

Supplier Terms and Conditions

G-Cloud 14

As a Service offers

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1. Change Network Limited G-Cloud 14 Supplier Terms

- 1.1 These G-Cloud Supplier Terms ('Supplier Terms') form part of an agreement for the provision of services by Change Network Limited ('Change Network') under a Call-Off Contract (and its Order Form) as defined in the Crown Commercial Service G-Cloud Framework Agreement (RM1557.14) between Change Network Limited and the Minister for the Cabinet Office, represented by the Crown Commercial Service (CCS).
- 1.2 The Supplier Terms apply between Change Network and each party (the 'Customer') entering a Call-Off Contract.
- 1.3 Services covered relate to Lot 3: Cloud Support and specifically only to 'Enterprise Architecture as a Service and Transformation As a Service'.
- 1.4 The Supplier Terms are applicable when not specifically overridden by those in the core Framework Agreement.

2. General terms and conditions

- 2.1 The following terminology applies:

Agreement	Means this Agreement, in combination with the G-Cloud 14 Framework Agreement, Call-Off Contract, Order Form and Supplementary Documentation.
Associate/s	A person, or persons who undertakes work for Change Network in either a sub-contracted capacity or on a fixed term contract.
Assumptions	A condition that is believed to be true and documented as such to enable effective planning.
Call-off Contract / Contract	A document that sets out the Services that the Customer commits to buy from the Supplier at pre-determined rates.
Change/s	An alteration or modification of the existing Agreement, resulting from amendments made to the scope, schedule, resources or other conditions.
Confidential Information	Information that is specifically described as Confidential either in writing or orally.
Customer Personnel	Any person employed by or working directly on behalf of the Customer.
Cloud Support Services / Services	The Services as defined in the Service Definition document and specified in the Agreement.
Customer	The party to the contract to whom Change Network is contracted to provide services.
Deliverables	The tangible or intangible outputs of the Services as specified in the Call-Off Contract and/or Order Form.

End Date	The date for the end of the project specified on the Call-Off Contract or Order Form.
Intellectual Property Rights	All intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights.
Order Form	A document used by the Customer to specify the Cloud Support Services they wish to purchase.
Party, or together 'the Parties'	Change Network and the Customer may be referred to individually as a 'Party' and collectively as the 'Parties'.
Representative	A named individual authorised to act on behalf of the Party or Parties.
Service Definition / Service	The scope, features and benefits of the service as set out in the Service Definition Document
Special Terms	Any varied, special, or additional terms and conditions that are agreed, are set out in the Order Form and form part of the Call-Off Contract.
Start Date	The commencement date of the Agreement as documented in the Call-Off Contract, Order Form and these Terms.
Supplementary Documentation / Documents	Change Network's obligations in respect of the provision of Services which may be detailed in documents such as separate proposals, plans, specifications or special terms, which, when referenced in the Order Form, will form part of the Call Off Contract.
Supplier	Change Network Limited.
Supplier Personnel	Individuals working for, or on behalf of Change Network Limited.
Variation	Uses the same definition as a 'Change'.

3. Service provision

3.1 The Customer agrees that for the duration of the Contract, both Parties will adhere to the following:

- 3.1.1 Change Network (the 'Supplier') will provide Services as agreed in the Call-Off Contract, Order Form, and Supplementary Documents, in accordance with and subject to the provisions of the Agreement.
- 3.1.2 Each party will name a Representative who will be responsible for managing issues relating to the day-to-day performance of the Services, including meeting at regular intervals to discuss progress and performance.
- 3.1.3 The parties will consult and co-operate with one another in respect of the delivery of each agreed Call-off Contract, using reasonable endeavours to perform allocated tasks and within agreed timelines.

- 3.2 Change Network shall use commercially reasonable efforts to make the Cloud Support Services available to the Customer in accordance with the Agreement, exercising all reasonable professional skill, care and diligence in supplying the Cloud Support Services.
- 3.3 Change Network warrants to the Customer that the Cloud Support Services will comply in all material respects with the relevant Service Definition.
- 3.4 The Customer is not authorised to sell, resell, lease or sublicense to any third-party direct access to the Cloud Support Services to others, unless and except as expressly agreed between the parties and set out in an agreed Call-Off Contract.

