

## e-change/Roadmap<sup>Pro</sup> Standard Terms and Conditions

Last updated: 25 May 2018

These standard terms and conditions (**Standard Terms**) apply to the provision of services by Changefirst Limited (**Changefirst**) to a client pursuant to a Schedule of Works (as defined below).

If you are an Authorised User (as defined below) you also hereby agree to be bound by and comply with these Standard Terms.

### Definitions

**Additional Fee** means the Licence Fee, as notified to the Client by Changefirst in writing, payable by the Client to Changefirst for extension of the current Licence Period;

**Authorised Users** means those employees, agent and contractors of the Client who are authorised by the Client to use the Services and the Documentation;

**Changefirst** means Changefirst Limited, company registered number 03025458 whose registered office is at Burns House, Harlands Road, Haywards Heath, West Sussex RH16 1LR;

**Changefirst Data** means all data other than the Client Data generated using the Services or the facilitation of the Client's use of the Services;

**Client** means a person, firm or company who purchases licence(s) from Changefirst, or is allowed access to e-change/RoadmapPro as part of a Programme, for use by it or its Authorised User(s) to access and use e-change/RoadmapPro;

**Client Data** means data submitted by the Client or Authorised Users for the purposes of using the Services or facilitating the Client's use of the Services;

**Conditions** means these e-change/RoadmapPro terms and conditions;

**Contract** means the contract (incorporating and including any emails relating to the setup of the e-change/RoadmapPro platform between the Client and Changefirst for subscription to e-change/RoadmapPro in accordance with these Conditions;

**Documentation** means all associated documentation made available by Changefirst to the Client;

**e-change/RoadmapPro** means an online portal platform licensed for use by the Client in accordance with these Conditions, whereby Authorised Users gain access to and use e-change/RoadmapPro and agreed online eLearning Products via a login;

**e-learning Products** means the agreed online eLearning products belonging to and provided by Changefirst that Authorised Users may access and use via e-change/RoadmapPro for the Licence Period;

**Fees** means the fees payable by the Client to Changefirst for the User Subscriptions, as set out in the SOW;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;.

**Schedule of Works or SOW** means the schedule of works for the Services which incorporate these Standard Terms.

**Services** means the subscription services provided by Changefirst to the Client from time to time via access to the Software.

**Software** means the online software applications made available by Changefirst from time to time as part of the Services, including, but not limited to, the e-change/Roadmap<sup>Pro</sup> platform and the e-learning training modules(s) accessed via the e-change/Roadmap<sup>Pro</sup> platform, together with all enhancements, updates, upgrades, modifications and alterations to that software as may be supplied or made available to the Client by Changefirst (at Changefirst's sole discretion).

**Subscription Fee** means the fee(s) payable by the Client to Changefirst for the licence of e-change/RoadmapPro (as

applicable) as requested from the Client by Changefirst at the time the Client seeks to subscribe to e-change/RoadmapPro, or use e-change/RoadmapPro outside of accessing e-change/RoadmapPro for the purposes of attending a Programme as notified by Changefirst;

**Subscription Term** means the period set out in the SOW.

**User Subscriptions** means the user subscriptions purchased by the Client pursuant to section 11 below which entitle Authorised Users to access and use the Services and Documentation in accordance with these Standard Terms.

### ***Right to Use***

1. Subject to the Client purchasing and paying for the User Subscriptions in accordance with section 11, Changefirst hereby grants to the Client a non-exclusive, non-transferable right to permit Authorised Users to use the Services, Software and the Documentation during the Subscription Term solely for internal business purposes and in accordance with these Standard Terms.
2. The Client undertakes that the maximum number of Authorised Users that it authorises to access and use the Services, Software and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time, and it will not allow any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User (up to the maximum number of times in aggregate that are permitted as set out in the SOW), in which case the prior Authorised User shall no longer have any right to access or use the Services, Software and/or Documentation. No User Subscription may be reassigned to an individual who has previously been an Authorised User.
3. Subject to the payment of Additional Fees in accordance with section 14 below, Changefirst agrees that it will at the Client's request increase the number of User Subscriptions and grant access to the Services, Software and Documentation to such additional Authorised Users in accordance with these Standard Terms.
4. Neither the Client nor any Authorised User shall reverse engineer, decompile or otherwise endeavour (in whole or in part) to obtain the source code to the Software save to the extent that cannot be prohibited under applicable law.
5. Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, neither the Client nor any Authorised User shall 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.
6. Neither the Client nor any Authorised User shall: (i) access all or any part of the Services, Software and Documentation in order to build a product or service which competes with the Services/Software; (ii) use the Services/Software and/or Documentation to provide services to third parties; (iii) 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 Authorised Users, or (iv) attempt to obtain, or assist third parties in obtaining, access to the Services, Software and/or Documentation, other than as expressly authorised under these Standard Terms.

