

HybriT Services Ltd

Master Services Agreement

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Date	Revision	Distribution	Overview
30/07/2024	V7 Template	For use in live once completed	Addition of EP
25/10/2024	V8 Template	Base template	Moved to content to latest Hybrit contract template
15/07/2025	V8.1 Template	Base template	Update DPA and annex 1

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Distribution List

Name	Role	Company/Department

Statement of Main Terms and Conditions of Master Services Agreement

The Customer wishes to enter into this agreement (including any current or future Schedules and annexes applicable to the Services) ("Master Services Agreement") and procure services and/or goods from HybrIT to the Customer.

This Master Services Agreement (including any current or future Schedules and annexes applicable to the Services) details the terms under which HybrIT shall provision Services and/or goods to the Customer, and the obligations which are placed upon the Customer.

Agreement References

Service Commencement Date	
Minimum Term	36 Months
Agreement Number	
Master Services Agreement Date	

1. Parties Details

HybrIT Services Details

Company Name ("The Company")	HybrIT Services Limited
Registered Address & Head Office	Building 3, Royal Ordnance Depot, Weedon Bec, Northampton. NN7 4PS
Company Number	10479291

Customer Details

Company Name "The Customer"	#Company Name
Registered Address & Head Office	
Company Number	

Contract Terms

2. Definitions

2.1. In this Agreement, unless expressly stated otherwise, capitalised terms shall have the meaning ascribed to them below and will be used as an addition to the master services agreement:

Additional Terms	means the terms applicable to each Service, as contained in the Schedule or incorporated into a Service Specification;
Agreement or Master Services Agreement	means the terms and conditions in this Master Services Agreement along with the Schedules, any applicable Service Specifications and any other documents agreed between the Parties;
Applicable Data Protection Legislation	means: a) to the extent the UK data protection law applies, all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which HybrIT is subject, which relates to the protection of personal data;
Applicable Laws	means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable Party;
Associated Company	in relation to a Party means any other person controlling, controlled by or under common control with that Party where "control" and related terms means the ability to direct the affairs of the relevant Party or person whether by means of the holding of shares, or the possession of voting power, by virtue of any powers conferred by its constitutional or corporate documents, or otherwise;
Authorised Person / Representative	means an individual who is authorised to request change to the contract or service or to agree things on behalf of the Customer prior to and post the service commencement date. By requesting / signing or initiating action you are confirming that you are authorised to act on behalf of the Customer and will initiate, manage and deliver activities based upon this.
Authorised Signature(s) / Signatories	means an individual who is authorised by their business (Customer or HybrIT) to sign and agree to terms upon which the service will be based and charged. By signing this document, you are confirming you are authorised to do so and HybrIT will initiate, manage and deliver Service based upon this signature.
Authorised User	means any individual who is entitled to use of the Third Party Services, Subscription Services and/or Services named to HybrIT as a user by the Customer;
Background	means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing

Materials	business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by HybrIT which may have been created outside the scope, or independently of, the Services and/or the Agreement, and including all updates, modifications, derivatives or future developments thereof;
Business Systems	the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customer or any of its agents or contractors;
Charges	means the charges, fees, costs and expenses payable under this Agreement and attached Schedules or Service Specifications;
Commissioner	means the Information Commissioner (see section 114, DPA 2018);
Confidential Information	has the meaning given in Clause 28.1;
CPI	means the Consumer Price Index announced by the ONS or similar body;
Customer Agreement	means the Microsoft customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider program that the Customer enters into this agreement, the terms of which are found at https://www.microsoft.com/licensing/docs/customeragreement and which may be updated from time to time;
Customer	Means the party detailed in section 1. of this MSA including all its subsidiaries and affiliates, 3rd party contractor and contingent workers working under contract for the Customer.
Customer Committed Date	means the date set out in the relevant Service Specification;
Customer Equipment	means any equipment located or to be located on a Customer Site and controlled exclusively by the Customer and their 3rd parties
Customer Personal Data	means any personal data which HybrIT processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer;
Deliverable	means all documents, products and materials developed by HybrIT or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts);
EU GDPR	the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law;
Fixed Rate Charge	means the recurring charges payable by the Customer for the provision of the Service(s) by HybrIT, as set out in the Service Specification;
HybrIT Contact Centre	means the HybrIT incident management centre or suppliers of HybrIT;

HybrIT Privacy Policy	The Hybrit Privacy policy as published on the Hybrit Website https://www.hybrit.co.uk/privacy-policy
Initial Term	means the period as set out in the relevant Service Specification or quote upon which a purchase order was raised, as applicable;
Intellectual Property Rights	means any patent, copyright, trademark, trade name, service mark, moral right, database right, know-how and any and all other intellectual property right whether registered or not or capable of registration and whether subsisting in the United Kingdom or any other part of the world now or in the future together with any and all goodwill relating thereto;
IPR Claim	means a claim arising from the infringement of Intellectual Property Rights belonging to third parties;
Liability	shall mean liability in or for breach of contract, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including without limitation liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract);
Licence Agreement	means all licence agreements that may have to be entered into by HybrIT and/or the Customer in respect of Third Party Services used. Such Licence Agreement terms shall be set out in the relevant Service Specification (as applicable);
Minimum Users	means the minimum number of Authorised Users stated in the relevant Service Specification if applicable;
Order	means any Customer authorisation containing a P.O or a confirmation of purchase for any product, Service(s), renewal or change quoted by HybrIT;
Planned Outage	has the meaning given in any applicable Schedule;
Party or Parties	a party to this Agreement or parties;
Product(s)	means the Microsoft or other Third Party Services, tools, software, hardware, or professional support or consulting services provided under the terms of the Customer Agreement or applicable Licence Agreement;
Purpose	means the purposes for which the Customer Personal Data is processed, as set out in Annex 1;
Ready for Service Date	shall be the date when the Service is handed over to the Customer unless stated otherwise in a Service Specification;
Relief Event	the following events: any failure by the Customer to comply with its obligations under this Agreement; any error or malfunction in the Business Systems or any other software, equipment, hardware or systems for which HybrIT is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as

