

Edenbridge Healthcare

# Edenbridge APEX

## APEX Terms & Conditions – GCloud 12

### Version History

Date	Version	Author	Description
20/07/2020	1.0	Allison Homer	Terms & Conditions - G-Cloud 12

# APEX TERMS & CONDITIONS

## GCLOUD 12

These Terms and Conditions apply to the APEX Software (as defined below), procured via a Call-Off Agreement under the GCloud 12 Framework Agreement.

### PARTIES

- (1) **Edenbridge Healthcare Limited** incorporated and registered in England with company number 8786456 whose registered office is at 1 Mariner Court, Calder Business Park, Wakefield, West Yorkshire, WF4 3FL (**Supplier**).
- (2) The relevant counterparty to the GCloud-12 Call-Off Agreement to which these Terms & Conditions apply (**Customer**).

The GCloud12 Call-Off Agreement and these APEX Terms and Conditions shall be referred to collectively throughout this document as the "Agreement".

### BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers, including the Services relating to its APEX platform.
- (B) The Customer wishes to procure APEX for use by the Commissioner and/or the relevant GP Practices defined in the Call-Off Agreement.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the Supplier's Service subject to the terms and conditions of this agreement.

### AGREED TERMS

#### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Authorised Users:** those employees, agents and independent contractors of the Customer or the GP Practices who are authorised by the Customer to use the Services and the Documentation.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.

**Customer Data:** the data inputted by the Customer, GP Practices, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Documentation:** the documents made available to the Customer by the Supplier in physical format or online via such web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

**Effective Date:** as detailed in the G-Cloud 12 Call-Off Agreement.

**Fees:** as detailed in the G-Cloud 12 Call-Off Agreement.

**GP Practices:** shall mean the GP Practices detailed in the G-Cloud 12 Call-Off Agreement.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Services:** the APEX Software as a Service services provided by the Supplier to the Customer under the Agreement.

**Software:** the software applications provided by the Supplier as part of the Services.

**Subscription Term:** the term of the licence granted to the Customer for use of the Software, as detailed in the G-Cloud 12 Call-Off Agreement.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms and Conditions.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

## **2. LICENCE GRANT**

2.1 The Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's operations.

2.2 The Customer shall remain responsible for all use of the Services by its Authorised Users.

2.3 The Customer shall not, and shall ensure that the GP Practices shall not, access, store, distribute or transmit any Viruses, or any material during the course of their use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's, or any individual GP Practice's, access to any material that breaches the provisions of this clause.

2.4 The Customer shall not, and shall ensure that the GP Practices shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - (c) use the Services and/or Documentation to provide services to third parties; or
  - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the GP Practices and Authorised Users, or
  - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company or organisation of the Customer.

### **3. SERVICES**

- 3.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer and the GP Practices on and subject to the terms of this agreement.
- 3.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 8:30pm to 6:30am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer as much prior notice as is reasonably possible in the applicable circumstances.
- 3.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours as detailed at Schedule 1.

#### **4. CUSTOMER DATA**

- 4.1 The Customer, or the relevant GP Practice as applicable, shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Furthermore, each GP Practice will be required to enter into an Information Governance Agreement with the Supplier, such agreement detailing the Supplier's role and responsibilities as a Data Processor when delivering the Services.
- 4.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 4.3 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- (a) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
  - (b) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

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

- 5.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

5.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

5.5 The Supplier shall make the Customer aware of any change to the appointed supplier account manager.

## **6. CUSTOMER'S OBLIGATIONS**

The Customer 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 provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the GP Practices and Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any GP Practice's or Authorised User's breach of this agreement;

- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- (g) inform the Supplier of any change to their appointed customer service lead; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **7. CHARGES AND PAYMENT**

- 7.1 The Customer shall pay the Fees as detailed in the GCloud 12 Call-Off Agreement.
- 7.2 The Customer shall on or before the Effective Date provide to the Supplier an approved purchase order and any other relevant valid, up-to-date and complete contact and billing details.
- 7.3 The Supplier shall invoice the Customer and the Customer shall pay each such invoice pursuant to the terms and conditions of the GCloud 12 Call-Off Agreement.
- 7.4 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:
- (a) the Supplier may, without liability to the Customer, disable the Service, 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; and
  - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current Bank of England Base Rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.5 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
  - (b) are non-cancellable and non-refundable; and
  - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.



## **8. PROPRIETARY RIGHTS**

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

## **9. CONFIDENTIALITY**

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 9.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

- 9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 9.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 9.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 9.8 The above provisions of this clause 9 shall survive termination of this agreement, however arising.

## **10. INDEMNITY**

- 10.1 The Customer 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 Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 10.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
  - (b) the Customer 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.
- 10.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on

immediate written notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

10.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

10.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **11. TERM AND TERMINATION**

11.1 On termination of the GCloud 12 Call-Off Agreement for any reason:

- (a) all licences granted under such agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation 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 Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer 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 Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**12. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**13. SEVERANCE**

- 13.1 If any provision (or part of a provision) of this agreement 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. NO PARTNERSHIP OR AGENCY**

Nothing in this agreement 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).

## Schedule 1 SLA

1. The Supplier shall deliver the Services in accordance with the service levels detailed in this Schedule 1.
2. Service Availability:
  - 2.1 The Supplier shall use its commercially reasonable endeavours to ensure that the Service is available throughout the Subscription Term for 99.95% of the time.
  - 2.2 The target availability detailed at section 2.1 above is understood to be exclusive of planned maintenance carried out during the maintenance window of 8.30pm to 6:30am UK time.
3. Incident Resolution:
  - 3.1 In the event that the Customer needs to raise an issue to the Supplier than it should do so by contacting the Supplier's support desk via the Supplier's contact details, which shall be provided to the GP Practices and the Customer.
  - 3.2 The Suppliers Support desk shall be contactable during Normal Business Hours.
  - 3.3 The Supplier's Support desk shall use its commercially reasonable endeavours to remedy any issues reported in accordance with the Target Resolution Times detailed at section 4 below.
4. Target Resolution Times:

*(All times detailed in the table below are within Normal Business Hours)*

Incident Severity	Details of Severity Level	Target Resolution Time
1	e.g. Service completely unavailable	4 Hours
2	e.g. Service materially affected by issue, or a specific piece of functionality is completely unavailable	8 Hours
3	e.g. Service available and usable by the Customer, though user experience is affected by issue	40 Hours
4	e.g. Minor defect, not affecting Customer use of Service.	160 Hours