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G-Cloud 15 Lot 2b

Bramble Hub

eXate Data Security Platform

Terms and Conditions

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Software, Support and Services Agreement

between

EXATE TECHNOLOGY LIMITED

and

[NAME OF CUSTOMER]

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THIS AGREEMENT is made on [date]

PARTIES

- (1) **EXATE TECHNOLOGY LIMITED**, a company incorporated in England and Wales under number 09512030 whose registered office is at 2 Finsbury Avenue, London, EC2M 2PA (“**Exate Technology**”); and
- (2) [Insert name of customer], a company incorporated in [England and Wales] under number [insert registered number] whose registered office is at [insert address] (**Customer**),

and each of Exate Technology and the Customer being a **party** and together Exate Technology and the Customer are the **parties**.

BACKGROUND

- A Exate Technology is the licensor of certain software applications.
- B The Customer is [insert details of Customer’s background/background to licence or relevant transaction.]
- C Exate Technology has agreed to grant to the Customer a licence to use the software applications on the terms of this Agreement.

THE PARTIES AGREE

1 Definitions and interpretation

1.1 In this Agreement:

Authorised Users	means the individual employees of the Customer who have been authorised to use the Software;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in England;
Commencement Date	means the date of this Agreement;
Confidential Information	means all information (whether in oral, written or electronic form) relating to a party’s business which may reasonably be considered to be confidential in nature including information relating to that party’s technology, know-how, Intellectual Property Rights, assets, finances, strategy, products and customers. All information relating to the Software, the User Manual, the Description and any other technical or operational specifications or data relating to the Software shall be part of Exate Technology’s Confidential Information;
Description	means the description of the Software set out in Schedule 2, as may be updated pursuant to the development of any Requirements;

Exate Technology Software	means the proprietary software of Exate Technology forming part of the Software;
Fees	means the Licence Fee and such other amounts payable by the Customer to Exate Technology under this Agreement;
Full Licence	means the clause 3 licence to use the Software that commences on the date of Successful Completion;
Initial Licence Term	means the period referred to in Schedule 2 or if no period is specified, a period of 36 months from the date of Successful Completion;
Intellectual Property Rights	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: (a) whether registered or not, (b) including any applications to protect or register such rights, (c) including all renewals and extensions of such rights or applications, (d) whether vested, contingent or future, and (e) wherever existing;
Licence Fee	means the fees payable by the Customer in consideration of the Full Licence of the Software and the Support Services, as set out in Schedule 3;
Licence Restrictions	means the restrictions set out in Schedule 2;
Licence Term	means together the Proof of Concept, any Initial Licence Term and any Renewal Licence Term;
Minimum Requirements	means the minimum technical specification (which may include software, hardware and/or other facilities) required to use the Software, as set out in Schedule 2;
Open Source Software	any software licensed under any form of open -source licence meeting the Open Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/gpl.html), or anything similar, included in the Software, as listed at Schedule 4;
Permitted Purpose	means for the Customer's own internal business purposes, unless otherwise specified in Schedule 2;

Professional Services	means any configuration, consultancy, training and/or other services performed by Exate Technology for the Customer under this Agreement (and which may include the provision of additional Requirements, as agreed in accordance with clause 7;
Proof of Concept	means the period specified in Schedule 1 during which the Software will be delivered, implemented and configured and during which the Software shall be used in accordance with clause 2.1 to ascertain whether it meets the Success Criteria;
Proof of Concept Charges	means the sums which Exate Technology shall be entitled to charge for the licence to use the Software during the Proof of Concept, as set out in Schedule 1;
Rate Card	means Exate Technology's time and materials rates listed in Schedule 3;
Renewal Licence Term	shall have the meaning in clause 14.2;
Requirements	means the Customer's Upgrade requirements in respect of the Software as agreed between the parties from time to time;
Software	means the Exate Technology Software together with any Open Source Software and/or Third Party Software incorporated therein, including any Updates or Upgrades made available by Exate Technology under this Agreement;
Success Criteria	means the criteria by which the success of the completion of the Proof of Concept will be measured, as set out in Schedule 1 hereto;
Successful Completion	means that the Proof of Concept has achieved the Success Criteria;
Support Services	means the provision of the technical support and other services relating to the Software in accordance with Schedule 5;
Territory	means the countries or territories set out in Schedule 2;
Third Party Software	any third party software identified as such in Schedule 2 ;
Update	means a software maintenance update, patch or bug-fix which does not constitute an Upgrade;
Upgrade	means a version or release of the Software intended to have new or improved functionality (including any Requirements developed for the Customer);
User Manual	has the meaning given in clause 8.1; and
VAT	means United Kingdom value added tax, any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