	required, for any software, equipment, hardware or systems for which HybrIT is not responsible; any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to HybrIT which is reasonably required by HybrIT for the proper performance of its obligations under this Agreement; or any of the causes or events set out in Clause 21.5;
MSA Renewal Term	is the twelve (12) month period commencing upon expiry of the Initial Term or any subsequent anniversary thereof;
Schedule	means the schedules relating to a specific Service, as provided to the Customer under separate cover;
Service Specification	means (as appropriate) the service deliverable, Statement of Work(s), Order(s), Schedule(s) and any other document that has been agreed and accepted by both Parties in connection with this Agreement;
Service Level(s)	means the service level agreement governing the quality of the Service set out in the relevant Schedules or Service Specifications;
Services	means the services identified in any applicable Service Specification to be provided to the Customer by HybrIT under this Agreement;
Service Credit	means an amount credited by HybrIT for the failure to achieve the relevant Service Levels;
Site	means the locations where the Services are provided as identified in the Service Engagement (as applicable);
Statement of Works	means a statement of works setting out specific Services which has been signed and accepted by both Parties (together with any change requests signed and accepted by both Parties);
Subscription Services	means a right to use the Product(s) for a defined term;
Taxes	means any tax, duty or other charges of whatever nature (but excluding any tax, duty or other charged levied on income accruing to HybrIT hereunder) imposed by any taxing or government authority including, without limitation VAT;
Term	shall mean the Initial Term and the Renewal Term under Clause 10.1 where applicable;
Third Party Services	means any services, goods, code or software programs written or provided by a Third Party Supplier which are used by the Customer during the provision of the Services;
Third Party Supplier	means any third party that supplies Third Party Services to HybrIT and/or the Customer (as the case may be) during the provision of the Services;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
User	means the user subscriptions purchased (which may be either named or

Subscriptions	concurrent) by the Customer pursuant to the Service Specification which entitle Authorised Users to access and use the Subscription Services and/or Third Party Services (as the case may be) in accordance with this Agreement;
VAT	means Value Added Tax or any other similar sales or transaction tax;
Withholding Tax	means any amount on account of tax on sources of income which the payer is obliged to deduct from payments due to the recipient and account for to any tax authority; and
Working Day	means a day (other than a Saturday, Sunday or public holiday in England) when banks in England are open for business between 8am and 6pm.

3. Applicable Parties

3.1. This Agreement is between:

3.1.1. **Company Name**, Company number **XXXXXX**, of **Customer Address**, United Kingdom (the "Customer" or "You").

and

3.1.2. **Hybrit Services Ltd**, Company number 10479291 of Building 3, Royal Ordnance Depot. Weedon Bec, Northants, NN7 4PS ("HybrIT" or "We");

4. Execution

The Parties have executed this Agreement by way of Authorised Signatures at the bottom of this Master Services Agreement. By signing this document, you are assumed to have the authority to do so. It is beholden upon the signatory and not on HybrIT to ensure that this is the case.

5. Agreement

It is agreed that:

- 5.1. HybrIT will provide the Customer with information technology or related services on the terms set out in this Master Services Agreement and any Additional Terms included in Schedules and or Service Specifications.
- 5.2. Following signature of this Master Services Agreement the Customer may order, and HybrIT may accept orders, for additional services. The Additional Terms associated with such additional services / Schedules shall automatically be deemed incorporated into this Master Services Agreement upon execution of a Service Specification.
- 5.3. This Master Services Agreement will commence on the date it is signed by both Parties and shall continue until the expiry of the Term, or the expiry of all Service Specifications entered into under this Master Services Agreement, whichever is the later.
- 5.4. Save as agreed otherwise, in the event of conflict in interpretation, meaning or consequence between the terms and provisions of any of the documents, the terms and conditions of the Additional Terms shall prevail, followed by the HybrIT terms and conditions of this Master Services Agreement.
- 5.5. Clause, and paragraph headings shall not affect the interpretation of this Agreement.
- 5.6. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 5.7. Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 5.8. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 5.9. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 5.10. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 5.11. A reference to writing or written includes e-mail.
- 5.12. Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 5.13. References to Clauses are to the Clauses of this Agreement.

6. Ordering a New Service

- 6.1. To request a new Service, the Customer must submit an Order which shall include the name of the Customer or its Associated Companies a reference to the Quote and the new Service being requested, the applicable charges and the proposed Initial Term. HybrIT is under no obligation to accept an order but will not unreasonably refuse to approve an Order.
- 6.2. A new Order shall only become a Service Specification that is binding on both Parties and subject to the terms and conditions set out in this Agreement on; signature by HybrIT and the Customer OR signature by HybrIT and submission by the customer of a purchase order for the amount stated in the Service Specification. However, at any time prior to any Services or purchases being made available under a Service Specification, HybrIT reserves the right to reject or, subject to Clause 6.3, amend details for any one or more Services stated in such Service Specification, including the expected delivery date for a Service, if:

the cost of any Third Party Services required for a Service change from those used in HybrIT's calculation of the Charges in a Service Specification; and/or
a Service is supplied subject to survey and such survey reveals information that was unknown to HybrIT at the time of quoting, and which could affect the availability, performance, delivery timeframes and/or Charges offered.

