

4C Strategies Exonaut® Software as a Service Terms and Conditions

1. Definitions

In these 4C Strategies Exonaut Software as a Service Terms and Conditions V2.0(ENG/ENG), (“**SaaS Terms**”), the following terms shall have the meanings set out below. Capitalised terms not otherwise defined in these SaaS Terms shall have the meaning given to them in the applicable Order Form and any addenda to these SaaS Terms or other documents that form part of the Agreement.

Confidential Information	means any information, whether or not marked or described as confidential, that is disclosed by one party (“ Discloser ”) to the other party (“ Recipient ”) and that at the time of disclosure should have been understood by the Recipient to be confidential, including (but not limited to) Customer Data, Deliverable Materials, Deliverable Software Components, source code, commercial and other business secrets and the contractual terms of the Discloser or third parties. Notwithstanding the foregoing, Confidential Information does not include information that (i) is in Recipient’s possession at the time of disclosure; (ii) is independently developed by Recipient without use or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient’s improper action or inaction; (iv) is approved for release in writing by Discloser.
Connection Point	means the point where 4C connects the Platform to a general electronic communications network.
Customer Data	means all data (including Customer Personal Data) that is uploaded to or stored on the Platform either by Customer or by 4C in accordance with Customer’s instructions, as well as all data transmitted by the Platform at Customer’s initiative or generated by the Platform as a result of Customer’s use of the Software Service.
Force Majeure	means an event arising by reason of circumstances outside a party’s reasonable control including, but not limited to, earthquakes, floods and other natural disasters, terrorism, fire, explosions, strikes, embargoes, labour disputes, acts of civil or military authority, war, a fault or failure of the internet or any public telecommunications network, power blackouts, communication line failures, hacker attacks, denial of service attacks, viruses or other malicious software attacks, omissions of suppliers, acts of regulatory or governmental agencies or actions or decrees of governmental bodies.
Go Live Date	means the date on which 4C provides Customer with access to the Software Service.
Full Access Named User	means a Named User who may use all commercially available functionalities of the Software Service within the scope of the Solution(s), including back-end configuration.
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, know-how, and any other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Named User	means a Full Access Named User or a Read and Report Named User who has been uniquely identified by Customer in accordance with Section 3.
Platform	means the Software, hardware, systems and networks used by 4C to provide the Software Service over the internet.
Software Service Documentation	means the User Manual and the Customer Hardware and Software Specifications.
Read and Report Named User	means a Named User who may use the Software Service solely to read and report incidents and/or activities within the scope of the Solution(s).
Support Portal	means 4C’s customer-facing website, which provides access to Support Services, tools, the User Manual and other related documentation.
Support Service	means 4C’s provision of Upgrades and services to resolve Support Issues in accordance with the Service Level Addendum.
Term	means the term of the Agreement, starting on the date it enters into force and continuing for the Initial Term and any subsequent Renewal Term(s) until termination in accordance with the Agreement.
User Manual	means the description of the functionality of the Software used by 4C to provide the Software Service (as a part of the Platform) that is available on the Support Portal.

2. Provision of the Software Service

4C shall provide the Software Service to Customer at the Connection Point in accordance with the Service Level Addendum from the Go Live Date until the Agreement terminates.

4C grants to Customer a non-exclusive right to access and use the Software Service during the Term, subject to the limitations regarding the purpose of use (Solution), territorial scope and number of Named Users set out in the Order Form and subject to the prohibitions set out in Section 4 of these SaaS Terms and otherwise in the Agreement.

3. Named Users and User Administrators

A Named User must be either an employee or an official or a subcontractor or an agent of/to Customer. Customer must provide 4C with a list of Named Users within reasonable time from the execution of the Agreement and 4C shall set up accounts for Named Users so that they can access and use the Software Service from the Go Live Date.

Customer may replace Named Users as necessary to reflect personnel and subcontractor or agent changes, provided that the number of individuals authorised to use the Software Service does not exceed the maximum number of Named Users set out in the Order Form. Customer must inform 4C about any replacements before they take effect.

Customer may appoint one Named User as User Administrator. The User Administrator has the right to create and administer user accounts for other Named Users to use the Software Service in accordance with the Agreement.

