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# Exonar Trial Service Terms And Conditions

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply.

**Users:**

employees, agents and independent contractors of the Customer who use the Services and the Documentation.

**Business Day:**

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Conditions:**

these terms and conditions as amended from time to time in accordance with condition 6.1

**Confidential Information:**

information of commercial value, in whatever form or medium, disclosed by the party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing and, for clarity, including (in the case of Exonar's information) information relating to the Software or any of its constituent parts, the source code relating to the Software.

**Contract:**

the contract between Exonar and the Customer for the provision of the Services in accordance with these Conditions.

**Customer:**

the person or firm who purchases the Services from Exonar.

**Customer Data:**



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the data indexed by the Software as instructed by the Customer, Users, or Exonar on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

**Documentation:**

the document made available to the Customer by Exonar online via email or such other web address notified by Exonar to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

**Effective Date:**

the date on which Exonar grants the Customer access to the Software and Services confirmed in writing by Exonar.

**Exonar:**

as defined in condition 2.1

Maximum Data: 200 Gigabytes of files stored on file shares or such other amount as Exonar and the Customer shall agree in writing.

**Services:**

the subscription services provided by Exonar to the Customer under the Contract via [exonar.com or any other website notified to the Customer by Exonar from time to time, as more particularly described in the Documentation.

**Software:**

the Virtual Machine image file allowing the Customer to access the Services and the online software applications provided by Exonar as part of the Services.

**Subscription Term:**

the period of 14 days from the Effective Date

**Third Party Provider:**

A third party supplier or sub-contractor providing hosting services to Exonar.

**Virus:**



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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.

## 1.2 Construction. In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. INFORMATION ABOUT EXONAR

2.1 Exonar is a company registered in England and Wales. Our company registration number is 06439969 and our registered office is at 14 West Mills, Newbury, Berkshire, RG14 5HG.

2.2 Exonar's customer support team may be contacted by email at support@exonar.com.

## 3. SERVICES

3.1 Subject to the restrictions set out in this condition 3 and the other terms and conditions of these Conditions, Exonar hereby grants to the Customer a non-exclusive, non-transferable right to use the Software, the Services and the Documentation during the Subscription Term for any purpose related to the Customer's business provided that the Customer shall not use the Software, Documentation or Services to provide services to third parties



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3.2 The Customer's use of the Service shall be limited such that the Software shall not ingest more than the Maximum Data.

3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and Exonar reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this condition.

3.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
  - (i) and except to the extent expressly permitted under these Conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or



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(d) licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this condition; and

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Exonar.

3.6 The rights provided under this condition are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless Exonar agrees otherwise in writing.

#### **4. AVAILABILITY**

4.1 Exonar shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these Conditions however Exonar makes no warranty or commitment that the Services will be available at any particular times.

4.2 Exonar and its sub-contractors and sub-suppliers reserve the right to perform maintenance on the Services at any time without notice and the Customer acknowledges that the Services may be unavailable in the event of:

(a) Domain name system problems;

(b) Issues with FTP, POP, IMAP or SMTP customer access;

(c) Acts or omissions by the Customer or Users causing downtime;

(d) Any negligence, wilful misconduct or use of the Services in breach of the Third Party Provider acceptable use policy;

(e) Issues with User's web browsers, DNS, or other caching that might make it appear the Services are unavailable.

#### **5. SUPPORT**



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- 5.1 Exonar shall provide access to help desk technicians sufficiently qualified and experienced to identify and resolve most support issues relating to the Services. Such support may be accessed by means of the following email address support@exonar.com.
- 5.2 Exonar shall endeavour to respond to a support request on the Business Day following receipt of the support request but makes no warranties or commitments in this regard.

## **6. CUSTOMER DATA**

- 6.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 Exonar shall retain the Customer Data for a period of 30 days from the date on which the Software ingests the Customer Data after which period it shall be deleted. The Customer agrees and accepts that Exonar shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data held by Exonar as this will be a copy of data already held by the Customer.
- 6.3 Exonar shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at [exonar.com/privacyandsecurity](http://exonar.com/privacyandsecurity) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Exonar in its sole discretion.
- 6.4 If Exonar processes any personal data on the Customer's behalf when performing its obligations under these Conditions, the parties record their intention that the Customer shall be the data controller and Exonar shall be a data processor and in any such case:
- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Exonar so that Exonar may lawfully use, process and transfer the personal data in accordance with these Conditions on the Customer's behalf;
  - (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - (c) Exonar shall process the personal data only in accordance with the terms of the Documentation and any lawful instructions reasonably given by the Customer from time to time; and



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- (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage however Exonar shall not be liable for a Third Party Provider failure.

6.5 Exonar shall be entitled to collect and retain information regarding the Customer's use of the Service in order to improve the Service and for marketing purposes and the Customer is deemed to consent to Exonar's collection of this information.

6.6 Exonar assigns to the Customer, with full title guarantee and free from all third party rights, the copyright in the reports and documents generated through the Customer's use of the Services.

