

# Churchill Contract Services Standard Client Terms and Conditions v7



CG-F-307

## Churchill Contract Services Standard Client Terms and Conditions (the “Agreement”)

BETWEEN:

- (1) **[Insert Client name]** (the “Client”); and
- (2) Churchill Contract Services Ltd (“Churchill”).

WHEREAS the Client and Churchill (individually the “Party” and collectively the “Parties” to this Agreement) agree as follows:

### 1. Provision of Services and Facilities / Premises

- 1.1 The following terms and conditions shall apply to the provision of services as set out in this proposal.
- 1.2 Churchill shall carry out services to the reasonable satisfaction of the Client and shall provide necessary staff and materials for this purpose.
- 1.3 Churchill will supply all equipment and cleaning materials as necessary.
- 1.4 Churchill will always endeavour to use the correct cleaning materials on all surfaces. However, it is the Client’s responsibility to bring to the attention of Churchill any specific floor and surface maintenance procedures and / or products required in accordance with manufacturer’s instructions or recommended by a manufacturer, particularly where a warranty may be affected.
- 1.5 The Client shall provide free of charge the following which may be required by Churchill to carry out the services:
  - (a) Power;
  - (b) light;
  - (c) Hot water;
  - (d) Other facilities required; and
  - (e) Safe storage of materials and equipment.
- 1.6 The Client will allow Churchill’s personnel, representatives or sub-contractors such access to the Premises as is reasonable required for the purpose of providing the Services. Where such access is not permitted for any reason the Client agrees in any case to pay the Charges in full as if such access had been permitted and the Services provided.
- 1.7 Churchill shall have the right to write a case study pursuant to this Agreement detailing service delivery by Churchill and the benefits thereof to the Client. The Client will provide final sign-off prior to the case study being published.

### 2. Term of Agreement

- 2.1 The Client agrees to enter into this Agreement for a minimum of **[thirty-six (36) months]** from the Commencement Date of this Agreement.
- 2.2 “Commencement Date”: **[insert date]**

### 3. Modification of Agreement

- 3.1 The Client undertakes to notify and consult with Churchill on any significant changes in the nature, extent and pattern Services likely to have an effect on the ability of or cost to Churchill in the performance of its obligations under the terms of this Agreement. Any changes to the Charges in respect of such changes shall be agreed by Churchill and the Client in writing and will be dealt with in accordance to **Clause 5**.
- 3.2 If during the term of this Agreement, the Client closes any premises or for whatever reason, relocates to a different geographic location, closes a site where Churchill employees are based or make any significant changes to the Services, the cost of change will be passed to the Client in full. Churchill will, in any such circumstances endeavour to redeploy and place employees in alternative positions, which is suitable and achievable.

### 4. TUPE / Employees

- 4.1 The Client and Churchill agree that the transfer of responsibility for the Services to be provide under the Agreement may constitute a relevant transfer within the meaning of the Transfer of undertakings Regulations 2006 and the respective contracts of employment of any individuals wholly or mainly engaged in the provision of services equivalent to the services by the Client or incumbent supplier on or immediately prior to the commencement of the Services by Churchill.
- 4.2 Pursuant to **Clause 4.1**, Churchill accepts industry-standard allocation of TUPE risk, indemnifying the Client for any TUPE liabilities arising from our service provision. In turn the Client will indemnify Churchill for pre-transfer liabilities relating to staff who transfer to Churchill (e.g. outstanding pay, employee grievances, latent equal pay claims or entitlements under pre-existing pensions etc.)
- 4.3 **[\*\* IF APPLICABLE \*\*]** The Client agree to indemnify Churchill from the commencement date in full where Life Insurance benefit is payable where the following conditions occur(ed), (i) any employee is currently not attending work due to illness

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(long or short term), and (ii) is not actively attending work prior to the transfer date, at the point of transfer or post contract award.]

