

ExTrac User Agreement

PARTIES

"ExTrac" and "Customer" are each referred to as a "Party" and together the "Parties" in this Agreement.

BACKGROUND

The capitalised terms used here have the meaning set out in Clause 1 (Definitions) unless otherwise defined.

- A. ExTrac owns or is otherwise in control of the Hosted Services, which draws on thousands of data sources identified by domain experts and uses artificial intelligence-powered analytics to track and forecast threats, risks, and geopolitical dynamics around the world.
- B. Customer wants to use and access the Hosted Services solely for the Permitted Purpose.
- C. ExTrac and the Customer therefore wish to enter into a contract regarding the provision of the Hosted Services and ancillary services to the Customer by ExTrac in accordance with the provisions of this Agreement.

AGREEMENT

1 Definitions

1.1 In this Agreement, except to the extent expressly provided otherwise:

"**Acceptable Use Policy**" means ExTrac's Acceptable Use Policy as amended from time to time, available at: <https://www.extrac.ai/acceptable-use-policy>;

"**Access Credentials**" means the usernames, passwords and other credentials enabling access to the Hosted Services, including access credentials for the User Interface and the API (as applicable);

"**Additional Term**" has the meaning set out in Clause 2.1;

"**Agreement**" means this ExTrac User Agreement, including any Schedules, together with the Order Form and any amendments to this Agreement from time to time;

"**API**" means the application programming interface for the Hosted Services defined by ExTrac and made available by ExTrac to the Customer (as applicable);

"**Applicable Laws**" means all applicable laws, statutes, regulations and codes from time to time in force including, but not limited to, all relevant data protection laws, applicable anti-corruption laws, anti-tax evasion laws, anti-slavery laws, the Bribery Act 2010 and the Modern Slavery Act 2015;

"**Authorised Users**" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Hosted Services in accordance with this Agreement;

"**Authorised User Subscription**" means the user subscriptions purchased by the Customer (as set out on the Order Form or Proposal document) which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement;

"**Availability SLA**" means ExTrac's service level agreement relating to availability of the Hosted Service as amended from time to time, available at: <https://extrac.ai/pbgherwvyijcjdcb> ;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"**CCN**" means a change control notice issued in accordance with Clause 15;

"**CCN Consideration Period**" means the period of 10 Business Days following the receipt by a Party of the relevant CCN from the other Party;

"Change" means any change to the scope, nature, volume or execution of the Services, or any other term or schedule of this Agreement;

"Charges" means the following amounts:

- (a) the amounts specified in the Order Form; or
- (b) such amounts as may be agreed in writing by the Parties from time to time;

"Confidential Information" means ExTrac Confidential Information and the Customer Confidential Information (as applicable);

"Content" means any information or data, including text, images, video or audio made available through the Hosted Services;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer Confidential Information" means:

- (a) any information disclosed by the Customer to ExTrac during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by ExTrac to be confidential; and
- (b) the Customer Data; and
- (c) the terms of this Agreement;

"Customer Data" means all data, works and materials; uploaded to or stored on the Hosted Services by the Customer; transmitted by the Hosted Services at the instigation of the Customer; supplied by the Customer to ExTrac for uploading to, transmission by or storage on the Hosted Services; or generated by the Hosted Services as a result of its use by the Customer (but excluding analytics data relating to the use of the Hosted Services and server log files);

"Customer Indemnity Event" has the meaning given to it in Clause 22.1;

"Customer Personal Data" means any Personal Data that is processed by ExTrac on behalf of the Customer in relation to this Agreement, but excluding Personal Data with respect to which ExTrac is a data controller;

"Customer Representatives" means the person or persons identified as such on the Order Form, and any additional or replacement persons that may be appointed by the Customer giving to ExTrac written notice of the appointment;

"Customer Systems" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Customisation" means a customisation of the Hosted Services, whether made through the development, configuration or integration of software, or otherwise;

"Data Protection Laws" means all applicable data protection and privacy laws in the UK relating to the processing of personal data and the privacy of electronic communications, including the EU GDPR, the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) – in each case, as amended, supplemented or replaced from time to time;

"Documentation" means the documentation for the Hosted Services produced by ExTrac and delivered or made available by ExTrac to the Customer;

"Effective Date" means the Effective Date set out on the Order Form;

"EU GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means *ExTrac*, as specified in the Hosted Services Specification, which will be made available by ExTrac to the Customer in accordance with this Agreement;