- 6.3. If HybrIT amends the details of a Service within the Service Specification in accordance with Clause 6.2, HybrIT will notify the Customer in writing and provide Customer with a new order form for the affected Service only. Customer shall have ten (10) Working Days to accept the changes or to cancel the affected Service. If the Customer does not accept the revised order form within ten (10) Working Days of notification, HybrIT reserves the right to cancel the affected Service in the Service Specification without any Liability to the Customer by notice in writing to the Customer. If there are any other Services on the Service Specification, these shall remain unaffected.
- 6.4. Any terms and conditions contained in a Customer order form, purchase order, letter or other document generated or managed by the Customer shall be invalid with respect to the Services provided hereunder unless agreed to in writing by HybrIT.
- 6.5. HybrIT shall ensure that HybrIT personnel are suitably skilled and qualified to provide the Services pursuant to this Agreement and the Service Specifications will be delivered according to industry practice where commercially and operationally able to do so.

7. User Subscriptions

- 7.1. HybrIT grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Third Party Services and/or Subscription Services (as applicable) during the Term solely for the Customer's internal business operations.

7.2. In relation to the Authorised Users, the Customer undertakes that:

- a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Third Party Services and/or Subscription Services;
- b) each Authorised User shall keep a secure password or other biometric authentication for their use of the Third Party Services and/or Subscription Services (as the case may be) and where a password is used, ensure that such password shall be changed in accordance with Customers documented and approved password policies and that each Authorised User shall keep their password confidential;
- c) it shall maintain a written, up to date list of current Authorised Users and provide such list to HybrIT within five (5) Working Days of HybrIT's written request from time to time;
- d) it shall permit HybrIT to audit the Customer's use of the Third Party Services and Subscription Services for each Authorised User. Such audit may be conducted no more than once per quarter or as specified in any Service Specification, at HybrIT's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- e) if any of the audits referred to in Clause 7.2(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to HybrIT's other rights, the Customer shall promptly disable such passwords and HybrIT shall not issue any new passwords to any such individual; and
- f) if any of the audits referred to in Clause 7.2(d) reveal evidence that the Customer has underpaid Charges to HybrIT and/or individuals are using the Third Party Services who are not Authorised Users, without prejudice to HybrIT's other rights, the Customer shall pay to HybrIT an amount equal to such underpayment within ten (10) Working Days of the date of the relevant audit or upon request by HybrIT, promptly disable access to such individuals.

7.3. The Customer may, from time to time during any Term:

- a) unless otherwise specified in writing or within a Service Specification, request that the User Subscriptions decrease providing it does not decrease below the Minimum Users unless in accordance with Clause 7.4 or as otherwise agreed by HybrIT or;
- b) request additional User Subscriptions at any point in excess of the User Subscriptions, by giving HybrIT written notice subject to the following:
 - i. HybrIT shall evaluate the Customer's request for additional User Subscriptions and grant or refuse the request (in its sole discretion), such requests not be unreasonably refused.
 - ii. If HybrIT approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of HybrIT's invoice, pay to HybrIT the relevant Charges for such additional User Subscriptions at the relevant price at the time of the request and, if such additional User Subscriptions are purchased by the Customer part way through the Term, such charges shall be pro-rated for the remainder of the Term.

- 7.4. Unless otherwise set out in the Service Specification, HybrIT may adjust the Minimum Users on the anniversary of the Ready for Service Date or each year to reflect any adjustments made to the User Subscriptions in accordance with this Clause 7 over the previous twelve (12) months or as otherwise agreed between the Parties.

8. Credit Approval & Deposit

- 8.1. Acceptance of the first Service Specification to be agreed under this Agreement by HybrIT shall be subject to credit approval. The Customer agrees to provide HybrIT with such credit information as HybrIT may reasonably request.

- 8.2. Where;

- a) the Customer has insufficient credit rating;
- b) the Customer has suffered a material and negative change in its financial or trading condition (as determined by HybrIT in its reasonable discretion),

HybrIT may require the Customer to provide a pre-payment, deposit or bank guarantee equivalent to three (3) months' Charges, actual or projected or other security satisfactory to HybrIT. Any deposit shall be held by HybrIT as security for the payment of Charges and any other amounts due under this Agreement. On the termination of this Agreement, HybrIT may apply such deposit or bank guarantee to any amounts owed by the Customer to HybrIT with any remaining credit balance being refunded to the Customer. Any deposit paid by the Customer pursuant to this sub-Clause will not carry any interest and will be held by HybrIT in accordance with the Applicable Laws governing such deposit.

- 8.3. HybrIT may, at any time, by notice in writing impose a credit limit on the Customer to an amount to be determined by HybrIT. Any Services required by the Customer in excess of any such credit limit will require the Customer to pre-pay or deposit with HybrIT an amount equal to or greater than the amount by which the Customer will exceed the credit limit.

