

Let's Make a Deal!

Negotiating during COVID-19 and Beyond



Paul Branch

COO
IACCM
pbranch@iaccm.com



Jason Gabbard

Head of AI Strategy
Conga
jason.gabbard@conga.com



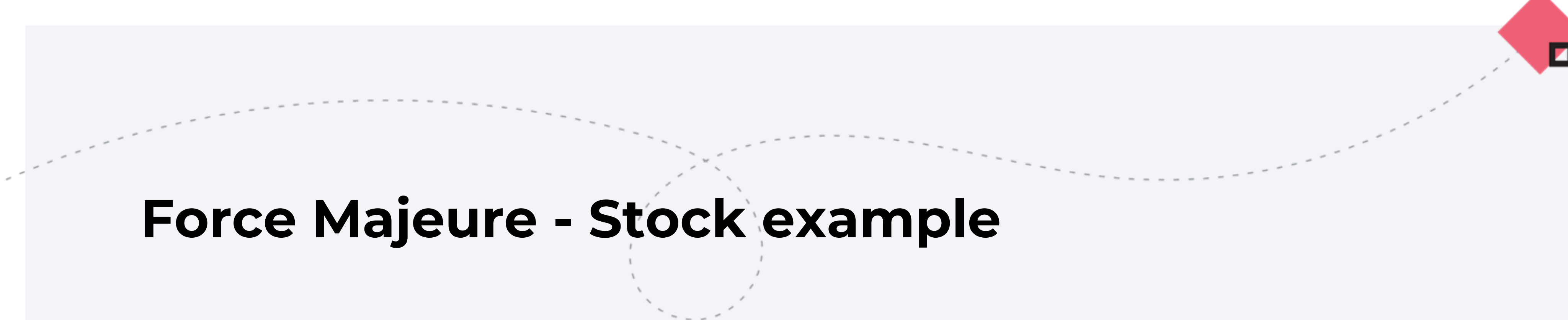
BETTER *TOGETHER*

Meet the All-new Conga

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Contracting through COVID-19



Force Majeure - Stock example

“Neither party shall be liable for any costs or damages due to delay or non-performance under this Agreement arising out of any cause or event beyond such party’s control, including without limitation, cessation of services hereunder or any damages resulting therefrom to the other party as a result of work stoppage, power or other mechanical failure, computer virus, natural disaster, governmental action or communication.”

Force Majeure: A closer look at COVID as F.M.

First, find your agreements (more later)

- Do they have F.M.?

Then, generally 3 types:

1. Blanket clauses - no enumerated events
2. Clauses with exemplary events
3. Clauses with exemplary events, and catch-all

