverables delivered to the Buyer during the On-boarding Services, the Supplier shall use reasonable endeavours to correct any such Error(s) within a reasonable time and, on completion, submit the corrected Deliverable to the Buyer. The provisions of this clause 2.5 shall then apply again, up to three additional times. If the Supplier is unable to correct such Error(s) after three attempts, either party may terminate this agreement without further liability to the other.
- 2.6 If the Buyer does not provide any written comments in the five-day period described above, or if the Deliverable is found to conform with the Service Definition, the Deliverable shall be deemed accepted.

## **3. G-CLOUD SERVICES**

- 3.1 The Supplier shall perform the G-Cloud Services in accordance with the Service Definition.
- 3.2 In relation to Authorised Users:
- (a) the Buyer's access to the G-Cloud Services shall be limited to the number of individual Authorised Users specified in the Order Form, being employees or independent contractors of Buyer;

- (b) the Buyer shall maintain a written list of current Authorised Users of the G-Cloud Service, and the Buyer shall provide such list to the Supplier as may be reasonably requested by the Supplier from time to time;
- (c) the Buyer shall ensure that each Authorised User keeps a secure password for his/her use of the G-Cloud Service, that such password is changed no less frequently than monthly and that each Authorised User keeps his/her password confidential;
- (d) the Supplier may audit use of the G-Cloud Service regarding the name and password for each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Buyer's normal conduct of business; and
- (e) if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to the Supplier's other rights, the Buyer shall promptly disable such passwords and shall not issue any new passwords to such individuals.

### 3.3 In relation to Software:

- (a) the Supplier grants to the Buyer on and subject to the terms and conditions of this agreement a non-exclusive, non-transferable licence during the term of the Call Off Contract to allow Authorised Users to access the Software through the G-Cloud Services and to use the Software solely for the Buyer's business purposes;
- (b) the Buyer shall not store, distribute or transmit any material through the G-Cloud Services 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;
- (c) the rights provided under this clause 3.3 are granted to the Buyer only, and shall not be considered granted to any subsidiary or holding company of the Buyer; and
- (d) the Buyer shall not:
  - (i) attempt to duplicate, modify or distribute any portion of the Software; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - (iii) use the Software or G-Cloud Services to provide services to third parties; or
  - (iv) transfer, temporarily or permanently, any of its rights under this agreement, or
  - (v) attempt to obtain, or assist others in obtaining, access to the Software and/or the G-Cloud Services, other than as provided under this clause 3.3(d).

## 4. BUYER DATA

The Supplier shall follow its archiving procedures for Buyer Data as described in the Service Definition. In the event of any loss or damage to Buyer Data, the Buyer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost

or damaged Buyer Data from the latest back-up of such Buyer Data maintained by the Supplier in accordance with the archiving procedure described in the Service Definition. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Buyer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Buyer Data maintenance and back-up).

## **5. SUPPLIER'S OBLIGATIONS**

- 5.1 The Supplier warrants that the Services will be performed with all reasonable skill and care. If the Services do not conform with the foregoing warranty, the Supplier will, at its expense, use all reasonable commercial endeavours to re-perform such Services promptly and in any event within 30 days. The correct re-performance of Services within the timescales stipulated constitutes the Buyer's sole and exclusive remedy for any breach of the warranty set out in this clause 5.1.
- 5.2 The Supplier warrants that the Software and the G-Cloud Services will perform substantially in accordance with the Service Definition. This warranty shall not apply to the extent of any non-conformance which is caused by use of the G-Cloud Services and/or the Software contrary to the Supplier's instructions or modification or alteration of the Software by any party other than the Supplier or the Supplier's agents. If the Software does not conform with the foregoing warranty, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly and in any event within 30 days, or provide the Buyer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Buyer's sole and exclusive remedy for any breach of the warranty set out in this clause 5.2. Notwithstanding the foregoing, the Supplier does not warrant that the Buyer's use of the Software and the Services will be uninterrupted or error-free.
- 5.3 Except as expressly stated in the Call-Off Contract (which includes these Supplier Terms), all other warranties and conditions, whether express or implied, by statute, common law or otherwise, are expressly excluded to the extent permitted by law.
- 5.4 This Call-Off Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this agreement.