9. Customer Committed Date & Ready for Service Date

- 9.1. HybrIT shall use all reasonable endeavours to ensure the Ready for Service Date occurs on or before the Customer Committed Date as per the agreed Schedules hereto. HybrIT shall hand over the Service to the Customer and deliver to Customer a Service Handover Document. The Service Handover Document shall state the Ready for Service Date.

- 9.2. The Customer shall have a period defined within the relevant Service Specification from the date of delivery of the Service Handover Document whereby the Customer is to notify HybrIT of any material non-compliance of the Service with the relevant Additional Terms by performance testing, and shall provide HybrIT with the results evidencing such non-compliance, if any.

- 9.3. If the Customer notifies HybrIT in accordance with Clause 9.2, HybrIT will take such action as is reasonably necessary to provide the Service in accordance with the Additional Terms. The process in Clause 9.2 shall be repeated until the performance testing has been successfully completed.

- 9.4. In the event that the non-compliance cannot be resolved, the Customer and HybrIT will enter into discussions to determine the steps necessary to progress.

- 9.5. In the event that any deviation or non-compliance with the Additional Terms is

attributable to the Customer system or network or otherwise due to the act or omission of Customer, HybrIT shall be entitled to invoice the Customer for any costs reasonably incurred in investigating the matter.

- 9.6. Unless the Customer notifies HybrIT of any non-compliance within the timescales set out in Clause 9.2 the Customer shall be deemed to have accepted the Service as of the Ready for Service Date set out in the Service Handover Document and HybrIT shall commence billing. Notwithstanding anything contained herein, the Customer's use of the Service other than for testing purposes will be deemed to constitute acceptance of that Service.
- 9.7. If the Ready for Service Date of the Service is delayed due to an act or omission of the Customer, notified to Customer in advance in writing, including but not limited to:
- a) a failure within a reasonable period to provide information reasonably requested by HybrIT; or
 - b) the information provided by the Customer is materially incomplete, incorrect and/or illegible; or
 - c) a failure to permit access to Site or Customer Equipment which prevents HybrIT from undertaking performance testing or installation (e.g., lack of connectivity where to be provided by Customer),

then HybrIT reserves the right to commence charging the Charges from the date HybrIT has informed the Customer that HybrIT is ready to deliver the Service(s) but is unable to do so due to an act or omission of the Customer for the reasons set out in this Clause.

- 9.8. In the event that HybrIT is responsible for the delays in Ready for Service, billing will not commence until such time as the issues are resolved and ready for service has been achieved. Third Party costs will be borne by the party responsible for the delay.
- 9.9. HybrIT warrants that where goods are delivered to the Customer as part of the Services, such goods shall be of satisfactory quality, unless such goods are defective and (a) HybrIT specifically draws the Customer's attention to any defects in writing, or (b) HybrIT provides the Customer with a trial service which enables the Customer to sample the goods and such defects would have been apparent on a reasonable inspection during the trial. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

10. Term, Suspension & Termination

- 10.1. A Service Specification shall be valid from the date of signature of both Parties, until the expiry of the Initial Term or any Renewal Term thereafter (unless terminated earlier in accordance with the terms of this Agreement). At the expiration of the Initial Term (or any agreed Renewal Term), the Service Specification shall automatically be renewed for Renewal Terms until terminated by either Party providing at least sixty (60) days' notice in writing, in advance of the expiry of the Initial Term or a subsequent Renewal Term, such termination to be effective at the end of the Initial Term or at the end of any subsequent Renewal Term.
- 10.2. Either Party may terminate this Agreement with immediate effect by written notice to the other Party on or any time after the occurrence of any of the following events:
- a) the other Party ceases to trade (either in whole, or as to any part involved in the performance of this Agreement), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any

part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts when due, or any order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) under the laws applicable to that Party; or

- b) the other Party commits a material breach of this Agreement, which is not capable of remedy and, if capable of remedy, the breach is not remedied within thirty (30 working) days following a written notice by the non-breaching Party to the other Party.

10.3. HybrIT may suspend Service under any affected Service Specification and/or this Agreement between the Customer and HybrIT following thirty (30) working days written notice to describe and justify the reason for suspension to the customer with no Liability or penalty where the Customer:

- a) provides materially incorrect, false, illegible or incomplete information to HybrIT and Customer failed to remedy within thirty (30) Working Days from receipt of written notice by HybrIT;
- b) defrauds HybrIT, materially interferes with HybrIT's services and creates harm to the HybrIT Network, Equipment or any third party's property and/or services;
- c) fails to make any payment due under any Service Specification in accordance with the terms and conditions set out in this Agreement and fails to do so within thirty (30) Working Days following written notice by HybrIT;
- d) fails to use, or ensure the use of, any of the Services materially in accordance with any applicable Acceptable Use Policy referenced in any relevant Schedules or published internet location;
- e) is in material breach of the terms of any Licence Agreement; or
- f) is using or allowing (or in the reasonable opinion of HybrIT is likely to be using or allowing) any of the Services to be used for fraud, misconduct or any other illegal purpose.

Any exercise of such right of suspension shall not prejudice HybrIT's right to payment hereunder.

10.4. If HybrIT suspends any Service in accordance with Clause 10.3 above, HybrIT may claim and Customer shall pay upon demand, a Charge at the actual cost to HybrIT which other carriers have charged to HybrIT for re-commencing the provision of the Services.

10.5. HybrIT may terminate Service under any affected Service between the Customer and HybrIT with immediate effect by written notice to the Customer with no Liability or penalty where HybrIT has exercised its suspension right under Clause 10.3 and the Customer has not remedied the underlying cause of suspension within thirty (30) Working Days of the date of the notice of suspension.

