

# Exonaut@ Software as a Service Terms and Conditions

## 1. Introduction

These Exonaut Software as a Service Terms and Conditions V2.3 (ENG), (the "SaaS Terms"), shall apply when attached to or referred to from an Agreement (as defined below), entered into between 4C and Customer, as such Parties are defined in the Agreement. These SaaS Terms, as they may be updated from time to time in accordance with Section 25, shall be incorporated and form an integral part of the Agreement.

4C and Customer are hereafter jointly referred to as the "Parties" and individually referred to as a "Party".

## 2. Definitions

In these SaaS Terms, the following capitalised terms shall have the meanings set out below. Capitalised terms not defined herein shall have the meaning given to them in the Agreement.

Acceptance Test	means the earliest date following the Acceptance Test, agreed by the Parties, upon which Software is made available for use in a production environment.
Agreement	means an order form, agreement and other contractual document relating to the provision and use of the Exonaut Software.
Annual Fee	means the subscription-based fee paid every 12 months for the Software Services.
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 physical connection point (e.g. a network access point) specified by 4C (e.g. in the Software Documentation) 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.
Development Services	means a new functionality, feature, component or service which is requested by the Customer in writing and agreed by 4C to be developed by 4C for implementation in 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, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or actions or decrees of governmental bodies.
Full Access 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.
Go Live Date	means the date stated in the Order Form on which 4C shall provide Customer with access to the Software Service.
Implementation service	means implementations, configurations and education/training services and other professional services, both technical and non-technical, performed or delivered by 4C under these SaaS Terms but excluding the SaaS Services and Maintenance Service.

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, including Development Services, 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 User or a Read and Report User who has been uniquely identified by Customer in accordance with Section 4.
Platform	means the Software, hardware, systems and networks used by 4C to provide the Software Service for use by the Customer over the internet.
Read and Report 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).
Software Documentation	means the User Manual and the Client-Side Requirements.
Software Service	means the service, including any Development Services, that 4C will make available to Customer via a Platform according to the specifications in the Order Form.
Support Portal	means 4C's customer-facing website, which provides access to Support Services, tools, the User Manual and other related documentation and information.
Term	means the term of the Agreement, starting on the day the Agreement 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 that is available on the Support Portal.

### 3. Provision of the Software Service

- 3.1. 4C shall provide a) the Implementation Service according to the Set Delivery Date(s) set in the Order Form; and b) the Software Service to Customer at the Connection Point in accordance with the Service Level Agreement from the Go Live Date until the Agreement terminates.
- 3.2. Under the terms and conditions of Agreement and solely for the Customer's internal business operation, 4C grants to Customer during the Term, a non-exclusive, non-transferable, limited and revocable right to access and use the Software Service, subject to the limitations regarding the purpose of use (Solution(s)), territorial scope and number and types of Named Users set out in the Order Form and subject to the prohibitions set out in Section 5 of these SaaS Terms and otherwise in the Agreement

### 4. Named Users and User Administrators

- 4.1. A Named User must be either an employee, an official, 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.
- 4.2. Customer may replace Named Users as necessary to reflect personnel, 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.
- 4.3. 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.

## 5. Software Service prohibitions

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

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- a) Customer shall not sub-license or otherwise transfer in whole or in part any of the rights granted under Section 3;
- b) Customer shall not sell, rent, lease, loan, publish, distribute or time-share the Software Service;
- c) Customer shall 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; and
- d) Customer must not alter, edit or adapt the Platform or the Software Service without prior written approval from 4C.

## 6. No assignment of Intellectual Property Rights

- 6.1. 4C and 4C's license providers are the owners of all Intellectual Property Rights to the Software and the Software Service, including any modifications, enhancements, and derivative works thereof. Nothing in the Agreement shall operate to assign or transfer any Intellectual Property Rights from 4C to Customer or from Customer to 4C.
- 6.2. Customer may, during Term of the Agreement, copy and distribute the Software Documentation within Customer's organisation for internal purposes only. Customer may not disclose the Software Documentation to any third parties without prior written consent from 4C with respect to each such third party.

## 7. Postponed or cancelled Consultancy Services

- 7.1. If Customer, for any reason other than Force Majeure, informs 4C that Customer wishes to postpone a Set Delivery Date, the following shall apply:
- if Customer informs 4C within less than 30 working days from the Set Delivery Date, Customer shall pay 25 % of the charge of the Consultancy Service in question; – if Customer informs 4C within less than 14 working days from the Set Delivery Date, Customer shall pay 4C 50 % of the charge of the Consultancy Service in question. – if Customer informs 4C within less than 5 working days from the Set Delivery Date, Customer shall pay 4C 75 % of the charge of the Consultancy Service in question.
- 7.2. Subject to termination of the Agreement under Section 22, neither party has the right to definitively cancel (as opposed to postpone) any Consultancy Service that have not yet been delivered under the Agreement.