## **7. THIRD PARTY PROVIDERS**

7.1 The Customer acknowledges that Exonar uses the Third Party Provider in order to provide the Services. The following provisions relate only to the Third Party Provider:

- (a) The Customer shall indemnify Exonar against any additional charges it is required to pay to the Third Party Provider due to problems caused by the Customer (including but not limited to deletion of necessary operating system files, accidental or intentional infection by a Virus);
- (b) The Customer agrees to fully indemnify and keep Exonar indemnified against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by the Third Party Provider (and recharged to Exonar) arising out of any of the following:
- (i) The Customer's breach of this Contract or its negligence, or other act, omission or default;
  - (ii) The operation or breakdown of any equipment or software owned or used by the Customer;
  - (iii) The Customer's misuse of the Services;
  - (iv) The Customer infringing third party intellectual property rights.
- (c) Exonar shall have no liability to the Customer for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the Customer or on its behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or



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arising from late arrival or non-arrival or any other fault by the Customer of on its

behalf. No action, claim or demand arising out of or in connection with the Contract may be brought by the Customer against Exonar more than one year after the cause of action has occurred.

- (d) Exonar is not responsible for any delay, malfunction, non-performance and/or other degradation of performance of any of the services, hardware or software caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by the Customer whether or not beyond those already supplied.

7.2 The Customer acknowledges that Exonar shall not be liable to the Customer for a breach of this Contract where such breach was caused by the Third Party Provider.

## **8. EXONAR'S OBLIGATIONS**

8.1 The Service is provided on an 'as-seen' basis and accordingly Exonar makes no warranties, representations or other commitments in connection with the performance of the Services.

8.2 In addition, Exonar:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) 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 Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.3 These Conditions shall not prevent Exonar 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 these Conditions.

8.4 Exonar warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Conditions.

## **9. CUSTOMER'S OBLIGATIONS**





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9.1 The Customer shall:

(a) provide Exonar with:

- (i) all necessary co-operation in relation to the Contract; and
- (ii) all necessary access to such information as may be required by Exonar;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) comply with the laws of the United Kingdom and all other applicable laws and regulations with respect to the use of the Services and its activities under the Contract;
- (c) carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Exonar may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Users use the Services and the Documentation in accordance with these Conditions and shall be responsible for any User's breach of these Conditions;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Exonar, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by Exonar from time to time;
- (g) ensure that it is authorised to use the Services within the network which the Services is to access the Customer Data; and
- (h) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Exonar's data centres, 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.

## 10. CHARGES AND PAYMENT



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- 10.1 The Services are provided on a free trial basis however if the parties agree to increase the amount of the Maximum Data, Exonar shall charge the Customer, and the Customer shall pay, the agreed charges in accordance with Exonar's stipulated payment terms.
- 10.2 If Exonar has not received payment within 10 days after the due date, and without prejudice to any other rights and remedies of Exonar, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.3 All amounts and fees payable under the Contract are exclusive of value added tax, which shall be added to Exonar's invoice(s) at the appropriate rate.

## **11. EXONAR PROPRIETARY RIGHTS**

- 11.1 The Customer acknowledges and agrees that Exonar and/or its licensors own all intellectual property rights in the Software, the Services and the Documentation. Except as expressly stated herein, these Conditions do not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.
- 11.2 Exonar confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

## **12. CONFIDENTIALITY**

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;



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- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.

12.3 Each party shall take reasonable steps to ensure the security of the other's Confidential Information to which it has access and shall take all reasonable steps to ensure it is not disclosed or distributed by its employees or agents in violation of these Conditions. Comment

12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

12.5 The Customer acknowledges that details of the Software constitute Exonar's Confidential Information. Exonar acknowledges that the Customer Data constitutes the Customer's Confidential Information.

12.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12.7 The above provisions of this condition 12 shall survive termination of the Contract, however arising.

### **13. LIMITATION OF LIABILITY**

13.1 This condition 13 sets out the entire financial liability of Exonar (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with the Contract;



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- (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
  - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

13.2 Except as expressly and specifically provided in these Conditions:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Exonar shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Exonar by the Customer in connection with the Services, or any actions taken by Exonar at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in these Conditions excludes the liability of Exonar:

- (a) for death or personal injury caused by Exonar's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.4 Subject to condition 13.2 and condition 13.3:

- (a) Exonar shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
- (b) Exonar's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total fees paid by the Customer to Exonar under the Contract.

## 14. TERM AND TERMINATION



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- 14.1 The Contract shall, unless otherwise terminated as provided in this condition 14, commence on the Effective Date and shall continue for the Subscription Term after which period it shall terminate.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party.
- 14.3 On termination of the Contract for any reason:
- (a) all licences granted under these Conditions shall immediately terminate;
  - (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - (c) Exonar may destroy or otherwise dispose of any of the Customer Data in its possession; and
  - (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

## 15. FORCE MAJEURE

Exonar shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Exonar or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Exonar or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## 16. GENERAL

- 16.1 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.2 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or



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restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 16.3 **Rights and Remedies.** Except as expressly provided in these Conditions, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 16.4 **Severance.** If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 16.6 **Entire Agreement.** The Contract, and any documents referred to in it, constitutes the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 16.7 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of the Contract, other than as expressly set out in this agreement.
- 16.8 **No Partnership or Agency.** Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.9 **Third Party Rights.** The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

**16.10 Notices.**

- (a) Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this



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clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.10 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.11 **Governing law.** The Contract 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.

16.12 **Jurisdiction.** 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).