10.6. If for any reason a contract between a Third Party Supplier and HybrIT relating to HybrIT's right to use, install or support Third Party Services which is the subject of the Agreement is terminated, then the Agreement or applicable Service Specification shall automatically terminate, save that where the Agreement or Service Specification relates to other Services other than that Third Party Service, termination of the Agreement or Service Specification shall operate only in so far as it relates to such Third Party Services.

10.7. In the event that HybrIT suspends any affected service inaccurately or incorrectly through its own actions or decisions, the customer will be entitled to lodge a claim against HybrIT in accordance with 19.6.

- 10.8. For the avoidance of doubt, where HybrIT is in anyway instructed by a legal or appropriately authorised governing body to terminate / suspend a service, HybrIT will accept no liability or consequence for following the instructions made to it. HybrIT however will ensure that the suspension is communicated to the Customer prior to enactment and with as much notice as possible.

11. Consequences of Termination

- 11.1. Termination or expiry of a Service Specification and/or this Agreement for any reason is without prejudice to any rights or remedies available to, or any obligations or Liabilities accrued to the Parties as at the date of termination or expiry.
- 11.2. On expiry or termination of the Agreement or Service Specification the following shall become immediately due and payable to HybrIT:
- a) (1) all sums due to HybrIT up to the date of termination, (2) any Licence Fees as set out under Clause **Error! Reference source not found.**; and (3) any termination fees that HybrIT incurs from any of its Third Party Suppliers as a consequence of such early termination. HybrIT shall use reasonable endeavours to mitigate any loss, but the Customer acknowledges and agrees that any Third Party Supplier fees may not be mitigated by HybrIT, and the Customer shall not hold HybrIT responsible if its incurs full termination fees;
 - b) In the event of expiry of this Agreement and receipt of a timely notice of intent to not renew as outlined in section 10, then HybrIT will not change any termination fees for the provision of the service.
 - c) the Customer must immediately return to HybrIT in good condition all Equipment which HybrIT has leased or loaned to the Customer, and which is under Customer's possession or control. In the event that the Customer fails to return all Equipment, then the Customer shall allow HybrIT or HybrIT's suppliers reasonable access, without charge, to its premises to recover the Equipment HybrIT may charge the Customer for all costs directly incurred in repossessing or acquiring replacement Equipment which the Customer has failed to return to HybrIT or which is returned to HybrIT in a damaged or defective condition; and
 - d) HybrIT will have the right to retain any Customer Equipment which is used in respect of the Service, and which is on premises made available by HybrIT, until receipt of all sums properly due and payable to HybrIT.
- 11.3. The Customer agrees that any termination charges during any initial or renegotiated terms are a genuine pre-estimate of loss and are not a penalty.
- 11.4. The following Clauses shall survive the termination or expiration of this Agreement in addition to those whose provisions by their content or nature will so survive: Liability and Indemnity (clause 19), Intellectual Property Indemnity (Clause 21), Severability (Clause 24), Waiver (Clause 25), Notices (Clause 26), Confidentiality (Clause 28), Press Announcements (Clause 30), Associated Company Orders and Rights of Third Parties (Clause 31) and Governing Law and Jurisdiction (Clause 33).
- 11.5. As a result of a termination of the contract, HybrIT will provide all data, including but not limited to Backups, virtual machines images and configurations where necessary to a new provider or customer as requested. Any internal processes created using our skills, experience and knowhow will remain the property of HybrIT and will not be provided.

- 11.6. Where the exit approach requires a longer-term managed solution, exit planning handover will be required, HybrIT will allocate a project manager to work with your new supplier and to co-ordinate a timely response from HybrIT to the agreed plan and requirements of the new supplier. Costs for HybrIT project management and technical handover will be forecasted for approval prior to commencement.
- 11.7. For the avoidance of doubt, the new supplier will be responsible for the plan and the approach taken to the migration of the service from HybrIT. HybrIT shall only be responsible for delivering the required actions at the required time (subject to availability, appropriate notification time and the requests being technically possible without negatively impacting our business or other customers). HybrIT at all time shall operate in good faith throughout any exit process.

12. Charges and Terms of Payment

- 12.1. Unless stated otherwise in a Service Specification or in accordance with Clause 12.5:
- a) HybrIT will invoice Installation Charges, and any other non-recurring initial Charges monthly, as incurred during the implementation stages of the Service;
 - b) HybrIT will invoice charges for the sale of equipment upon delivery to either the Service Recipient or the HybrIT configuration centre.
 - c) HybrIT will invoice all recurring Charges as of the Ready for Service Date and monthly in advance thereafter;
 - d) HybrIT shall invoice any other Charges not covered by (a),(b) and (c) above as and when incurred; and
 - e) The Customer shall pay all Charges, within thirty (30) days of the date of the relevant invoice.
- 12.2. Twelve (12) months from the Ready for Service Date and annually thereafter, unless otherwise stated in the Schedules, HybrIT reserves the right to review the Charges and may increase any Charge in line with CPI index for the previous twelve (12) months. Notification of changes in charging will be provided in writing to the Customer. The Customer has the right to dispute any increases deemed unreasonable and terminate in line with Clause 10. A dispute of this nature may go to a 3rd party arbitration.
- 12.3. For the avoidance of doubt, HybrIT may increase any fees related to Third Party Services in line with any increases imposed upon HybrIT by such Third Party Suppliers upon thirty (30) days' written notice and in line with the terms of the Licence Agreement and/or Customer Agreement.
- 12.4. Where HybrIT have quoted pricing based on Customer forecasted use levels, HybrIT reserves the right to re-assess Charges based on "actual" service use levels.
- 12.5. Where the Services are provided on a time-and-materials basis:
- a) The HybrIT standard hourly and daily rates are calculated on the basis of a Working Day;
 - b) HybrIT shall be entitled to charge an overtime rate for time worked outside of a Working Day providing this is notified to Customer in advance in writing and agreed by Customer as set out within the Service Specification; and
 - c) HybrIT shall complete the relevant time recording systems to calculate the Charges for each invoice charged on a time-and-materials basis which will be, unless otherwise agreed, issued at the end of each calendar month.