4. Changes

- 4.1 Either Party may request changes to the Services or changes to any other aspect of the Agreement.
- 4.2 Requests for changes must be supported by sufficient detail to enable the other party to assess the impact of the requested change on the cost, timetable, and any other relevant aspect of the Agreement.
- 4.3 Both parties agree to work together to consider and, if appropriate, agree any changes.
- 4.4 Until a change is agreed in writing both parties will continue to act in accordance with the latest agreed version of the Agreement.

5. Customer Responsibilities

- 5.1 The Supplier's delivery of the Services and the fees charged are dependent on (i) the Customer undertaking the Customer responsibilities as set out in the Call-Off Contract and Supplementary Documents, (ii) the accuracy of the Assumptions as set out in The Call-Off Contract and Supplementary Documents; (iii) the Customer performing its obligations under this Agreement; (iv) the Customer providing the Supplier with such information as shall reasonably be requested to enable it to perform its obligations under this Agreement; and (v) the Customer providing timely decisions and obtaining required management approvals.
- 5.2 The Customer will ensure the Supplier and Supplier Personnel are provided with prompt access to Customer Personnel and relevant data and information as required to deliver the Services.

- 5.3 The Customer agrees to keep the Supplier informed of any material developments or in relation to the business or operations of the Customer where these may have an effect upon the Services.
- 5.4 The Customer agrees that the Supplier will be entitled to rely on all the Customer's decisions and approvals given in connection with the Services. Further, the Customer understands that the Supplier is relying on the information provided by or on behalf of the Customer and represents that such information is true, accurate and complete.
- 5.5 The Supplier will not be liable for any loss, damage or expense arising from the Customer's failure or delay in supplying access to personnel or information, or its reliance on any information or materials supplied by or on behalf of the Customer or any inaccuracy or other deficiency in such information or materials.
- 5.6 In instances of delays resulting from external factors beyond either of the Parties control the Parties will take such actions as reasonably possible to minimise the impact of the delays but will pass on any resultant costs to the Customer, subject as above to providing reasonable evidence of the additional costs.
- 5.7 All analysis and recommendations made in any report, presentation or materials supplied by the Supplier in connection with the Services are made by the Supplier in good faith and on the basis of the information supplied to it at the time. The Supplier does not guarantee and takes no responsibility for the achievement or continuing applicability of recommendations made where the actual outcome is dependent on future events and circumstances and matters over which the Supplier has no control, including the actions, or inaction of, the Customer's personnel.
- 5.8 It is the responsibility of the Customer to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in the Services provided. Whilst Change Network may assist in the implementation, ultimately this is the sole responsibility of the Customer.
- 5.9 It is the Customer's responsibility to ensure all necessary permissions to use, provide, store and process Customer Data and other data provided or transmitted by the Customer in connection with the Cloud Support Services. In entering a Call-Off Contract, the Customer grants to Change Network permission to use such data for the purposes of providing the Cloud Support Services to the Customer.

6. Service Duration

- 6.1 Each Agreement shall be effective from the relevant Call-Off Contract's Start Date and continue for the period stated in the Call-Off Contract unless and until terminated by either the Customer or the Supplier in accordance with the Agreement.

- 6.2 The Supplier will use all reasonable efforts to carry out its obligations in accordance with any timetable referred to in the Call-Off-Contract and Supplementary Documentation, however unless both parties specifically agree otherwise in writing, all dates given by Change Network or specified by the Customer including dates contained in any timetable in the Call-Off-Contract, are intended for planning and estimating purposes only and are not contractually binding.
- 6.3 Where a Call-Off Contract sets out an End Date for its Cloud Support Services, then the Supplier is not obliged to make its resources available to supply the Cloud Support Services beyond that end date, except to the extent that the Customer continues to pay for those resources on a time and materials basis.