1.2 In this Agreement:

- 1.2.1 a reference to this Agreement includes its schedules;
- 1.2.2 the table of contents, background section and the clause, paragraph, schedule or other headings in this Agreement are included for convenience only and shall have no effect on interpretation;
- 1.2.3 a reference to a 'party' includes that party's successors and permitted assigns;
- 1.2.4 words in the singular include the plural and vice versa;
- 1.2.5 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.6 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);
- 1.2.7 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement;
- 1.2.8 a reference to legislation includes all subordinate legislation made from time to time under that legislation; and
- 1.2.9 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2 Proof of Concept

- 2.1 Subject to the terms of this Agreement and in consideration of Customer's payment of the Proof of Concept Charges, Exate Technology grants to the Customer a non-exclusive, non-transferable, non sub-licensable right, during the Proof of Concept, to use the Software internally within its organisation for the purpose of evaluation and testing to establish whether the Software can achieve the Success Criteria.
- 2.2 On achieving the Success Criteria, this Agreement shall automatically continue for the Initial Licence Term and the Customer's continued use of the Software will be subject to the Full Licence terms at clause 3 hereunder. For the avoidance of doubt, the Software shall be deemed to have achieved the Success Criteria in the event Exate Technology has not received from the Customer any notification of a non-conformity with the Success Criteria before the end of the Proof of Concept period.
- 2.3 Following any notification to Exate Technology that the Software has not complied with the Success Criteria, the Customer will inform Exate Technology as soon as possible the reasons for the failing, describing the relevant non-conformity in reasonable detail. Promptly after receipt of such description, Exate Technology will correct the relevant part of the Software so as to ensure that it will conform with the relevant Success Criteria and an additional Proof of Concept period will commence in accordance with clause 2.1 for a period equivalent to the

previous Proof of Concept. This new Proof Concept will commence on the date Exate Technology notified the Customer that it had corrected the Software.

- 2.4 Correction of non-conformities will be conducted by Exate Technology without additional charge, unless Exate Technology determines, acting reasonably, that the non-conformity constitutes a new Requirement, which shall be dealt with in accordance with clause 7.
- 2.5 If after two further periods as set out in clause 2.3 the Customer informs Exate Technology that the Software has not achieved the Success Criteria, then the Customer may in its discretion:
 - 2.5.1 allow one or more further reasonable Proof of Concept periods to allow Exate Technology the opportunity to correct any relevant non-conformities and the Customer to re-perform the Proof of Concept in accordance with the procedure set out above, provided that at the end of each such further period allowed under this clause 2.5.1, this clause 2.5 will apply so as to give the Customer a choice to allow a further period or terminate this Agreement; or
 - 2.5.2 terminate this Agreement with immediate effect on notice to Exate Technology.

3 Full Licence

- 3.1 Subject to the terms of this Agreement and in consideration of Customer's payment of the Licence Fee, Exate Technology grants the Customer a non-exclusive, non-transferable licence to install and use the Software for the Permitted Purpose in the Territory for the Initial Licence Term and any Renewal Licence Term.
- 3.2 The licence granted at clause 3.1 shall include a right for the Customer to permit Authorised Users to use the Software, provided that it shall be responsible for all use of the Software by the Authorised Users and the Customer shall be liable for breach of this Agreement by an Authorised User as if it were a breach by the Customer.
- 3.3 The licence shall include a right for the Customer to grant sub-licences to third parties engaged to provide outsourcing or consultancy services to the Customer ("**Third Party Resource**"), provided Exate Technology has given its prior written approval in relation to each proposed sub-licence. The Customer shall:
 - 3.3.1 be liable for the acts and omissions of the Third Party Resource as if they were its own;
 - 3.3.2 procure that the Third Party Resource is aware of, and complies with, the obligations and restrictions imposed on the Customer under this Agreement, including all obligations and restrictions relating to record keeping, audits and Exate Technology's Confidential Information; and
 - 3.3.3 ensure that the Third Party Resource only accesses and uses the Software for the purposes of rendering services to the Customer.
- 3.4 The Customer acknowledges that Exate Technology shall be entitled to withhold approval under clause 3.3 at its discretion or to make any approval conditional on the payment of additional fees or such other terms as Exate Technology considers appropriate.