- 12.6. All amounts in respect of Charges shall be paid in GBP or as specified on the Service Specification and shall be paid free of currency exchange costs, bank charges, withholding or deductions. To the extent that any deduction or withholding is required by Applicable Law, Customer shall increase the amount of such payment to ensure that HybrIT receives the amount it would have received had no deduction or withholding been required.
- 12.7. Except in the case of a bona fide invoice dispute (12.8), HybrIT may levy additional interest on any amount invoiced and not paid when due at Barclays base rate + 3% per annum (whether before or after judgment), from (but not including) the due date for payment of such invoice, until the date on which such invoice is paid in full. Such charge shall accrue day by day and is payable on demand.
- 12.8. In the event that Customer in good faith disputes any portion of the Charges contained in an invoice, Customer will pay the undisputed portion of the invoice on the due date in full and submit a documented claim for the disputed amount. As a minimum such documented claim shall set out the amount in dispute, the reason for such dispute and provide such evidence as shall be reasonably necessary to support the dispute. The Parties shall negotiate in good faith in an attempt to resolve the dispute, provided that if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either Party may institute legal proceedings. If Customer does not submit a documented claim prior to the due date for payment of the invoice, Customer waives all rights to dispute the invoice.

13. Taxes

- 13.1. All Charges and any other fees under this Agreement are exclusive of Value Added Tax (VAT) or any similar indirect or sales taxes that may be applicable. If any VAT or similar sales tax is chargeable by HybrIT, this will be added to the agreed price (by way of separate invoice, if those Charges have already been invoiced) and shall be paid in addition by the Customer.
- 13.2. If Withholding Tax applies (in which case it will be stated in the Service Specification) to any payments for supplies made under this Agreement, the Customer may withhold that element that is required under the applicable legislation but must pay an additional amount in accordance with Clause 12.3 and must notify HybrIT prior to payment that Withholding Tax is required to be paid. The Parties undertake to co-operate, where possible, to minimise the amount of Withholding Tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of Withholding Tax or exempt entirely this amount if applicable. In any event, the Customer undertakes to account for any tax withheld to the tax authorities on a timely basis.
- 13.3. Neither Party shall be liable for the other Party's Taxes based on income (including gains from the disposal of capital).
- 13.4. Any other Taxes or levies arising from the use of the Services (including local profits taxes) (if any) shall be the Liability of the Customer and HybrIT reserves the right to recharge these to the Customer.
- 13.5. Any stamp duties or registration taxes or other Taxes relating to documentation of the

individual transactions entered into under this contract shall be borne by the Customer.

14. Service Levels

- 14.1. HybrIT shall provide the Service(s) in accordance with the Service Levels set out in the relevant Schedule.
- 14.2. Subject to Clause 19.8, the Service Levels and Service Credits (where defined in a Service Specification) state the Customer's full and exclusive right and remedy, and HybrIT's only obligation and liability, in respect of the performance and availability of the Services, or their non-performance and non-availability.

15. Compliance with Laws

- 15.1. HybrIT and the Customer shall obtain all necessary licences, approvals, permits and consents including building permits and landlords' consent required by any applicable governmental or regulatory authority or body necessary for Customer to use the Services. HybrIT shall provide, and the Customer shall use, the Services in accordance with and subject to all provisions of Applicable Law applicable to provision of the relevant Services and any order or determination of any competent authority.

16. Third Party Services (Suppliers and Services)

- 16.1. HybrIT as necessary shall procure any services from Third Party Suppliers required by HybrIT for the provision of the managed service(s) and as more fully set out in the relevant Service Specification. HybrIT will utilise warranties purchased on behalf of the customer for the provision of service and hold third parties accountable for delivery of expected service output. HybrIT will be liable for performance of supplier services acquired for the delivery of the relevant managed service detailed in the Service Specification. The Customer shall remain liable for any and all payments owed to HybrIT throughout this Agreement and until the end of the respective licence terms for such Third Party Services (the "**Licence Fees**").
- 16.2. It is a condition of this Agreement that the Customer shall enter into such direct Licence Agreements issued by the Third Party Services provider(s) where the Customer must directly contract with that Third Party as so prescribed by the relevant software owners of each Third Party Service identified within this Agreement and/or in the applicable Service Specification. In the event the Customer does not accept the terms of such Licence Agreements (whether directly contracted with HybrIT or the relevant Third Party Supplier), then the ability of HybrIT to deliver the service may be frustrated until such time as the Customer enters into such licence Agreement. Any delays in Service Performance due to such issues will not be SLA impacting or result in nonpayment to Supplier.
- 16.3. For the avoidance of doubt, HybrIT shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and shall not be held liable for the actions and or omissions of any other third party including but not limited to Microsoft (whereby the Customer will have a direct contract in place with Microsoft through the Customer Agreement).
- 16.4. Customer will not, and shall use all its reasonable endeavours to ensure that others do not (and in relation to the Third Party Services, save where the Customer is granted such

right in the relevant Licence Agreement):