"Hosted Services Specification" means the specification of the Hosted Services to ExTrac as set out on the Order Form and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Licence" has the meaning set out in Clause 4.1(b);

"Maintenance Services" means the general maintenance of the Hosted Services, including the Platform and/or API (as applicable), and the application of Updates and Upgrades;

"Maintenance SLA" means ExTrac's service level agreement relating to the provision of the Maintenance Services as amended from time to time, available at: <https://extrac.ai/8qogxdexpqoa30fm> ;

"Minimum Term" means, in respect of this Agreement, the Minimum Term period set out on the Order Form beginning on the Effective Date;

"Order Form" means the Order Form signed by the Parties in relation to Customer's use of the Hosted Services;

"Personal Data" has the meaning set out in the Data Protection Laws;

"Permitted Purpose" means internal business purposes of the Customer only;

"Privacy Policy" means ExTrac's privacy policy as amended from time to time, available at: <https://www.extrac.ai/privacy-policy>;

"ExTrac Confidential Information" means:

- (a) the Content;
- (b) any information disclosed by ExTrac to the Customer at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- (c) the terms of this Agreement;

"ExTrac Representatives" means the person or persons identified as such on the Order Form, and any additional or replacement persons that may be appointed by ExTrac giving to the Customer written notice of the appointment;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means the provision of the Hosted Services (as applicable) in accordance with this Agreement;

"Set Up Services" means the configuration of the Hosted Services in accordance with Set-Up Services provisions set out on the Order Form;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services;

"Supported Web Browser" means the current release from time to time of the following web browser(s) (or any other web browser that ExTrac agrees in writing shall be supported): Microsoft Edge, Google Chrome or Apple Safari;

"**Support SLA**" means ExTrac's service level agreement relating to the provision of support for the Hosted Services as amended from time to time, available at: <https://extrac.ai/tkzqo1kt5w9cysdq> ;

"**Term**" means the Minimum Term and each Additional Term;

"**Third Party Services**" means any hosted, cloud or software-based services provided by any third party that are or may be integrated with the Hosted Services by ExTrac from time to time;

"**UK GDPR**" means the EU GDPR as transposed into UK law (including by the Data Protection Act 2018 and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) and all other UK laws regulating the processing of Personal Data, as such laws may be updated, amended and superseded from time to time;

"**Update**" means a hotfix, patch or minor version update to the Hosted Services software;

"**Upgrade**" means a major version upgrade of the Hosted Services software;

"**User Interface**" means the web-based platform interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services;

"**Virus**" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

"**Vulnerability**" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to writing or written excludes fax but includes email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2 Term

- 2.1 This Agreement commences on the Effective Date and shall, unless otherwise terminated earlier in accordance with the terms of this Agreement, continue for the Minimum Term and for successive one (1) month periods thereafter (each an "**Additional Term**") on the same terms.

3 Set-Up Services

- 3.1 ExTrac shall:

- (a) provide the Set-Up Services to the Customer; and
- (b) use reasonable endeavours to provide the Set-Up Services in accordance with the timetable set out on the Order Form.

3.2 The Customer acknowledges and agrees that a delay or failure in the Customer performing its obligations in this Agreement may result in a delay in the performance of the Set-Up Services and ExTrac shall not be liable to the Customer in respect of any failure to provide the Set Up Services in accordance with the provisions set out on Order Form, including but not limited to meeting any deadlines set out in the applicable timetable.

3.3 Any Intellectual Property Rights that are created in course of the performance and delivery of the Set-Up Services by ExTrac shall vest in and become the exclusive property of ExTrac.

4 Licence to use the Hosted Services

4.1 In consideration of the Charges paid by the Customer to ExTrac, ExTrac:

- (a) shall provide to the Customer, upon the completion of the Set-Up Services, the Access Credentials necessary to enable the Customer to access and use the Hosted Services; and
- (b) hereby grants to the Customer the Licence set out on the Order Form (the "**Licence**").

