
Standard Terms & Conditions – h-trak Scan4Safety System

1 GRANT OF LICENCE

h-trak Limited grants to the Customer a non-exclusive, non-transferable sub-licence to use the Software, Documentation and Web Services in connection with the specified purpose of managing hospital stock, procedure level costing and patient safety for the agreed term.

1.1 h-trak Limited rights

h-trak Limited has been granted the appropriate licence in respect of the Intellectual Property Rights in the Software and Documentation, and owns the Intellectual Property Rights in the Services, and will similarly be granted the appropriate licence in respect of the Intellectual Property Rights in Improvements and New Releases supplied by the owner of the relevant Intellectual Property Rights.

1.2 Moral Rights

h-trak Limited warrants that it is satisfied that the owner of the Intellectual Property Rights in the Software and the Documentation has obtained from all authors and holders of the Moral Rights in any Software or Documentation provided to the Customer, and further shall ensure and warrants that it has obtained from all authors and holders of the Moral Rights in any Services provided to the Customer consent to the following specific acts or omissions by the Customer and its successors, assigns or Customers:

(1) reproducing, publishing, adapting or communicating the Software, Services or Documentation to the public without attributing their authorship or otherwise identifying the author of the Software, Services or Documentation; and

(2) subjecting the Software, Services or Documentation to derogatory treatment, that is namely, a material distortion, mutilation, or material alteration or the doing of anything else to the Software, Services or Documentation, including adapting, reproducing, publishing, communicating to the public, adding, deleting, editing or modifying the text, format or structure of the Software, Services or Documentation, in such a way as may prejudice the honour and reputation of the author.

(3) the rights and obligations of the parties under this clause 0 survive expiry or termination of this agreement.

2 MOBILE DEVICES

h-trak Limited is responsible for sourcing and supplying the mobile devices.

3 ACCEPTANCE TESTING

3.1 Acceptance Testing

(a) The Customer may conduct any tests it thinks necessary on delivery and installation of the Software and provision of the Services and Mobile Devices at each Hospital to verify that the Software, Services and Mobile Devices can be reasonably used for the Specified Purpose and comply with the Specifications.

(b) Before the Acceptance Testing begins, h-trak Limited and Customer must each nominate one or more representatives to be present at each Hospital, or if agreed between the parties available for consultation, throughout the Testing Period.

(c) If the Customer in accordance with Schedule 1 is reasonably satisfied that the Software, Services and Mobile Devices pass the Acceptance Testing at each Hospital (including any repeated tests under clause 3.2), the Customer must so notify h-trak Limited in writing (**Acceptance Notice**).

(d) If the Customer is not so reasonably satisfied, it must notify h-trak Limited in writing within 10 business days after the conduct of the last of those tests.

(e) The Customer will be deemed to have issued an Acceptance Notice for a Hospital to h-trak Limited if it fails to issue an Acceptance Notice to the h-trak Limited within 10 business days after the conduct of the last of those tests at that Hospital and the failure continues for a further 5 days after receiving notice from h-trak Limited requiring it to accept or reject the Software, Web Services and Mobile Devices.

3.2 Repeating Acceptance Testing

(a) If h-trak Limited receives a notice under clause 3.1(d), h-trak Limited must:

(1) Modify and re-install the Software, Services and Mobile Devices (as the case may be) so that it will pass the Acceptance Testing (but still comply with the Specifications); and

(2) allow the Customer to repeat the Acceptance Testing.

(b) If the Customer is not reasonably satisfied that the Software, Services or Mobile Devices pass the repeated Acceptance Testing, the Customer may:

(1) issue a further notice under clause 3.1(d) triggering this clause 3.2 again;

(2) accept the Software, Services and Mobile Devices subject to a reduction and rebate of the Fee to be agreed by the parties to reflect the reduced functionality of the Software, Services or Mobile Devices (as the case

may be); or

(3) terminate this agreement by notice to the h-trak Limited under clause 5.1(a).

4. SERVICES

4.1 Supply of Improvements and New Releases

(a) As Improvements or New Releases become available, the h-trak Limited must offer them to the Customer and, if the Customer elects, supply and install the Improvements or New Releases, as applicable, and provide associated Documentation and instructions for use.

(b) The cost of providing the products and services set out in this clause 4.1 is included in the Fee.

4.2 Update of Documentation

If:

(a) the correction of Errors necessitates an amendment to the Documentation;

(b) the Documentation is found to be inaccurate and the Customer requests the h-trak Limited to amend the Documentation; or

(c) an Improvement or New Release is made available under clause 4.1 requiring an amendment to the Documentation, h-trak Limited must promptly amend the Documentation and supply the number of copies of the amended Documentation necessary to update the Customer's existing Documentation.