- a) obtain or claim any ownership in the Services or any Third Party Services (or in any derivation thereto or improvement thereof);
- b) 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 Agreement or any Licence Agreement, attempt to copy, modify, duplicate, create, write or develop derivative works from, frame, mirror, republish, download, display, transmit, distribute, reverse engineer, decompile or disassemble all or any portion of the Third Party Services or the Services (as applicable) in any form or media or by any means;
 - i. sell, lease, licence or sublicense the Services or any Third Party Services; or
 - ii. take any action prohibited by the applicable Licence Agreement.

17. Intellectual Property Rights

- 17.1. Subject to Clause 17.2 below, on creation by HybrIT and upon HybrIT receiving payment in full, all Intellectual Property Rights in bespoke materials or code created under the Services ("**Bespoke IPR**") for the Customer shall vest automatically in the Customer. HybrIT hereby assigns to the Customer its present and future rights and full title and interest in such Bespoke IPR, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Customer hereby provides an irrevocable, worldwide, royalty-free licence to HybrIT for the duration of the Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 17.2. Notwithstanding Clause 17.1 above, HybrIT shall retain exclusive ownership of:
- a) all of its Background Materials; and ideas, concepts, techniques and know-how discovered, created or developed by HybrIT during the performance of the Services that are of general application and that are not based on or derived from the Customer's business or Confidential Information ("**General IP**", together with the Background Materials, the "**HybrIT Intellectual Property**"). HybrIT grants to the Customer a non-exclusive, irrevocable, worldwide royalty free and non-transferable licence to use the HybrIT Intellectual Property solely for the purpose of utilising the Services.

18. Assignment & Novation

- 18.1. Except as provided below neither HybrIT nor the Customer may assign, sub-contract, sub-licence or otherwise dispose of all or any of its rights or obligations under this Agreement, without the prior written consent of the other Party (not to be unreasonably withheld or delayed).
- 18.2. In the event that the customer may wish to transfer any of its rights and obligations under this Agreement to any of its Associated Companies (or its or their successors, through merger or acquisition or divestment of substantially all their or its assets), the Customer will ensure that either 12 months continued service provision or the remainder of the original contract (whichever is higher) at a minimum of the utilisation rate / charge rate at the time of merger, acquisition or divestment will be entered into by the acquiring partner / merged business with HybrIT. All other terms of this MSA and related

Schedules will continue with the acquiring partner as agreed originally with the Customer.

- 18.3. HybrIT may transfer any of its rights and obligations under this Agreement to any of its Associated Companies (or its or their successors, through merger or acquisition of substantially all of their or its assets), without the prior written consent of the other Party.
- 18.4. HybrIT may, with the prior written approval of the Customer, sub-contract any or all of its obligations under this Agreement to a third party or an Associated Company, provided that HybrIT shall remain liable to the Customer for the performance of those obligations.

19. Liability & Indemnity

- 19.1. Except as otherwise set forth in this Agreement, HybrIT shall have no Liability (a) for any transaction, which the Customer may enter into with a third party using the Services; (b) for the contents of any communications transmitted via Services or for any information or content on the Internet.
- 19.2. Other than set out in this Agreement including any Service Specification, HybrIT gives no warranties for Third Party Services (hardware or software), nor makes any representations or other agreements, express or implied with respect to the Services and in particular HybrIT does not warrant that any Service shall be uninterrupted or fault free or that such Service will interoperate effectively with Customer Equipment, or Customer's network or services which are outside of its scope for the provision of service design and delivery. HybrIT does accept liability for the performance of Third Party Suppliers whose products underpin the HybrIT managed Service offering as per clause 16.1. and will manage those Third Parties to a point of Service Acceptance.
- 19.3. These terms are in lieu of all other conditions, warranties or other terms concerning the supply or purported supply of, failure to supply or delay in supplying the Services which might but for this Clause 19 have effect between HybrIT and the Customer or would otherwise be implied into or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded (including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or as to the use of reasonable skill and care).
- 19.4. Subject to Clause 19.5, neither Party shall have any Liability for any of the following, whether the same are suffered directly or indirectly or are immediate or consequential: (a) loss of revenue; (b) loss of actual or anticipated profits; (c) downtime costs (d) loss of contracts; (e) loss of the use of money; (f) loss of anticipated savings; (g) loss of business; (h) loss of opportunity; (i) loss of goodwill; (j) loss of reputation; or (k) loss of, damage to or corruption of data, unless stated in the Service Specification; or (l) any special damage even if the other Party was aware of the circumstances in which such special damage could arise, and such Liability is excluded whether it is foreseeable, known, foreseen or otherwise.
- 19.5. Nothing in this Clause 19 shall exclude or limit the Liability of the Customer to:
- a) pay the Charges; and/or
 - b) repair (or if repair is not practicable, replace) any tangible physical property intentionally or negligently damaged by the Customer or its employees or agents.
- 19.6. Except where explicitly stated otherwise in the applicable Additional Terms, and subject to Clauses 19.5 and 19.8, the Liability of each Party for any claim, loss, expense, or damage

under this Agreement shall be limited to one hundred and twenty five percent (125%) of the total amount of Charges owed by Customer to HybrIT in the twelve months immediately preceding the cause of action. If the Service(s) have been in service for less than twelve (12) months, then the Liability of each Party shall be limited to one hundred and twenty five percent (125%) of the estimated Charges for twelve (12) months of service. The Liability set out in this Clause 19.6 is subject to a maximum of £250,000 for any one incident or a series of related incidents and to £2,000,000 for all incidents in any period of twelve (12) months.