4.2 In relation to scope of use of the Licence:

- (a) use of the Hosted Services shall be restricted to use of the Hosted Services in object code form for the normal business purposes of the Customer (which shall not include allowing the use of the Hosted Services by, or for the benefit of, any person other than an Authorised User of the Customer);
- (b) the Customer may not use the Hosted Services or the Content for any reason other than the Permitted Purpose without the prior written consent of ExTrac, and the Customer acknowledges that additional fees may be payable on any change of use requested by the Customer (whether pursuant to Change control process in Clause 15 or otherwise agreed between the Parties in writing);
- (c) the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Hosted Services in whole or in part; and
- (d) Third-Party Services shall be deemed to be incorporated within the Hosted Services for the purposes of the Licence (except where expressly provided to the contrary) and use of the Third-Party Services may be subject to the additional terms.

4.3 The Customer acknowledges and agrees that:

- (a) the User Interface may only be used through a Supported Web Browser;
- (b) the User Interface may only be used by the Authorised Users of the Customer;
- (c) the API may only be used by an application(s) that are:
 - (i) approved by ExTrac in writing prior to such use; and
 - (ii) controlled by the Customer.

4.4 The Customer shall not:

- (a) sub-license its right to access and use the Hosted Services or any Content to any third party;
- (b) permit any unauthorised person or application to access or use the Hosted Services or any Content;
- (c) use the Hosted Services to provide services to third parties without ExTrac's prior written consent;
- (d) disclose, republish or redistribute any content or material, including the Content, to any third party without ExTrac's prior written consent;

- (e) make any alteration to the Hosted Services; and
- (f) conduct or request that any other person conduct any load testing or penetration testing on the Hosted Services;
- (g) use the Hosted Services in any way that:
 - (i) causes, or may cause, damage to the Hosted Services, or impairment of the availability or accessibility of the Hosted Services;
 - (ii) uses excessive Hosted Services resources and as a result is liable to cause a material degradation in the services provided by ExTrac to its other customers using the Hosted Services, and the Customer acknowledges that ExTrac may use reasonable technical measures to limit the use of Hosted Services resources by the Customer for the purpose of assuring services to its customers generally;
 - (iii) is unlawful, illegal, fraudulent or harmful.
- (h) allow the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation to exceed the number of Authorised User Subscriptions it has purchased from time to time;
- (i) allow or suffer any Authorised User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation; and
- (j) provide access to the Hosted Services to officials or representatives of any State that is:
 - (i) subject to United Nations, United Kingdom, United States of America, or European Union sanctions; or
 - (ii) listed on any human rights watch lists of the United Kingdom, United States of America or European Union, including but not limited to, the US State Department's lists: 'Countries of Particular Concern', 'Special Watch List Countries', and 'Entities of Particular Concern'.

4.5 The Parties acknowledge and agree that the Availability SLA shall govern the availability of the Hosted Services.

4.6 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Hosted Services, either during or after the Term.

5 Customisations

5.1 Pursuant to the Change control procedure set out in Clause 15, the Parties may agree that ExTrac shall design, develop and implement a Customisation(s).

5.2 Unless agreed between the Parties in writing, all Intellectual Property Rights in the Customisations shall, as between ExTrac and the Customer, vest in and become the exclusive property of ExTrac.

5.3 A Customisation shall form part of the Hosted Services from the time and date that it is first made available by ExTrac to the Customer, and accordingly from that time and date the Customer's rights to use the Customisation shall be governed by Clause 4.

5.4 The Customer acknowledges that any Customisation requested and delivered by ExTrac in accordance with this Agreement is non-exclusive and ExTrac may therefore make any Customisation available to any third party in its sole discretion.

6 Scheduled maintenance

6.1 ExTrac may from time to time suspend the use of the Hosted Services for the purposes of scheduled maintenance to the same.

6.2 ExTrac shall, where practicable, provide the Maintenance Services in accordance with the Maintenance SLA.

7 Support Services

7.1 ExTrac shall provide the Support Services to the Customer during the Term.

7.2 ExTrac shall provide the Support Services:

- (a) with reasonable skill and care; and
- (b) in accordance with the Support SLA.

7.3 ExTrac may; at any time during the Term, suspend the provision of the Support Services where:

- (a) any amount due to be paid by the Customer to ExTrac under this Agreement is overdue; and
- (b) ExTrac has given to the Customer at least 30 days' written notice of its intention to suspend the Support Services where a payment is overdue.

8 Customer obligations

8.1 The Customer shall provide to ExTrac, or procure on its behalf for ExTrac, such:

- (a) co-operation, support and advice;
- (b) information and documentation, including but not limited to Customer Data, security access information and configuration services;
- (c) access to the Customer's computer hardware, software, networks and systems, including without limitation the Customer Systems; and
- (d) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable ExTrac to perform its obligations under this Agreement.