- 4.4 **[\*\* IF APPLICABLE \*\*]** The indemnity provided in terms of **Clause 4.3** ceases upon the employee's return to work for a minimum of one day or his / her employment ends with Churchill by way of resignation, redundancy, dismissal, transfer out, excluding death.]
- 4.5 If this Agreement is signed prior to Churchill receiving complete TUPE information, then the following will apply:
- (a) It is agreed by the Client that, in the event the existing contractor is paying a higher hourly rate to the Supervisor or Operative than Churchill, or any other benefits or Terms of Employment, in addition to the statutory requirements, or if anything contained in the TUPE information results in additional costs, the differential will be added to the cost of the contract.
  - (b) If the Client withholds information regarding the outgoing contractor or their existing staff working on site, or there is a dispute over an Operative's status of being employed or a subcontractor, the Client will be responsible for all costs to Churchill arising from any dispute.
  - (c) Where Churchill incurs additional costs resulting from transferring employee's pension arrangements such as actuary fees or undisclosed contributions in the TUPE information provided, these costs will be charged back to the client.
- 4.6 In the event that, following termination of the Agreement, the employment of any employee of Churchill transfers or is deemed to transfer to the Client or any successor service provider as a result of the operation of TUPE, then the Client agrees to indemnify Churchill against any and all Losses incurred by Churchill as a result of the acts or omissions of the successor service provider in relation to any such employee on or after the date of such transfer or deemed transfer, and any failure by the successor service provider to comply with any part of TUPE.
- 4.7 If, upon termination, expiry or variation of the Services, either in whole or in part, the contracts of employment of any Outgoing Employees do not, for any reason, transfer to the Client or a Successor Provider, the Client shall pay to Churchill a sum of money equivalent to that which has been or will be paid to such employee in respect of (a) statutory redundancy pay, (b) any contractual redundancy pay, (c) any pay in lieu of notice and (d) any pay in lieu of accrued but untaken holiday (statutory, contractual or otherwise).
- 4.8 Each Party shall not during the Term and for **[two (2) years]** thereafter solicit or accept the service of any employee or subcontractor of the other Party. If a Party should solicit or hire any employee of the other Party (or its Affiliates) as prohibited above, the contravening Party shall pay the other Party an amount equal to one hundred per cent (100%) of the employee's starting base salary with the contravening Party.
- 4.9 Churchill has a policy to carry out DBS checks on all employees working at sites that have been risk assessed as requiring checks to be in place. The costs for these initial checks are included within Churchill's proposal, however Churchill's policy is to recheck employees every 3 years and these costs may be charged back to the Client on the third-year contract anniversary.

## 5. Price and Payment

- 5.1 In consideration of Churchill providing the Services, the Client will pay the Charges in full to Churchill in accordance with this **Clause**, without any set-off or deduction except to the extent permitted by law, except to the extent that a bona fide dispute in relation to an invoice is notified to Churchill within five (5) business days of the date of the relevant invoice (in which case the Client shall pay any undisputed amounts).
- 5.2 All payments due to be made by the Client shall be made by B.A.C.S transfer or such other equivalent instantaneous transfer of funds to such bank as Churchill may from time to time direct or as Churchill may otherwise from time to time agree. Payment shall be made within thirty (30) days of the invoice date.
- 5.3 All consumable products will be charged for when delivered to the Client's sites.
- 5.4 Should Churchill's proposal price be shown fully inclusive of all consumable items, please note that Churchill have used industry standards to arrive at this figure. This industry standard allows a set amount per head per week and has, therefore, been multiplied by the number of people employed at the Client's site. Whilst Churchill have endeavoured to provide as accurate a quotation as possible, Churchill would point out that, should the Client's actual consumable spend prove to be above the quoted amount, Churchill reserve the right to revise charges accordingly and backdate any overspend.
- 5.5 Where Services include the provision of waste management, Churchill reserves the right to pass on any government increases or landfill tax increase, along with any additional overweight charges incurred by Churchill.
- 5.6 Any additional working days incurred during Leap years will be charged at the pro rata contract flat rate.
- 5.7 Proposals based on less than 52 weeks per year (such as 39-week term time education sites) will be invoiced over 12 months. If this Agreement is terminated by either party before the annual anniversary for whatever reason, Churchill will invoice for any shortfall due to them. This shortfall will be calculated by the actual number of weeks services has been provided (i.e. term time) against the total invoiced to termination date.
- 5.8 All sums payable hereunder are exclusive of:
- 5.8.1 VAT or any other applicable tax or duty payable upon such sums which will be added if appropriate at the rate prevailing at the relevant tax point; and
  - 5.8.2 any applicable Fuel Taxes, together with all costs, losses, liabilities and/or expenses relating thereto, which shall be borne by Client and added to the sums payable hereunder if incurred by Churchill.