4. Software Service prohibitions

Except to the extent expressly permitted by the Agreement or required by applicable law on a non-excludable basis, Customer's right to access and use the Software Service is subject to the following prohibitions:

- a) Customer must not sub-license any of the rights granted under Section 2;
- b) Customer must not sell, rent, lease, loan, publish, distribute or time-share the Software Service;
- c) Customer must not reverse engineer, de-compile, disassemble or otherwise attempt to derive the source code, techniques or processes, algorithms or know-how or other information of the Platform or Software Service, as applicable;
- d) Customer must not alter, edit or adapt the Platform or the Software Service without prior written approval from 4C.

5. No assignment of intellectual property rights

4C and 4C's license providers are the owners of all Intellectual Property Rights to the Software and the Software Service, including any modifications thereof. Nothing in the Agreement shall operate to assign or transfer any Intellectual Property Rights from 4C to Customer or from Customer to 4C.

Customer may copy and distribute the Software Service Documentation within Customer's organisation for internal purposes during the Term of the Agreement. Customer may not disclose the Software Service Documentation to any third parties without prior written consent from 4C with respect to each such third party.

6. 4C's right to modify the Software Service

4C may without prior notice make non material modifications the Software Service or the way in which it is provided.

7. Customer Data and Backups

Customer hereby grants to 4C a non-exclusive licence to copy, reproduce and store the Customer Data to the extent reasonably required for the performance of 4C's obligations under the Agreement and subject to the Data Processing Addendum. Customer warrants that the Customer Data, when processed by 4C in accordance with the Agreement, will not infringe the Intellectual Property Rights of any person and will not breach the provisions of any law, statute or regulation under any applicable law.

4C shall create a back-up copy of the Customer Data at least daily and shall ensure that the latest copy is sufficient to enable 4C to restore the Software Service to the state it was in at the time the back-up was taken and in accordance with the Data Processing Addendum.

8. Customer's Responsibilities

Customer must

- a) follow, and ensure that all Named Users follow, 4C's instructions regarding use of the Software Service (including instructions regarding log-ins and security procedures) to protect the Software Service against unauthorised use;
- b) provide information and otherwise assist 4C as reasonably necessary for 4C to carry out its obligations under the Agreement,
- c) comply with the Customer Hardware and Software Specifications (including any updates) so that 4C can fulfil its obligations under the Service Level Addendum and otherwise under the Agreement.

9. Confidentiality

A Recipient must:

- a) not disclose the Discloser's Confidential Information
 - (i) to any of Recipient's officers, employees or contractors (including subcontractors) other than on a need to know basis and only provided that such person executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Section 9, or;
 - (ii) to any other third parties than to Recipient's contractors (including subcontractors) without Discloser's prior written consent and then only under conditions of confidentiality approved in writing by the Discloser;
- b) must not use Confidential Information for any purpose other than to facilitate 4C's provision of, and Customer's use of, the Software Service and delivery of Deliverable Materials and to fulfil its obligations under the Agreement;
- c) must protect Discloser's Confidential Information with the same degree of care it uses to protect its own Confidential Information of similar nature and importance, but with no less than reasonable care.

Notwithstanding the foregoing, Recipient may disclose Confidential Information to the extent that is necessary, if required to do so by legal or governmental authority. Upon termination of the Agreement, Recipient shall, at the request of Discloser, either return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.

The provisions of this Section 9 shall continue in force for a period of 5 years following the termination of the Agreement, at the end of which period they will cease to have effect.

10. Warranties

4C warrants to Customer that

- a) it has the legal right and authority to provide the Software Service and to perform its obligations under the Agreement;
- b) the Software incorporated into the Platform will function in all material aspects with the User Manual;
- c) the Platform will conform with the specifications set out in the Order Form as regards the numbers and types of server instances;
- d) the Software Service will be provided free from viruses, spyware and other malicious software programs.

11. Warranty limitations and acknowledgement

Customer acknowledges that complex software is never wholly free from defects, errors or bugs; and subject to the other provisions of the Agreement, 4C gives no warranty or representation that the Platform or the Software Service will be wholly free from defects, errors and bugs. Customer also acknowledges that the Software Service is only designed to be compatible with the systems, networks, applications, programs, hardware or software (as applicable) specified in the Customer Hardware and Software Specifications.