8.2 Customer warrants and represents that it:

- (a) shall implement and maintain reasonable security measures relating to the Hosted Services, including the Access Credentials, to ensure that no unauthorised person or application may gain access to the Hosted Services;
- (b) has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
- (c) shall adhere with, and procure that the Authorised Users adhere, with the Acceptable Use Policy and the relevant terms of this Agreement. The Customer shall be liable for any breach of this Agreement and/or the Acceptable Use Policy by any Authorised User;
- (d) shall carry out all other Customer obligations and responsibilities set out in this Agreement in a timely and efficient manner;
- (e) shall comply with all applicable legal and regulatory requirements applying to the exercise of its rights and the fulfilment of its obligations under this Agreement;
- (f) shall obtain and maintain all necessary licences, consents, and permissions necessary for ExTrac, its contractors and agents to perform their obligations under this Agreement, including without limitation the performance of the Services;
- (g) shall ensure that its network and systems, including without limitation the Customer Systems, comply with the relevant specifications provided by ExTrac from time to time; and
- (h) shall be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to ExTrac's data centres (as applicable), and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9 Customer Systems

9.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements relating to Customer Systems set out on the Order Form in all material respects, subject to any changes agreed in writing by ExTrac.

10 Customer Data

- 10.1 The Customer hereby grants to ExTrac a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of ExTrac's obligations and the exercise of ExTrac's rights under this Agreement.
- 10.2 The Customer warrants to ExTrac that the Customer Data, when used by ExTrac in accordance with this Agreement, shall not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

11 Integrations with Third Party Services

- 11.1 The Hosted Services are integrated with certain Third Party Services and ExTrac may integrate the Hosted Services with additional Third Party Services at any time during the Term.

12 Intellectual Property Rights

- 12.1 All Intellectual Property Rights in the services provided by ExTrac to the Customer in accordance with this agreement, including but not limited to the Hosted Services, the Content and the Documentation, as between ExTrac and the Customer, are the exclusive property of ExTrac. Other than as set out in this Agreement, the Customer acquires no rights in relation to the Hosted Services, Content, or Documentation.
- 12.2 ExTrac shall retain all Intellectual Property Rights relating to ExTrac, including but not limited to its logos, trade marks, patents and copyrights.
- 12.3 The Customer shall use all reasonable endeavours not to damage (or allow to be damaged) ExTrac's Intellectual Property Rights or goodwill.
- 12.4 Other than as required for its use of the Hosted Services, the Customer shall not use ExTrac's Intellectual Property Rights in any form without the express written consent of ExTrac.
- 12.5 If ExTrac reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, ExTrac may at its own cost and expense:
- (a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
 - (b) procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 12.6 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from ExTrac to the Customer.

13 Representatives

- 13.1 ExTrac shall use its reasonable endeavours to ensure that all instructions given by ExTrac in relation to the matters contemplated in this Agreement shall be given by an ExTrac Representative to a Customer Representative, and the Customer:
- (a) may treat all such instructions as the fully authorised instructions of ExTrac; and
 - (b) shall not comply with any other instructions in relation to that subject matter.
- 13.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in this Agreement shall be given by a Customer Representative to an ExTrac Representative, and ExTrac:
- (a) may treat all such instructions as the fully authorised instructions of the Customer; and
 - (b) shall not comply with any other instructions in relation to that subject matter.

14 Management

- 14.1 The Parties shall hold management meetings at the reasonable request of either Party.
- 14.2 A Party requesting a management meeting shall give to the other Party at least 10 Business Days' written notice of the meeting.

- 14.3 Each Party shall be represented at management meetings by at least 1 ExTrac Representative and 1 Customer Representative (as applicable).

15 Change control

- 15.1 The provisions of this Clause 15 apply to each Change requested by a Party.
- 15.2 Either Party may request a Change at any time during the Term but a proposed Change will not take effect until such time as a CCN recording the Change has been agreed and signed by or on behalf of each Party by authorised representatives.
- 15.3 A Party requesting a Change shall provide to the other Party a completed CCN in the form specified in the Schedule (Form of CCN).
- 15.4 A Party in receipt of a CCN shall, before the end of the CCN Consideration Period:
- (a) accept the CCN, in which case that Party must countersign the CCN and return it to the other Party;
 - (b) reject the CCN, in which case that Party must inform the other Party of this rejection, including reasons for the rejection; or
 - (c) issue an amended CCN to the other Party, in which case this Clause 15 will reapply with respect to the amended CCN.
- 15.5 For the avoidance of doubt, ExTrac has no obligation to a Change proposed by the Customer unless and until the Parties have agreed the necessary variations to its Charges (as applicable), the Hosted Services, and any other relevant terms of this Agreement to take account of the Change and this Agreement has been varied in accordance with Clause 34.