Case Study: L Brands

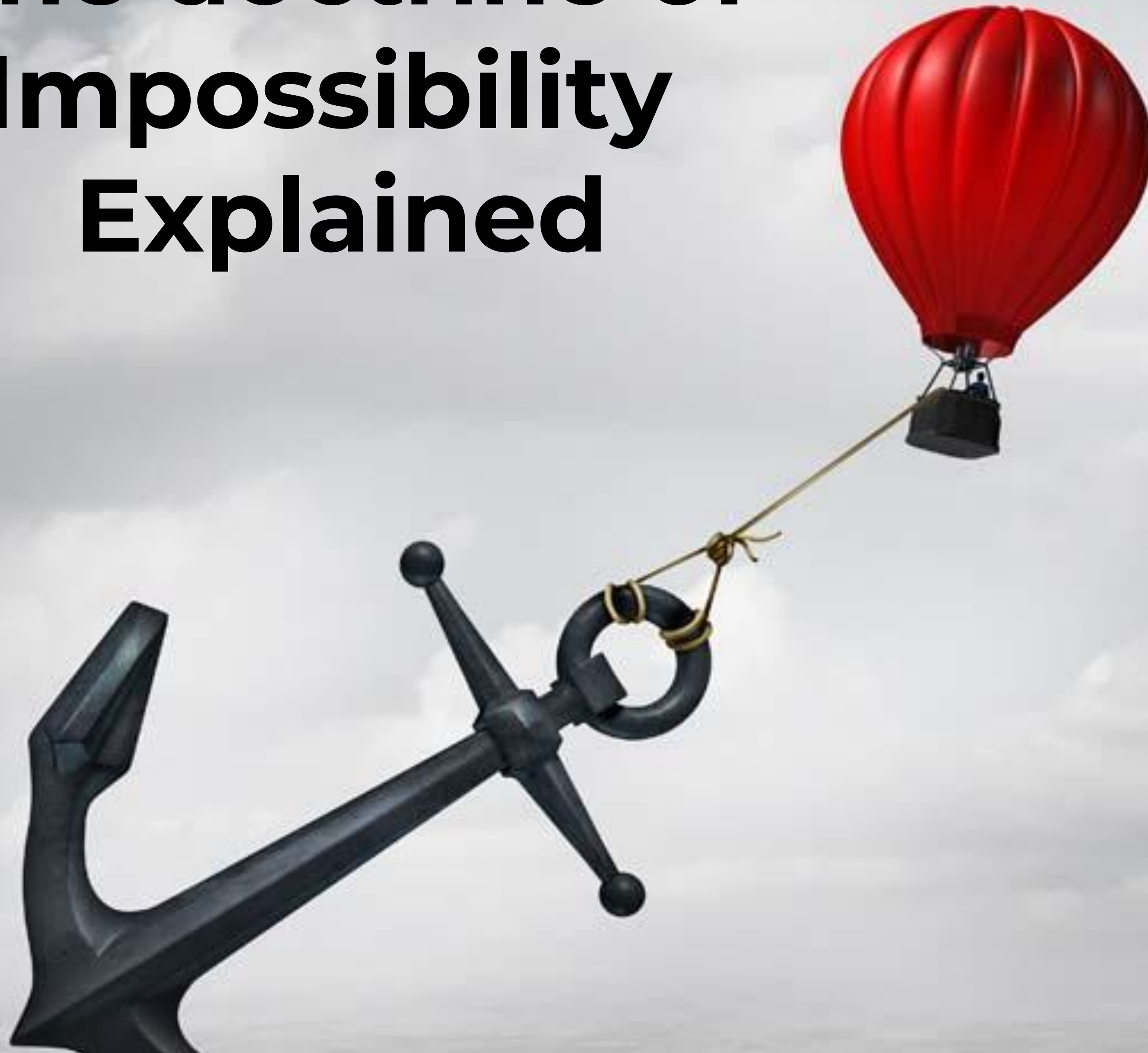
- Sycamore Partners made arrangement to buy Victoria Secret from L Brands for \$525 Million
- Sycamore Partners tried to back out citing the COVID-19 Pandemic as a “material adverse event”
- L Brands contract specifically excluded global pandemics as a “material adverse event” forcing acquisition to move forward



Case Study: Conga Client

- Enterprise FinServ Company
- COVID-19 has lead to the need for an online customer portal
- Customers can initiate contract process on Conga Client's website
- Conga works on the backend to organize documents, contracts, and final signature

The doctrine of Impossibility Explained



Impossibility...

"A performance may be so difficult and expensive that it is described as 'impracticable,' and enforcement may be denied on the ground of impossibility."

-- In 6 Corbin on Contracts, section 1325, page 338.

EX: Protective face mask delivery for April 1, 2020

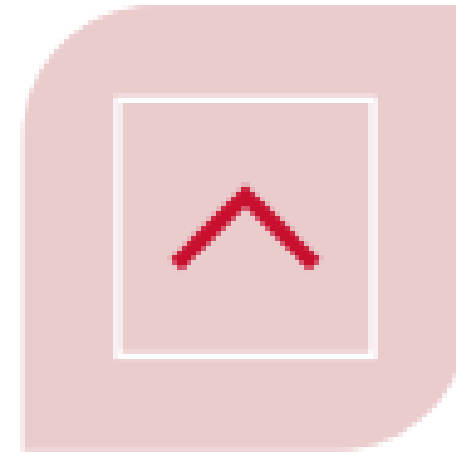
How can Conga can help?

