

Terms and Conditions



The Config Team™
SAP Supply Chain Specialists

1 Definitions and Interpretation

1.1 Defined words and expressions used in this Agreement shall take the following meanings:

Agreement: the agreement comprised of the SoW (if applicable), the Proposal, these Terms and the Schedules hereto.

Authorised User: the employees and agents of the Customer who use the Solution, up to any maximum number specified in the SoW or Proposal.

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

Business Hours: means 09:00 to 17:00 on a Business Day.

Change: an amendment to:

- a. the scope, nature, volume or execution of the Solution; or
- b. any other term, Annex or Schedule of this Agreement.

Change Control Procedure: the procedure for agreeing a Change, as set out in Annex 2 to these Terms.

Commencement Date: means the date on which the Agreement is entered into or, the date advised in writing to the Customer by The Config Team or the date as set out in the SoW.

Confidential information: means any and all confidential information (whether in oral, written or electronic form) imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, services, software, products, solutions and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party.

Customer: the party whose details are set out in the SoW or Proposal.

Customer Data: means any personal data provided by or on behalf of the Customer (or a user of the Solution).

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by The Config Team in connection with the Software, Hardware and Support.

DP Legislation: means any and all applicable data protection legislation in force from time to time including but not limited to the Data Protection Act 2018, the General Data Protection Regulation, the Electronic Communications Data Protection Directive, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the Processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction and the terms **Data Controller**, **Data Processor**, **Data Subject**, **Personal Data** and **Processing** bear the respective meanings given to them in the DP Legislation.

Equipment: hardware and such other equipment or consumable goods owned or operated by the Customer on or in conjunction with the Software.

Fees: the fees payable by the Customer to The Config Team in accordance with and as defined in this Agreement and any additional costs and expenses.

Force Majeure Event: means any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, collapse of buildings, fire, explosion or accident, any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party), and interruption or failure of utility service.

Hardware: the hardware and such other equipment or consumable goods to be provided by The Config Team to the Customer as part of the Solution as detailed in the SoW or the Proposal.

ICC: the International Chamber of Commerce.

Intellectual Property Rights: means:

- a. any and all copyright, database rights and any and all related rights;
- b. source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation;
- c. rights in designs, trade marks, domain names, goodwill, business names, rights to sue for passing off;
- d. patents;
- e. rights in confidential information (including know how and trade secrets); and
- f. any other intellectual property rights (including, where relevant, all extensions, reversions, revivals and renewals of the same),

in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent rights or forms of protection which now, or will in the future, subsist in any part of the world.

IPR Claim: has the meaning given in clause 6.4.

Loss: means any actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, liabilities, losses, penalties, proceedings and settlements and Losses shall be construed accordingly.

Materials: the content, information, instructions, scripts, media, documentation, specifications or other materials provided to The Config Team by the Customer from time to time and in whatever form or media for incorporation in the Solution or otherwise for The Config Team's use in conjunction with the provision of the Solution.

Mediation Rules: the ICC Mediation Rules.

Proposal: the proposal. issued by The Config Team to the Customer.

Record Retention Period: has the meaning given in clause 8.7.

Restricted Person: means any firm, company or person employed or engaged by The Config Team during the term of this Agreement, who or which has been engaged in the provision of the Solution (or any part thereof) or the management of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

Services: the professional services to be provided by The Config Team to the Customer in accordance with Schedule 1 and as more particularly detailed in the SoW or Proposal.

Site(s): the location(s) at which Software is to be used as specified in SoW or Proposal.

Software: means the software to be provided by The Config Team to the Customer as part of the Solution in accordance with Schedule 2 and as more particularly detailed in the SoW or Proposal including The Config Team Software and any Third Party Software.

Solution: means the solution provided to the Customer by The Config Team comprised of any or all of the Services, the Software, the Hardware, the Documentation and the Support (as the case may be and detailed in the SoW or Proposal).

SoW: means the statement of work in the form set out in Annex 1 issued by The Config Team to the Customer and to which these Terms are incorporated and which replaces the Proposal

Support: means the support and maintenance services provided to the Customer by The Config Team in respect of the Software in accordance with Schedule 3 and as more particularly detailed in the SoW or Proposal but which shall include:

- a. investigation into the reported fault in the Software;
- b. correction of errors in the code of any Software and which has been written by The Config Team; and
- c. any other support services agreed between the Customer and The Config Team that The Config Team is responsible for providing.