4.3 Service Levels

h-trak Limited, acting reasonably, will assign a severity level to any request for Support Services according to the following table:

Severity Level	Type of Error
1	Total disruption of the software or the web services such that they are not usable or are unstable or total failure of the Mobile Device
2	An incident renders a substantial portion of the software or the web services inoperable, significantly affecting workflow in critical areas
3	A part of the software or the web services fails and user workflow is disrupted but a workaround is possible
4	A minor error with minimal business impact
5	Advice or enquiry requested

4.4 Response times

The following response times apply to all requests for Support Services logged with h-trak Limited. h-trak Limited must use its reasonable endeavours to resolve all errors to the Customer's satisfaction within the timeframes set out in the table below:

Severity Level	h-trak to respond within...	h-trak to resolve issue within...
1	1 hour (1.5 hours outside standard business hours)	4 hours for software and webservices issues 2 business days for hardware, where the resolution requires the supply of a fully configured replacement mobile device
2	2 hours (2.5 hours outside standard business hours)	8 hours
3	1.5 days	The date of the next new release of software, unless the customer specifically requests an earlier date, which must not be earlier than 2.5 days after the customer logs the request
4	2 days	The date of the next new release of software, unless the customer specifically requests an earlier date, which must not be earlier than 4.5 days after the customer logs the request
5	5 days	3 weeks

4.5 Failure to comply with Service Levels

If the Customer notifies h-trak Limited in writing that, in the Customer's reasonable opinion, h-trak Limited has failed on a continuous or persistent basis to comply with the Service Levels in any calendar quarter (commencing 1 January, 1 April, 1 July or 1 October respectively) during the Term and h-trak Limited has not remedied the failure to comply in the following quarter, then h-trak Limited must assist the Customer in whatever way practicable to allow the Customer to contact an alternate service provider to correct the Error. h-trak Limited must pay the costs of that work.

5 TERMINATION

5.1 Rights to terminate

Either party may terminate this agreement immediately by notice to the other party if:

- (a) the other party commits a material breach of any of its obligations under this agreement and does not remedy that breach within 30 days of receipt of a notice from the party wishing to terminate specifying the breach and requiring the breach to be remedied; or
- (b) an Insolvency Event occurs in relation to the other party.

5.2 h-trak Limited representations and warranties

h-trak Limited represents and warrants to the Customer that:

- (a) the Documentation will be sufficient to enable:
 - (1) a competent information technology professional or engineer to use and maintain the Software, Web Services and Mobile Devices; and
 - (2) the Customers staff to make full and proper use of the Software, Web Services and Mobile Devices for the Specified Purpose;
- (b) at the date of delivery and at the date of installation, the Software, Services and Mobile Devices will:
 - (1) comply with the Specifications;
 - (2) be free from defects or omissions in design, material, performance, workmanship and installation;
 - (3) be free from any Disabling Code; and
 - (4) be of merchantable quality and fit for the purposes for which the Software, Services and Mobile Devices are to be used;
- (c) at the date of delivery and at the date of installation, any Improvement or New Release supplied under clause 4.1 will:
 - (1) comply with the Specifications;
 - (2) be free from defects or omissions in design, material, performance, workmanship and installation;
 - (3) be free from any Disabling Code; and
 - (4) be of merchantable quality and fit for the purposes for which it is to be used;
- (d) it has the right to grant to the Customer the sub-licence granted in clause 1;
- (e) use of the Software or Services by or with the permission of the Customer will not infringe the Intellectual Property Rights of any person;
- (f) it has reviewed and inspected the Customer's System and has satisfied itself that it is suitable to allow the operation of the Software, Mobile Devices and Services in accordance with the Specifications;
- (g) any Mobile Devices that h-trak Limited informs the Customer of in accordance with clause 5 are suitable to allow the operation of the Software and Services in accordance with the Specifications; and
- (h) the Software and Web Services are and will continue to be Date Compliant.

5.3 Notice of breach

h-trak Limited must notify the Customer as soon as reasonably practicable after becoming aware of any breach of a representation or warranty.

6 INDEMNITY

6.1 Customers Indemnity

Subject to clause 16 (iii) the Customer indemnifies h-trak Limited against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which h-trak incurs or is liable for in connection with a breach of any representation, warranty or obligation of the Customer in this agreement or any negligent or otherwise wrongful act or omission of the Customer or its representatives, agents or employees.

6.2 Enforcement of Customers Indemnity

A claim against the Customer under this clause 6 must be brought by h-trak Limited.

6.3 h-trak Limited Indemnity

h-trak Limited indemnifies the Customer against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which the Customer pays, suffers, incurs or is liable for in connection with:

- (a) a breach of any representation, warranty or obligation of h-trak Limited in this agreement or any negligent or otherwise wrongful act or omission of h-trak Limited or its representatives, agents or employees; or
- (b) a claim brought or threatened against the Customer by a third party that the use by the Customer of the Software or Services infringes the Intellectual Property Rights of that third party.

6.4 Enforcement of h-trak Limited Indemnity

A claim against h-trak Limited under this clause 6 must be brought by the Customer.

7 LIMITATION OF LIABILITY

- i) a party's liability to the other for (a) death or personal injury arising from its negligence; (b) fraud or theft; and (c) fraudulent mis-statement, shall not be limited.

- ii) neither party shall be liable for any special, consequential or indirect loss or damage caused to the other party, howsoever arising and whether or not such loss was reasonably foreseeable.