16 Charges and Payment

- 16.1 The Customer shall pay the Charges to ExTrac in accordance with this Agreement and as set out on the Order Form.
- 16.2 The Customer shall pay the Charges:
- (a) within thirty (30) days of receipt of a valid invoice issued by ExTrac, which shall be issued from time to time during the Term; and
 - (b) by bank transfer using such payment details as are notified by ExTrac to the Customer from time to time.
- 16.3 If ExTrac has not received payment within thirty (30) days after the due date, and without prejudice to any other rights and remedies of ExTrac, then ExTrac may:
- (a) charge the Customer interest on the overdue amount at the rate of 4% per annum above the Bank of England base rate from time to time (interest which will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 16.4 Unless stated otherwise on the Order Form, all amounts stated in or in relation to this Agreement are, unless the context requires otherwise, exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to ExTrac.
- 16.5 ExTrac shall be entitled to increase the Charges at the start of each Additional Term upon 90 days' prior notice to the Customer and the Charges set out on Order Form shall be deemed to have been amended accordingly.

17 Confidentiality obligations

- 17.1 ExTrac shall:
- (a) keep the Customer Confidential Information strictly confidential;
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent; and

- (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as ExTrac uses to protect ExTrac's own confidential information of a similar nature, being at least a reasonable degree of care.

17.2 The Customer shall:

- (a) keep ExTrac Confidential Information strictly confidential;
- (b) not disclose ExTrac Confidential Information to any person without ExTrac's prior written consent; and
- (c) use the same degree of care to protect the confidentiality of ExTrac Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care.

17.3 Notwithstanding Clauses 17.1 and 17.2, a Party may disclose the Confidential Information of the other Party:

- (a) to its officers, employees, representatives and advisers who need to have access to the Confidential Information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.4 No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

17.5 A Party shall not be in breach of this Clause 17 in respect of the disclosure of Confidential Information if that Confidential Information:

- (a) is known to the other Party before disclosure under this Agreement (providing such disclosure is not in breach of this Agreement) and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other Party; or
- (c) is obtained by the other Party from a third party in circumstances where the other Party reasonably believes that there has been a breach of an obligation of confidentiality.

17.6 Upon the expiry or termination of this Agreement, or if so requested by the Party that disclosed the Confidential Information ("**Discloser**") at any time by notice in writing to the Party that received the Confidential Information ("**Recipient**"), the Recipient shall:

- (a) subject to Clause 26.2(c) regarding Customer Data, destroy, return to the Discloser, or permanently erase (including, to the extent legally and technically practicable, from its computer(s) and communications systems and devices or from systems and data storage services provided by third parties) all documents and materials (and any copies) containing, reflecting, incorporating or based on any Confidential Information; and
- (b) certify in writing to the Discloser that it has complied with the requirements of Clause 17.6(a));

subject in each case to any obligations that the relevant Party has under this Agreement to supply or make available to the other Party any data or information, and providing that the relevant Party shall have no obligation under this Clause 17.6 to delete or to cease to possess or control any of the other Party's Confidential Information to the extent that the relevant Party is required by applicable law to retain that Confidential Information.

17.7 The provisions of this Clause 17 shall continue in force indefinitely following the termination of this Agreement.

18 Publicity

18.1 Neither Party may make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases, public announcements and marketing materials) without the prior written consent of the other Party.

18.2 Nothing in this Clause 18 shall be construed as limiting the obligations of the Parties under Clause 17.

19 Data protection

- 19.1 Each Party shall comply with their respective obligations under all relevant Data Protection Laws.
- 19.2 The Customer warrants to ExTrac that it has the right to disclose all Customer Personal Data that it does in fact disclose to ExTrac under or in connection with this Agreement.
- 19.3 ExTrac shall process the Customer Personal Data in accordance with the [Privacy Policy](#).
- 19.4 ExTrac and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data.
- 19.5 If any changes or prospective changes to the Data Protection Laws result or will result in one or both Parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under this Agreement, then the Parties shall use their best endeavours promptly to agree such variations to this Agreement as may be necessary to remedy such non-compliance.

