

# Rotamap Services

## Terms and Conditions for G-Cloud 13

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Rotamap Ltd

Revision D : May 2022

### 1 Introduction

- (a) This document sets out the TERMS AND CONDITIONS for the Rotamap web-based service or services (referred to as the 'Service') as provided by Rotamap Ltd, Company No. 04551928 ('Rotamap'), to the Client.
- (b) The Service is provided on an annual basis and the minimum term is 12 months.
- (c) Specific details of the Service such as the Service types, dates, contract duration and contract charges are set out separately in the G-Cloud 13 Call-Off Contract.

### 2 Definitions

- (a) ADMINISTRATIVE USERS are those AUTHORISED USERS designated by the Client to administer the Service on its behalf and who will act, unless otherwise instructed by the Client, as the Client's representatives.
- (b) AUTHORISED USERS of the Service are the designated parties given access by the Client to the Service.
- (c) BUSINESS CONTINUITY EVENT means any event including but not limited to a serious hardware or network failure that could impact on the operations of the Client and Rotamap's ability to provide the Service.
- (d) CHARGES are the charges as set out in the G-Cloud 13 Call-Off Contract.
- (e) CONFIDENTIAL INFORMATION means any information of a confidential or secret nature (including trade secrets, know-how, prototypes, inventions, drawings, designs, plans, lists, processes, formulae, specifications, notations, improvements, software, software documentation or any form of record (whether electronic or otherwise), computer data, business information, customer information, financial information, technical information, marketing information, information in relation to bid applications such as proposed contractual terms, pricing, financial models, software architecture solution design, resource profiling and product methodologies) whether or not recorded in documentary form, or on computer disc, or tape and which is information not readily ascertainable to persons not connected with Rotamap or the Clients or which is not in the public domain.
- (f) DATA EXCHANGE SERVICES means the services described in section 3(b) below.
- (g) ENTIRE SERVICE TERM is the entire term over which the Service is provided by Rotamap to the Client.

- (h) G-CLOUD 13 CALL-OFF CONTRACT means the Call-off contract entered into pursuant to the Crown Commercial Services G-Cloud 13 Framework Agreement (RM1557.13).
- (i) ESR means NHS Electronic Staff Record System.
- (j) INITIAL SERVICE SETUP MEETING means the first meeting between AUTHORISED USERS and Rotamap.
- (k) INVOICE TERM is initially the term between the SERVICE START DATE and the first RENEWAL DATE, and subsequently the term between RENEWAL DATES. This will be an annual term unless otherwise noted in the SERVICE DETAILS or otherwise agreed by Rotamap in writing.
- (l) MESSAGING SERVICES means the messaging service described in section 3(b) below.
- (m) NOTIFICATION DATE is the date by which notification of the CHARGES for the subsequent INVOICE TERM following the next RENEWAL DATE are to be provided by Rotamap. The NOTIFICATION DATE is four months prior to the RENEWAL DATE.
- (n) ROTAMAP G-CLOUD 13 SERVICE LISTING, the listing set out in the framework portal.
- (o) ROTAMAP SERVICES PRICING DOCUMENT for G-Cloud 13 as listed in the framework portal.
- (p) RENEWAL DATE is the anniversary of the SERVICE START DATE unless otherwise noted in the SERVICE DETAILS or otherwise agreed by Rotamap in writing.
- (q) ROTAMAP OPERATIONS TEAM means senior Rotamap team and members including those with responsibility for contract administration.
- (r) SERVICE DETAILS are specific details of the Service such as the Service types, dates, term, contract duration, charges and other fees, as set out separately in the G-Cloud 13 Call-Off Contract.
- (s) SERVICE START DATE is the date the initial Service setup meeting is held unless otherwise specified in the G-Cloud 13 Call-Off Contract.
- (t) SERVICE USERS (previously referred to as “ROSTERED STAFF”) are those AUTHORISED USERS whose activity is intended to be managed through the Service.
- (u) SERVICE USERS may include UNSUPERVISED GRADES, which refers to all consultants and any other grade of staff that do not require supervision, including SAS grades.
- (v) SERVICE USERS may include SUPERVISED GRADES, which refers to all training grades, and all other grades that require supervision.
- (w) SITES and/or LOCATIONS for the provision of the Service are deemed to be the administrative offices of the Client.
- (x) SYSTEM means the relevant Rota Management Service and/or Overview Service and/or Central Reporting Service as specified in the G-Cloud 13 Call-Off Contract.
- (y) TERMINATION DATE is the date by which either party must provide the other with notification of its intention to terminate the Service, thus ending the ENTIRE SERVICE TERM. The TERMINATION DATE is three months prior to the RENEWAL DATE.