- iii) subject to the remaining provisions of this clause, the Parties liability to each other shall be limited to the total Fee paid by the Customer under this Agreement.

8 CONFIDENTIALITY

8.1 Confidentiality

8.1.1 Each party must keep confidential, and not use or disclose any Confidential Information of the other party, except as permitted by this agreement.

8.1.2 The obligation of confidence in clause 8.1.1 extends to Confidential Information provided to or obtained by a party before entering into this agreement.

8.2 Exclusions

The obligation of confidence in clause 8.1.1 does not apply to Confidential Information that is:

8.2.1 required to be disclosed by applicable Law as long as the recipient:

8.2.1.1 discloses the minimum amount of Confidential Information required to satisfy the Law; and

8.2.1.2 before disclosing any information, gives a reasonable amount of notice to the discloser and takes all reasonable steps (whether required by the discloser or not) to maintain that Confidential Information in confidence;

8.2.2 in the public domain otherwise than as a result of a breach of this agreement or another obligation of confidence;

8.2.3 independently developed by the recipient; or

8.2.4 already known by the recipient independently of its interaction with the other party and free of any obligation of confidence.

8.3 Preventing disclosures

Each party must take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

8.4 Notice of breach

Each party must notify the other party of any unauthorised disclosure of Confidential Information as soon as reasonably practicable.

8.5 Remedies for breach

8.5.1 Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 8 is breached.

8.5.2 Each party acknowledges that, without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 8, a party may seek and obtain an ex-parte interlocutory or final injunction to prohibit or restrain the other party or its advisers from any breach or threatened breach of this clause 8.

8.6 Survival of obligations

The obligations of confidentiality in this clause 8 survive the expiry or termination of this agreement.

9 PRIVACY

9.1 Personal Information

Without limiting clause 10, in performing this agreement, the parties shall comply with the relevant GDPR Laws and:

9.1.1 use Personal Information only for the purposes of fulfilling their obligations under this agreement;

9.1.2 not use, modify or disclose Personal Information without the prior written consent of the other party;

9.1.3 take all reasonable measures to ensure that Personal Information in its possession or control, or to which it has access in connection with this agreement, is protected against loss and unauthorised access, use, modification or disclosure;

9.1.4 comply with any reasonable direction, policy or guidelines of the other party which concern the security, use and disclosure of Personal Information; and

9.1.5 ensure that any person who is authorised to have access to any Personal Information, is made aware of, and undertakes in writing, to observe the obligations of this clause 9.

9.2 Survival

This clause 9 survives the expiry or termination of this agreement.

10 USE OF CUSTOMERS' DATA

10.1 h-trak Limited will adhere to the G-Cloud 12 Framework Agreement (version 1.0) Framework reference: RM1557.12, Annex 2 Joint Controller Agreement:

10.1.1. acknowledges and agrees that the Customer's Data is, and remains, the property of the Customer;

10.1.1.1 shall put in place and maintain appropriate security and back-up measures to ensure that the Customer's Data is at all times protected against unauthorised access, use or corruption;

10.1.1.2 may not use or disclose the Customer's Data to a third party without the Customers express written consent and in accordance with GDPR restrictions h-trak will not transfer Personal Data outside the EEA unless the prior written consent of the Buyer has been obtained.

; and

10.1.1.3 shall within 7 days of the termination of this agreement; or receiving a written request from the Customer, provide to the Customer, free of charge, a copy of the Customer data in such form as requested by the Customer (including in electronic form) and the h-trak Limited must then delete all copies of the Customer's Data in the h-trak Limited possession or control, whether in electronic form or otherwise.

10.1.2 The h-trak Limited reserves the right to create de-identified and aggregated data that may have some commercial value at a later time, and reserves the right to use this data at its discretion. This clause 10 survives the expiry or termination of this agreement.

SCHEDULE 1 – ACCEPTANCE TESTING

1 Acceptance Testing

The Acceptance Testing will be conducted at the Customer Hospital/Department and Customer Hospital/Department.

3 Acceptance Criteria

The Acceptance Criteria is as follows:

- The Customer must develop test scripts and scenarios for user acceptance testing (UAT Test scripts) at each Hospital and forward these to h-trak Limited within 7 Business Days of the date that h-trak Limited informs the Customer in writing that it has completed the Implementation Services at a Hospital.
- h-trak Limited must approve the UAT Test Scripts within 7 Business Days of receiving them from the Customer.
- The Customer must classify each issue arising from the Acceptance Testing in accordance with the following table:

Importance Level	Issue
1	Issue with high impact critical progress of testing with no work around identified
2	Issue with high impact to critical business functionality, with work around identified
3	Issue with impacting non critical business functionality with work around identified
4	Issue with limited impact to business functionality with no work around required

4 Testing Period

The Testing Period for each Hospital commences on the date which h-trak Limited informs the Customer in writing that it has approved the UAT Test Scripts for that Hospital and ends on the date on which the Customer gives h-trak Limited an Acceptance Notice for that Hospital in accordance with clause 3.1(c) or is deemed to have given h-trak Limited an Acceptance Notice for that Hospital in accordance with clause 3.1(e).