### ***Client Responsibilities***

7. The Client and the Authorised Users shall provide Changefirst with all necessary co-operation for Changefirst to provide the Services and shall comply with all applicable laws and regulations with respect to its activities under the Contract.
8. The Client shall ensure that the Authorised Users, and the Authorised Users shall, use the Services, Software and the Documentation in accordance with these Standard Terms and the Client shall be responsible for any Authorised User's breach of the Contract.
9. The Client and the Authorised Users shall ensure that its or their network and systems comply with the relevant specifications provided by Changefirst from time to time and shall be solely responsible for procuring and maintaining its or their network connections and telecommunications links.
10. e-change/Roadmap<sup>Pro</sup> accounts are password protected, Client and Authorised Users are solely responsible for keeping their password confidential and secure. They understand that they are responsible for all use of their username and password on the Software. If an Authorised Users' username or password is lost or stolen, or if they believe there has been unauthorized access to their account by third parties, please notify us immediately and change the password as soon as possible.
11. If the Client requests Changefirst to upload any Client Data or third party Intellectual Property Rights or other proprietary materials onto Changefirst's systems ("Platform") (all such materials being "Third Party Materials"), then the Client is responsible for ensuring that all Third-Party Materials can be uploaded onto the Platform and that this does not infringe any

third party Intellectual Property Rights, or any obligations relating to confidentiality, data protection or otherwise. The Client shall indemnify Changefirst in full in relation to any losses, liabilities, costs, damages and expenses that may be incurred by Changefirst in respect of the Client's breach of this section 10.

### **Fees and Payment**

12. The Client shall pay the Fees to Changefirst for the User Subscriptions in accordance with the Contract/SOW.
13. Where payment of the Fees or any part thereof is not made on a due date then Changefirst, without prejudice to its other rights or remedies, shall be entitled at its sole discretion to disable access to all or part of the Services until the outstanding payment is made by the Client.
14. All amounts and fees stated or referred to in these Standard Terms shall be payable in pounds sterling, are non-cancellable and non-refundable, and are exclusive of value added tax, which shall be added to Changefirst's invoices at the appropriate rate.
15. The Client agrees to pay Changefirst Additional Fees in respect of any additional Authorised Users permitted to access the Services and Documentation pursuant to section 2 above.

### **Proprietary Rights**

16. The Client and the Authorised Users acknowledge and agree that Changefirst and/or its licensors own all Intellectual Property Rights used or embodied in the Services, the Software and the Documentation. Except as expressly set out in these Standard Terms, neither the Client nor any Authorised User is granted any rights to, or in, any Intellectual Property Rights, or any other rights or licences, in respect of the Services, the Software or the Documentation.
17. Changefirst confirms that it has all the rights in relation to the Services, Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these Standard Terms.
18. Changefirst shall defend the Client against any claim that the normal use or possession of the Services in accordance with these Standard Terms infringes the Intellectual Property Rights of any third party and shall indemnify the Client for any amounts awarded against the Client in judgement or settlement of such claims, provided that: (i) Changefirst is given immediate and complete control of such claim; (ii) the Client and the Authorised Users do not prejudice Changefirst's defence of such claim; (iii) the Client and the Authorised Users gives Changefirst all reasonable assistance with such claim; and (iv) the claim does not arise as a result of the use of the Services in combination with any unauthorised equipment or programs not supplied or approved by Changefirst. Changefirst shall have the right to replace or change all or any part of the Services to avoid any infringement. The foregoing states the entire liability of Changefirst to the Client and the Authorised Users in respect of the infringement of the Intellectual Property Rights of any third party.

### **Confidentiality**

19. Except with the consent of the disclosing party or as required by law, a court order or by any relevant regulatory or government authority, or to the extent that information has come into the public domain through no fault of the receiving party, each party shall treat as strictly confidential all commercial and technical information relating to the other party received or obtained as a result of entering into or performing the Contract including but not limited to the Software, the Documentation and any information which relates to the provisions or subject matter of the Contract.

### **Data**

20. All Intellectual Property Rights in Client Data shall remain with the Client and/or the Authorised Users (as applicable) and the Client and the Authorised Users hereby grant to Changefirst the right to anonymise and aggregate such Client Data for any purpose. The Client acknowledges that such anonymous and aggregated data shall form part of Changefirst Data.
21. All Intellectual Property Rights in Changefirst Data shall belong to Changefirst and, to the extent that the Intellectual Property Rights in the same do not automatically vest in Changefirst, the Client and the Authorised Users hereby assign such Intellectual Property Rights to Changefirst.
22. To the extent that Client Data contains any personal data (as that term has the meaning set out in Data Protection legislation (DPA 1998, GDPR 2016), the Client shall procure the appropriate consents from data subjects (as that term has the meaning set out in the Data Protection Legislation) (including but not limited to any Authorised User) in respect of such personal data.
23. Changefirst will use your Personal Data to contact you from time to time as specified in section 3, How we use information we collect, in our Privacy Policy - <https://info.changefirst.com/privacy-policy>