### 3 Rota Management Services

This section 3 of the TERMS AND CONDITIONS is only relevant to Rotamap's rota management services CLWRota, Medirota, All Doctor Rostering for Organisations and All Doctor Rostering for Groups, as described on Rotamap's G-Cloud 13 service listings. In this section references to the Service pertain only to those parts of the Service relating to Rotamap's rota management services.

- (a) The Service is comprised of the provision of web-based software for the management of clinical staff rotas.
- (b) The Service includes:
  - (i) Access to a secure account on the Service for the Client and its AUTHORISED USERS.
  - (ii) Hosting of the Service software, the Client's account and associated data on secure, managed computer servers.
  - (iii) Support for all aspects of the system.
  - (iv) Technical maintenance of the Service software.
  - (v) Upgrades to the Service software as they are released.
  - (vi) Email alerts, text messaging (SMS) alerts, mobile phone applications, mobile application push messaging, and external recipient email alerts, together known as MESSAGING SERVICES.
  - (vii) The provision of one-way or bi-directional data exchange facilities through Application Programming Interfaces (APIs) known as DATA EXCHANGE SERVICES.
- (c) The charges:
  - (i) CHARGES are determined annually in advance by the Client declaring the number of SERVICE USERS whose activity is intended to be managed through the Service, such declaration permitting management of up to that number of staff.
  - (ii) Where the Service is not provided on an organisation-wide arrangement, annual CHARGES after the first year may be informed by renewal notices provided by Rotamap.
  - (iii) Inactive staff profiles are not included when determining the number of SERVICE USERS.
  - (iv) Staff who are rostered on average fewer than three sessions a week are not included when determining the number of SERVICE USERS.
  - (v) Staff numbers and anticipated charges for the upcoming INVOICE TERM are normally reassessed on the NOTIFICATION DATE.
  - (vi) If the actual number of SERVICE USERS grows above the number of SERVICE USERS declared by the Client by 2% or by more or by 5 people the Client should notify Rotamap immediately and pay the additional CHARGES (if any) as set out in the "Rotamap Services Pricing Document for G-Cloud 13" for the relevant year or years of the Service.
  - (vii) CHARGES will be invoiced on an annual basis and in advance of the service commencement or RENEWAL DATE. Initial CHARGES will be those set out in the SERVICE DETAILS.
  - (viii) No rebate will be provided if the Client utilises the Service for fewer than the declared number of SERVICE USERS.

### 4 Overview

This section 4 of the TERMS AND CONDITIONS is only relevant to Rotamap's Overview service, as described on Rotamap's G-Cloud 13 service listings. In this section references to the Service pertain only to that part of the Service relating to Rotamap's Overview service.

- (a) The Service is comprised of the provision of web-based software for composite views and data aggregation for Rotamap's rota management services.

- (b) The Service includes:
  - (i) Access to a secure account on the Service for the Client and its AUTHORISED USERS.
  - (ii) Hosting of the Service software, the Client's account and associated data on secure, managed computer servers.
  - (iii) Support for all aspects of the system.
  - (iv) Technical maintenance of the Service software.
  - (v) Upgrades to the Service software as they are released.
  - (vi) Mobile phone applications for accessing the Service.
- (c) The Service may include:
  - (i) Email alerts, text messaging (SMS) alerts, mobile application push messaging, and external recipient email alerts, together known as MESSAGING SERVICES.
- (d) CHARGES are determined annually in advance on a fixed fee basis.