- **Centralized repository:** powerful search and reporting to identify which contracts may be affected by COVID-19.
- **Controlled negotiations:** Enforce contract policy and move your negotiations into hyperdrive.
- **Stress testing:** train multiple clause types, like force majeure and frustration of purpose, in order to stress test the repository for relief.
- **Accelerate business growth:** See a 282% return on investment in less than 6 months.*

Key findings and changes since last report



79% REPORT MODERATE TO SEVERE IMPACT (UP 19%)



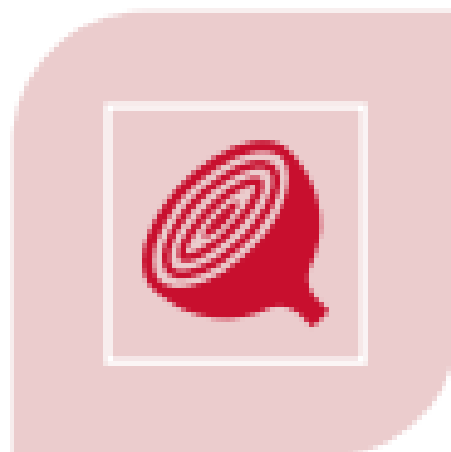
AFRICA, MIDDLE EAST NOW MOST SEVERELY IMPACTED REGIONS



18% WORKING TO REDUCE EXPOSURE IN LOW COST MARKETS (SAME)



23% CONSIDERING BRINGING WORK BACK IN-HOUSE (UP 6%)



31% CONSIDERING NEAR-SHORE / DOMESTIC ALTERNATIVES (UP 5%)