## **6. BUYER'S OBLIGATIONS**

The Buyer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;in order to render the Services, including but not limited to Buyer Data, security access information and software interfaces to the Buyer's other business applications;
- (b) provide such personnel assistance, including the Buyer Account Team and other Buyer personnel, as may be reasonably requested by the Supplier from time to time. The Buyer shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement;

- (c) appoint the Buyer's Project Manager, who shall have the authority to contractually bind the Buyer on all matters relating to this agreement. The Buyer shall use reasonable endeavours to ensure continuity of the Buyer's Project Manager;
- (d) comply with all applicable laws and regulations with respect to its activities under this agreement; and
- (e) carry out all other Buyer responsibilities set out in the Order Form and the Implementation Plan in a timely and efficient manner. In the event of any delays in Buyer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary.

## **7. CHARGES AND PAYMENT**

- 7.1 The Buyer shall pay the Charges for the Services set out in the Order Form on the dates and occasions set out in the Order Form and/or the Service Definition (as relevant).
- 7.2 The Buyer shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.
- 7.3 All amounts and fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 7.4 All invoices are due and payable 30 days after the invoice date. If the Supplier has not received payment within five days after the due date, and without prejudice to any other rights of the Supplier, interest shall accrue on such due amounts at the rate of 4% over the base lending rate of Barclays Bank plc, commencing on the due date and continuing until fully paid, whether before or after the judgment.
- 7.5 If the Supplier has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of the Supplier the Supplier may, without liability to the Buyer, (where applicable) disable the Buyer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

## **8. PROPRIETARY RIGHTS**

- 8.1 The Buyer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and Services. Except as expressly stated, this agreement does not grant the Buyer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.
- 8.2 The Supplier confirms that it has all the rights in relation to the Software and the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **9. INDEMNITY**

- 9.1 The Buyer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Buyer's use of the Software and/or the Services, provided that:
  - (a) the Buyer is given prompt notice of any such claim;

- (b) the Supplier provides reasonable co-operation to the Buyer in the defence and settlement of such claim, at the Buyer's expense; and
  - (c) the Buyer is given sole authority to defend or settle the claim.
- 9.2 The Supplier shall defend the Buyer, its officers, directors and employees against any claim that the Software and/or the Services infringes any patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Buyer for any amounts awarded against the Buyer in judgment or settlement of such claims, provided that:
  - (a) the Supplier is given prompt notice of any such claim;
  - (b) the Buyer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - (c) the Supplier is given sole authority to defend or settle the claim.
- 9.3 In the defence or settlement of the claim, the Supplier may obtain for the Buyer the right to continue using the Software and/or Services, replace or modify the Software and/or Services so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Buyer. The Supplier shall have no liability if the alleged infringement is based on:
  - (a) a modification of the Software and/or Services by anyone other than the Supplier; or
  - (b) the Buyer's use of the Software and/or Services in a manner contrary to the instructions given to the Buyer by the Supplier; or
  - (c) the Buyer's use of the Software and/or Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 9.4 The foregoing states the Buyer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.
- 10. LIMITATION OF LIABILITY**
- 10.1 Clause 24.1 of the Call-Off Contract and this clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
  - (a) any breach of this agreement;
  - (b) any use made by the Buyer of the Services, the Software, the Deliverables or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 10.2 Except as expressly and specifically provided in the Call-Off Contract:
  - (a) the Buyer assumes sole responsibility for results obtained from the use of the Software and the Services by the Buyer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Buyer in connection with the Services, or any actions taken by the Supplier at the Buyer's direction; and

- (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

10.3 The Service Level Arrangements state the Buyer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Services, or their non-performance and non-availability.

## **11. TERMINATION**

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Call-Off Contract without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2 On termination of this Call-Off Contract for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Buyer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination or expiry of this agreement, a written request for the delivery to the Buyer of the then most recent back-up of the Buyer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Buyer within 30 days of its receipt of such a written request, provided that the Buyer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Buyer shall pay all



reasonable expenses incurred by the Supplier in returning or disposing of Buyer Data; and

- (d) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

**12. WAIVER**

- 12.1 A waiver of any right under this Call-Off Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 12.2 Unless specifically provided otherwise, rights arising under this Call-Off Contract are cumulative and do not exclude rights provided by law.

**13. SEVERANCE**

- 13.1 If any provision (or part of a provision) of this Call-Off Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 13.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**14. ASSIGNMENT**

- 14.1 The Buyer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Call-Off Contract.
- 14.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Call-Off Contract.

**15. NO PARTNERSHIP OR AGENCY**

Nothing in this Call-Off Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**16. NOTICES**

- 16.1 Any notice required to be given under this Call-Off Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.

A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.



**Contact us**

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