7. Service personnel

- 7.1 The Supplier shall assign personnel of appropriate skills and experience to perform the Cloud Support Services. The Customer accepts that it is responsible for verifying that the Cloud Support Services are suitable for its own needs.
- 7.2 Whilst the Supplier will attempt to comply with Customer requests for specific individuals, the appointment of all personnel to perform the Services and the nature and duration of their assignment shall be made as the Supplier considers appropriate.
- 7.3 The Supplier may at any time replace or reassign any personnel assigned by it to the Services providing any replacement personnel appointed are no less experienced or qualified than those personnel they are replacing. Changes will be subject to the prior approval of the Customer, such approval not to be unreasonably withheld or delayed. Any such substitute will be instructed in the nature of the contract by the Supplier with the costs of any handover period at the Supplier's expense.
- 7.4 The Customer and Supplier will each be responsible for ensuring that their respective staff involved with the Service have the appropriate skills and experience. If any of the Supplier's, or the Customer's Personnel fail to perform as required additional or replacement staff will be provided as the other party may reasonably request.
- 7.5 Where Supplier Personnel work on Customer premises the Customer will ensure that they are provided without charge, with a suitable office environment and facilities as required to deliver the Services and meet all applicable law.
- 7.6 Where the Customer is using third parties to provide information, materials or support for the Service, or is contracting other suppliers whose work may affect the Supplier's ability to perform the Services, the Customer will be responsible for the management

of such persons and their performance, including the timeliness and quality of their input and work.

- 7.7 During the provision of the Services, and for a period of twelve (12) months following completion, or termination of the provision, of the Services, neither party will either directly or indirectly solicit the personnel of the other Party engaged directly or indirectly in the project unless express agreement is given by the current employer. Breach of this condition will render the defaulting party liable to pay the other party liquidated damages equal to 0.5 times the total annual remuneration of the individual concerned on the date that the individual gives notice to its employer, but without prejudice to the innocent party's other rights, including injunctive relief. For this, purpose 'solicit' means approaching directly or indirectly any person with a view to engaging that person as an employee, director or contractor. This provision shall not apply to any person:
- Who shall have ceased for a period of not less than six months to be a member of the other party's staff; or
 - Who shall have ceased for a period of not less than one year to be involved, directly or indirectly, in providing relevant services or in the performance of this Agreement; or
 - Has independently applied for a position advertised through normal proceedings within the open job market.
- 7.8 The Supplier may sub-contract elements of the provision of the Services to any person including Associates. Such sub-contracting will not relieve the Supplier from its obligations under this Agreement and Change Network accepts that it takes full responsibility for the actions of such sub-contractors.
- 7.9 The Supplier will determine the means by which the contracted deliverables are accomplished, and its employees will not be available for general consultation by the Customer's staff or to routinely attend team meetings or similar unless directly relevant to the contracted work or necessary on, for example, health and safety grounds.
- 7.10 Except where otherwise specified in writing between the Parties, or where resources are contracted on a full-time basis, the Supplier's Personnel will determine their hours of work and will be entitled to undertake contracts for other customers, so long as this does not endanger the prospects of completing the contracted task by the specified time.
- 7.11 The Supplier shall certify hours expended against the SFIA rates which will be chargeable to the Customer based on the 'as a Service' fee. The Supplier shall also be entitled to invoice the Customer for materials and expenses up to the amount specified in the Call-Off Agreement.

7.12 The Supplier Personnel's work patterns will be, as standard, and unless otherwise agreed in writing:

- 8 hours exclusive of travel and lunch
- Monday to Friday excluding national holidays
- 9:00am to 5:00pm Monday to Friday

8. Intellectual Property Rights

- 8.1 Unless otherwise specified in the Call-Off-Contract all ownership, licence, intellectual property and rights and interests in the Services and associated documentation remains solely with the Supplier.
- 8.2 This Agreement will not prevent or restrict the Supplier from providing services to other customers which are the same or similar to the Services or using for any purpose the Supplier considers appropriate any techniques, ideas, concepts or know how gained or arising from the performance of the Services, subject to the obligations of confidentiality set out in Clause 11.