Except for the express warranties specified above in Section 10, 4C makes no warranty, representation or promise. To the maximum extent permitted by applicable law, all warranties or representations concerning the subject matter of the Agreement, including implied conditions of satisfactory quality and fitness for purpose or implied warranties arising from a course of dealing or course of performance are excluded.

12. Remedies for breach of Warranty

In the event of 4C's breach of the warranties provided in Section 10, 4C shall a) repair the Platform b) replace the Software with Software of substantially similar functionality, or c) if such attempts do not succeed after a reasonable time, refund an amount of the Annual Fee corresponding to the remaining time of the period to which it relates.

13. 4C's indemnification to Customer

4C will indemnify and defend Customer against all damages, liabilities and expenses (including reasonable legal fees, court costs, expenses and settlements resulting from any action or claim) arising out of any third-party allegation that Customer's use of the Software Service infringes a patent, copyright or trade secret of a third party. The foregoing shall, however, not apply if the action or claim arises from Customer's breach of the Agreement or failure to accept an Upgrade that would have avoided the alleged infringement or to the extent that the claim arises out of use of the Software Service in combination with hardware or software not approved by 4C.

Customer must give timely notice of an indemnified claim under this Section 13 to 4C after Customer becomes aware of it. 4C will have the option, at its expense, to employ counsel reasonably acceptable to Customer to defend against such claim (including appeals) and to settle or otherwise dispose of the claim; provided, however, that no settlement admitting liability of or imposing any obligations upon Customer may be affected without the prior written consent of Customer.

At its sole expense, 4C shall either a) secure for Customer the right to continue using the Software Service; or b) modify the Platform so that it is non-infringing or c) replace the infringing component with a functionally comparable substitute. If none of the foregoing options are available to 4C, either party may terminate the Agreement and 4C shall refund Customer an amount of the Annual Fee corresponding to the remaining time of the period to which it relates.

14. Customer's indemnification to 4C

Customer will indemnify, defend at its expense and hold harmless 4C from all damages, liabilities and expenses (including reasonable legal fees, court costs, expenses and settlements resulting from any action or claim) arising out of, in connection with or resulting in any way from any allegation that Customer Data infringes third party rights or otherwise violates any applicable laws.

15. Limitation of liability

Neither party shall be liable to the other party in respect of a) any loss of profits or anticipated savings, b) any loss of revenue or income, c) any loss of use or production, d) any loss of contracts or opportunities and e) any other special, indirect or consequential loss or damage.

Neither party's liability arising out of or in connection to the Agreement shall exceed the lower of a) the Annual Fee for the Software Service in the year that the loss occurred or b) £1,000,000.

Nothing in the Agreement shall a) limit or exclude any liability for death or personal injury resulting from negligence; b) limit or exclude any liability for fraud or fraudulent misrepresentation; or c) limit or exclude any liabilities in any way that is not permitted under applicable law.

16. Force majeure

Neither party shall be liable to the other party for delay or failure in performance of any of its obligations under the Agreement as a result of Force Majeure. Where there is an event of Force Majeure, the party prevented from or delayed in performing its obligations under the Agreement must immediately notify the other party giving full particulars of and the reasons for the event of Force Majeure preventing that party from, or delaying that party in performing its obligations under the Agreement. The party that is prevented or delayed from performing its obligations due to Force Majeure must use its reasonable efforts to mitigate the effect of the event upon its performance or fulfilment of its obligations under the Agreement.

4C may terminate the Agreement, immediately upon written notice to Customer, if a Force Majeure event continues substantially uninterrupted for a period of thirty days or more.

17. Payments

4C shall issue invoices for the Annual Fees to Customer in advance of the period to which they relate. Customer must pay each Annual Fee within the period of 30 days following the issue of an invoice. Project Expenses will be invoiced from time to time as they are incurred.

If Customer does not pay an amount due to 4C under the Agreement, Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England base rate from time to time, which will accrue daily until the date of actual payment and be compounded at the end of each named calendar month.

18. Annual Fee adjustment

After the Initial Term and after any subsequent Renewal Term, 4C has the right to increase the Annual Fee by no more than 4%, provided that 4C gives at least 90 days' notice before the start of the first 1-year period to which the increase applies. If Customer does not wish pay the increased Annual Fee, Customer may terminate the Agreement in accordance with Section 3 of the Order Form (which affords the parties with the same termination rights as Section 20 of these SaaS Terms).