- 3.5 Any sub-licences granted by the Customer under clause 3.3 shall prohibit further sub-licensing and shall include a provision to the effect that the sub-licence shall terminate immediately on expiry or termination of this Agreement. To the extent Schedule 2 contains restrictions on the number of users, equipment or sites then such restrictions shall apply to installation and/or use by the Customer together with all sub-licensees in the aggregate and not individually.
- 3.6 Without prejudice to any other rights or obligations of either party, if the Customer at any time has or obtains additional copies of the Software beyond those licensed under this Agreement (including duplicate deliveries), it shall promptly destroy the additional copies.
- 3.7 Third Party Software supplied as part of the Software may be subject to any additional terms and conditions set out in Schedule 3 or otherwise notified to the Customer. The Customer agrees to comply with any terms and conditions relating to such Third Party Software.
- 3.8 Any Open Source Software and Third Party Software included with the Software may be used according to the terms and conditions of the specific licence under which the relevant Open Source Software and/or Third Party Software is distributed, but is provided “as is” and expressly subject to the disclaimer in clause 11.3.

4 Limitations on use

- 4.1 Except as expressly permitted under this Agreement or by law, the Customer shall not:
 - 4.1.1 use, copy, modify, adapt, correct errors, or create derivative works from, the Software;
 - 4.1.2 decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software;
 - 4.1.3 assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber the Software;
 - 4.1.4 remove or modify any copyright or similar notices, or any of Exate Technology’s or any other person’s branding, that the Software causes to be displayed when used or that is displayed in the User Manual or on any packaging accompanying the Software if delivered on physical media;
 - 4.1.5 install or use the Software, or permit it to be installed or used, on behalf of any third party or otherwise than for Permitted Purpose; or
 - 4.1.6 attempt to circumvent or interfere with any security features of the Software.
- 4.2 The Customer may make such back-up copies of the Software as is reasonably necessary.
- 4.3 The Customer shall not exceed the Licence Restrictions and acknowledges that it shall be required, without prejudice to any other rights or remedies to which Exate Technology may be entitled, to pay Exate Technology at Exate Technology’s then-current rates for any additional usage of the Software.
- 4.4 Notwithstanding any Licence Restrictions in respect of the sites at which the Software can be used or the equipment on which it may be installed, the Customer may:

- 4.4.1 install (and keep installed) the Software at one back-up site during the Licence Term provided the Customer has given Exate Technology at least five days' prior written notice of the relevant site and of any change of site from time to time;
 - 4.4.2 use the Software at the back-up site referred to in clause 4.4.1 solely on occasions where the Customer is prevented from using the Software at the original site due to circumstances beyond the Customer's reasonable control; and
 - 4.4.3 for the purposes of testing the Customer's disaster recovery and business continuity arrangements, use the Software installed at the back-up site referred to in clause 4.4.1 for such reasonable period of time as is necessary to complete the disaster recovery and business continuity testing.
- 4.5 The Customer shall ensure that the back-up site referred to in clause 4.4 remains under the Customer's direct ownership and control and the Customer shall promptly notify Exate Technology when the Customer's temporary use of the Software begins and ceases.
- 4.6 The Customer shall install and use the Software at all times in accordance with the User Manual and all other terms of this Agreement.
- 4.7 The Customer shall be permitted to use the Software in machine-readable object code form only.
- 4.8 The Customer hereby warrants, represents and undertakes that it shall (i) comply with all applicable local and foreign laws and regulations which may govern its use of the Software, and (ii) use the Software only for lawful purposes; and (iii) comply with any Minimum Requirements.
- 4.9 The Customer shall notify Exate Technology in writing as soon as it becomes aware of any actual or suspected unauthorised installation or use of the Software (including any installation or use in excess of the Licence Restrictions).

5 Delivery and installation

- 5.1 Exate Technology shall use reasonable endeavours to deliver the Software to the Customer in the manner and on the date specified in Schedule 2 or as otherwise agreed in writing.
- 5.2 If the Software is to be delivered to the Customer on physical media, the risk in the media shall pass to the Customer when it is dispatched by Exate Technology.
- 5.3 If the Software is to be made available for download by the Customer, Exate Technology shall notify the Customer when the Software is ready to be downloaded and shall provide all reasonable instructions, including any necessary activation codes or licence keys. It is the Customer's responsibility to ensure that its computer system and network connection is capable of downloading the Software.
- 5.4 Unless otherwise agreed in writing, the Customer shall be responsible for installing the Software in accordance with the instructions provided by Exate Technology.

6 Support and maintenance

Exate Technology shall provide the Support Services in accordance with Schedule 5.

7 Professional Services

- 7.1 Exate Technology and the Customer may from time to time mutually agree to Professional Services in writing, which shall be subject to the terms and conditions set out in this Agreement.
- 7.2 As soon as reasonably practicable after its receipt of the Customer's request for Professional Services, Exate Technology shall give the Customer a written estimate of the amount of time that it reasonably believes shall be required to complete the requested Professional Services (the "**Estimate**"). The Estimate shall also set forth an estimate of the fees payable for the Professional Services which shall be on a time-and-materials basis, calculated in accordance with Exate Technology's Rate Card, unless otherwise specified in the applicable Professional Services SOW (as defined below).
- 7.3 Neither Party shall have any obligation with respect to the applicable Professional Services until a written document describing the Professional Services, the time and Estimate has been signed by authorized representatives of both Parties ("**Professional Services SOW**")
- 7.4 The Professional Services shall be performed with reasonable skill and care in a manner consistent with generally accepted standards for identical or similar services.
- 7.5 Exate Technology shall use reasonable endeavours to perform the Professional Services in accordance with any timescales agreed between the parties, but any start or completion dates for the Professional Services are estimates and provided for information only.
- 7.6 Where the Professional Services involve the development of additional Requirements, the Customer acknowledges that additional Licence Fees shall also be payable in respect of the continued use of the Requirements as part of the Software. The amount of the additional Licence Fee shall be as agreed between the parties, but Exate Technology reserves the right to withhold Customer's use of any Requirements for which an additional Licence Fee has not been agreed. Once agreed, the amount of such additional Licence Fee shall be calculated on a pro-rata basis to the end of the then current Initial Licence Term or Renewal Licence Term and payable within thirty (30) days of Exate Technology's invoice. Additional Requirements shall be made available in accordance with clause 5. The amount of the annual Licence Fee shall also be amended accordingly.
- 7.7 Ownership of all Intellectual Property Rights in the results of the deliverables developed and analysis conducted by Exate Technology pursuant to a Professional Services SOW, as well as any methodologies, prototypes or applications developed by Exate Technology under a Professional Services SOW, shall be with Exate Technology, unless expressly stated otherwise in the applicable Professional Services SOW.
- 7.8 The Customer shall co-operate with Exate Technology in such manner reasonably required by Exate Technology in the performance of the Professional Services, including the timely provision of information and data required by Exate Technology and making available suitably qualified employees and contractors of the Customer.

8 User Manual

- 8.1 Exate Technology shall provide or make available online a set of documentation (**User Manual**) containing instructions on how to use the Software and detailing any specific user requirements or restrictions relating to the Software. Any help files supplied with the Software shall be deemed to form part of the User Manual.

- 8.2 The User Manual shall be updated by Exate Technology from time to time in such manner as Exate Technology sees fit. Where updates to the User Manual are made available online, Exate Technology shall not be obliged to provide updated hard copy versions of the User Manual, which shall be deemed to incorporate the online updates from the date on which they are made available.

9 Fees

- 9.1 The Fees (including expenses) expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described in Schedule 3.
- 9.2 Exate Technology shall invoice the Customer for all sums due under this Agreement, and the invoices shall be paid within 30 calendar days of the date on the invoice.
- 9.3 The Fees are exclusive of VAT which shall be payable by the Customer at the rate and in the manner prescribed by law.
- 9.4 Exate Technology shall have the right to charge interest on overdue invoices at the rate of 5% per year above the base rate of the Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- 9.5 Exate Technology reserves the right to increase the Licence Fee at any time on notice to the Customer, which shall take effect from the start of the next Renewal Licence Term following the Initial or Renewal Licence Term in which Exate Technology gave notice.
- 9.6 All payments made or to be made under this Agreement shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.

10 Records and audit

- 10.1 The Customer shall maintain accurate and complete records of its and its sub-licensees installation and usage of the Software including:
- 10.1.1 the number of copies (including back-up copies);
 - 10.1.2 the number of Authorised Users; and
 - 10.1.3 the installation sites and equipment on which it is installed.
- 10.2 Within ten Business Days of being requested to do so by Exate Technology, the Customer shall provide Exate Technology with copies of the records referred to in clause 10.1 for the purpose of verifying that the Customer's use of the Software is in accordance with this Agreement.
- 10.3 The Customer shall allow and procure for Exate Technology (and any authorised representatives of Exate Technology) access to its premises and those of its sub-licensees to inspect the equipment on which the Software is installed or on which Exate Technology reasonably believes the Software might be installed, and to audit (and take copies of) the relevant records of the Customer and the sub-licensees, to the extent necessary to verify that the installation and use of the Software is in accordance with this Agreement.
- 10.4 Unless otherwise agreed in writing, the inspection referred to in clause 10.3 shall be undertaken:

- 10.4.1 during the Customer's normal business hours on Business Days;
- 10.4.2 subject to the provision by Exate Technology of a minimum of five Business Days' notice; and
- 10.4.3 not more than twice in any calendar year during the Licence Term.
- 10.5 At Exate Technology's option, the audit and inspection referred to in clause 10.3 may be undertaken by way of remote access or by way of physical attendance at any premises where the Customer (or any person to whom use of the Software is sub-licensed) locates its computer equipment.
- 10.6 The Customer shall, at its own cost, provide all reasonable assistance and cooperation to Exate Technology in conducting any inspection or audit undertaken under this clause 10. Exate Technology shall comply with the Customer's reasonable directions in order to minimise disruption to the Customer's business and to safeguard the confidentiality of the Customer's Confidential Information.
- 10.7 The provisions of this clause 10 shall survive termination or expiry of this Agreement for a period of 12 months.

11 Warranties

- 11.1 Subject to clause 11.2, Exate Technology warrants to the Customer that:
 - 11.1.1 at the time of delivery of the Software to the Customer, no viruses, disabling code or malicious software (including spyware) are contained in the Software or the media on which it is delivered; and
 - 11.1.2 installation, use or possession of the Software and the User Manual, will not infringe the Intellectual Property Rights of any third party.
- 11.2 The Customer acknowledges that no liability or obligation is accepted by Exate Technology (howsoever arising whether under contract, tort, in negligence or otherwise):
 - 11.2.1 in relation to any Open Source Software or Third Party Software;
 - 11.2.2 that the Software shall meet the Customer's individual needs, whether or not such needs have been communicated to Exate Technology;
 - 11.2.3 arising from any failure by the Customer to comply with the Minimum Requirements; or
 - 11.2.4 that the Software shall be compatible with any software (other than the Third Party Software or Open Source Software) or with any particular hardware or equipment.
- 11.3 Exate Technology does not warrant that the use of the Software will be uninterrupted or error-free. Other than as set out in this clause 11, and subject to clause 13.5, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose, reasonable skill and care or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

12 Intellectual Property Rights

- 12.1 Nothing in this Agreement will serve to transfer from Exate Technology to the Customer ownership of the Software, the User Manual or in any copies of them and save for the licence expressly set out herein, all right, title and interest in and to the same will remain exclusively with Exate Technology and/or its licensors.
- 12.2 Subject to clauses 12.3 and 12.7, Exate Technology shall:
- 12.2.1 defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of Exate Technology Software infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom (an **IP Claim**); and
 - 12.2.2 pay, subject to clause 12.4, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.
- 12.3 The provisions of clause 12.2 shall not apply unless the Customer:
- 12.3.1 promptly notifies Exate Technology upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
 - 12.3.2 makes no comment or admission and takes no action that may adversely affect Exate Technology's ability to defend or settle the IP Claim;
 - 12.3.3 provides all assistance reasonably required by Exate Technology subject to Exate Technology paying the Customer's reasonable costs; and
 - 12.3.4 gives Exate Technology sole authority to defend or settle the IP Claim as Exate Technology considers appropriate.
- 12.4 The provisions of clause 13 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 12.2.
- 12.5 If Exate Technology Software is or is likely to become subject to an IP Claim, Exate Technology shall use reasonable endeavours to:
- 12.5.1 obtain the right for the Customer to continue to use Exate Technology Software; or
 - 12.5.2 replace or modify Exate Technology Software (or the part of it subject to the IP Claim) so that it becomes non-infringing without materially affecting the functionality of Exate Technology Software set out in the Description.
- 12.6 If Exate Technology is unable to achieve either of the outcomes described in clause 12.5 having used reasonable endeavours (including where the costs of doing so are commercially prohibitive) or otherwise elects to proceed under this clause 12.6 then, on receiving written notification from Exate Technology, the Customer shall promptly uninstall the Software and this Agreement shall immediately terminate. Exate Technology shall refund the Customer on a pro-rata basis for Licence Fees paid to Exate Technology in advance and relating to the period from the effective date of termination and the end of the then current Initial Licence Term or Extended Licence Term, as the case may be. This clause 12.6 is without prejudice to the Customer's rights and remedies under clauses 12.2.

12.7 Exate Technology shall have no liability or obligation under this clause 12 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:

12.7.1 any modification of the Software without Exate Technology's express written approval;

12.7.2 installation or use of the Software otherwise than in accordance with this Agreement, the User Manual or Exate Technology's instructions; or

12.7.3 installation or use of the Software in combination with any software, hardware or data that has not been supplied or expressly authorised by Exate Technology.

12.8 Subject to clause 13.5, the provisions of this clause 12 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

13 Limitation of liability

13.1 The extent of Exate Technology's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 13.

13.2 Subject to clause 13.5, Exate Technology's maximum aggregate liability howsoever arising under or in connection with this Agreement shall not exceed an amount equal to the Licence Fee paid to Exate Technology.

13.3 Subject to clause 13.5, Exate Technology shall not be liable for consequential, indirect or special losses.

13.4 Subject to clause 13.5, Exate Technology shall not be liable for any of the following (whether direct or indirect):

13.4.1 loss of profit;

13.4.2 loss or corruption of data;

13.4.3 loss or corruption of software or systems;

13.4.4 loss or damage to equipment;

13.4.5 loss of use;

13.4.6 loss of production;

13.4.7 loss of contract;

13.4.8 loss of opportunity;

13.4.9 loss of savings, discount or rebate (whether actual or anticipated); and/or

13.4.10 harm to reputation or loss of goodwill.

13.5 Notwithstanding any other provision of this Agreement, Exate Technology's liability shall not be limited in any way in respect of the following:

13.5.1 death or personal injury caused by negligence;

13.5.2 fraud or fraudulent misrepresentation; or

13.5.3 any other losses which cannot be excluded or limited by applicable law.

14 Term and termination

14.1 This Agreement shall come into force on the Commencement Date and unless terminated earlier in accordance with the provisions of this clause 14 shall continue for the Proof of Concept.

14.2 This Agreement shall automatically renew from the date of Successful Completion for the Initial Licence Term and shall automatically extend for 1 year ("**Extended Licence Term**") at the end of the Initial Licence Term and at the end of each Extended Licence Term. Either party may give written notice to the other party, not later than 90 days before the end of the Initial Licence Term or the relevant Extended Licence Term, to terminate this Agreement at the end of the Initial Licence Term or the relevant Extended Licence Term, as the case may be.

14.3 Either party may terminate this Agreement at any time by giving notice in writing to the other party if:

14.3.1 the other party commits a material breach of this Agreement and such breach is not remediable;

14.3.2 the other party commits a material breach of this Agreement which is not remedied within 20 Business Days of receiving written notice of such breach; or

14.3.3 the other party has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 20 Business Days after the other party has received notification that the payment is overdue.

14.4 For the avoidance of doubt, any breach by the Customer of clause 4 shall be deemed a form of material breach of this Agreement which is not remediable.

14.5 Exate Technology may terminate this Agreement at any time by giving notice in writing to the Customer if it:

14.5.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

14.5.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Exate Technology reasonably believes that to be the case;

14.5.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

14.5.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

- 14.5.5 has a resolution passed for its winding up;
 - 14.5.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 14.5.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within five Business Days of that procedure being commenced;
 - 14.5.8 has a freezing order made against it;
 - 14.5.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
 - 14.5.10 is subject to any events or circumstances analogous to those in clauses 14.5.1 to 14.5.9 in any jurisdiction;
 - 14.5.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 14.5.1 to 14.5.10 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 14.6 The right of Exate Technology to terminate the Agreement pursuant to clause 14.5 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to this Agreement.

15 Consequences of termination

- 15.1 Immediately on termination or expiry of this Agreement (for any reason), the licences and rights granted by Exate Technology shall terminate and the Customer shall (and shall procure that any sub-licensee shall):
- 15.1.1 stop using and uninstall the Software; and
 - 15.1.2 destroy and delete or, if requested by Exate Technology, return any copies of the User Manual and the Software.
- 15.2 The Customer shall ensure that it backs up its data regularly and extracts it from the Software prior to the termination or expiry of this Agreement. Exate Technology shall not be obliged to provide the Customer with any assistance extracting or recovering data whether during or after the Licence Term.
- 15.3 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.

16 Confidentiality

- 16.1 The Customer shall maintain the confidentiality of Exate Technology's Confidential Information and shall not without the prior written consent of Exate Technology, disclose, copy

or modify the Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under this Agreement.

16.2 The Customer undertakes to:

16.2.1 disclose Exate Technology's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and

16.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 16.

16.3 The Customer shall give notice to Exate Technology of any unauthorised misuse, disclosure, theft or loss of Exate Technology's Confidential Information immediately upon becoming aware of the same.

16.4 The provisions of this clause 16 shall not apply to information which:

16.4.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;

16.4.2 is lawfully received by the Customer from a third party free of any obligation of confidence at the time of its disclosure;

16.4.3 is independently developed by the Customer, without access to or use of such information; or

16.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer, where possible, notifies Exate Technology at the earliest opportunity before making any disclosure.

16.5 The obligations under this clause 16 shall survive the termination or expiry of this Agreement for a period of ten years.

17 Dispute resolution

17.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 17.

17.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

17.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:

17.3.1 Within five Business Days of service of the notice, the **[contract managers]** of the parties shall meet to discuss the dispute and attempt to resolve it.

17.3.2 If the dispute has not been resolved within five Business Days of the first meeting of the **[contract managers]**, then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within seven days to discuss the dispute and attempt to resolve it.

17.4 The specific format for the resolution of the dispute under clause 17.3.1 and, if necessary, clause 17.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

17.5 Until the parties have completed the steps referred to in clause 17.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts or emergency arbitrator relief.

18 Entire agreement

18.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

18.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

18.3 Nothing in this Agreement shall limit or exclude any liability for fraud.

19 Notices

19.1 Any notice given by a party under this Agreement shall be:

19.1.1 in writing and in English;

19.1.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and

19.1.3 sent to the relevant party at the address set out in clause 19.3.

19.2 Notices may be given, and are deemed received:

19.2.1 by hand: on receipt of a signature at the time of delivery;

19.2.2 by post: at 9.00 am on the second Business Day after posting;

19.2.3 by email: at 09:00am on the following Business Day after sending the e-mail.

19.3 Notices shall be sent to:

19.3.1 Exate Technology [for the attention of Sonal Rattan Co-founder and CTO] at:

1st Floor, 85 Great Portland Street, London, W1W 7LT

19.3.2 Customer [for the attention of *[insert name and/or position]*] at:

[insert address]

[[insert email address]]]; and OR .]

[copied to [insert name] at [insert address].]

- 19.4 Any change to the contact details of a party as set out in clause 19.3 shall be notified to the other party in accordance with clause 19.1 and shall be effective:

19.4.1 on the date specified in the notice as being the date of such change; or

19.4.2 if no date is so specified, five Business Days after the notice is deemed to be received.

- 19.5 This clause does not apply to notices given in legal proceedings or arbitration.

20 Announcements

- 20.1 Subject to clause 20.2, no announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, the Customer without the prior written consent of Exate Technology.

- 20.2 If the Customer is required to make an announcement or other public disclosure concerning this Agreement or any of the matters contained in it by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction, it may do so but shall:

20.2.1 notify Exate Technology as soon as is reasonably practicable upon becoming aware of such requirement to the extent it is permitted to do so by law, by the court or by the authority requiring the relevant announcement or public disclosure;

20.2.2 make the relevant announcement or public disclosure after consultation with Exate Technology so far as is reasonably practicable; and

20.2.3 make the relevant announcement or public disclosure after taking into account all reasonable requirements of Exate Technology as to its form and content and the manner of its release, so far as is reasonably practicable.

- 20.3 Exate Technology shall be permitted at any time to announce and/or publicise the entering into of this Agreement, including the use of the Customer's name in its marketing and promotional material, but shall not disclose the details of the Licence Fees payable by the Customer.

21 Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

22 Assignment and transfers

Except as expressly permitted by this Agreement, the Customer shall not assign, transfer, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under this Agreement (including the licence rights granted), in whole or in part, without Exate Technology's prior written consent.

23 No partnership or agency

The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other

than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

24 Severance

- 24.1 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 24.2 If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

25 Waiver

- 25.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 25.2 No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 25.3 A waiver of any term, provision, condition or breach of this Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

26 Compliance with law

- 26.1 Each party shall comply with all applicable laws and shall maintain such authorisations and approvals as required from time to time to perform their obligations under or in connection with this Agreement.
- 26.2 Without prejudice to the generality of clause 26.1, the parties shall comply with all applicable laws, rules, and regulations governing export of goods and information that apply to the Software and the User Manual, and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Software or the User Manual to any country for which an export licence or other approval is required, without first obtaining such licence or other approval. The Customer shall be solely responsible for ensuring its access, importation or use of the Software or User Manual in or into any part of the Territory complies with all export laws.

27 Conflicts within agreement

If there is a conflict between the terms contained in the main body of this Agreement and the terms of the schedules, the terms of the main body of the Agreement shall prevail.

28 Costs and expenses

Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

29 Third party rights

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

30 Governing law

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

31 Jurisdiction

The parties irrevocably agree 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, its subject matter or formation (including non-contractual disputes or claims).

AGREED by the parties on the date set out at the head of this Agreement

Signed by *[insert full name of director/authorised signatory]*

for and on behalf of [Director OR Authorised signatory]

Exate Technology Limited

and

Signed by *[insert full name of director/authorised signatory]*

for and on behalf of [Director OR Authorised signatory]

[insert name of the Customer]

SCHEDULE 1
PROOF OF CONCEPT

SCHEDULE 2
SOFTWARE

1 Description of Software

[Insert a description of the software including the name, version and latest release number]

2 Third Party Software

[List any Third Party Software]

3 Open Source Software

[List any Source Software]

4 Minimum Requirements

[List any minimum technical requirements]

5 Delivery

5.1 Estimated delivery date: *[Insert date]*

5.2 Delivery method: [Download OR Physical media]

6 Initial Licence Term

[insert time period, eg 24 months from the date of Successful Completion or other date on which the Initial Licence Term is to start]

7 Territory

[Insert, eg United Kingdom or worldwide]

8 Licence Restrictions

8.1 Authorised Users: [The Customer may install a copy of the Software on one computer to be used by an individual user. OR Concurrent User: The Customer may install *[insert]* copies of the Software on *[insert]* computers to be used by not more than *[insert]* users at any one time.]

8.2 Sites: The Software may only be installed at the following sites: *[insert]*

8.3 Equipment: The Software may only be used on the following equipment: *[insert]*

9 Permitted Purpose

The internal business purposes of the Customer. Internal business purposes does not (amongst other things) include *[list any particular concerns, eg use for the provision of outsourcing services]*.

SCHEDULE 3
LICENSE FEE AND RATE CARD

[Insert Licence Fee amounts and when entitlement to invoice arises]

Rate Card

Resource: £XXX + VAT per day

SCHEDULE 4

THIRD PARTY SOFTWARE AND OPEN SOURCE SOFTWARE TERMS

[Insert any additional terms and conditions specifically relating to Third Party Software and/or Open Source Software]

SCHEDULE 5 SUPPORT SERVICES

1. DEFINITIONS

“Additional Support Charges” means additional sums which may be charged pursuant to this Schedule 5 for time spent by Exate Technology on matters not covered by these Support Services, calculated in accordance with Exate Technology’s Rate Card;

“Additional Support Services” means support services provided other than pursuant to these Support Services, including but not limited to support services provided where the Error is a Customer Error;

“Customer Error” means any Error which arises due to any of the circumstances set out in paragraph 6.1 and 6.2 of this Schedule 5;

“Customer Error Reporting Co-ordinator” means the individual appointed by the Customer who shall be responsible for reporting Errors to Exate Technology and receiving information on the status and resolution of Errors from Exate Technology;

“Error” means a failure of the Software to perform in accordance with the Documentation;

“First Line Support” means the initial diagnosis of issues that may arise with the Software and includes the provision of assistance and troubleshooting, collection of information relating to the issue, performance of first diagnosis of a problem, the provision of answers to general service and technical questions;

“Priority” means the level of priority assigned to any Error, as set out in paragraph 4.1;

“Working Hours” means 9.00am until 6.00pm on a Business Day.

2. PROVISION OF SUPPORT

6.1 To be included with updated version

3. RELEASES

7.1 Exate Technology shall notify the Customer of the availability of any:

7.1.1 Updates; and

7.1.2 Upgrades;

each a **“Release”**, from time to time.

7.2 Updates shall be provided to the Customer for no additional fee.

7.3 Upgrades shall be subject to additional fees payable by the Customer as specified by Exate Technology or otherwise agreed pursuant to a Professional Services SOW.

7.4 Exate Technology shall only be required to maintain and provide Support Services to non-current versions of the Software for up to 2 years from that version’s release to the Customer (**“Continuing Support Period”**). Subject to Exate Technology’s agreement, Exate Technology’s continued provision of the Support Services beyond the Continuing Support

Period will be subject to the Customer's payment of Additional Support Charges as agreed between the parties, or in the event the parties have not agreed such charges prior to the expiration of the Continuing Support Period, at Exate Technology's then current time and materials rate.

- 7.5 Exate Technology shall keep the Customer promptly informed of all Updates and make them available to the Customer as soon as reasonably practicable following release.

Appendix 1 to Schedule 5

Support Contact Details

Reason for contact	Customer	Exate Technology
Requests for advice (Working Hours only)	[REPORTING PERSON]	support@exate.com
Critical Errors	[REPORTING PERSON]	+ 44 (0) 7956 843333 or urgent.issues@exate.com
Major Errors	[REPORTING PERSON]	support@exate.com
Minor Errors (Working Hours Only)	[REPORTING PERSON]	support@exate.com
Escalation & other management issues	xxx	escalations@exate.com
	xxx	sonal@exate.com
	xxx@email.com	