56% RE-EVALUATING TERMS OF CURRENT AND FUTURE CONTRACTS



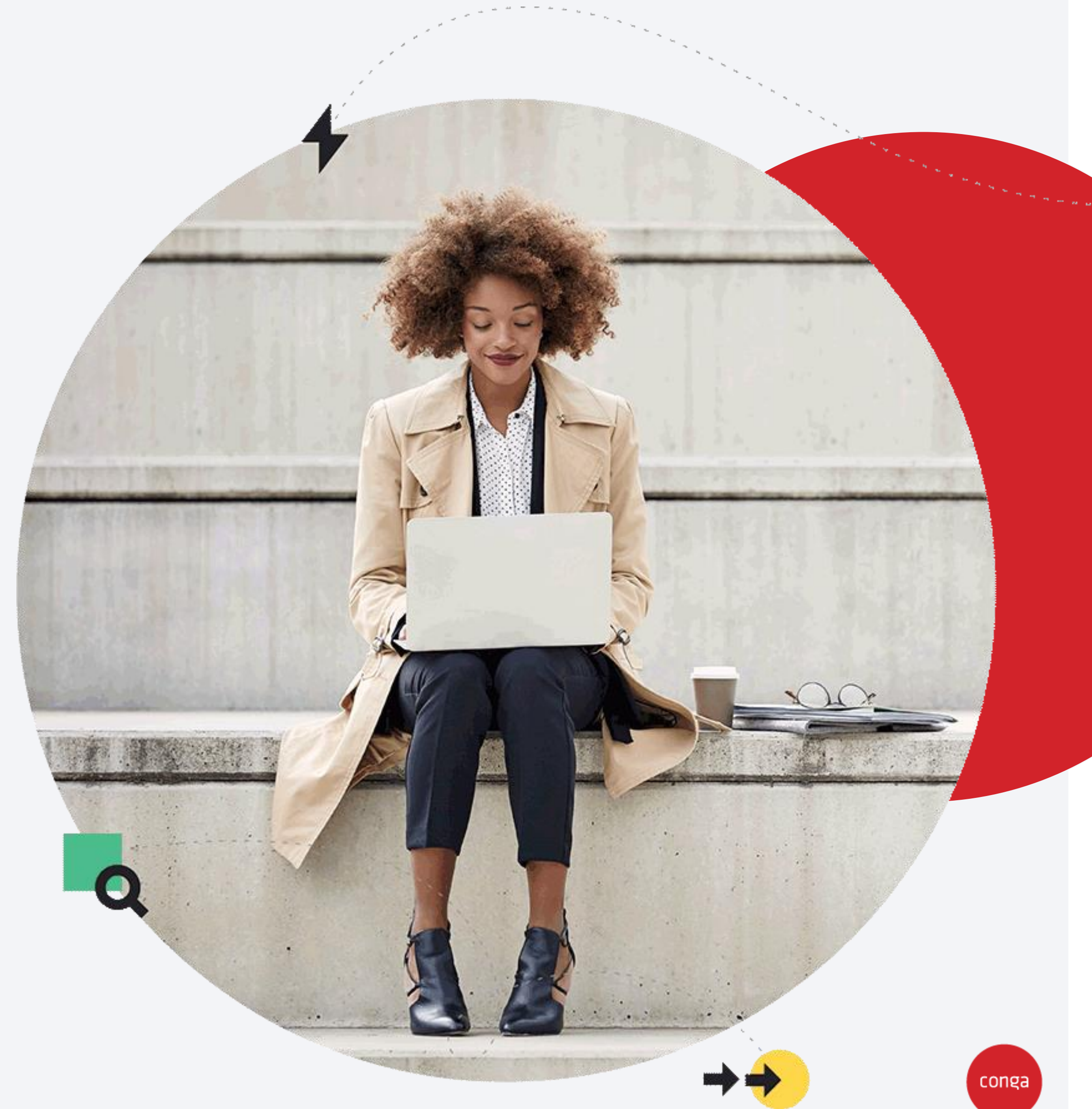
84% OF PROFESSIONALS HAVE TECHNOLOGY THEY NEED TO WORK FROM HOME



64% CONCERNED ABOUT FUTURE CAREER AND JOB SECURITY

Other Considerations

Terms that apply during a worldwide pandemic.




Excluding FM, which other term have you revisited most frequently as a result of the pandemic?

1. Limitations of liability
2. Service levels
3. Delivery terms / Milestones
4. Termination
5. Something else





Limitations of Liability/Liability Caps/Liquidated Damages

- 
- Calculating damages will be hard
 - Parties could memorialize best est. of damage
 - May wish to exclude certain types of liability altogether in the limitations of liability clause

Related...Suspension

- May be appropriate under certain agreed circumstances during pandemic

Service Levels

- Service providers may need to push for more flexible service levels to accommodate increased demand.
- Establishing svc credits as the sole remedy for service interruption or degradation would also reduce risks for the service provider during a pandemic.

Delivery Terms

- Party obligated to deliver may want to address the heightened uncertainty.
- Provide for more flexible delivery windows or non-binding delivery estimates, an agreed process for substituting goods and services.



Termination

- Adjust cause definitions
- Timelines expand during shut down
- Conversely, some parties may prefer to have a clean right to terminate without cause to hedge pandemic-related risks.
- Strict termination right seems unreasonable given chain effects

Something else?

Milestones

- Is the pandemic likely to impact milestone payments? Anticipate how the milestone triggered?

+ Change Orders

- Incl. expedited change order process, with governance procedures, to facilitate their review and approval.

Something else?

Payment Terms

- Waiving INT on late fees/expense

Acceptance of Goods, Risk of Loss, Transfer of Title

Alternate Dispute Resolution

- Courts may be closed consider ADR

Health and Safety

Let's Make a Deal: Recap

- Force Majeure
- Impossibility Explained
- How Conga can help
- Key terms that apply during a global pandemic



Thank You

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