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- 5.9 The Charges shall be revised annually, with effect on each anniversary of the Commencement Date, to reflect increases or decreases in the costs of labour, materials and other relevant costs from the preceding revision. The index to be applied will be the RPI Index value (for the month prior to the month of the contract anniversary, using the year on year % figure). In the event that the RPI Index value is less than zero, the charges will remain the same.
- 5.10 If the cost to Churchill in providing the Services, including, but not limited to, any costs associated with the employment of the individuals providing the Services, increases in order to comply with any Legislation or part of any Legislation enacted or coming into force after the Commencement Date or with any change to existing Legislation including, but not limited to, any changes in laws, regulations and administrative decisions applicable to the Services or changes of taxes imposed which relate to the provision of the Services, Churchill shall have the right to adjust the Charges to reflect such increased cost. The Parties shall use reasonable endeavours to minimise, to the extent practicable and permissible, any such increase.

## 6. Penalties for late payment

- 6.1 If the Client fails to pay any sum due in respect of the Charges, Churchill will be entitled forthwith to suspend provision of the Services until such time as all outstanding payments have been made and without prejudice to any other rights or remedies Churchill may have under this Agreement.
- 6.2 During the period of any suspension pursuant to **Clause 6.1**, the Charges will continue to accrue and be due to Churchill as if the Services had not been suspended.
- 6.3 Churchill reserves the right to charge interest on late payments. Such interest shall accrue daily and be compounded on a monthly basis at the rate of four (4) per cent per annum above the base rate.

## 7. Liability

- 7.1 The following provisions set out the Parties entire liability (including any liability for the acts or omissions of their respective employees, agents or sub-contractor) to each other in respect of:
  - 7.1.1 any breach of their respective obligations under this Agreement; and
  - 7.1.2 any representation, statement or tortious act or omission, including negligence, or otherwise arising under or in connection with this Agreement.
- 7.2 Notwithstanding any other provision of this Agreement Churchill's liability for any and all acts or omissions of its employees, agents or sub-contractors arising under or in connection with this Agreement (whether arising from contract, breach of warranty, tort (including negligence), breach of statutory duty, non-fraudulent misrepresentation, under any indemnity or otherwise) shall be limited to and in no circumstances shall exceed in aggregate:
  - 7.2.1 two million pounds (£2,000,000) in respect of loss or damage to any property real or personal; and
  - 7.2.2 an amount equivalent to fifty percent (50%) of the Charges payable for the first Year for any other loss or liability.
- 7.3 Neither Party shall be liable to the other in contract, tort (including negligence), under any indemnity or otherwise:
  - 7.3.1 for any loss of profits, loss of income, loss of business, loss of revenue, loss of use, loss of production, loss of anticipated savings, loss of data or loss of goodwill arising under or in connection with this Agreement;
  - 7.3.2 nor for any indirect or consequential loss or damage arising under or in connection with this Agreement.
- 7.4 Nothing in this Agreement limits either Party's liability for:
  - 7.4.1 death or personal injury caused by negligence; and
  - 7.4.2 fraud committed by that Party.
- 7.5 Notwithstanding any other provision of this Agreement, each Party shall only be liable to the other in contract, tort (including negligence), under any indemnity or otherwise which may result or arise from any act or omission or default of that Party, its employees, agents or sub-contractors to the extent that any loss, damage or expense is due to the act or omission or default of that Party. Neither Party shall be liable to the other in contract tort (including negligence), under any indemnity or otherwise which may result or arise from any act or omission or default of the other Party, its employees, agents or sub-contractors or from any failure by the other Party, its employees, agents or sub-contractors to comply with its obligations under this Agreement.
- 7.6 Unless expressly stated in this Agreement, all warranties, conditions and other terms (whether implied by statute, common law or otherwise) are excluded from this Agreement.
- 7.7 Each Party acknowledges that it considers the provisions of **Clause 7** to be reasonable, taking account of the other terms of this Agreement and its ability to insure against the losses, which might arise from a breach of this Agreement.
- 7.8 The provision of **Clause 7** shall survive the expiry or termination of this Agreement.