20 ExTrac's Obligations and Warranties

- 20.1 ExTrac represents and warrants to the Customer that:
- (a) ExTrac has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) ExTrac will comply with all applicable legal and regulatory requirements applying to the exercise of ExTrac's rights and the fulfilment of ExTrac's obligations under this Agreement;
 - (c) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement;
 - (d) the Hosted Services will conform in all material respects with the Hosted Services Specification;
 - (e) the Hosted Services will incorporate security features in accordance with good industry practice;
 - (f) the use of the Hosted Services, strictly in accordance with this Agreement, shall not infringe the Intellectual Property Rights of any third party.
- 20.2 All of ExTrac's warranties and representations in respect of this Agreement are expressly set out herein. To the maximum extent permitted by applicable law, no other warranties or representations will be implied into this Agreement.

21 Acknowledgements and disclaimers

- 21.1 ExTrac does not warrant or represent that:
- (a) the Hosted Services will be uninterrupted or wholly free from defects, errors and/or bugs;
 - (b) the Hosted Services and the Content will meet the requirements of the Customer regardless of whether such requirements are expressly or implicitly made known to ExTrac;
 - (c) the Hosted Services and the Content will be sufficient or adequate for use in the Customer's business;
 - (d) the Content will be entirely accurate;
 - (e) the Hosted Services will be entirely secure;
 - (f) the Hosted Services will be compatible with any software or systems other than the software and systems expressly specified as being compatible in the Hosted Services Specification; and
 - (g) the Hosted Services will be free from Vulnerabilities or Viruses.
- 21.2 ExTrac shall not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services.

21.3 ExTrac is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Hosted Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

21.4 This Agreement shall not prevent ExTrac from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

22 Indemnities

22.1 The Customer shall indemnify and shall keep indemnified ExTrac against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by ExTrac as a result of any material breach by the Customer of this Agreement ("**Customer Indemnity Event**").

22.2 With regard to a Customer Indemnity Event, ExTrac shall:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- (d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer.

23 Limitations and exclusions of liability

23.1 Nothing in this Agreement shall limit or exclude any liability:

- (a) for death or personal injury resulting from negligence;
- (b) for fraud or fraudulent misrepresentation; or
- (c) in any way that is not permitted under applicable law.

23.2 The limitations and exclusions of liability set out in this Clause 24 and elsewhere in this Agreement:

- (a) are subject to Clause 23.1; and
- (b) govern all liabilities arising under this, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

23.3 Neither Party shall be liable to the other Party in respect of any loss, damage, cost, expense or other claim for compensation arising as a direct or indirect result or breach or non-performance of this Agreement arising due to a Force Majeure Event.

23.4 Neither Party shall be liable to the other Party in respect of any:

- (a) loss of profits or savings, or anticipated profits or anticipated savings;
- (b) loss of revenue or income, or anticipated revenue or income;
- (c) any loss of use or production;
- (d) loss of wasted expenditure;
- (e) any loss of business, contracts or opportunities;
- (f) loss or corruption of any data, database or software; or

(g) special, indirect or consequential loss or damage.

23.5 The total liability of ExTrac under this Agreement shall not exceed

the total amount paid by the Customer to ExTrac in the contract year in which the breaches occurred.

24 Force Majeure Event

24.1 If a Force Majeure Event prevents, hinders, or delays a Party performing any obligation under this Agreement (other than any obligation on the Customer to make payment of the Charges) (the “**Affected Party**”), the Affected Party shall not, subject to its compliance with Clause 24.2, be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly, and the corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

24.2 The Affected Party shall:

(a) as soon as reasonably practicable following the Force Majeure Event and in any event no later than five (5) days from its start, notify the other Party in writing of:

(i) the Force Majeure Event;

(ii) the date on which the Force Majeure Event started;

(iii) the likely or potential duration of the Force Majeure Event;

(iv) the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

(b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

24.3 If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than one (1) month, the Party not affected by the Force Majeure Event may terminate this Agreement by giving fourteen (14) days' written notice to the Affected Party.

25 Termination

25.1 Following the Minimum Term, either Party may terminate this Agreement on 30 days' written notice of termination to the other Party.