## 5 Central Reporting

This section 5 of the TERMS AND CONDITIONS is only relevant to Rotamap's Central Reporting service as described on Rotamap's G-Cloud 13 service listings. In this section references to the Service pertain only to that part of the Service relating to Rotamap's Central Reporting service.

- (a) The Service is comprised of the provision of web-based software for reporting, data aggregation and data exchange facilities for Rotamap's rota management services.
- (b) The Service includes:
  - (i) Access to a secure account on the Service for the Client and its AUTHORISED USERS.
  - (ii) Hosting of the Service software, the Client's account and associated data on secure, managed computer servers.
  - (iii) Support for all aspects of the system.
  - (iv) Technical maintenance of the Service software.
  - (v) Upgrades to the Service software as they are released.
- (c) The Service may include:
  - (i) Client and/or organisation management reports and statistics.
  - (ii) The exchange of data between Rotamap's rota management services and Central Reporting, for example the exchange of staff activity information for HR and/or Payroll records.
  - (iii) The provision of one-way or bi-directional data exchange facilities through Application Programming Interfaces (APIs) known as DATA EXCHANGE SERVICES.
  - (iv) Email alerts, text messaging (SMS) alerts, mobile phone applications, mobile application push messaging, and external recipient email alerts, together known as MESSAGING SERVICES.
- (d) CHARGES are determined annually in advance on a fixed fee basis.

## 6 General

- (a) The Client's use of the Service is governed by these TERMS AND CONDITIONS.
- (b) CHARGES are based on the rate, rates and/or fees set out in the "Rotamap Services Pricing Document for G-Cloud 13".
- (c) The Client is responsible for maintaining the contact details for ADMINISTRATIVE USERS on the SYSTEM and ensuring they are correct.
- (d) AUTHORISED USERS include external parties given access to the system by any means, including DATA EXCHANGE SERVICES and MESSAGING SERVICES.
- (e) All DATA EXCHANGE SERVICES involving Third Parties are only to be provided on the basis of the Client having established an independent contractual relationship with the Third Party, with the Client being responsible for collaboration with the Third Party, and the Client being responsible also for any and all network and service availability, data quality and related issues with the Third Party's service.
- (f) Rotamap's DATA EXCHANGE SERVICES integration with any Third Party service will be covered at all times, for the absence of doubt, by Rotamap's use of information clauses under section 10 and by Rotamap's limitation of liability under section 17.
- (g) The ADMINISTRATIVE USERS are responsible for registering and managing SERVICE USERS with any Service.
- (h) Rotamap will liaise with ADMINISTRATIVE USERS to support the Service. Rotamap staff will have access to the account for maintenance, monitoring, reporting and support purposes only.
- (i) Unless otherwise agreed by Rotamap the Client will not: allow those who are not AUTHORISED USERS access to the Service; modify, adapt, enhance, translate, reverse engineer, decompile, disassemble or attempt to discover the source code of the Service; or allow the Service to become incorporated or integrated in any other programs, software or hardware.
- (j) Computer servers hosting the Service will be maintained in secure, managed facilities. Where these are managed by a Third Party, Rotamap will make all reasonable efforts to ascertain best possible standards of service and assume responsibility for any interruption to the Service where this can be determined to be the fault of Rotamap or one of its suppliers. Rotamap will not permit physical access to its server hosting facilities to any parties other than its own employees and suppliers.
- (k) Service support is provided by email and telephone only unless provision of the Service is not possible by these means. Support will normally be provided by email at [support@rotamap.net](mailto:support@rotamap.net) or other email address as provided by Rotamap to the Client.
- (l) MESSAGING SERVICES are provided with no guarantee of delivery.
- (m) Where the Service provides DATA EXCHANGE SERVICES with ESR, Rotamap will bear ESR direct integration and connection charges only, and the Client assumes all Data Controller responsibilities.
- (n) Unless otherwise agreed between Rotamap and the Client, Service support will only be provided to AUTHORISED USERS.
- (o) Service support is generally available during our normal operating hours of 08:30–12:00 and 13:00–17:00 UK time Monday to Friday ("WORKING DAY") other than England and Wales public holidays and between the Christmas and New Year public holidays.
- (p) All efforts will be made to respond to support requests within a reasonable time-frame and in any event by the next WORKING DAY within the working hours set out in these TERMS AND CONDITIONS. Where an immediate resolution is not possible Rotamap will endeavour to provide a response as quickly as is feasible and to keep the Client informed.