## 8. Insurance

- 8.1 Churchill will maintain in force, at its own cost, insurances in accordance with Legislation and such insurances as it deems appropriate and adequate, having regard to its obligations and liabilities under this Agreement.
- 8.2 The Client will maintain in force, at its own cost, insurances in accordance with Legislation and such insurances as it deems appropriate and adequate, having regard to its obligations and liabilities under this Agreement.
- 8.3 The Client will notify its insurers of the Churchill's obligation to carry out the Services.
- 8.4 Each Party shall provide evidence that the insurances required by **Clause 8** are in place, whenever reasonably requested to do so by the other.

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## 9. Warranties

- 9.1 Materials supplied by Churchill but not of Churchill's manufacture shall be guaranteed only to the extent of any Guarantee given to Churchill by the manufacturer.

## 10. Force Majeure

- 10.1 "Force Majeure" means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under this Agreement including, but not limited to, Act of God, fire, flood, storm, blizzard, heavy ground snow, lightning, war, revolution, act of terrorism, riot or civil commotion, general strikes, lock-outs or other industrial action (other than strikes, lock-outs or industrial action solely affecting such Party's staff);
- 10.2 If either Party is affected by Force Majeure, it will immediately notify the other Party in writing of the matters constituting the Force Majeure and will keep that Party fully informed of the continuance and of any relevant change of circumstances whilst such Force Majeure continues.
- 10.3 Neither Party shall be considered to be in default or in breach of its obligations under this Agreement to the extent that the performance of such obligations is prevented by any circumstances of Force Majeure which arise after the date when this Agreement becomes effective.
- 10.4 Churchill shall not be liable to the Client for any Losses caused to or suffered by the Client as a direct or indirect result of a Force Majeure event under **Clause 10.1** or the supply of the Services being suspended pursuant to **Clause 10.3**.
- 10.5 The Party affected by Force Majeure will take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under this Agreement provided that Churchill will not thereby incur any additional costs unless previously authorised in writing by Client.
- 10.6 Without prejudice to any other power of determination, either Party may terminate this Agreement in whole or in part by giving the other Party written notice in the event that the Agreement has been affected by Force Majeure for a continuous period of three (3) months. In the event of termination of this Agreement under **Clause 10.5**, all sums payable by the Client pursuant to this Agreement at the date of such termination shall immediately become due and owing.

## 11. Termination

- 11.1 Without prejudice to any or rights or remedies that the Parties may have under this Agreement or at law, either Party may terminate this Agreement forthwith:
- 11.1.1 the other Party is Insolvent; or
- 11.1.2 the other Party is in material breach of any of its obligations under this Agreement and either the breach is not capable of remedy or it is capable of remedy but has not been remedied within fourteen (14) days of a notice from the non-defaulting Party requiring the breached to be remedied.
- 11.2 Notwithstanding the provisions of **Clause 11.1** Churchill may terminate this Agreement forthwith if the Client fails to pay any amount due under this Agreement by its final date for payment and the amount remains outstanding not less than seven (7) days after being notified by Churchill in writing to make such payment.
- 11.3 Either Party may terminate this Agreement for any reason upon giving not less than six (6) months' notice of termination.
- 11.4 If notice is not served by the Client, then the contract will continue for a further period of one-year subject to the terms and conditions contained herein.

## 12. Consequences of Termination

- 12.1 In the event that this Agreement is terminated by the Client pursuant to **Clause 11.1**, the Client shall pay to Churchill within 30 days of the date of termination any Charges due up to and including the date of termination less any reasonable costs suffered by the Client as a result of the termination, subject to **Clause 7**.
- 12.2 In the event that this Agreement is terminated early in circumstances in which Churchill is not at fault, the Client shall pay to Churchill within 30 days of the date of termination any Charges due up to and including the date of termination plus any reasonable costs incurred by Churchill including, but not limited to, any breakage costs with sub-contractors and any costs committed to materials or equipment for use on the Services.
- 12.3 In the event that this Agreement is terminated by the Client or Churchill whilst a lease agreement is in place for equipment solely used in the provision of services to this Agreement, Churchill shall use all reasonable endeavours to ensure that such equipment shall be re-deployed within its own business; in the event, however, that such equipment cannot be redeployed, the Client agrees that any contracts for the lease of such equipment shall be novated to the Client or a replacement contractor (as the case may be).
- 12.4 The provisions of this Agreement shall continue to bind each Party after termination or expiry of this Agreement insofar as and for so long as may be necessary to give effect to their respective rights and obligations hereunder.
- 12.5 Subject to **Clause 7 and Clause 12.4**, on the expiry or termination of this Agreement (for whatever reason), the relationship between the Parties will cease and any rights or licences granted under or pursuant to this Agreement will cease to have effect.

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## 13. Ownership of Property and Intellectual Property

- 13.1 Materials, equipment, consumables, fuel or other property supplied by Churchill as part of the Services shall remain the sole and absolute property of Churchill until payment for them has been received in full by Churchill.
- 13.2 Intellectual Property Rights in all documents, drawings, materials and other information produced by or on behalf of Churchill and the rights to know-how developed in connection with the Agreement shall vest in and remain with Churchill.
- 13.3 **Annex C** sets out both parties' rights and responsibilities relating to Churchill's Software Package, 'Mo:duS'.

## 14. Dispute Resolution

- 14.1 The relationship between the parties will be maintained at a peer-to-peer level between the Client and Churchill via scheduled meetings and informal communication.
- 14.2 Any changes to any of the Client's or Churchill's representatives shall be notified to the other party within 14 days of such change taking effect.
- 14.3 If there is an issue in relation to this Agreement (whether as to payment or otherwise) the Client and Churchill shall each use their reasonable endeavours to negotiate and resolve the issue.
- 14.4 If the issue has not been resolved within 14 days of it first coming to the attention of the parties, Churchill's Operational Director and the Client's appropriate representative shall meet and try to resolve the issue.
- 14.5 If the issue is not resolved at a senior representative level within 30 days of the issue having been first considered by the parties or such longer period as may be agreed by the parties, then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Procedure.
- 14.6 If the parties have not settled the dispute by mediation within 60 days from the initiation of the mediation, then the matter may be referred to the courts.

## 15. No Partnership

- 15.1 Save as expressly stated herein, nothing in this Agreement will create or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of Churchill will be deemed to be or have become an employee of Client.

## 16. Entire Agreement

- 16.1 This Agreement, its Schedules and Annexes, contains the entire agreement between the Parties in relation to provision of the Services. Both Parties waive any right they may have to claim damages for, and/or to rescind this Agreement because of, breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently.
- 16.2 No purported alteration or variation of this Agreement will be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties.
- 16.3 References to Clauses are references to Clauses of this document. Headings to Clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement.

## 17. Severability

- 17.1 If any Clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable, that Clause or part of this Agreement will, to the extent required, be severed from this Agreement and will be ineffective without, so far as is possible, modifying any other Clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

## 18. Waiver

- 18.1 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. 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.

## 19. Assignment

- 19.1 Neither Party shall assign, novate, or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Party.

## 20. Notices

- 20.1 Any notice required to be given under this Agreement will be in writing and may be delivered by hand or sent by first class recorded delivery pre-paid post to the Party to whom it is addressed at the address of such Party set out at the head of this Agreement or to such other address in the United Kingdom as such Party will have notified to the other for this purpose.



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- 20.2 Any notice sent or dispatched in accordance with **Clause 20** will be deemed to have been received by the addressee if delivered personally, at the time of delivery, or if sent by post, 48 hours after the envelope enclosing the notice was delivered to the postal authorities.
- 20.3 In proving service by post (without prejudice to any other means of proof) it will be necessary to prove only that the notice was sent or dispatched and that the notice was contained in an envelope properly addressed, stamped first class and delivered to the postal authorities in the country where dispatched for the purpose of recorded delivery.

## 21. **Health and Safety**

- 21.1 Churchill's Client Safety Guidelines which are attached as **Annex A**, clarify the general health and safety responsibilities for both parties (duty holders of the work environment) to protect each other, both parties' workforces and anyone else (e.g. visitors, people living nearby and other members of the public).
- 21.2 Both parties must co-operate to ensure that the attached guidelines are adhered to in order to ensure health & safety is managed so far as is reasonably practicable. This will assist in the prevention of accidents / incidents and ill health therefore supporting applicable legislation and our proactive management culture.
- 21.3 If the Client fails to provide a safe environment, Churchill will be entitled forthwith to suspend provision of the Services until such time as all concerns have been addressed and without prejudice to any other rights or remedies Churchill may have under this Agreement.
- 21.4 During the period of any suspension pursuant to **Clause 21.3**, the Charges will continue to accrue and be due to Churchill as if the Services had not been suspended.

## 22. **Confidentiality**

- 22.1 Each Party, its Employees and any other person associated with either Party shall keep confidential:
  - 22.1.1 the terms of this Agreement; and
  - 22.1.2 any and all Confidential Information that it may acquire in relation to the other Party.
- 22.2 No Party shall use or disclose the other Party's Confidential Information, without prior written consent, except to persons necessary for the purpose of performing the Agreement, or where disclosure is expressly permitted under this Agreement.
- 22.3 Churchill shall ensure its Employees, professional advisors, sub-contractors and suppliers are aware of its confidentiality obligations under this Agreement.
- 22.4 The obligations on a Party set out in **Clauses 22.1 to 22.3** shall not apply to any Confidential Information which:
  - 22.4.1 a party can demonstrate is or becomes public knowledge otherwise than by breach of this Agreement;
  - 22.4.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
  - 22.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - 22.4.4 is independently developed without access to the Confidential Information; or
  - 22.4.5 is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000.
- 22.5 This Clause shall survive termination of this Agreement for a period of 6 years.

## 23. **Bribery and Business Ethics**

- 23.1 Both Parties to this Agreement insist on honesty, integrity and fairness in all aspects of their business and expect the same in their relationships with all those with whom they do business. Both Parties accept, agree and warrant that the direct or indirect offer, payment, soliciting and acceptance of bribes or facilitation payments in any form are unacceptable practices.
- 23.2 Both Parties shall:
  - 22.4.6 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
  - 22.4.7 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 22.4.8 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 6.3(a) of the Act, and will enforce them where appropriate;
  - 22.4.9 comply with all applicable laws, statutes, regulations and codes relating to anti-slavery including but not limited to the Modern Slavery Act 2015;
  - 22.4.10 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by the other party in connection with the supply of Services and/or Goods under this Agreement; and
  - 22.4.11 immediately notify the other party in writing if a foreign public official becomes an officer or employee of the other party or acquires a direct or indirect interest in the other party, and the other party warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of execution by the Parties of this Agreement.
- 23.3 Both Parties shall ensure that any person associated with it (including its subcontractors) who is performing Services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such



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person terms equivalent to those imposed on each party in this Clause. Each party shall be responsible for the observance and performance by such persons of the said terms and shall be directly liable to the other party for any breach by such persons of the terms.

23.4 Breach of this Clause shall be deemed a material breach of the Agreement, provided that, notwithstanding any other termination provisions or its rights at law, each party shall be immediately entitled to terminate this Agreement if the other party or any member of said party's Group or its subcontractors shall, in relation to the Agreement, have committed any act on or after the Commencement Date which is an offence under any relevant Applicable Laws relating to proper business practices and payment of inducements from time to time in force in any country to which this Agreement relates.

23.5 For the purpose of **Clause 23**, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this Clause, a person associated with the other party includes but is not limited to any subcontractor of the other party.

**24. Governing Law**

24.1 This Agreement and any dispute or claim arising out of or in connection with it will be governed by and construed in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**SIGNED** for and on behalf of the "Client":

**SIGNED** for and on behalf of "Churchill":

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## ANNEX A – Churchill Client Safety Guidelines



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A HSEQ Guidelines fo

## ANNEX B – Data Processing and Information Security

### 1. Definitions and Interpretation

1.1 Save as otherwise provided in this Annex, the terms used in this Annex shall have the meanings set forth in this Annex, including the definitions set out below:

“Act”	the Data Protection Act 1998;
“Annex”	this annex to the Agreement;
“Business Day”	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
“Charges”	the charges for the Services as set out in the Agreement;
“Data”	any data, including Personal Data, provided by or obtained from, or produced for, the Client under or in connection with this Agreement;
“Data Controller”, “Data Processor”, “processing”	shall have the meanings given to them in the Data Protection Act or the GDPR once the GDPR has entered into force in the UK;
“Data Protection Laws”	(i) either the Act or the GDPR, whichever is in force in the United Kingdom at the relevant time; (ii) either the Privacy and Electronic Communications (EC Directive) Regulations 2003 or the EU ePrivacy Regulation whichever is in force in the United Kingdom at the relevant time; and (iii) all other applicable laws and regulations statutory instruments and, where applicable, the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority with jurisdiction in the United Kingdom, all as amended, extended, re-enacted or replaced from time to time;
“Data Subject(s)”	the individual(s) whose Personal Data is processed by the Data Processor on behalf of the Data Controller pursuant to the terms of the Agreement;
“GDPR”	the General Data Protection Regulation (EU) 2016/679 adopted by the European Parliament on 14 April 2016;
“Information Security Policies”	any policies which relate to information security, whether provided by the Client or Churchill, including but not limited to policies on access control, information, classification (and handling), physical and environmental security, back-up, information transfer, protection from malware and management of technical vulnerabilities;
“Personal data”	all personal data (as defined by Data Protection Act or the GDPR, whichever is in force in the United Kingdom at the relevant time) relating to individuals, which is processed by the Data Processor on behalf of the Data Controller in accordance with the Agreement; and
“Services”	the services supplied, or to be supplied, by Churchill and as set out in the Agreement (and any variations under the Agreement).

### 2. Data Protection

- 2.1 Each party shall comply at all items with the Data Protection Laws in respect of any Personal Data processed by it pursuant, or in connection with the Agreement.
- 2.2 Churchill acknowledges that for the purpose of the Data Protection Laws, the Supplier is the Data Controller and Churchill is the Data Processor of any Personal Data provided to Churchill in connection with the Agreement.
- 2.3 To the extent Churchill acts as Data Processor on behalf of the Supplier under or in connection with the Agreement, Churchill warrants and undertakes that it shall:



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- 2.3.1 take appropriate technical and organisational measures to ensure safekeeping against unauthorised or unlawful processing of the Personal Data and against accidental loss, destruction, damage, alternation or disclosure of the Personal Data, to ensure the Client's and Churchill's compliance with the Data Protection Laws;
  - 2.3.2 Process such Personal Data only to the extent, and in such a manner, as is necessary to fulfil its obligations under the Agreement and in accordance with the Client's express lawful instructions from time to time and shall not process any such Personal Data for any other purpose. Churchill will keep a record of any processing of Personal Data it carries out on behalf of the Client and shall, as soon as reasonably practicable, provide to the Client, at the Client's request, a copy of all Personal Data held by it;
  - 2.3.3 Keep the Personal Data confidential;
  - 2.3.4 Promptly comply with any request from the Client requiring Churchill to amend, transfer or delete any Personal Data;
  - 2.3.5 Notify the Client immediately if it becomes aware of any unauthorised, unlawful or non-compliant processing, loss, damage, destruction or access to Personal Data and of any complaints relating to the processing of Personal data. Churchill shall provide the Client with full co-operation and assistance in relation to any such event, complaint, notice or communication;
  - 2.3.6 Promptly inform the Client if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. Churchill shall restore such Personal Data at its own expense.
  - 2.3.7 Notify the Client as soon as reasonably practicable if Churchill believes that any instructions it receive from the Client are not in compliance with any applicable Data Protection Laws;
  - 2.3.8 Not transfer, or permit the transfer of, any of the Personal Data outside of the United Kingdom without prior written consent of the Client;
  - 2.3.9 Make arrangements to ensure that back-up records of the current Personal Data are maintained and updated on a regular basis and have appropriate procedures in place for the archiving and eventual destruction of Personal Data;
  - 2.3.10 Allow the Client to audit Churchill's compliance with the requirements of this Clause on reasonable notice and/or to provide the Client with evidence of its compliance with the obligations set out in this Clause;
  - 2.3.11 Not authorise any third party to process the Personal Data without the Client's prior written consent and provided that any such third party's agreement with Churchill in relation to such processing is on terms which are substantially the same as those set out in this **Clause 2** and terminate automatically on termination of the Agreement; and
- 2.4 Should Churchill no longer need any of the Personal Data for the performance of the Service it shall return that Personal Data to the Client in hard copy or in electronic form or at the request of the Client shall destroy the Personal Data and/or irretrievably delete any Personal Data stored on any magnetic or optical disk or memory, and all matter derived from such sources which is in Churchill's possession.
- 2.5 Churchill agrees to indemnify on demand and keep indemnified and defend at its own expense the Client against all costs, claims, damages or expenses incurred by the Client, or for which the Client may become liable, arising out of or in connection with any failure by Churchill or its employees to comply with any of its obligations under **Clause 2.3** and/or **Clause 2.4**.
- 2.6 The Parties agree that Data Protection Laws and best practice may from time to time change. At the request of either Party, the parties shall negotiate in good faith such changes as may be necessary to this **Clause 2** to give effect to any changes to Data Protection Laws and best practice.
- 2.7 For the avoidance of doubt, this **Clause 2** shall survive termination of this Agreement.