## 8. 4C's right to modify the Software Service

- 8.1. 4C has the right, throughout the Term, to make non-material modifications to the Software Service or the way in which it is provided.

## 9. Customer Data and Backups

- 9.1. 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 Agreement. 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.
- 9.2. The Customer Data belong to the Customer. 4C may not, outside the scope of the performance of the Software Service, reproduce, spread or otherwise proceed in a way that entails a risk of Customer losing control over such information.
- 9.3. 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.

## 10. Escrow

- 10.1. 4C will maintain, at the Customer's request and expense, a complete and accurate copy of the Source Code with Stockholm Chamber of Commerce (the "Escrow Agent") for the then-current release version and, unless otherwise agreed between the Parties, update once a year, pursuant to an escrow agreement among Customer, 4C and the Escrow Agent.

## 11. Customer's Responsibilities

- 11.1. Customer agrees to:
- 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 Client-Side Requirement (including any updates) so that 4C can fulfil its obligations under the Service Level Addendum and otherwise under the Agreement; and
  - d) provide competent and skilled personnel with appropriate expertise and experience to enable 4C to fulfil its obligation under this Agreement.

## 12. Confidentiality

- 12.1. 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 12, 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) not use Confidential Information for any purpose other than to facilitate 4C's provision of, and Customer's use of, the Software Service and to fulfil its obligations under the Agreement;
  - c) 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.

12.2. 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, at its own choice, either return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof.

12.3. The provisions of this Section 12 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.

## 13. Warranties

13.1. 4C warrants to Customer that;

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- 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 described in the User Manual;
- c) the Software Service will be provided free from viruses, spyware and other malicious software programs.

## 14. Warranty limitations and acknowledgement

14.1. 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 Client-Side Requirements.

14.2. Except for the express warranties specified above in Section 13, 4C makes no warranty, representation or promise whatsoever. In particular, 4C gives no warranty regarding the outcome of following any instructions, advice or recommendations presented or otherwise in connection with the provision of the Implementation Services. To the maximum extent permitted by applicable law, no warranties concerning the subject matter of the Agreement will be implied into the Agreement, including implied conditions of satisfactory quality and fitness for purpose.

## 15. Remedies for breach of Warranty

15.1. In the event of 4C's breach of the warranties provided in Section 13, 4C shall at its own choice 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 Term to which it relates.

## 16. 4C's indemnification to Customer

16. 1.4C will indemnify and defend Customer against resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or agreed to in settlement including reasonable legal fees, court costs, expenses and settlements resulting from any action or claim) arising out of any thirdparty allegation that Customer's use of the Software Service infringes a patent, copyright or trade secret of a third party ("Infringement Claim"). The foregoing shall, however, not apply if:

- a) the misappropriation is a result of Customer's action;
  - b) Customer fails to accept an Upgrade that would have avoided the alleged infringement; or
  - c) the Infringement Claim arises out of use of the Software Service in combination with hardware or software not recommended by 4C.
- 16.2. Customer must promptly notify 4C of an Infringement Claim under this Section 16 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. Customer may not settle or compromise any Infringement Claim without the prior written consent of 4C.
- 16.3. Should the Software Service become, or proven be likely to become, the subject of an Infringement Claim, 4C will, at its own option and expense either a) secure for Customer the right to continue using the Software Service; or b) replace or modify the Software Service so that it is non-infringing; or c) terminate the Agreement with respect to the affected functionality and pro-rata refund an amount of the Annual Fee corresponding to the remaining time of the Term to which it relates.

## 17. Customer's indemnification to 4C

- 17.1. Customer will indemnify, defend and hold harmless 4C from all losses, damages, liabilities and expenses (including reasonable legal fees, court costs, expenses and settlements resulting from any action or claim) arising out of;
- a) any allegation that Customer Data infringes third party rights or otherwise violates any applicable laws; or
  - b) Customer's breach of contract.