## **Warranty**

24. Changefirst warrants that the Software will perform in all material respects in accordance with the functional specification published for the relevant release of the Software and that it will perform its obligations under these Standard Terms with reasonable skill and care.
25. Changefirst does not warrant or represent that: (i) the operation of the Software, or the Client's and/or Authorised Users' use of the Services, will be uninterrupted or error free; (ii) the Software is compatible with any third party computer programs or on all third party hardware configurations; or (iii) the Software is suitable for the Client's and/or the Authorised Users' needs and the Services will meet the Client's and/or the Authorised Users' requirements.
26. The warranties set out in section 22 above shall not apply to defects or failures which arise in whole or in part from use of the Services contrary to Changefirst's instructions, any accident, neglect or misuse of the Software, failure of electrical power or circuitry, unusual stress or storage, transportation, handling, modifying or repairing by the Client and/or the Authorised Users.
27. The warranties set out in section 22 are the only warranties given under the Contract. All other express or implied warranties, terms, conditions and representations in relation to the Services or the Documentation are, to the fullest extent permitted by law, excluded from the Contract, including those concerning satisfactory quality or fitness for purpose.
28. The Client will give notice to Changefirst as soon as it is reasonably able upon becoming aware of a non-compliance of any of the warranties set out in section 22. Changefirst's sole liability and obligation in relation to any non-compliance of warranty under section 22 shall be to use reasonable commercial endeavours to correct any such non-conformance, or repair or replace the parts of the Service causing such non-compliance.

## **Liability**

29. Nothing in these Standard Terms limits or excludes Changefirst's liability for death or personal injury caused by its negligence, fraud or any other liability that cannot be excluded under applicable law.
30. Subject to section 27, Changefirst shall not be liable to the Client and the Authorised Users whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.
31. Subject to section 27, in no event shall the aggregate liability of Changefirst in contract, tort (including negligence or breach of statutory duty) or otherwise in connection with the Contract exceed the Fees paid by the Client for the User Subscriptions during the twelve (12) months immediately preceding the date on which the claim arose.

## **Term and Termination**

32. The Contract shall commence on the date specified on the SOW and, unless otherwise terminated in accordance with these Standard Terms, shall continue for the Subscription Term.
33. Without prejudice to any other rights or remedies, Changefirst may, by written notice to the Client, terminate the Contract with immediate effect if the Client or any Authorised User fails to comply with any of the terms or conditions of the Contract.
34. Upon termination or expiry of the Contract for any reason all licences granted under the Contract shall immediately terminate and all 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 Contract which existed at or before the date of termination shall not be affected or prejudiced.
35. Termination or expiry of the Contract shall not affect the continued existence and the validity of the rights and obligations of the parties under sections of these Standard Terms necessary for the interpretation or enforcement of the Contract.

## **Circumstances Beyond Changefirst's Control**

36. Changefirst shall not be deemed to be in breach of the Contract, or otherwise liable to the Client and/or the Authorised Users, by reason of any delay in performance or non-performance of any of its obligations under the Contract to the extent that such delay or non-performance is due to any circumstances beyond Changefirst's reasonable control.

## **Variations To These Standard Terms**

37. Changefirst may revise these Standard Terms at any time at its discretion. The latest version of these Standard Terms will always be available on Changefirst's website located at [www.changefirst.com](http://www.changefirst.com). Any new version of these Standard Terms shall take effect and will govern the use of the Services on the date of posting on Changefirst's website. Authorised Users are expected to check for updates to these Standard Terms each time the Services are used.

## **General**

38. Neither the Client nor any Authorised User shall assign, transfer, charge or purport to assign, transfer, or charge the Contract or any of its rights or obligations under it without the prior consent in writing of Changefirst.
39. No failure or delay by a party to enforce or exercise any right or remedy under the Contract or by law shall be deemed to be a waiver of that right or remedy, nor shall it operate so as to bar the enforcement or exercise of that or any other right or remedy at any time subsequently. Any waiver of any breach of the Contract shall not be deemed to be a waiver of any subsequent breach.
40. Any notice to be given under the Contract shall be in writing signed by or on behalf of the party giving it, and shall be delivered personally, or sent by recorded delivery to the registered address of the party or such other address as that party may have specified to the other party in accordance with this section.
41. If a court or competent authority finds that any provisions of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision (or part) shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
42. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provisions such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
43. Nothing in the Contract is intended to or shall operate to create a partnership or joint venture between the parties, or to authorise either party to act as agent for the other and neither party shall have authority to act in the name of or on behalf of the other, or to enter into any commitment or make any representation or warranty or otherwise bind the other in any way.
44. The Contract constitutes the entire agreement and understanding between the parties and supersedes and cancels all previous agreements and working arrangements whether oral or written express or implied between the parties in respect of the subject matter of the Contract. Each party acknowledges that upon entering into the Contract, it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party except those expressly set out in the Contract. Nothing in this section shall limit or exclude liability for fraud.
45. A person who is not a party to the Contract shall not have any rights to enforce its terms.
46. These Standard Terms shall prevail over any other terms (including the SOW) in relation to the provision of the Services to the Client.

## **Governing Law**

47. The Contract and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arises out of or in connection with this Agreement, its subject matter or formation.