9. Invoicing and payment

- 9.1 The Customer will be charged monthly or quarterly, as quoted in the 'as a Service' definition specified in the Order Form and the applicable Service Description, each based on the published SFIA rate card, including any stated discount. Charges will be recorded in no less than half day increments.
- 9.2 Invoicing will be according to the payment schedule in the Call-Off-Contract Order Form or Supplementary Documents. If no payment schedule is given, invoices will be issued monthly in arrears for Services work performed.
- 9.3 Unless otherwise specified in the Call-Off-Contract Order Form or Supplementary Documents, valid invoices must be paid in full within 30 days of the date of issue.
- 9.4 All charges are in Pounds Sterling and do not include VAT which will be charged at the appropriate rate prevailing at the time of invoice.
- 9.5 If any of the Supplier's invoices becomes overdue, the Supplier may immediately suspend provision of the Services upon giving written notice to the Customer of such suspension and the reason for it, and any agreed timescale for delivery of the Services will be automatically extended.

- 9.6 Invoices remaining unpaid after 30 days will be subject to interest on overdue amounts. If the Customer does not pay any amount properly due to the Supplier under this Agreement, the Supplier may charge the Customer interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month).
- 9.7 The Supplier's rates exclude travel and hotel expenses and the costs of materials that may be required in the delivery of the Services, unless these have been explicitly included in the Service Description or Order Form. Travel and subsistence for Supplier Personnel is payable at the Customer's standard rates which shall be no less than the actual cost incurred. Mileage is charged at the prevailing HMRC rate. Any additional expenses necessarily incurred in relation to the provision of Cloud Support will be charged at cost.
- 9.8 Unless stated in the Call-Off Contract, for work on the Customer's Premises travelling time in excess of the employee's normal travel to work time will be chargeable.
- 9.9 An estimate of chargeable expenses will be provided by the Supplier on request in advance.
- 9.10 There are no exit charges for services provided by the Supplier under the G-Cloud framework, however a minimum sign up period of one year (12m) applies to our 'as a service' contracts. Services may alternatively be commissioned on a day rate only basis.
- 9.11 If additional work or expense is incurred by the Supplier as a result of a changes in the Service requirements or agreed project plan being made by the Customer, or by a failure or delay by the Customer in meeting its obligations in connection with the delivery of the Services, then such additional work or expense will be reasonably charged to the Customer as a Variation to the price set out in the Call-Off Contract.
- 9.12 Any Variation proposed by either the Supplier or the Customer will be negotiated and agreed before the Variation is implemented.

10. Liabilities

- 10.1 Except as provided in the Call Off Contract, Order Form or applicable Service Description, no warranty condition, undertaking or term, expressed or implied, statutory or otherwise, as to the condition, quality, performance, merchantability, durability or fitness for purpose of the Services is given or assumed by the Supplier and all such warranties, conditions, undertaking and terms are hereby excluded.

- 10.2 Subject to any specific financial limits stated in the Order Form, the Supplier's total aggregate liability to the Customer in respect of all losses arising under or in connection with the Call Off Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the amounts paid or payable by the Customer under the Call-Off Contract.

11. Termination

- 11.1 The Call-Off Term shall be for the minimum period stated in the Order Form which shall be no less than 12m, or, if no such period is stated, for a period of two years.
- 11.2 Unless otherwise stated in the Order Form should either the Customer or the Supplier wish to terminate provision of Cloud Support prematurely, the terminating party shall give 3m written notice to the other. If the full value does not meet the discount threshold as a result of early termination, any discount applied to that date will be recoverable at the next invoice.
- 11.3 Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if the other Party commits a material breach of this Agreement.
- 11.4 Either Party may terminate this Agreement immediately by giving written notice of termination to the other Party if the other Party:
- Is dissolved;
 - Ceases to conduct all (or substantially all) of its business;
 - is or becomes unable to pay its debts as they fall due;
 - is or becomes insolvent or is declared insolvent; or
 - convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other Party;
 - an order is made for the winding up of the other Party, or the other Party passes a resolution for its winding up other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other Party under the Agreement.
- 11.5 The termination of this Agreement shall not affect the accrued rights of either Party.