19. Suspension of the Software Service

4C has the right to suspend Customer's access to the Software Service if

- a) Customer fails to make a payment under the Agreement that has fallen due;
- b) 4C detects a risk that Customer's use of the Software Service may harm the Platform or 4C's systems in general;
- c) 4C reasonably suspects that Customer is using the Software Service in violation of applicable laws.

20. Termination

The Agreement shall come into force on the date that the Order Form is signed by both parties (which is also the Start Date of the Initial Term) and will continue until the end of the Initial Term set out in the Order Form. Thereafter, the Agreement shall renew for successive renewal terms of equal length as the Initial Term (each a "**Renewal Term**"), unless either party refuses such renewal by written notice 60 or more days before the end of the Initial Term or Renewal Term, as applicable.

4C may, without prejudice to any other remedies that 4C may have, terminate the Agreement immediately if Customer breaches Sections 2 (Provision of Software Service) or 4 (Software Service Prohibitions).

Either party may terminate the Agreement

- a) on 30 days' written notice in the event of a breach, unless the other party cures such breach before the effective date of termination;
- b) immediately by giving written notice of termination if (i) an order is made or a resolution is passed for the winding up of the other party; (ii) an order is made for the appointment of an administrator, administrative receiver, liquidator, receiver or similar over the assets of the other party; or (iii) the other party is or becomes insolvent.

21. Effects of termination

Upon the termination of the Agreement for any reason, all of the provisions of the Agreement shall cease to have effect, save that the following provisions of the Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Sections 9, 15, 17, 21 and 22 of these SaaS Terms. Except to the extent that the Agreement expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

In the event that Customer terminates the Agreement based on 4C's material breach, 4C shall refund Customer an amount of the Annual Fee corresponding to the remaining time of the period to which it relates.

22. 4C's right to audit Customer's use of the Software Service

During the Term of the Agreement and for 1 year thereafter, 4C may audit Customer's use of the Software on 7 day's advance written notice. Customer shall cooperate with the audit by providing access to any books, computers, records or other information that relate or may relate to Customer's use of the Software Service. Such audit shall not unreasonably interfere with Customer's business activities. If 4C discovers unauthorised use

of the Software Service or a violation of the prohibitions set out in these SaaS Terms, Customer shall reimburse 4C for the reasonable cost of the audit, in addition to such other rights and remedies as 4C may have.

23. Amendments

Any amendments to the Agreement must be made in writing and be signed by authorized representatives of both parties.

24. Notices

Any request for Service Credits or other notice from one party to the other party under the Agreement must be given to the Contact Person set out in the Order Form by one of the following methods:

- a) delivered personally or sent by courier, in which case notice shall be deemed to be received upon receipt; or
- b) sent by letter signed for registration, in which notice shall be deemed to be received five days following posting; or
- c) email, in which case notice shall be deemed to be received when the email is received by recipient's server, provided that the party sending the email has cc:d info@4cstrategies.com.

25. No waiver

Neither party will be deemed to have waived any of its rights under the Agreement by lapse of time or by any statement or representation other than by an authorised representative in an explicit written waiver. No waiver of a breach of the Agreement will constitute a waiver of any other breach of the Agreement.

26. Severability

If any provision or part-provision of the Agreement is determined by any court or other competent authority to be unlawful or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable in part or if it were deleted, that part will be deemed deleted, and the rest of the provision will continue in effect.

27. Third party rights

The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

28. Assignment

Neither party may assign, transfer, license or otherwise deal or dispose of any contractual rights or obligations under the Agreement without the prior written consent of the other party.

Notwithstanding the foregoing, 4C may assign the Agreement to its affiliates and either party may assign the Agreement to the surviving party in a merger of that party into another entity or in an acquisition of all or substantially all that party's assets, provided that the assignee agrees in writing to be bound by all the assigning party's rights and obligations set forth in the Agreement.

29. Governing Law and Dispute Resolution

The Agreement shall be governed by the substantive laws of England.

Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of Arbitration ("**LCIA**") Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, United Kingdom. The language to be used in the arbitral proceedings shall be English.