- (q) Emergency requests will be given priority. This status will be determined by Rotamap, with all due consideration to the Client. Where the request involves a failure of the Service as provided by Rotamap, all efforts will be made for an immediate resolution.
- (r) The performance of the Service is dependent on the Client having a sufficiently capable local network, user computers and a good quality internet connection. Rotamap takes no responsibility for the performance of the Service where this is adversely affected by the Client's network, computer hardware or software, or where the Service is impinged upon by services provided by other suppliers to the Client.

## **7 Service Implementation and Training**

- (a) The Client is expected to ascertain the Service's suitability for its purposes prior to commencing implementation of the Service and the use of the Service is covered by Rotamap's limitation of liability under section 17.
- (b) The Service will be implemented by Client staff, normally the ADMINISTRATIVE USERS, with assistance from Rotamap.
- (c) Rotamap will not be liable in any way if the Client is unable to operate the Service in conjunction with its existing systems and programmes.
- (d) Rotamap will not be responsible for the Client delaying the implementation of the Service and the agreed charges will still apply.
- (e) Rotamap shall provide training, advice and guidance to the Client during the implementation of the Service. Rotamap may also provide additional training to the Client's ADMINISTRATIVE USERS should there be any significant revisions to the Service for which this is deemed necessary, such training requirements to be determined by Rotamap with all reasonable consideration to the Client.

Thereafter it is expected that the Client will provide all further training to its staff and designated users of the Service.

- (f) Rotamap recommends the following non-contractually binding practices, particularly if the Client is taking on more than one Rotamap service:
  - (i) That each department/directorate rota requires dedicated administrative resource.
  - (ii) That clinical involvement in the design and operation of the rota be clearly established.
  - (iii) To arrange for Rotamap team members to meet with the clinical body to be rostered ahead of implementation to establish communication and trust.
  - (iv) That the Client appoint an Implementation Coordination Officer (ICO) to be trained by Rotamap to provide approximately three days of assistance per departmental/directorate implementation.
  - (v) That the Client appoint a clinician as Clinical Coordination Officer (CCO) to help liaise with clinicians and communicate the benefits of the Service.
  - (vi) That the ICO and CCO liaise closely with Rotamap and senior organisation management to report on implementation resources and progress.
  - (vii) That the Client appoints a project board, to include the ICO and CCO, to conduct quarterly progress reviews.

## **8 Management and Assessment**

- (a) The Contract will be administered on Rotamap's behalf by the ROTAMAP OPERATIONS TEAM unless otherwise communicated to the Client.

- (b) Rotamap undertakes to provide reports on the progress of the implementation process at least once every six weeks until the Service is fully implemented.
- (c) Rotamap undertakes to assist the Client in configuring the management console component of the Service where provided, or periodic automated reports, to provide Key Performance Indicator (KPI) Assessments and Management Information to the Client on a self-service basis.
- (d) Where quality standards are to be assessed the quality control processes to be used for assessment will be Rotamap's software release notification process.

## 9 Service Interruption and Business Continuity Plan

- (a) Rotamap shall undertake upgrades to the Service from time to time. Where a disruption in the Service is anticipated the Client will be notified in advance and such upgrades undertaken after normal working hours wherever possible.
- (b) Notice of upgrades, downtime and other notifications will be made by email and/or in-system notification messages. ADMINISTRATIVE USERS will take full responsibility for reading all such notifications and taking the appropriate action on behalf of the Client.
- (c) In case of a serious hardware or network failure Rotamap reserves the right to inform the Client's ADMINISTRATIVE USERS that a Business Continuity Event has occurred and effect its Business Continuity Plan to relocate the Service to a secondary site using backup data. Access to the secondary site may use a different web address from that normally provided.

Additional and/or alternative contingency arrangements may include:

- (i) Creating a PDF file of the current rota and emailing or faxing the PDF to the Client.
- (ii) Provision of access to the Service data on a temporary server.
- (iii) Providing an emergency telephone number at Rotamap's offices to help resolve queries.

Data used in emergency situations may be taken from the last daily backup.

Where such contingency arrangements are in place, the Service will be considered as being provided and Rotamap's Business Continuity Plan as being in place.

- (d) If the Client experiences loss of access to any aspect of the Service that is not scheduled or notified and can be determined to be caused by action or inaction by Rotamap, or a Third Party employed by Rotamap to provide aspects of the Service, and contingency arrangements as set-out in Clause 9(c) have not been met, Rotamap will provide a reimbursement of fees as set out in the following reimbursement schedule:

The duration of service interruption is determined within a 28-day period and during normal working hours only (08:30–17:00 UK time, Monday–Friday, excluding UK public holidays); 'monthly payment' means 1/12<sup>th</sup> of the annual fees:

- 0–8 hours: No refund
- 8–16 hours: 30% of monthly payment
- >16 hours: 100% of monthly payment

## 10 Confidentiality and Use of Information

- (a) Each party agrees that both during the ENTIRE SERVICE TERM and for an unlimited period of time after the ENTIRE SERVICE TERM expires, that it will not disclose to any Third Party any Confidential Information of the other except as permitted in these TERMS AND CONDITIONS or as authorised by the other party or as determined by law. Disclosure of these TERMS AND CONDITIONS and CHARGES to any Third Party are specifically prohibited.

- (b) The Client's data remains the property of the Client at all times during and for an unlimited period of time after the ENTIRE SERVICE TERM expires.
- (c) The Client appoints Rotamap as Data Processor as defined by the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 (DPA) to process data relevant to the Service, such processing to be done on its behalf as Data Controller for the ENTIRE SERVICE TERM.
- (d) The Client will refer to Rotamap's privacy notices held at [www.rotamap.net/privacy](http://www.rotamap.net/privacy).
- (e) Rotamap will report the status of the Service's UK GDPR technical and organisational measures to the Client on request.
- (f) Unless the Client directs otherwise, Rotamap will consider the ADMINISTRATIVE USERS the Client's representatives for UK GDPR purposes, for example to notify the Client of a data Subject Access Request.
- (g) The Client agrees that Rotamap will report any data Subject Access Request relating to the Service to the Client as Data Controller with whom it will coordinate the response to the requester.
- (h) Rotamap will not hold any unanonymised Service data outside of the UK.
- (i) The Client agrees to the use of anonymous data collated by Rotamap. Anonymous data may, for example, be used for the ongoing development of the Service, for illustrative purposes when marketing the Service, for studies into the Service's use, for cross-departmental benchmarking and research papers amongst other uses. The source and subjects of data used will remain anonymous at all times and will be subject to Clause 10(a) above, and will at no time include personal data as defined by the UK GDPR.
- (j) Where the Freedom of Information Act 2000 (FOIA) is applicable to this Service, conformance to the FOIA will recognise that the operational techniques, data structures and code of the Service constitute commercially sensitive information.
- (k) The Client agrees not to use the Service to store 'Patient identifiable information' as defined by the NHS Confidentiality Code of Practice of November 2003.

## 11 Payment

- (a) Payments should be made in advance of the INVOICE TERM and are due within 30 days of invoice.
- (b) Should the Client fail to make payment when due Rotamap shall have the right by notice in writing to suspend all further services until the default be made good.

## 12 Prior Termination

- (a) Each party may by notice in writing to the other party, notwithstanding that on a former occasion or occasions it has waived its rights, terminate the Service at any time in the event of any breach by the other party of any clause of these TERMS AND CONDITIONS which is not remedied within 60 days after notice in writing has been given to the other party requiring it to remedy the breach. The exercise by each party of its rights under this clause shall be without prejudice to any accrued rights of action of either party against the other.



## 13 Termination

- (a) At or prior to the termination of the Service, the Client may extract its data from the Service using the DATA EXCHANGE SERVICES, for which no fee will be payable by the Client to Rotamap and which facility shall constitute the entirety of the Service Exit Plan unless otherwise agreed.
- (b) On termination Rotamap shall restrict the Client from continued access to the Service and will delete the Client's data from the Service.

## 14 Intellectual Property Rights

- (a) The Service and all parts thereof and all title copyright, patent and other intellectual property rights shall remain vested in Rotamap. Except only to the extent to which rights are expressly granted in writing to the Client by a Director of Rotamap, no rights in or under such property pass to the Client.
- (b) The copyright and intellectual property rights of the SERVICE INFORMATION shall remain vested in Rotamap and shall not pass to the Client.
- (c) Rotamap, CLWRota and Medirota are Registered Trade Marks held by Rotamap Ltd.

## 15 Indemnity

Subject to compliance with the usage of the Service as specified in these TERMS AND CONDITIONS, Rotamap shall indemnify the Client against liability under any injunction or final judgement or any settlement made by Rotamap under 15(c) below for infringement of Third Party United Kingdom patents, copyright and registered designs by the Client's use of the Service, subject to the following conditions:

- (a) The Client must promptly notify Rotamap in writing of any allegation of infringement.
- (b) The Client must make no admission without Rotamap's consent.
- (c) The Client must at Rotamap's request allow Rotamap to conduct and/or settle all negotiations and litigation and must give Rotamap all reasonable assistance. The costs incurred or recovered in such negotiations and litigation shall belong to Rotamap.

## 16 Force Majeure

Rotamap shall not be liable for failure to perform its obligations under these TERMS AND CONDITIONS if such failure results from *Force Majeure* circumstances as described in the G-Cloud 13 Call-Off Contract.

## 17 Limitation of Liability

Without prejudice to the Client's statutory rights:

- (a) Rotamap does not warrant that the Service is error free, that all errors will be corrected, or will run on all computer systems. The Service is provided on an 'as is' basis, and Rotamap disclaims any implied warranties and conditions including, but not limited to, warranties of merchantability and fitness for a particular purpose.
- (b) The total liability of Rotamap to the Client as a result of any breach of any term or condition of the G-Cloud 13 Call-Off Contract or the TERMS AND CONDITIONS or as a result of professional negligence, error or omission in the provision of the Service or failure to provide

the Service, or any action or inaction or any negligence of Rotamap or its employees or agents, or as a result of any other cause whatsoever, shall not exceed the service charges paid by the Client to Rotamap.

- (c) Notwithstanding the above neither party shall in any event be liable for indirect losses or consequential losses or losses of profit by the other or any Third Party; or be liable for the costs of procurement of substitute services or other incidental damages.

## **18 Notices**

Any notice hereunder shall be given by sending the same either:

- by Signed for Special Delivery in the case of Rotamap to its registered office for the time being and in the case of the Client to its normal operating address or to such other address as shall from time to time be notified in writing by the Client to Rotamap; or
- by email in the case of Rotamap to [ops@rotamap.net](mailto:ops@rotamap.net) and in the case of the Client to its normal management team email address as shall from time to time be notified in writing by the Client to Rotamap

and any notice so sent shall be deemed to have been served on the day following the date of posting or sending and in proving such service it shall be deemed sufficiently served if the notice was properly addressed and sent by Signed for Special Delivery post.

## **19 Disputes**

Disputes shall be managed following the procedures set out in the G-Cloud 13 Call-Off Contract.

## **20 Headings**

The headings of this document are inserted for convenience of reference only and are not intended to be part of or to affect the meaning of any of these TERMS AND CONDITIONS.