12. Confidentiality

- 12.1 Subject to clause 12.2, each party agrees where it is in possession of information about or relating specifically to the other and/or any Associate of the other (including its/their business) that is by its nature confidential, or is designated as such (whether in writing or orally) by the other or ought reasonably to be regarded as such including this Agreement, it shall (i) keep it confidential; (ii) use it only in connection with performing its obligations and/or exercising its rights under this Agreement; and (iii) not to disclose it to any other person without the other's prior written consent.
- 12.2 The undertakings under this clause 12.1 will not apply to a party in relation to information to the extent that that party can show that such information is or becomes generally publicly available for reasons not due to that party's default, was possessed by that party without any obligation of confidence prior to this Agreement (or prior to being designated as Confidential Information), or is lawfully acquired by that party from a third party who is under no obligation of confidence, or which is or has been developed by that party independently of this Agreement.
- 12.3 Nothing in this Agreement will prevent either party from being entitled to disclose Confidential Information to its legal advisors, to protect its own legitimate interests and to comply with any legal, professional or regulatory requirement.
- 12.4 The Customer agrees to reimburse any reasonable costs we may incur in complying with any such disclosure requirement relating to any of our Services to you imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against us, provided that we notify you promptly and, where reasonably or legally possible, prior to disclosure.
- 12.5 The Customer agrees that the Supplier may share Confidential Information with any subcontractors or Associates used to provide the Services on the understanding that they will treat the information as Confidential Information in accordance with the provisions of this Agreement. The Supplier shall ensure that each Associate complies with the obligations imposed on the Supplier under clause 12 as if it were the Supplier.
- 12.6 Either party may disclose Confidential Information, and the Supplier and its Associates may disclose information comprised in any of the Deliverables which it would otherwise not be entitled to disclose but for this Clause 12.5, that it is required to disclose by law or any competent regulatory body or recognised investment exchange provided that, so far as is practicable and lawful, the disclosure shall be made only after consultation with the other party and after taking into account the other party's reasonable requirements as to timing, content and manner of communication.
- 12.7 Nothing in this Agreement will prevent or restrict the Supplier from providing services to other customers (including services which are the same or similar to the Services) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing the Services to the Customer provided that the

Supplier complies with clause 12.1 and does not infringe any Intellectual Property Rights of the Customer.

- 12.8 The Customer agrees that to the extent that the Supplier possesses information obtained under an obligation of confidentiality to another customer or other third party, the Supplier is not obliged to disclose it or make use of it for Customer benefit, however relevant it may be to the Services.

13. Warranties

13.1 The Supplier warrants to the Customer that:

- a. The Supplier has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- b. The Supplier will comply with all applicable legal and regulatory requirements applying to the exercise of the Supplier's rights and the fulfilment of the Supplier's obligations under this Agreement;
- c. The Supplier has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- d. The Customer warrants to the Supplier that it has the legal right and authority to enter into this Agreement and to perform its obligations under the Agreement.
- e. The Parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into the Agreement or any related contract.

14. Entire Agreement

- 14.1 Save for documents created in the provision of the Services, these Supplier Terms, the applicable Service Description, the Supplementary Documents, the Order Form, the Call-Off Contract terms, and the Framework Agreement constitute the entire understanding between the Customer and Change Network, with the order of precedence as set out in clause 8.3 of the Framework Agreement.
- 14.2 It supersedes all previous communications, representations and Contracts either written or oral. The Customer acknowledges that it is not entering into the Contract in reliance upon any representation not set out in the documents referred to above.
- 14.3 No amendment to these Supplier Terms shall be binding unless in writing, signed by the parties or their duly authorised representatives and expressed to be for the purpose of such amendment.

- 14.4 The benefit of this Agreement may not be assigned or otherwise transferred without the prior express written consent of the other party.
- 14.5 Any notices given pursuant to this Agreement shall be in writing, addressed to the relevant contact at the address of the relevant party set forth in this Agreement, and shall be considered given when delivered at that address.
- 14.6 No term shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.
- 14.7 If any provision or part of this Agreement is determined to be illegal or unenforceable, such provision or part will be deemed not to form part of this Agreement, but the remainder of the Agreement will remain in full force and effect to the fullest extent permitted by law.
- 14.8 Any provision of this Agreement which by its nature extends beyond the expiry or termination of the arrangements set out in this Agreement will survive such expiration or termination.
- 14.9 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any disputes which may arise out of or in connection with this Agreement.

For and on behalf of the Customer:

Name:

Signature:

Role:

Date:

For and on behalf of the Supplier:

Name:

Signature:

Role:

Date: