

## CONSENSUS TERMS OF USE

Welcome to Consensus, an end-to-end contract and management platform built on the Microsoft Cloud, developed for legal, procurement and contracting teams, and made available to you by **Barhead Solutions Australia Pty. Ltd.** (“**Barhead**”), an Australian company with registration number ABN 75 609 675 854.

By agreeing to these terms, You represent and warrant that you have the authority to accept this Agreement, and You also agree to be bound by its terms. This Agreement applies to all Orders entered into under this Agreement. Capitalized terms have the meanings given under “Definitions.”

### I. LICENCE

- a. **Licence grant.** Consensus is licensed and not sold. Subject to your compliance with this Agreement, You are granted a nonexclusive and limited licence to use Consensus. This Licence is solely for your own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.
- b. **Duration of licences.** Licences granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order, unless renewed. Licences granted for metered subscriptions billed periodically based on usage continue as long as You continue to pay for the usage.
- c. **End Users.** You will control access to and use of Consensus by End Users and is responsible for any use of Consensus that does not comply with this Agreement.
- d. **Affiliates.** You may order Consensus for use by your Affiliates. If You do, the licences granted to You under this Agreement will apply to such Affiliates, but You will have the sole right to enforce this Agreement. You will remain responsible for all obligations under this Agreement and for you Affiliates’ compliance with this Agreement and any applicable Order(s).
- e. **Reservation of Rights.** All rights not expressly granted in this Agreement are reserved. Consensus is protected by copyright and other intellectual property laws and international treaties. You acknowledge and agree that Barhead is the owner of all intellectual property rights in Consensus and the Documentation. No rights will be granted or implied by waiver or estoppel. Rights to access or use Consensus on a device do not give any right to implement Barhead’s patents or other intellectual property in the device itself or in any other software or devices. Any trade mark or copyright symbol or legend or other proprietary mark on Consensus and the Documentation must not altered, removed or obscured.
- f. **Restrictions.** Except as expressly permitted in this Agreement, the Documentation or the Order, You must not (and is not licensed to):
  - (1) use Consensus to provide services to third parties;
  - (2) copy, modify, reverse engineer, decompile, or disassemble any component of Consensus, or attempt to do so;
  - (3) install or use any third-party software or technology in any way that would subject Consensus to any other license terms;
  - (4) work around any technical limitations of Consensus or restrictions in Documentation;
  - (5) separate and run parts of Consensus on more than one device;
  - (6) upgrade or downgrade parts of Consensus at different times;
  - (7) use Consensus for any unlawful purpose;
  - (8) transfer parts of Consensus separately;
  - (9) use any of the components, files, modules, content or related licensed materials of Consensus separately;
  - (10) benchmark or disclose the results of any benchmark test of Consensus to any third party without prior written approval; or

- (11) distribute, sublicense, rent, lease, or lend Consensus, in whole or in part, or use them to offer hosting services to a third party.
- g. **Free Trial Subscriptions.** In the event that the use of Consensus is for trial purposes only, Consensus shall not be used for any purposes other than evaluation and testing, and You take full responsibility for any use of Consensus beyond this purpose.
- h. **Third Party Products.** You acknowledge that Consensus is dependent on third-party products for its successful operation as set out in the Documentation. You must ensure that the required third-party products as defined in the Documentation are available for the successful operation of Consensus, including but not limited to the procurement of Microsoft Power Platform licences and sufficient Database storage. You acknowledge that these third-party products are provided under separate terms by the publishers of such products.
- i. **Feedback.** Any Feedback is given voluntarily, and the provider grants to the recipient, without charge, a non-exclusive licence under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of recipient's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider retains all other rights in any Feedback and limits the rights granted under this section to licences under its owned or controlled non-patent intellectual property rights in the Feedback (which do not extend to any technologies that may be necessary to make or use any product or service that incorporates, but are not expressly part of, the Feedback, such as enabling technologies).

## II. PRIVACY

- a. **EU Standard Contractual Clauses.** To the extent applicable, the parties will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland. All transfers of Customer Data out of the European Union, European Economic Area, and Switzerland will be governed by the Standard Contractual Clauses, as designated by the European Commission, to be made available and communicated to You separately.
- b. **Personal Data.** You consent to the processing of Personal Data by Barhead and its Affiliates, and its respective agents and Subcontractors, as provided in this Agreement. Before providing Personal Data to us, You will obtain all required consents from third parties (including your contacts, partners, distributors, administrators, and employees) under applicable privacy and Data Protection Laws.
- c. **Processing of Personal Data; GDPR.** With respect to processing of Personal Data subject to the GDPR, the Standard Contractual Clauses govern that processing and the parties also agree to the following terms in this subsection ("Processing of Personal Data; GDPR"):
- (1) **Processor and Controller Roles and Responsibilities.** The parties agree that You are the controller of Personal Data and Barhead is the processor of such data, except when (a) You act as a processor of Personal Data, in which case Barhead is the subprocessor or (b) stated otherwise. Barhead will process Personal Data only on documented instructions from You. In any instance where the GDPR applies and You are a processor, You warrant to Barhead that your instructions, including appointment of Processor as a processor or subprocessor, have been authorized by the relevant controller.
  - (2) **Processing Details.** The parties acknowledge and agree that:
    - (A) the subject-matter of the processing is limited to Personal Data within the scope of the GDPR;
    - (B) the duration of the processing will be for the duration of your right to use Consensus and until all Personal Data is deleted or returned in accordance with your instructions or the terms of this Agreement;

- (C) the nature and purpose of the processing will be to provide Consensus pursuant to this Agreement;
  - (D) the types of Personal Data processed by Consensus include those expressly identified in Article 4 of the GDPR; and
  - (E) the categories of data subjects are your representatives and end users, such as employees, contractors, collaborators, and customers, and other data subjects whose Personal Data is contained within any data made available to Barhead by You.
- (3) **Data Subject Rights; Assistance with Requests.** Information will be made available to You in a manner consistent with the functionality of Consensus and Barhead's role as a processor of Personal Data of data subjects and the ability to fulfill data subject requests to exercise their rights under the GDPR. Barhead will comply with reasonable requests by You to assist with your response to such a data subject request. If Barhead receives a request from your data subject to exercise one or more of its rights under the GDPR in connection with Consensus for which Barhead is the data processor or subprocessor, Barhead will redirect the data subject to make its request directly to You. You will be responsible for responding to any such request including, where necessary, by using the functionality of Consensus. Barhead will comply with reasonable requests by You to assist with your response to such a data subject request.
- (4) **Use of Subprocessors.** You consent to Barhead using the subprocessors named in the list to be made available and communicated to You separately. Barhead remains responsible for the subprocessors' compliance with the obligations herein. The list of subprocessors may be updated from time to time, by providing You at least 14-days notice before providing any new subprocessor with access to Personal Data. If You do not approve of any such changes, You may terminate the subscription without penalty by providing, prior to expiration of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.
- (5) **Records of Processing Activities.** Barhead will maintain all records required by Article 30(2) of the GDPR and, to the extent applicable to the processing of Personal Data on your behalf, make them available to You upon request.

### III. CONFIDENTIALITY

- a. **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Consensus and the Documentation (including all of the components and materials covered by the licence), Customer Data, the terms of this Agreement, and your account authentication credentials. Confidential Information does not include information that: (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products or services.
- b. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.
- c. **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

- d. **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

#### **IV. SLAs.**

Further availability and support obligations for Consensus may be offered. Such service level agreement ("SLA") will be made available at the applicable URL for such SLA or as otherwise communicated to You.

#### **V. VERIFYING COMPLIANCE**

You must keep records relating to you and your Affiliates' use of Consensus. At Barhead's expense, Barhead may verify your and your Affiliates' compliance with this Agreement at any time upon 30 days' notice. To do so, Barhead may engage an independent auditor (under nondisclosure obligations) or ask You to complete a self-audit process. You must promptly provide any information and documents that Barhead or the auditor reasonably requests related to the verification and access to systems running Consensus. If verification or self-audit reveals any unlicensed use, You must, within 30 days, order sufficient licences to cover the period of its unlicensed use. Without limiting other remedies, if unlicensed use is 5% or more of your total use of Consensus, You must reimburse Barhead for its costs incurred in verification and acquire sufficient licences to cover the unlicensed use at 125% of the then-current price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

Nothing in this section limits your right to audit under the GDPR provisions.

#### **VI. REPRESENTATIONS, WARRANTIES, OBLIGATIONS, AND ACKNOWLEDGEMENTS**

a. Barhead continuously represents and warrants that:

- (1) it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;
- (2) its performance will not violate any agreement or obligation between it and any third party;
- (3) Consensus substantially conforms to the Documentation;
- (4) Consensus will not:
  - (A) to the best of its knowledge, infringe or violate any third party patent, copyright, trademark, trade secret, or other proprietary right; or
  - (B) contain viruses or other malicious code that will degrade or infect any products, services, software, or your network or systems, and
- (5) while performing under this Agreement, Barhead will comply with law, including Data Protection Laws and Anti-Corruption Laws, and will provide training to its employees regarding AntiCorruption Laws.

*Disclaimer. Except as expressly stated in this Agreement, Consensus is provided as is. To the maximum extent permitted by law, Barhead disclaims any and all other warranties (express, implied or statutory, or otherwise) including of merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance.*

- b. You warrant that you have not relied upon any representation made by Barhead other than as set out in this Agreement.
- c. You are not permitted to sell, charge, mortgage or otherwise encumber Consensus and/or the Documentation in any way.
- d. You acknowledge that You have no intellectual property rights in Consensus and/or the Documentation and that Barhead gives no guarantee as to the accuracy or completeness of the Licensed Software and the Materials nor that they are free from error.

- e. You are solely responsible for the use, supervision, management and control of Consensus and the Documentation.
- f. You will ensure that Consensus and the Documentation are at all times protected from access, use or misuse and damage and destruction by any person not authorised by You and You will notify Barhead immediately if You become aware of any unauthorised use of Consensus and/or the Documentation.
- g. You consent that contact, usage, and transactional information is to be shared with Barhead during the term of this Agreement. This information is used by Barhead to support billing and other transactional activities and to enable telemetry.

## VII. DEFENSE OF THIRD-PARTY CLAIMS

- a. You will defend Barhead and its Affiliates from and against any and all third party claims, actions, suits, proceedings arising from or related to your or any authorised user's violation of this Agreement or user terms, and will indemnify Barhead and its Affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against Barhead or its Affiliates in connection with or as a result of, and for amounts paid by Barhead or its Affiliates under a settlement You approve of in connection with such claim. Barhead must provide You with prompt written notice of any such claims and allow You the right to assume the exclusive defense and control of the claim, and cooperate with any reasonable requests assisting your defense and settlement of such matter.
- b. Barhead will defend You from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of Consensus as permitted under the Agreement infringes or misappropriates a third party's intellectual property rights, and will indemnify You for all reasonable attorney's fees incurred and damages and other costs finally awarded against You in connection with or as a result of, and for amounts paid by You under a settlement Barhead approves of; provided, however, that Barhead has no liability if such claim arises from: (1) Customer Data or non-Barhead products, including third-party software; and (2) any modification, combination or development of Consensus that is not performed or authorized in writing by Barhead, including in the use of any application programming interface (API). You must provide Barhead with prompt written notice of any such claim and allow Barhead the right to assume the exclusive defense and control, and cooperate with any reasonable requests assisting Barhead's defense and settlement of such matter. This section states Barhead's sole liability with respect to, and your exclusive remedy against Barhead for any third party claim as referred to herein.
- c. Notwithstanding anything contained in the above subsections (a) and (b), (1) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (2) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if: (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties; (C) the settlement does not include a full release of liability for the indemnified parties; or (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

## VIII. LIMITATION OF LIABILITY

Each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts You were required to pay for Consensus during the term of the applicable licenses, subject to the following:

- a. **Subscriptions.** Barhead's maximum liability to You for any incident giving rise to a claim will not exceed the amount You paid for Consensus during the 12 months before the incident.
- b. **Free Subscriptions.** For free subscriptions, You agree to assume all risks, and Barhead shall not in any way be held liable for any damages that may arise from your use of Consensus.

- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's: (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

## IX. PRICING AND PAYMENT

The pricing and payment terms for a given order are set forth and governed by the Microsoft Services Agreement and applicable Order.

## X. TERM AND TERMINATION

- a. **Term.** This Agreement is effective until terminated as described below. The term for each Order will be set forth therein.
- b. **Termination without cause.** Unless otherwise set forth in an Order, either party may terminate this Agreement or any Order without cause on 60 days' notice. Barhead will not provide refunds or credits for any partial subscription period(s) if the Agreement or an Order is terminated without cause.
- c. **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement or any Order immediately on notice if (i) the other party materially breaches the Agreement or an Order, and fails to cure the breach within 30 days after receipt of notice of the breach; or (ii) the other party becomes Insolvent. Upon such termination, the following will apply:
  - (1) All licenses granted under this Agreement will terminate immediately.
  - (2) All amounts due under any unpaid invoices will become due and payable immediately. For metered subscriptions billed periodically based on usage, You must immediately pay for unpaid usage as of the termination date.
  - (3) If Barhead is in breach, You will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.
- d. **Suspension.** Barhead may suspend use of Consensus without terminating this Agreement during any period of material breach. Barhead will give You reasonable notice before the suspension, and such suspension will only be to the extent reasonably necessary.
- e. **Survival.** The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.

## XI. MISCELLANEOUS

- a. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the following order of precedence will apply:
  - (1) Order;
  - (2) this Agreement;
  - (3) Service Level Agreement (SLA); and
  - (4) Documentation.
- b. **Independent contractors.** The parties are independent contractors. Each may develop products independently without using the other's Confidential Information.
- c. **Agreement not exclusive.** You are free to enter into agreements to license, use, and promote the services of others.

- d. **Amendments.** Unless otherwise agreed in a writing signed by both parties, Barhead will not change the terms of this Agreement, including privacy terms, during the term of this Agreement.
- e. **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. You consent to the assignment to an Affiliate or third party, without prior notice, of any rights Barhead may have under this Agreement to receive payment and enforce your payment obligations, and all assignees may further assign such rights without further consent. Furthermore, either party may assign this Agreement without the consent of the other party in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.
- f. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
- g. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- h. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- i. **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Barhead must be sent to the address stated in the Order. Notices to You will be sent to the individual at the address you identify on the account as contact for notices. Barhead may send notices and other information to You by email or other electronic form.
- j. **Applicable law.** This Agreement shall be governed by the laws of Australia.
- k. **Order of precedence.** The body of this Agreement will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- l. **Government procurement rules.** By accepting this Agreement, You represent and warrant that: (1) You have complied and will comply with all applicable government procurement laws and regulations; (2) You are authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.
- m. **Compliance with laws.** Barhead will comply with all laws and regulations applicable to its provision of Consensus. Barhead will obtain and maintain any approvals, licenses, filings, or registrations necessary to its performance, and will comply with all law (including law related to export, corruption, money laundering, or any combination of these). You must also comply with laws applicable to your use of Consensus.
- n. **Construction.** Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent. Lists of examples following "including", "e.g.", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Unless stated or context requires otherwise:

- (1) all internal references are to this Agreement and its parties;
- (2) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars;
- (3) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs;
- (4) a party's choices under this Agreement are in its sole discretion, subject to any implied duty of good faith;
- (5) "written" or "in writing" means a paper document only, except where email is expressly authorized;
- (6) "days" means calendar days;
- (7) "may" means that the applicable party has a right, but not a concomitant duty,
- (8) "partner," if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership;
- (9) "current" or "currently" means "as of the Effective Date" but "then-current" means the present time when the applicable right is exercised or performance rendered or measured;
- (10) "notify" means to give notice under subsection (i) above; and
- (11) a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed via an electronic signature service by a duly authorized representative of the signing party.

## **XII. DEFINITIONS**

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party.

"Agreement" means these Terms of Use and the terms set forth in the Order.

"Anti-Corruption Laws" means all laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, and illegal software, including the U.S. Foreign Corrupt Practices Act.

"Control" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Barhead or its Affiliates by, or on behalf of, You and your Affiliates through use of Consensus. Customer Data does not include Support Data.

"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Barhead by You or on your behalf (or that You authorize Barhead to obtain from Consensus) through an engagement with Barhead to obtain technical support for Consensus covered under this Agreement.

"Data Protection Law" means any law applicable to Barhead or You, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("GDPR"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

"Documentation" means all user manuals, handbooks, training material, requirements, and other written or electronic materials Barhead makes available for, or that result from use of, Consensus.

"End User" means any person You permit to use Consensus or access Customer Data.

"Feedback" means ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient's Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g. feature lists) for future products.



“Insolvent” means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party’s) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

“Order” means an ordering document used to transact Consensus via the Microsoft Marketplace.

“Personal Data” means any information relating to an identified or identifiable natural person.

“Representatives” means a party’s employees, Affiliates, contractors, advisors and consultants.

“Standard Contractual Clauses” means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR.

“Subcontractor” means any third party: (1) to whom Barhead delegates its obligations under this Agreement, including a Barhead Affiliate not contracting directly with You through an Order; or (2) who, in performing under a contract between it and Barhead or a Barhead Affiliate, stores, collects, transfers or otherwise processes Personal Data (obtained or accessed in connection with performing under this Agreement) or other Customer Confidential Information.

“use” means to copy, download, install, run, access, display, use or otherwise interact with.