25.2 Either Party may terminate this Agreement (“**Non-defaulting Party**”) immediately at any time during the Term on written notice of termination to the other Party (“**Defaulting Party**”) if:

(a) the Defaulting Party commits any material breach of this Agreement and such material breach is not remediable;

(b) the Defaulting Party commits a material breach of this Agreement that is remediable but the Defaulting Party fails to remedy the material breach within 14 days of receipt of a written notice from the Non-defaulting Party requiring the material breach to be remedied; or

(c) the Defaulting Party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach); or

(d) the Defaulting Party breaches any of the obligations in clauses 4.2 and 4.4.

25.3 Subject to applicable law, either Party may terminate this Agreement immediately on written notice of termination to the other Party if:

(a) the other Party:

(i) is dissolved or is the subject of a resolution passed for its dissolution;

(ii) ceases to conduct all (or substantially all) of its business;

- (iii) is or becomes unable to pay its debts as they fall due;
- (iv) is or becomes insolvent or is declared insolvent; or
- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- (c) an order is made for the winding up of the other Party, or the other Party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other Party under this Agreement).

25.4 ExTrac may terminate this Agreement immediately on written notice to the Customer should the Customer fail to pay any amount due under this Agreement on the due date and remains in default not less than five (14) days after being notified by ExTrac in writing to remedy such default by making the required payment.

26 Effects of termination

26.1 Without prejudice to the Parties' legal rights, within 30 days following the termination of this Agreement for any reason:

- (a) the Customer shall pay to ExTrac any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
- (b) where the Agreement is not terminated due to Customer's breach of this Agreement, ExTrac shall refund to the Customer on a pro-rata basis any Charges paid by the Customer to ExTrac in respect of Services that were to be provided to the Customer after the termination of this Agreement.

26.2 On expiry or termination of this Agreement for any reason:

- (a) clauses which expressly or by implication have effect after termination will continue in full force and effect;
- (b) all licences granted under this Agreement shall immediately terminate and the Customer and Authorised Users shall immediately cease all use of the Hosted Services, the Content and the Documentation;
- (c) ExTrac may destroy or otherwise dispose of any of the Customer Data in its possession, unless ExTrac receives, no later than ten (10) days after the date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. ExTrac shall use its reasonable endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by ExTrac in returning or disposing of Customer Data; and
- (d) the accrued rights, remedies, obligations and liabilities of the Parties as at termination will not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.

27 Non-solicitation of personnel

27.1 Subject to Clause 27.2, neither Party will directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any individual employed or engaged by such other Party on either a permanent or temporary basis in the provision of the Services or, in the case of the Customer, in receipt of the Services, at any time during the Term or for a further period of twelve (12) months after termination of the Agreement other than by means of general advertising and not specifically targeted at anyone employed or engaged by the other Party.

27.2 The Parties agree and acknowledge that the following will not be considered as solicitation for the purposes of Clause 27.1:

- 27.2.1 any transfer of personnel pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- 27.2.2 where the Parties agree otherwise in writing; or
- 27.2.3 where the relevant individual(s) are recruited by a Party for a role other than employment within the business of the relevant Party,

27.3 If either Party commits any breach of Clause 27.1, the infringing Party will, within thirty (30) days of an appropriate invoice, pay to the non-infringing Party by way of liquidated damages the greater of:

27.3.1 £100,000; or

27.3.2 a sum equivalent to twelve (12) months' gross pay that was payable to that employee, worker or independent contractor by the non-infringing party,

together with the reasonable recruitment costs incurred by the non-infringing Party in replacing such individual. The Parties acknowledge that the sums payable under this clause 27.3 represent a genuine pre-estimate of the loss that a Party is likely to suffer if the other Party breaches clause 27.1.

28 Compliance with Applicable Laws

28.1 Each Party warrants and undertakes to the other that it has complied and will continue to comply with the Applicable Laws in relation to this Agreement.

28.2 Save to the extent that Applicable Laws requires otherwise, each Party must promptly notify the other if it becomes aware of any events or circumstances relating to this Agreement that will or is likely to constitute a breach of Applicable Laws (irrespective of the identity of the person in breach).