## 18. Limitation of liability

- 18.1. 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 e) loss of reputation or goodwill, or f) any other special, indirect or consequential loss or damage g) loss of data.
- 18.2. Neither Party's liability arising out of or in connection to the Agreement, including liability for any indemnities given under the Agreement, shall exceed the lower of a) the Annual Fee for the Software Service in the twelve months' period preceding the loss or b) £1,000,000. During the first twelve months of the Term, the foregoing point a) shall refer to the Annual Fee paid by Customer for the first twelve months.
- 18.3. Notwithstanding the foregoing, 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.

## 19. Force majeure

- 19.1. 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.
- 19.2. Each Party may terminate the Agreement, immediately upon written notice to the other Party, if a Force Majeure event continues substantially uninterrupted for a period of sixty days or more.

## 20. Payments

20. 1.4C shall issue invoices for the Annual Fees to Customer in advance of the period to which they relate.
- 20.2. Customer must pay each invoice within the period of 30 days following the issue of an invoice.
- 20.3. Any fees payable under the Agreement are in each case exclusive of any applicable VAT and other applicable taxes which shall be paid by Customer in addition at the relevant statutory rate.

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 percent 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.

20.4. Should Customer request a Development Service, an additional fee of 20 percent of the total invoiced amount for the Development Service which will be added to the Annual Fee. Such additional charge will be made on the basis of a previously agreed costs quotation.

20.5. After the Initial Term and after any subsequent Renewal Term, 4C has the right to increase the Annual Fee by no more than 4 percent, provided that 4C gives at least 90 days' notice before the start of the first I-year period to which the increase applies.

## 21. Suspension of the Software Service

21.1. 4C has the right to temporarily 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 detects a security risk or threat to the Software Service, Platform or 4C's systems in general;
- d) 4C reasonably suspects that Customer is using the Software Service in violation of applicable laws.

21.2. Prior to suspending the Software Service, 4C shall endeavour to notify Customer of its decision to suspend the Software Service and, in 4C's reasonable discretion, allow Customer to cure the cause of the suspension.

## 22. Termination

22. 1. 4C may, without prejudice to any other remedies that 4C may have, terminate the Agreement immediately if Customer breaches Sections 3 (Provision of Software Service) or 5 (Software Service prohibitions).

22.2. Either Party may terminate the Agreement

- a) on 30 days' written notice in the event of a breach by the other Party, unless the breaching 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.

## 23. Effects of termination

23.1. 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 6, 12, 14, 18, 23 and 31 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.

23.2. 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.

## 24. 4C's right to audit Customer's use of the Software Service

24.1. During the Term of the Agreement, 4C or its third-party auditor may audit Customer's use of the Software Service on seven 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. Audits will be conducted during normal business hours, and 4C will use commercially reasonable efforts to minimize the disruption of Customer's normal 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.

- 24.2. Customer will, without any undue delay, notify 4C if the Customer uses other Solutions than those agreed in the Order Form or if the actual number of Named Users exceeds the number of Named Users for which Customer has paid the applicable fees. Such notice shall specify the other Solutions used and include the number of additional Named Users and the date on which such Named Users were first utilized in order for 4C to invoice such other Solutions and/or for those excess users.

## 25. Amendments

- 25.1. Any amendments to the Agreement must be made in writing and be signed by authorized representatives of both Parties. Such amendments shall have precedence over the Agreement and its appendices.

## 26. Notices

- 26.1. 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 or otherwise agreed 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 if Customer is the Party sending the email it has cc:d [info@4cstrategies.com](mailto:info@4cstrategies.com), and if 4C is the sending Party the recipient has read the e-mail.

## 27. No waiver

- 27.1. 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.

## 28. Severability

- 28.1. 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.

## 29. Third party rights

- 29.1. 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 UK Contracts (Rights of Third Parties) Act 1999.

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### 30. Assignment

- 30.1. 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.
- 30.2. 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.

### 31. Governing Law and Dispute Resolution

- 31.1. The Agreement and all non-contractual liabilities arising out of or in connection with it, including any changes of and amendments to this Agreement from time to time, shall be governed by the substantive laws of England.
- 31.2. 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 ("I-CIA") Rules, which Rules are deemed to be incorporated by reference into this clause.
- 31.3. 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.
- 31.4. Each party shall keep the arbitration proceedings and all that is dealt with in connection therewith strictly confidential. This confidentiality undertaking shall also concern all information submitted in the arbitration proceeding as well as any decision by the arbitration tribunal. Neither party may disclose any confidential information according to this section to any third-party without the prior written approval of the other party unless this is necessary for a party to preserve its rights for the arbitration proceedings or a party is obliged to disclose such information according to law, mandatory regulation or an order by authority or the party's stock exchange contract.

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