### 3. **Information Security**

- 3.1 Churchill undertakes to comply with such Information Security Policies appropriate to the information being provided to it by the Client and to any Information Security Policies provided by the Client.
- 3.2 Churchill will ensure that it implements and maintains appropriate security controls to ensure the confidentiality and integrity of Data.
- 3.3 Without prejudice to the generality of **Clauses 3.1 and 3.2**, Churchill shall ensure that all the Data is protected at all times, in such a manner as is consistent with the confidentiality and sensitivity of the Data, from corruption and from unauthorised access and interference both while such Data is within the possession and control of Churchill and while it is in transit across a network.
- 3.4 Where the Data is transmitted across a network or stored on any portable medium of device, Churchill shall ensure that the level of protection that is adopted shall be consistent both with the confidentiality and sensitivity of the Data and with the additional risk posed by its transmission and/or its storage on a portable medium or device.
- 3.5 Churchill will ensure that access to the Data is limited to those employees who need access to the Data to meet Churchill's obligations under this Agreement and to such parts of the Data as are strictly necessary for the performance of that employee's duties. Churchill shall ensure that all its employees are informed of the confidential nature of the Data and have undertaken appropriate training relating to handling Personal Data in accordance with this Agreement.
- 3.6 Churchill will have in place methods for detecting and dealing with breaches of security, including having a proper procedure in place for investigating and remedying breaches of this **Clause 3**.

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## ANNEX C – ‘Mo:dus’

### 1. Definitions and Interpretation

1.1 Save as otherwise provided in this Annex, the terms used in this Annex shall have the meanings set forth in this Annex, including the definitions set out below:

“Mo:dus” Churchill’s ‘online workplace’ Software Package.

### 2. License

2.1 Churchill hereby grants to the Client a non-transferable, non-sub-licensable right to use the Software, ‘Mo:dus’ and the related documentation under License for its business purposes within the FM Sector from the Commencement Date until this Agreement has been varied or terminated (whichever comes first) by either Party in accordance with the terms of this Agreement.

### 3. Restrictions

3.1 The Software shall not be used for any purpose other than as expressly authorized by **Clause 2.1**, above. In particular, but without limitation, the Client agrees that it will not:

- 3.1.1 sell, license, rent, lease, distribute or otherwise transfer the Software to any third party whatsoever without the express permission of Churchill;
- 3.1.2 copy, frame, imitate, replicate, emulate or mirror any part of the Software or its content, other than as expressly authorized by this Agreement;
- 3.1.3 attempt in any way to duplicate, modify, adapt, translate, decompile, or reverse engineer the Software, or otherwise use the Software to develop any products or services that compete with the Software;
- 3.1.4 modify or remove any copyright or proprietary notices on the Software or the Documentation and shall reproduce such notices on any copies of the Documentation it may make in the form in which they appear on the original;
- 3.1.5 use the Software in a manner contrary to the Documentation or to applicable laws and government regulations;
- 3.1.6 use the Software to store or transmit infringing, libellous, or otherwise unlawful or tortuous material, or material in violation of third-party privacy rights; and
- 3.1.7 use the Software to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs, or otherwise interfere with or disrupt the integrity or performance of the Software or third-party data contained therein or attempt to gain unauthorized access to the Software or its related systems or networks.

### 4. Warranty

4.1 Churchill warrants that it has the right, power and authority to enter into this Agreement and has obtained all approvals and consents necessary to Licence the Software to the Client.

### 5. Effect of Termination

5.1 Termination of this Agreement shall not affect the accrued rights and remedies of each Party.

5.2 **Clause 2** (‘Licence’), **Clause 4** (‘Warranty’), **Clause 5** (‘Effect of Termination’), and **Clause 6** (‘Intellectual Property Rights’) will survive termination and shall continue to apply after termination of this Agreement.

### 6. Intellectual Property Rights

6.1 Nothing in this Agreement shall amount to an assignment of or transfer any Intellectual Property Rights owned by either Party prior to entering into this Agreement. For the avoidance of any doubt, the title to and any Intellectual Property Rights subsisting in the Software or the Documentation shall remain with Churchill.