

THEIA360 - COMMERCIAL TERMS

These Commercial Terms and the Conditions which accompany them, together with the documents referred to in them, are the complete agreement between the Customer and Exactly Tech with respect to the Services that are the subject of the Commercial Terms.

Customer	CLIENT NAME , a company incorporated under the laws of England and Wales under company number insert whose registered office is at insert	
Exactly Tech Services	The provision of the following: ☐ purchase and delivery of [number] Exactly Tech 360-degree cameras (the Product(s)) at £ [AMOUNT] per unit. ☒ Hosting Services ☒ Maintenance and Support	
Initial Term	Two years from and including the Commencement Date.	
Charges	A one-off implementation charge of £ [AMOUNT] , which is payable on or around the date of this Contract in accordance with clause 10. An annual subscription charge of £ [AMOUNT] , which is payable on the date of this Contract and each anniversary of the date of this Contract in accordance with clause 10. A charge of £ [AMOUNT] is payable for each virtual tour that is undertaken by the Customer in excess of the Maximum Number of Virtual Tours, which is payable monthly in arrears in accordance with clause 10.	
Maximum Number of Virtual Tours	[NUMBER] per calendar month (pre-rata for any incomplete month)	
Additional Services	Additional integration services are available based upon professional services	
Termination Terms	Three months' notice to terminate in writing, such notice to expire no earlier than the expiration of the Initial Term.	
Party Representatives	Exactly Tech: [Name] Tel: [insert] Email address: [insert]	Customer: [Name] Tel: [insert] Email address: [insert]
Address for Notices	Exactly Tech: For the Attention of: [Position] [Address for notices]	Customer: For the Attention of: [Position] [Insert full address of Customer]
THIS AGREEMENT has been executed by or on behalf of the parties on the dates set out below.		
Signed by a duly authorised signatory of Exactly Tech Limited:	_____ Signature _____ Date _____ Name Status: _____	
Signed by a duly authorised signatory of the Customer:	_____ Signature _____ Date _____ Name Status: _____	

EXACTLY TECH VIRTUAL TOUR SOFTWARE SERVICES – TERMS AND CONDITIONS

1 INTERPRETATION

The following definitions and rules of interpretation apply in this Contract.

Additional Services: any optional additional services which the Customer chooses to receive as set out in the Commercial Terms or otherwise agreed in writing between the parties.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

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

Charges: the charges payable by the Customer to Exactly Tech for the Services, as set out in the Commercial Terms.

Commencement Date: the date on which the Customer enters into the Contract in accordance with clause 2.3.

Commercial Terms: the commercial terms set out above including (without limitation) the description of the Product(s), the Software and the Services, the Charges and the duration of this Contract and which the Customer accepts in accordance with the terms of this Contract including, in particular, clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Confidential Information: all information whether technical or commercial (including all software, specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is identified as confidential at the time of disclosure, or which ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Contract: the contract between Exactly Tech and the Customer for the supply of the Services incorporating the Commercial Terms and these Conditions.

Customer: the person or firm who purchases the Services from Exactly Tech.

Customer Data: the images, data and/or information inputted, created or generated by the Customer, Authorised Users, or Exactly Tech on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Default: has the meaning given in clause 9.1.

Exactly Tech: Exactly Tech Limited (a company incorporated in England and Wales with company number 10120820) whose registered office address is at Aston House, Cornwall Avenue, London N3 1LF.

Delivery Location: has the meaning given in clause 4.3.

Dependencies: the dependencies and responsibilities that are the responsibility of the Customer, the fulfilment of which is necessary for the successful delivery of the Products and Services as set out in Conditions and in the Commercial Terms.

Documentation: the documentation provided to the Customer or otherwise made available to the Customer by Exactly Tech online via email or such other web address

notified by Exactly Tech to the Customer from time to time which sets out a description of the Software, the Services, the Products, and the user instructions for the Services.

Hosting Services: the hosting services provided by Exactly Tech and/or its sub-contractors in respect of the Customer Data generated through use of the Services.

Initial Term: the initial term of this Contract as set out in the Commercial Terms and if none is specified, the period of 24 months from the Commencement Date.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Maintenance and Support: any error corrections, updates and upgrades that Exactly Tech may perform with respect to the Software.

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Product(s): the 360-degree cameras, as particularised in the Commercial Terms if required.

Renewal Period: the period described in clause 15.1.

Services: the hosted online Software applications which Exactly Tech permits the Customer to access and use during the Term for the purpose of performing virtual tours, together with the associated Maintenance and Support, Hosting Services and any Additional Services, as more particularly described in the Commercial Terms and the Documentation.

Software: Exactly Tech's proprietary software accessible via the internet in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements and accessed by the Customer in connection with the Services.

Support Services Policy: Exactly Tech's policy for providing Maintenance and Support in relation to the Product(s) and Software as notified to the Customer from time to time.

Term: has the meaning given in clause 15.1 (being the Initial Term together with any subsequent Renewal Periods)

Third Party Providers: third party entities listed in the Commercial Terms or as otherwise notified by Exactly Tech to the Customer to whom Exactly Tech sub-contracts hosting of Customer Data (if any).

Virus: 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.

1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2 A reference to a party includes its successors and permitted assigns.

1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 A reference to writing or written includes email but does not include fax.

2 BASIS OF CONTRACT

2.1 These Conditions contain general terms relating to the provision by Exactly Tech of the Services. Exactly Tech and the Customer shall first agree details in relation to the Services, Software, the provision of Products and Maintenance and Support, including the nature of the Services, the Charges, and the duration of this Contract. All such details shall be set out in the Commercial Terms.

2.2 The Commercial Terms together with these Conditions shall form the Contract between the Customer and Exactly Tech. In the event of any conflict or inconsistency between the documents forming this Contract, the following order of preference shall apply:

2.2.1 the Commercial Terms; and

2.2.2 these Conditions.

2.3 Where these Conditions are not expressly accepted by signature on behalf of the Customer, they shall be deemed to have been accepted by the Customer, and the Customer agrees to be bound by these Terms, when it places any order for, pays for or uses the Services.

2.4 These Conditions shall prevail at all times to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply even if such other provisions are submitted in a later document or purport to exclude or override these Conditions and neither the course of conduct between parties nor trade practice shall act to modify this Contract

2.5 Any quotation given by Exactly Tech in connection with the performance of the Services and/or the provision of the Products shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

2.6 Any samples, drawings, descriptive matter or advertising issued by Exactly Tech and any descriptions of the Products or illustrations or descriptions of the Services contained in Exactly Tech's catalogues or brochures are issued or published for the sole purpose of giving an

approximate idea of the Services and/or Product(s) described in them. They shall not form part of the Contract or have any contractual force.

3 SERVICES

3.1 Subject to the Customer paying the Charges in accordance with clause 10, the restrictions set out in this clause 3 and the other terms and conditions of this Contract, Exactly Tech hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sub-licences, to acquire the Products and to access and use and permit Authorised Users to access and use the Services and the Documentation during the Term solely for the Customer's business (for the purpose of undertaking virtual tours of properties under the ownership and/or control of the Customer) in accordance with and subject to the terms of this Agreement. The Customer acknowledges and confirms that the Services are not business critical.

3.2 Where the Customer requests in writing and/or on the Commercial Terms to acquire one or more Product(s), Exactly Tech shall sell and the Customer shall purchase (with full title guarantee and at the price set out in the Commercial Terms) the Product(s).

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:

3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.3.6 is otherwise illegal or causes damage or injury to any person or property;

and Exactly Tech 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 clause.

3.4 The Customer shall not:

3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Contract: (a) 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 (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

3.4.2 access all or any part of the Software, Services and/or Documentation in order to build a product or service which competes

	with the Services;	4	PRODUCT(S): DELIVERY, TITLE AND RISK
3.4.3	subject to clause 17.1.2, license, 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	4.1	The Product(s) are as described in the Commercial terms. The Customer accepts responsibility for the Product(s) and their ability to achieve the Customer's intended results. The Customer acknowledges that the Product(s) have not been developed to meet the individual requirements of the Customer.
3.4.4	attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.	4.2	Exactly Tech shall ensure that each delivery of the Product(s) (or parts thereof) is accompanied by a delivery note which shows the date of the order, the type and quantity of the Product(s) and, if the order is being delivered by instalments, the outstanding balance of Product(s) remaining to be delivered.
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 Exactly Tech.	4.3	Exactly Tech shall deliver the Product(s) (or parts thereof) to the location set out in the Commercial Terms or such other location as the parties may agree (Delivery Location) at any time after Exactly Tech notifies the Customer that the Product(s) are ready.
3.6	The rights provided under this clause 3 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company of the Customer.	4.4	Delivery of the Product(s) shall be completed on the completion of the unloading of the Product(s) at the Delivery Location.
3.7	Exactly Tech shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:	4.5	Any dates quoted for delivery of the Product(s) are approximate only, and the time of delivery is not of the essence. Exactly Tech shall not be liable for any failure or delay in delivery of the Product(s).
3.7.1	planned maintenance carried out during the notified window; and	4.6	The Customer acknowledges and agrees that risk and title in the Product(s) shall pass to the Customer on completion of delivery.
3.7.2	unscheduled maintenance performed where possible outside Normal Business Hours, provided that Exactly Tech has used reasonable endeavours to give the Customer at least [one] Normal Business Hours' notice in advance.	5	MAINTENANCE AND SUPPORT
3.8	Exactly Tech will (as part of the Services and provided the Customer has requested the same in the Commercial Terms), in consideration of the Charges, provide the Customer with Exactly Tech's standard Hosting Services in respect of Customer Data for the duration of the Term. In connection with such Hosting Services, the Customer agrees that:	5.1	Exactly Tech will, as part of the Services and in consideration of the Charges, provide the Customer with Exactly Tech's standard Maintenance and Support in respect of the Software during Normal Business Hours for the duration of the Term in accordance with Exactly Tech's Support Services Policy in effect at the time that the Services are provided. Exactly Tech may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Exactly Tech's then current rates.
3.8.1	Exactly Tech 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 Hosting Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and	5.2	Maintenance and Support shall be provided on the condition that:
3.8.2	where Third Party Providers are used, the Customer acknowledges that Exactly Tech makes no representation or warranty in respect of Third Party Providers' software and/or services and, that these are provided subject to, and with the benefit of, the terms of such Third Party Providers. Exactly Tech shall contract with the Third Party Providers for such services and the Customer agrees that Exactly Tech will not be liable to the Customer for any loss, damage, claim or liability howsoever arising from or related to Third Party Providers software and/or services beyond that which can be claimed by Exactly Tech under the terms of the contract with such Third Party Providers.	5.2.1	the Customer gives notice of any fault or defect within a reasonable time of discovery of such fault or defect;
		5.2.2	the Customer provides all the information that may be necessary to assist Exactly Tech in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable Exactly Tech to re-create the defect or fault;
		5.2.3	the defect or default does not arise from a failure to fulfil a Dependency; and
		5.2.4	the defect or fault does not fall within any of the exclusions or disclaimers set out in clause 5.3 or clause 5.4.
		5.3	Exactly Tech shall not be liable for, and Maintenance and Support shall not cover, faults and defects in the Product(s).

- 5.4 Exactly Tech shall not be liable for, and Maintenance and Support shall not cover, faults and defects in the Software to the extent that the faults and/or defects are caused by improper or unauthorised testing, operation, maintenance, service, repair, installation, alteration, modification, or adjustments of the Software. Exactly Tech shall be entitled to charge for any remedy or repair that it undertakes in respect of such faults, defects or damage in addition to the Charges, at its then-current standard rates.
- 5.5 Exactly Tech reserves the right, without liability to the Customer, to disable or suspend the Customer's access to the Services under this Contract (including services provided by Third Party Providers) for material breach of any of the terms of this Contract, in addition to any other rights Exactly Tech has in law or equity.
- 6 CUSTOMER DATA**
- Exactly Tech shall follow its standard archiving procedures for Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Exactly Tech to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Exactly Tech in accordance with the archiving procedure. Exactly Tech shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Exactly Tech to perform services related to Customer Data maintenance and back-up). The Customer acknowledges and confirms that the Services are not business critical to the Customer's business, nor is the availability and restoration of the Customer Data.
- 7 EXACTLY TECH'S OBLIGATIONS**
- 7.1 Exactly Tech undertakes that the Services will be performed substantially in accordance with the terms of this Contract and the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Exactly Tech's instructions, or modification or alteration of the Services by any party other than Exactly Tech or its duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Exactly Tech will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, Exactly Tech:
- 7.2.1 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
- 7.2.2 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.
- 7.3 This Contract shall not prevent Exactly Tech 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 Contract.
- 7.4 Exactly Tech warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.
- 8 CUSTOMER'S OBLIGATIONS**
- 8.1 The Customer shall:
- 8.1.1 ensure that the details it provides in the Commercial Terms and any information it provides in respect of the Contract are complete and accurate;
- 8.1.2 provide Exactly Tech with all necessary co-operation in relation to this Contract and all necessary access to such information as may be required by Exactly Tech, in each case in order to provide the Services;
- 8.1.3 comply with all applicable laws and regulations with respect to its activities under this Contract including health and safety laws;
- 8.1.4 fulfil or procure the fulfilment of all Dependencies and carry out all other Customer responsibilities set out in this Contract 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, Exactly Tech may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.1.5 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Contract and shall be responsible for any Authorised User's breach of this Contract;
- 8.1.6 obtain and shall maintain all necessary licences and permissions in connection with its obligations under this Contract and which may be required for the Services before the date on which the Services are to start;
- 8.1.7 without limiting the generality of clause 8.1.6, ensure that the Customer has obtained all necessary title, landowner consents and any other consents, approvals and permissions as are required for the installation and use of Products and the performance of the Services before the date on which the Services are to start. The Customer shall indemnify on demand, defend and hold harmless Exactly Tech against all claims, actions, proceedings, losses, damages, fines, judgments, demands, fees, costs, expenses and liabilities of any

nature (including legal fees and disbursements on a full indemnity basis) suffered or incurred by Exactly Tech arising out of a breach of this clause;	9	CUSTOMER DEFAULT
8.1.8 provide Exactly Tech, its employees, agents, consultants and subcontractors, with access to such premises and other facilities as reasonably required by Exactly Tech to provide the Services;	9.1	If Exactly Tech's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
8.1.9 provide Exactly Tech with such information and materials as Exactly Tech may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;	9.1.1	without limiting or affecting any other right or remedy available to it, Exactly Tech shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Exactly Tech's performance of any of its obligations;
8.1.10 obtain and shall maintain all necessary licences, consents, and permissions necessary for Exactly Tech to process Customer Data;	9.1.2	Exactly Tech shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Exactly Tech's failure or delay to perform any of its obligations as set out in this clause 9.1; and
8.1.11 ensure that its network and systems comply with the relevant specifications provided by Exactly Tech from time to time;	9.1.3	the Customer shall reimburse Exactly Tech on written demand for any costs or losses sustained or incurred by Exactly Tech arising directly or indirectly from the Customer Default.
8.1.12 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Exactly Tech'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
8.1.13 comply with any additional obligations as set out in the Commercial Terms;	10.1	The Customer shall pay the Charges to Exactly Tech in accordance with this clause 10 and the Commercial Terms.
8.1.14 [permit Exactly Tech or its nominated subcontractors access to the Product(s):	10.2	The Charges for any Additional Services shall be payable in advance in the amounts and on the dates stated in the Commercial Terms.
8.1.14.1 for the purpose of support and maintenance of the Software; and/or	10.3	The Charges for the use of the Software, Hosting Services and the provision of the Maintenance and Support shall be calculated on the basis of a Maximum Number of Virtual Tours conducted by the Customer in any calendar month. The Maximum Number of Virtual Tours per month is set out in the Commercial Terms. Any virtual tours undertaken by the Customer in excess of the Maximum Number of Virtual Tours will be charged at the amounts stated in the Commercial Terms monthly in arrears.
8.1.14.2 to inspect and have access to any premises at or on which the Product(s) are installed and/or used, and have access to any records kept in connection with this Contract, for the purposes of ensuring that the Customer is complying with the terms of this Contract,	10.4	The Charges for the use of the Software, Hosting Services and the provision of the Maintenance and Support, as set out in the Commercial Terms and described in clause 10.3 but excluding the charge for excessive virtual tours, are payable annually in advance in accordance with the Commercial Terms.
provided that Exactly Tech provides reasonable advance notice to the Customer of such support and maintenance and/or inspections, which shall take place at reasonable times;]	10.5	Payment of all Charges shall be made by the Customer in pounds sterling within seven days of the date of each invoice to a bank account nominated in writing by Exactly Tech. Where a direct debit mandate has been set up, Charges shall be debited by Exactly Tech on or after the date that the invoice is issued.
8.1.15 ensure that the Customer's staff use the Product(s) in accordance with these Conditions and the reasonable instructions of Exactly Tech;	10.6	If Exactly Tech has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Exactly Tech:
8.1.16 ensure that the Product(s) are connected to the internet in accordance with Exactly Tech's system requirements; and		
8.1.17 maintain appropriate security measures to prevent any unauthorised loss of, damage to or theft of the Product(s) or any equipment within them.		

- 10.6.1 Exactly Tech may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Exactly Tech shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 10.6.2 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 Lloyds Bank plc. from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.7 All payments referred to in this Contract are stated exclusive of any value added tax and all other similar taxes and duties payable in respect of such payments. The Customer shall pay to Exactly Tech at the time that the payment becomes due an amount equal to any value added tax properly chargeable upon such payment.
- 10.8 The Customer shall be responsible for obtaining any necessary import licences or permits necessary for the delivery of the Services to the Customer, and the Customer shall be responsible for any and all customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the delivery of the Services.
- 10.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.10 Exactly Tech shall be entitled to increase the Charges, on each anniversary of the Commencement Date upon 60 days' prior notice to the Customer and the Commercial Terms shall be deemed to have been amended accordingly[, provided that such increase shall not exceed the greater of: [4]%; or a percentage equal to the percentage increase in the Retail Price Index (as maintained by the Office of National Statistics) or any index that replaces, it during the previous 12 months].
- 10.11 Exactly Tech shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Exactly Tech engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Exactly Tech for the performance of the Services.
- 10.12 [If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, Exactly Tech shall charge the Customer, and the Customer shall pay, Exactly Tech's then current excess data storage fees.
- 11 PROPRIETARY RIGHTS**
- 11.1 The Customer acknowledges and agrees that Exactly Tech and/or its licensors own all Intellectual Property Rights in the Services, Software and the Documentation including any modifications, development and enhancements made from time to

time. Except as expressly stated herein, this Contract does not grant the Customer any rights to, under or in, Intellectual Property Rights or any other rights or licences in respect of the Services, Software or the Documentation.

- 11.2 Exactly Tech confirms that it has all the rights in relation to the Software, Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Contract.
- 11.3 The parties acknowledge and agree that Exactly Tech shall have the right, and the Customer hereby grants a non-exclusive perpetual, irrevocable, worldwide, royalty free licence (with right to sub-license), to use the anonymised data and information derived from the use of the Services and/or from the Customer Data to support, maintain, test, modify, develop, enhance and improve the Services, provided that in doing so the neither the Customer nor any Authorised User or other individual shall be identifiable. All rights, title and interest (including Intellectual Property Rights) arising in connection with such test results, modifications, developments, enhancements and improvements shall vest in Exactly Tech and shall be Exactly Tech's Confidential Information. The above rights shall survive termination of this Contract, however arising.

12 CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 12.1.2 was in the other party's lawful possession before the disclosure;
- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2 Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and 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 this Contract.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 12.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is

given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Exactly Tech's Confidential Information.

12.6 Exactly Tech acknowledges that the Customer Data is the Confidential Information of the Customer.

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

13 INDEMNITY

13.1 Exactly Tech shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any Intellectual Property Rights, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

13.1.1 Exactly Tech is given prompt notice of any such claim;

13.1.2 the Customer provides reasonable co-operation to Exactly Tech in the defence and settlement of such claim, at Exactly Tech's expense; and

13.1.3 Exactly Tech is given sole authority to defend or settle the claim.

13.2 In the defence or settlement of any claim, Exactly Tech may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

13.3 In no event shall Exactly Tech, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

13.3.1 a modification of the Services or Documentation by anyone other than Exactly Tech; or

13.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Exactly Tech; or

13.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Exactly Tech or any appropriate authority.

13.4 The foregoing and clause 14.3.2 states the Customer's sole and exclusive rights and remedies, and Exactly Tech's (including Exactly Tech's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

14 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

14.1 Except as expressly and specifically provided in this Contract:

14.1.1 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. Exactly Tech shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Exactly Tech by the Customer in connection with the Services, or any actions taken by Exactly Tech at the Customer's direction;

14.1.2 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 this Contract; and

14.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

14.2 Nothing in this Contract excludes the liability of Exactly Tech:

14.2.1 for death or personal injury caused by Exactly Tech's negligence; or

14.2.2 for fraud or fraudulent misrepresentation.

14.3 Subject to clause 14.1 and clause 14.2:

14.3.1 Exactly Tech 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 this Contract; and

14.3.2 Exactly Tech's total aggregate liability in contract (including in respect of the indemnity at clause 13.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the lower of: (a) £10,000 and (b) the total Charges paid for the Services during the 12 months immediately preceding the date on which the claim arose.

15 TERM AND TERMINATION

15.1 This Contract shall, unless otherwise terminated as provided in this clause 15, commence on the Commencement Date and shall continue for the Initial Term and, thereafter, this Contract shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

15.1.1 either party notifies the other party of termination, in writing, at least three months before the end of the Initial Term or any Renewal Period, in which case this Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

15.1.2 otherwise terminated in accordance with the provisions of this Contract.

15.2 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 if:

15.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

15.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

15.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

15.3 Without affecting any other right or remedy available to it, Exactly Tech may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

15.4 Without affecting any other right or remedy available to it, Exactly Tech may suspend the supply of Services under the Contract or any other contract between the Customer and Exactly Tech if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.4, or Exactly Tech reasonably believes that the Customer is about to become subject to any of them.

15.5 On termination of this Contract for any reason:

15.5.1 all licences granted under this Contract shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;

15.5.2 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;

15.5.3 Exactly Tech may destroy or otherwise dispose of any of the Customer Data in its possession unless Exactly Tech receives, no later than ten days after the effective date of the termination of this Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Exactly Tech shall use reasonable commercial endeavours to deliver the back-up

to the Customer within 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 Exactly Tech in returning or disposing of Customer Data; and

15.5.4 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 Contract which existed at or before the date of termination shall not be affected or prejudiced.

15.6 On termination of this Contract for any reason any provision of this Contract which expressly or by implication is intended to come into or continue in force on or after termination of this Contract including, without limitation, 1, 11, 12, 14, 15.5, 15.6 and 17, which shall remain in full force and effect

16 **FORCE MAJEURE**

Exactly Tech shall have no liability to the Customer under this Contract if it is prevented from or delayed in performing its obligations under this 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 Exactly Tech or any other party), failure of a utility service or transport or telecommunications network, pandemic or epidemic, 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 suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

17 **GENERAL**

17.1 **Assignment and other dealings**

17.1.1 Exactly Tech may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

17.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Exactly Tech.

17.2 **Notices.**

17.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the address stated in the Commercial Terms or such other address as may be notified from time to time.

17.2.2 Any notice or other communication shall be

deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 or at the time recorded by the delivery service.

17.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.6 **Entire agreement.**

17.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.6.2 Each party acknowledges that in entering into

the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

17.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

17.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17.8 **Variation.** The Customer acknowledges and agrees that Exactly Tech may change the Software or Services or this Contract at any time. Exactly Tech shall publish any changes on or via the online home-page for the Services. If Exactly Tech reasonably believes that the Change is material and/or adversely affects the Customer ("**Material Change**"), it shall give the Customer at least 30 days' notice before it takes effect and it shall give the Customer the opportunity to accept or reject the Material Change. If Exactly Tech cannot publish the Material Change at least 30 days before it takes effect (for example because the change is necessary for the security of the Software and/or Services, because of regulatory change or because one of Exactly Tech's suppliers makes changes to its service at short notice), Exactly Tech shall publish the Material Change as soon as it reasonably can. In the event of any rejection of a Material Change to this Contract, this Contract shall terminate with immediate effect.

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

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