Term: the period of time during which the Agreement remains in force.

Terms: means these standard terms and conditions.

The Config Team: The Config Team Limited, incorporated and registered in England and Wales with company number 02954758 and whose registered office is at Hallbarrow, Heversham, Milnthorpe, Cumbria, LA7 7EB.

The Config Team Software: means application software, the Intellectual Property Rights to which are owned by The Config Team including any standard software programs which have been modified or are to be modified by The Config Team.

Third Party Software: means any software, the Intellectual Property Rights to which are owned by a third party and which The Config Team makes use of in the course of providing the Solution including any standard software programs which have been modified or are to be modified by The Config Team.

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.

Vulnerability: any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

1.2 In this Agreement, the following rules of interpretation apply:

- a. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- b. A reference to a party includes its personal representatives, successors or permitted assigns.
- c. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- d. References to clauses, Annexes, Schedules and paragraphs are to the relevant clauses, Annexes, Schedules (as applicable) or paragraphs of this Agreement.
- e. The headings to the clauses, Annexes, Schedules and paragraphs of this Agreement will not affect the interpretation.
- f. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- g. A reference to writing or written includes emails.
- h. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

Where there is any conflict between the terms of:

- a. the SoW (if agreed);
- b. the Proposal;
- c. the Schedules; and
- d. these Terms and its Annexes,
the terms set out in the respective document first set out in the list above will prevail.

2 Provision of the Solution

2.1 The Config Team shall provide the Solution with these Terms and the applicable Schedule(s). Whilst The Config Team shall use its reasonable endeavors to comply with any proposed timescales or deadlines in providing the Solution, such times re indicative and time for performance in accordance with them shall not be of the essence.

2.2 The Config Team may, on reasonable prior written notice to the Customer, make changes to the Solution, provided that such changes do not have a materially adverse effect on the Customer's business operations or its enjoyment of the Solution.

2.3 Save in respect of any specific warranties given elsewhere in this agreement, The Config Team does not warrant or guarantee that the Solution, when taken in whole or in part, will contain no Vulnerabilities and it shall be the Customer's sole responsibility to ensure that its cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems under any applicable laws are notified to The Config Team in sufficient detail so they can be implemented by The Config Team.

2.4 The warranties in this Agreement replace all other warranties, conditions, terms and representations expressed or implied including any warranties of merchantability or fitness for particular purpose. The Config Team disclaims and excludes all other warranties to the fullest extent permitted by law.

2.5 Any Change will be subject to the Change Control Procedure.

2.6 Risk in any media bearing any Software and/or Documentation or other information that may from time to time be supplied by The Config Team to the Customer shall pass to the Customer on receipt.

3 Customer Obligations

3.1 The Customer shall be responsible, without any charge to The Config Team, for (in each case as and to the extent applicable):

- a. providing The Config Team with:
 - i. all reasonably necessary co-operation and information as may be required by The Config Team in relation to the performance of its obligations under this Agreement;
 - ii. all necessary access to such information as may be reasonably required by The Config Team;
 - iii. security, approval and access information and configuration services;
 - iv. a suitable network connection to enable connection to the Solution;
 - v. safe access to, egress from and movement around its premises at any time during Business Hours (or on reasonable notice outside of Business Hours), where the same is needed to be accessed by The Config Team in order to perform any of its obligations under this Agreement; and
 - vi. access to such facilities (including computer consumables, computer programs, storage, data preparation, communications facilities and such other Equipment) data (including reasonable test data suitable for use on acceptance tests and the results expected to be achieved by processing such test data) information, documentation, personnel and time on the Customer's computer equipment as The Config Team may reasonably request in connection with the performance of its obligations under this Agreement;
 - vii. the provision and maintenance of the operational and environmental conditions necessary for the proper functioning of the Software and the Equipment and/or the Hardware on or in conjunction with which the Software is used and procuring the maintenance of the same in the manner and form from time to time prescribed by the manufacturer and/or its suppliers;
- b. the safe custody of the Solution and any Equipment and documentation;
- c. maintaining full security copies of all programs (including the Software) and data used on or in conjunction with the Equipment and/or Hardware on or in conjunction with which the Software is used;
- d. compliance with all applicable laws and regulations with respect to its activities under this Agreement;
- e. carrying out all other Customer responsibilities set out in this Agreement in a timely and efficient manner;
- f. obtaining and shall maintain all necessary licences, consents, and permissions necessary for The Config Team, its contractors and agents to perform their obligations under this Agreement;
- g. ensuring that the Software and the Equipment and/or Hardware on or in conjunction with which it is used is operated in a proper manner by competent trained employees;

- i. ensuring that its network and systems comply with the relevant specifications provided by The Config Team from time to time; and
- j. procuring and maintaining its network connections and telecommunications links from its systems to The Config Team's cloud service or data centres (or those of its suppliers, where applicable), 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.

3.2 If The Config Team is obliged to spend additional time in the performance of any of its obligations under this Agreement because of any of the acts or omissions of the Customer or any of its employees, agents, contractors or sub-contractors (including the supply of any incorrect or inadequate data or information), and where any resultant delay results in The Config Team incurring additional costs and expenses then, notwithstanding anything else contained in these Terms and only after seeking prior approval of the Customer:

- a. The Config Team may invoice the Customer for such additional costs and expenses on a time and materials basis; and
- b. the time for performance of any of The Config Team's obligations is extended by a reasonable period in light of the delay.

3.3 The Customer shall be responsible for the accuracy and completeness of the Materials and shall provide them in whatever form and format reasonably required by The Config Team.

3.4 The Customer is responsible for taking all appropriate measures to prevent the outbreak of a Virus on its systems, networks, hardware and all other aspects of its computer systems. For the avoidance of doubt The Config Team will not be responsible for the removal of any Virus introduced by the Customer or any other third party. Any restoration or reconstruction of data, programs or the Solution by The Config Team required by the Customer is fully chargeable and will attach a premium rate if it is required to be performed on an immediate or short-term basis.

3.5 The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including Intellectual Property Rights) and the Customer shall indemnify The Config Team, keep The Config Team indemnified and hold The Config Team harmless, for and against all Losses arising as a result of any action or claim relating to the Materials being in breach of the requirements of this clause.

3.6 The Customer warrants and represents to The Config Team that the representative/individual signing the SoW or issuing the corresponding Customer purchase order referencing the Proposal, has all legal authority and power to enter into the Agreement and bind the Customer.

4 The Config Team's Obligations

The Config Team warrants and represents to the Customer that:

- a. it is fully authorised to enter into, execute and perform all of its obligations under this Agreement;
- b. the officer signing the Agreement on its behalf has all legal authority and power to bind The Config Team;
- c. it has all necessary expertise to comply with its obligations under this Agreement subject to having sufficient resources available; and
- d. it is not subject to any contractual or other restriction that could prevent or materially impede The Config Team from meeting its obligations under this Agreement.

5 Fees and Payment

5.1 The Customer shall pay Fees due to The Config Team in accordance with the payment terms detailed in the SoW or, if no such terms are specified, within thirty (30) days of the date of the invoice to which those Fees relate.

5.2 The Customer agrees and acknowledges that all invoices shall be issued in and it shall pay the Fees in the currency stipulated within the SoW or Proposal.

5.3 The Fees do not include the cost of surcharges or import or customs duties and taxes levied on or payable by The Config Team and the Customer shall pay to The Config Team the amount of any such duties, taxes or surcharges levied on or payable by The Config Team.

5.4 The Customer shall pay all amounts due under this Agreement in full, without deduction, withholding, set-off or counterclaim.

5.5 In the event that The Config Team has not received payment of any due Fees by the due date for payment and without prejudice to any other rights or remedies of The Config Team:

- a. The Config Team may suspend or otherwise disable the provision of, or cease to provide any or all of the Solution whilst the relevant Fees concerned remain unpaid; and
- b. daily interest on such amount at a rate of 2% per annum above the Bank of England's base rate from time to time in force, from the date on which such amount was payable until such amount is paid (both before and after any judgement).

5.6 The Fees exclude value added tax and any applicable additional or substitute taxes, levies, imposts, duties, fees or charges whatsoever and whenever, all of which shall be paid additionally by the Customer in accordance with this Agreement.

5.7 The Fees shall be fixed for twelve (12) months from the date of the first invoice, and shall be subject to an adjustment on each anniversary to reflect the average percentage change in the Consumer Prices Index (CPI)(All items) (United Kingdom) during the previous 12 month period and the appropriate exchange rate, if relevant.

5.8 In the event of a change in applicable law or regulation that materially changes the cost of providing the applicable Solution, The Config Team may give the Customer written notice thereof and the Customer shall have thirty (30) days to accept such increased costs else the applicable portion of the Agreement shall be deemed terminated with immediate effect.

5.9 If the Customer disputes any amount payable under an invoice in good faith, the Customer must notify The Config Team of the dispute within five (5) Business Days of receipt of the invoice. Any non-disputed amount is payable in accordance with clause 5.2. Both parties must negotiate in good faith to resolve any payment dispute, and interest on the disputed amount will not be payable until the dispute has been resolved and the Customer has received a reasonable period of time in which to pay any further amounts owing.

6 Intellectual Property Rights

6.1 The parties agree that any and all Intellectual Property Rights in or arising out of or in connection with the Solution (or any part thereof), shall be owned by The Config Team (or its licensors) and that for the avoidance of doubt any and all Intellectual Property Rights remain in the possession of The Config Team (or its licensors) at all times, do not transfer to the Customer and the Customer is not permitted to make an onward sale or transfer of the Solution (or any part thereof), to any third party without the prior written consent of The Config Team (or its licensors).

6.2 The Config Team hereby grants a non-exclusive, royalty-free, revocable licence to the Customer to make use of the Intellectual Property referred to in clause 6.1 strictly for and limited to making use of the Solution (or any part thereof).

6.3 The Customer shall use reasonable endeavours to prevent any infringement of The Config Team's Intellectual Property Rights and shall promptly report to The Config Team any such infringement that comes to its attention. In particular, the Customer shall:

- a. ensure that each Authorised User, before starting to use the Solution, is made aware that it is proprietary to The Config Team and that it may only be used and copied in accordance with this Agreement;
- b. implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Solution, save to the extent provided for by this Agreement; and
- c. not permit third parties to have access to the Solution without the prior written consent of The Config Team, who may require that such third party executes a written confidentiality agreement before being given access to the Solution.

6.4 Provided that The Config Team makes no warranty that the Solution (or any part thereof) does not breach the Intellectual Property Rights of any third party, if the Solution (or any part thereof) is found to breach a third party's Intellectual Property Rights and such breach is found to be at the fault of The Config Team (**IPR Claim**), The Config Team shall at its absolute discretion:

- a. use all reasonable endeavours to obtain the right for the Customer to continue to use the Solution (or applicable part thereof); or

- b. replace or modify the Solution (or applicable part thereof) so that it becomes non-infringing without materially affecting its functionality.

6.5 Where The Config Team replaces or modifies the Solution in accordance with this clause, the Solution shall be deemed to take the form of the replaced or modified Solution.

6.6 The Config Team shall have no liability under this clause to the extent that any IPR Claim arises from any modification of the Solution undertaken by the Customer without The Config Team's prior written consent or from any use of the Solution by the Customer in breach of the terms of this Agreement.

6.7 The Customer shall indemnify The Config Team, keep The Config Team indemnified and hold The Config Team harmless from and against any and all Loss (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by The Config Team arising out of or in connection with any claim that its use of Materials supplied by it to The Config Team in connection with the performance of its obligations under this Agreement infringes the Intellectual Property Rights of any third party.

7 Confidentiality

7.1 Each party agrees and undertakes that it shall maintain the confidentiality of and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party the other party's Confidential Information and shall not, without the prior written consent of the other party, use, disclose, copy or modify such Confidential Information or permit others to do so other than as necessary for the performance of its right and obligations under the Agreement.

7.2 Each party shall:

- a. disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under this Agreement, and
- b. to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

7.3 Each party shall:

- a. give notice to the other party of any unauthorised misuse, disclosure, theft or loss of its Confidential Information immediately upon becoming aware of the same;
- b. take all reasonable steps to maintain the confidentiality of the Confidential Information;
- c. maintain adequate security measures to safeguard the Confidential Information from theft, and from access by any person other than as permitted by this Agreement; except as expressly permitted under Section 50B of the Copyright, Designs and Patents Act 1988 not copy, alter, modify or adapt the Confidential Information in any way whatsoever, or permit the Solution to be combined with or to become incorporated in any other programs unless carried out by The Config Team, or decompile or disassemble the executable code version of any Solution, or attempt to do or permit the doing of any of these things;
- d. not (and the Customer shall use its reasonable endeavours to procure that no person other than its personnel will) access, use, copy, alter, modify or adapt any source code; and
- e. promptly bring to the other party's attention any infringement of its rights in, or any unauthorised use of, the Confidential Information, which it becomes aware of.

7.4 The provisions of this clause shall not apply to information which is:

- a. or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
- b. lawfully received by the other party from a third party free of any obligation of confidence at the time of its disclosure;
- c. independently developed by the recipient, without access to or use of such information; or
- d. required by law, by court or governmental or regulatory order to be disclosed provided that the other party is, where possible, notified at the earliest opportunity.

7.5 Whilst The Config Team may publicly announce that a business relationship has been entered into with the Customer, The Config Team shall not, without the prior written consent of the Customer not to be unreasonably withheld or delayed publicise the details or terms of this Agreement or use the Customer's name or brand in the context of endorsing the quality of its work.

8 Data Protection and Anti-Bribery

8.1 Each party shall, in performing its obligations under this Agreement, comply with the DP Legislation.

8.2 If The Config Team processes any Customer Data when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the Data Controller and The Config Team shall be a Data Processor and in any such case:

- a. the Customer warrants that it has a legal basis under the DP Legislation to enable the lawful transfer of the Customer Data to The Config Team for the Term and the purposes of the Agreement and, where required under the DP Legislation, it has obtained the prior and express consent of each Data Subject to transfer the Customer Data to The Config Team in accordance with DP Legislation and that the Customer is accordingly entitled to transfer the Customer Data to The Config Team so that it may lawfully use, process and transfer the Customer Data in accordance with this Agreement;
- b. the Customer acknowledges and agrees that the Customer Data may be transferred or stored outside the European Economic Area (EEA) or the country where the Customer and the Data Subjects are located in order to provide the Solution and perform The Config Team's other obligations under this Agreement;
- c. the Customer warrants that it is entitled to transfer the relevant Customer Data to The Config Team having obtained the Data Subject's express consent so that The Config Team may lawfully use, process and transfer the Customer Data in accordance with this Agreement on the Customer's behalf;
- d. the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, Processing, and transfer as required by the DP Legislation; and
- e. each party shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of the Customer Data or its accidental loss, destruction or damage.

8.3 The Config Team shall:

- a. only carry out Processing of any of the Customer Data on the Customer's and any other lawful instructions given from time to time;
- b. only transfer the Customer Data to countries outside EEA that ensure an adequate level of protection for the rights of the Data Subject; and
- c. promptly and fully notify the Customer in writing of any notices in connection with the Processing of any Customer Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.

8.4 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for The Config Team to use reasonable commercial endeavours to restore the Customer Data which has been lost or damaged from the latest back-up of such maintained by the Customer.

8.5 Except as expressly provided otherwise, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any data, which is not Personal Data.

8.6 The Config Team shall:

- a. comply with all applicable laws, statutes, and regulations relating to bribery and corruption (collectively, the **Anti-Bribery Laws**) including but not limited to the UK Bribery Act 2010;
- b. ensure that its associated persons (as defined in the UK Bribery Act 2010 and related guidance) comply with the Anti-Bribery Laws;
- c. comply with such of the Customer's policies relating to bribery and corruption as may be notified to The Config Team from time to time (the **Anti-Bribery Policies**);

- d. implement and maintain its own policies, procedures and controls, including but not limited to 'adequate procedures' (as defined in the Bribery Act 2010 and related guidance), to ensure compliance by itself and its associated persons with the Anti-Bribery Laws and the Anti-Bribery Policies, and shall enforce them where appropriate;
- e. promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by The Config Team in connection with its performance pursuant to this Agreement; and
- f. provide such certifications, access to premises, access to staff, and other supporting evidence of compliance with this clause 8.6 as the Customer reasonably requests.

8.7 The Config Team shall, at its sole cost and expense, retain all records, information, materials and documents relating to this Agreement until the later of the following dates or events:

- a. five (5) years after expiration or termination of this Agreement;
- b. all pending matters relating to this Agreement (e.g. disputes) being closed;
- c. all obligations necessary to meet the Customer's notified records retention policy (as modified from time to time) being completed; or
- d. all obligations necessary to comply with applicable law being completed;

(Record Retention Period).

8.8 The Config Team shall permit the Customer, and its authorised representatives, during the term of this Agreement and throughout the Record Retention Period described above, to perform an audit on reasonable notice and at pre-agreed times and The Config Team shall, on reasonable notice and at pre-agreed times, permit the Customer, and its authorised representatives, to access (and, as appropriate, to photocopy) all goods, records, information, materials, and documents relating to this Agreement strictly for the purposes of verifying The Config Team's compliance with its obligations under this Agreement and its compliance with applicable laws, rules and regulations.

9 Indemnity and Limitation of Liability

9.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract, breach of statutory duty or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause.

9.2 The Customer assumes sole responsibility for results obtained from the use of the Solution and for any conclusions drawn from such use. The Config Team shall have no liability for any Losses caused by errors or omissions in any Materials or information provided to The Config Team by the Customer in connection with the Solution, or any actions taken by The Config Team at the Customer's direction.

9.3 Subject to sub-clause 9.6, The Config Team shall not be liable to the Customer or any third party arising out of or in connection with this Agreement:

- a. for any Losses in excess of the sum of all Fees paid or payable to The Config Team by the Customer under the relevant SoW or Proposal (as applicable) in the preceding twelve (12) months; and
- b. for any:
 - i. consequential, indirect or special Losses;
 - ii. loss of profit;
 - iii. loss of contract or business;
 - iv. loss of opportunity;
 - v. loss of savings, discount or rebate (whether actual or anticipated);
 - vi. damage to, loss or corruption of data;
 - vii. harm to reputation or loss of goodwill; and/or
 - viii. any other Losses of a pure economic nature.

9.4 Subject to clauses 9.2 and clause 9.5:

- a. in no event shall The Config Team, its employees, agents and sub-contractors be liable to the Customer or any third party for any Losses arising from issues with the Solution (or part thereof) or to the extent that any alleged infringement of Intellectual Property Rights is based on:
 - i. a modification of the Solution by anyone other than The Config Team; or

- ii. the Customer's use of the Solution in a manner contrary to the instructions given to the Customer by The Config Team; or
- iii. the Customer's use of the Solution after notice of the alleged or actual infringement from The Config Team or any appropriate authority; or
- iv. the fraudulent or unauthorised use of any Solution by the Customer; or
- b. the Customer's installation of any applications, utilities or other software programs or hardware or re-configuration of the Solution (including, but not limited to, hardware, firmware, software, programming, configuration and service) or otherwise modifies or alters any of the foregoing.

9.5 The Customer shall indemnify The Config Team, keep The Config Team indemnified and hold The Config Team harmless from and against any and all Loss (including any direct, indirect, special or consequential Loss, loss of profit, loss of business, contract, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by The Config Team arising out of or in connection with:

- a. the Customer's breach of this Agreement howsoever arising;
- b. any wilful or negligent act or omission of the Customer, its officers, employees, contractors or agents; and
- c. the Customer's use of the Solution.

9.6 The exclusions and limitations of liability set out in this clause shall not apply in respect of:

- a. death or personal injury;
- b. fraud or fraudulent misrepresentation; or
- c. any other Losses which cannot be excluded or limited by applicable law.

10 Non-Solicitation

10.1 In order to protect the legitimate business interests of The Config Team, the Customer covenants with The Config Team that it shall not (except with the prior written consent of The Config Team) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.

10.2 The Customer shall be bound by the covenant set out in clause 10.1 during the term of this Agreement and for a period of twelve (12) months after termination or expiry of this Agreement.

10.3 If the Customer commits any breach of this clause, it shall, on demand, pay to The Config Team a sum equal to one year's salary of the Restricted Person, or the annual fee that would have been payable by The Config Team in relation to the services provided by the Restricted Person plus the recruitment costs incurred by The Config Team in replacing such person.

11 Export and Import Control

11.1 The Customer acknowledges that the export of computer products and/or technology may be subject to UK government export regulations or restrictions. Where the Customer exports or re-exports any computer hardware and/or software it agrees to comply with the relevant export regulations and/or restrictions in force from time to time. Furthermore, the Customer agrees to keep The Config Team accurately informed of all regulations or restrictions relevant to export or import of the particular products which it is supplying to the Customer.

12 Term and Termination

12.1 This Agreement shall be for the Term commencing with the Commencement Date and save where terminated earlier in accordance with clause 12.2, continue in accordance with the relevant provisions of the applicable Schedule.

12.2 The Config Team may terminate this Agreement (in full or in relation to any individual or combination of Schedules) immediately by written notice to the Customer in the event that:

- a. the Customer fails to pay any undisputed amounts due to The Config Team;
- b. the Customer commits any breach of this Agreement that is irremediable or, if remediable, is not remedied by the Customer within fourteen (14) days of receipt of The Config Team's written notice specifying the breach and requiring its remedy; or
- c. any regulatory decision or governmental order requiring The Config Team to suspend or terminate the provision of its obligations under this Agreement.

12.3 Either party may terminate this Agreement (in full or in relation to any individual or combination of Schedules) immediately by written notice to the other in the event that:

- a. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
- b. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- c. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- d. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- e. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- f. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- g. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- h. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.3(a) to clause 11.2(h) (inclusive); or
- i. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.4 In any circumstance in which The Config Team may terminate any or any portion of this Agreement, it may exercise its right to suspend performance of any of its obligations. Such exercise of the right to suspend shall:

- a. be without liability to the Customer; and
- b. not function as a waiver of any right of termination that The Config Team may have under this Agreement.

12.5 On termination of this Agreement by The Config Team, all licences granted by The Config Team under this Agreement shall terminate immediately and the Customer shall return to The Config Team the relevant licences and/or documentation and all copies of the relevant documentation or, if requested by The Config Team, destroy them and certify in writing to The Config Team that they have been destroyed.

12.6 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of any person at any time up to the date of termination and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.

13 Notices

13.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, or by commercial courier or email.

13.2 A notice or other communication shall be deemed to have been received if:

- a. delivered personally, when left at the address referred to in clause 13.1;
- b. sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
- c. delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- d. sent by email, one Business Day after transmission.

13.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

14 Force Majeure

14.1 Provided it has complied with clause 14.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.2 The Affected Party shall:

- a. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
- b. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than two (2) months, the party not affected by the Force Majeure Event may terminate this agreement by giving two (2) weeks' written notice to the Affected Party.

15 No Partnership or Agency

15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other.

15.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

16 Entire Agreement

16.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

17 Variation

17.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18 Assignment and Other Dealings

18.1 This Agreement is personal to the Customer and the rights and obligations hereunder may not be assigned, sub-contracted or transferred to a third party without the prior written approval of The Config Team.

18.2 The Config Team may assign, sub-contract or otherwise transfer its rights and obligations hereunder without the Customer's prior written consent.

19 No Automatic Waiver

19.1 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.

19.2 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.

20 Severance

20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

20.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21 Third Party Rights

21.1 No one other than a party to this Agreement shall have any right to enforce any of its terms.

22 Multi-Tiered Dispute Resolution

22.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly provided in this Agreement, the parties may at their discretion follow the procedure set out in this clause:

- a. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute; and
- b. if the management level employees are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it.

22.2 If the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle it by mediation.

- a. The parties shall have recourse to mediation in accordance with the Mediation Rules, which are deemed to be incorporated by reference into this clause.
- b. If the Dispute is not settled by mediation within thirty (30) days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be submitted to the International Court of Arbitration of the ICC whose seat shall be London and shall be finally settled under the ICC Arbitration Rules, by one or more arbitrators appointed in accordance with the ICC Arbitration Rules. The Emergency Arbitrator Provisions under the ICC Arbitration Rules shall not apply.
- c. This clause 22 takes the form of an arbitration agreement and is governed by the law of England and Wales.
- d. The language to be used in the mediation and in the arbitration shall be English.

22.3 If the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is registered in the United Kingdom, the parties may commence court proceedings under clause 24 in relation to the whole or part of the Dispute.

23 Governing Law

23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

24 Jurisdiction

24.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

End of Document



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Strength in Knowledge

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