28.3 ExTrac shall use all reasonable endeavours to:

(a) ensure that all persons that:

(i) provide services to the Customer (including employees, agents and subsidiaries of ExTrac); and

(ii) are involved in the performance of the obligations of ExTrac under this Agreement,

shall comply with the Applicable Laws; and

(b) maintain its own policies and procedures designed to ensure the compliance of ExTrac with the Applicable Laws ("**Compliance Documentation**");

28.4 ExTrac undertakes to:

(a) act reasonably, maintain and enforce the Compliance Documentation during the Term; and

(b) promptly, following receipt of a reasonable, written request for the same from the Customer, provide copies of the Compliance Documentation to the Customer.

28.5 Each Party shall create and maintain proper books and records of all payments and other material benefits given by one Party to the other, and each Party shall, following receipt of a written request from the other Party, promptly supply copies of the relevant parts of those books and records to the other Party.

28.6 Each Party shall provide reasonable co-operation to the other Party on request of the other Party, at the other's expense, in relation to any due diligence exercises, risk assessments, monitoring programmes and reviews conducted by the other Party for the purpose of ensuring or promoting necessary compliance with the Applicable Laws.

28.7 Nothing in this Agreement shall prevent either Party from reporting a breach of Applicable Laws to the relevant governmental authorities.

28.8 Any breach of this Clause 28 shall be deemed to constitute a material breach of this Agreement.

29 Notices

29.1 Any notice given or authorised under this Agreement from one Party to the other:

(a) must be in writing, whether or not described as "written notice" in this Agreement;

(b) sent by registered post or email to the relevant addressee's contact details set out on the Order Form.

- 29.2 The addressee and contact details set out on the Order Form may be updated from time to time by a Party giving written notice of the update to the other Party in accordance with this Clause 29.
- 29.3 A Party receiving a notice by email from the other Party shall acknowledge receipt by email promptly, and in any event within 3 Business Days following receipt of the notice.
- 29.4 A notice by email will be deemed to have been received at:
- (a) the time the receiving Party sends of an acknowledgement of receipt to the Party issuing the notice (or, where such time is not within Business Hours, when Business Hours next begin on the following Business Day); or
 - (b) where no acknowledgement of receipt is sent by the receiving Party to the issuing Party, the first Business Day following the period set out in Clause 29.3.
- 29.5 A notice sent by registered post will be deemed to have been received 2 Business Days after it is sent.

30 Subcontracting and Assignment

- 30.1 The Customer shall not, without the prior written consent of ExTrac, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 30.2 ExTrac may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 30.3 ExTrac shall remain responsible to the Customer for the performance of any subcontracted obligations.

31 No Waiver

- 31.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 31.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

32 Severability

- 32.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 32.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

33 Third Party Rights

- 33.1 This Agreement is for the benefit of the Parties and is not intended to benefit or be enforceable by any third party. No person who is not Party to this Agreement will have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy that exists or is available other than pursuant to said Act.
- 33.2 The exercise of each Party's rights under this Agreement is not subject to the consent of any third party.

34 Variation

- 34.1 Subject to Clause 34.2, this Agreement may not be varied except by means of a written document signed by or on behalf of each Party.
- 34.2 ExTrac may vary the terms of this Agreement upon 30 days' written notice to the Customer.

35 Entire agreement

- 35.1 This Agreement, including the Schedules, shall constitute the entire agreement between the Parties, and shall supersede all previous agreements, arrangements and understandings, which will cease to be effective, whether written, oral or implied between the Parties.

35.2 Neither Party will have any remedy in respect of any misrepresentation (whether written or oral) made to it by the other Party upon which it relied in entering into this Agreement. This clause does not preclude liability for fraudulent misrepresentation.

36 Law and jurisdiction

36.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

36.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule (FORM OF CHANGE CONTROL NOTICE)

1 Introduction

Title of Change: *[insert title]*

CCN number: *[insert number]*

Change proposed by: *[insert individual name(s)]*

Date of issue of CCN: *[insert date]*

Summary details of proposed Change: *[insert details]*

2 Change details

[Insert full details of proposed Change]

3 Impact of Change

Impact upon resources: *[insert details]*

Impact upon timetable: *[insert details]*

Impact upon Charges: *[insert details]*

Other effects of Change: *[insert details]*

4 Agreement to Change

The parties have indicated their acceptance of the Change described in this CCN by signing below.

SIGNED BY *[[individual name]* on *[.....]*, ExTrac / *[individual name]* on *[.....]*, duly authorised for and on behalf of ExTrac]:.....

SIGNED BY *[[individual name]* on *[.....]*, the Customer / *[individual name]* on *[.....]*, duly authorised for and on behalf of the Customer]:.....