- 19.7. The limitation of Liability under Clause 19.6 above has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 19.8. Nothing in this Agreement shall exclude or limit either Party's Liability:
- c) for fraud or fraudulent misstatement;
 - d) for death or personal injury; or
 - e) for any other Liability, which cannot be excluded or limited by Applicable Law.
- 19.9. Both parties hereby agree that it shall use all reasonable endeavours to mitigate any losses that may arise from this Agreement.
- 19.10. Subject to Clause 19.8, and notwithstanding any other provision of this Agreement, HybrIT shall not in any circumstances have any liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

20. Entire Agreement

- 20.1. This Agreement contains all the terms agreed among the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. In entering into this Agreement, the Customer agrees it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations among the Parties prior to this Agreement except as expressly stated in this Agreement and HybrIT shall have no Liability to the Customer other than pursuant to the express terms of this Agreement.

21. Intellectual Property Indemnity

- 21.1. The Customer shall pay and indemnify HybrIT, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by HybrIT, arising by reason of claims that (1) HybrIT's possession of or use of the Customer's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its customers, modify, alter, replace combine with any other data, code, documents or other software, which alters HybrIT's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

- 21.2. HybrIT shall pay and indemnify the Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Customer, arising by reason of claims that (1) the Customer's possession of or use of HybrIT's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) HybrIT, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Customer's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 21.3. If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 21, the Indemnified Party shall:
- a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clauses 21.1 or 21.2 (as applicable);
 - b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
 - d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 21.4. If an IPR Claim is brought or in the reasonable opinion of HybrIT is likely to be made or brought, HybrIT may at its own expense ensure that the Customer is still able to use any Deliverables by either:
- a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
 - b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.
- 21.5. Except to the extent that HybrIT should reasonably have known or advised the Customer the foregoing provisions of Clause 21.4, HybrIT shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
- a) any use by or on behalf of the Customer of the combination with any item not supplied or recommended by HybrIT where such use of the Deliverables directly gives rise to the claim, demand or action; or
 - b) any modification carried out on behalf of the Customer to any item supplied by HybrIT under this Agreement if such modification is not authorised by HybrIT in writing where such modification directly gives rise to a claim, demands or action.

22. Insurance

- 22.1. Each Party will maintain in effect at all times during the performance of this Agreement such insurance policies with a reputable insurance company as it is required to hold under Applicable Law and such other policies as a prudent business conducting similar operations in the region would maintain. Coverage limits will be sufficient to cover the Party's Liabilities under this Agreement.
- 22.2. With specific regard to Equipment, during the continuance of this Agreement, it shall be the Customer's responsibility to insure at its own expense, and keep insured (i) Equipment which is on Customer Premises and (ii) Customer Equipment on HybrIT premises, in each case with a reputable insurer against loss, theft, damage or destruction howsoever arising (unless such damage or destruction is caused by HybrIT or its agents) at an amount not less than the full replacement value of the Equipment. Such Equipment and Customer Equipment shall at all times be at the Customer's risk.
- 22.3. Each Party will, at the request of the other Party, provide copies of such documentation as the requesting Party reasonably requires in evidence of the other Party's compliance with this Agreement.

23. Force Majeure

A Party shall not be deemed in default of any of its obligations under this Agreement if, and to the extent that, performance of such obligation is prevented or delayed by any of the following (but not limited to) acts of God or public enemy, future pandemic or epidemic, civil war, war, threat of or preparation for war, armed conflict, political commotion or unrest, imposition of sanctions, embargo, or breaking off of diplomatic relations, insurrection or riot, fire, flood, explosion, earthquake, labour dispute causing cessation slowdown or interruption of work, national emergency, any law, act or omission of any governing authority or agency thereof, cyber warfare or cyber-attack, inability after reasonable endeavours to procure equipment, data or materials from suppliers, damage or disruption to subsea cables, or any other circumstances beyond its reasonable control ("**Event of Force Majeure**"), provided that such Event of Force Majeure is not caused by the negligence of that Party, and that Party has notified the other in writing of the Event of Force Majeure. The Party notifying an Event of Force Majeure shall use all reasonable endeavours to avoid or minimise the effects of an Event of Force Majeure. Upon the occurrence of an Event of Force Majeure, the time for performance shall be extended for the period of delay or inability to perform due to such occurrence, but if an Event of Force Majeure continues for a continuous period of more than one month the other Party shall be entitled to terminate impacted Service Specifications.

24. Severability

If any of the provisions of this Agreement is held by an appropriate arbitral, judicial or regulatory authority to be void, invalid or unenforceable, such provision shall, to the extent permitted by Applicable Law, be deemed to be deleted from this Agreement to the intent that the remaining provisions shall continue in full force and effect.

25. Waiver

The waiver by either Party, in whole or in part, of a breach of or a default under any of the provisions of this Agreement or associated Service Specifications, or the failure, in whole or in part, of the other Party, upon one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall not thereafter be construed as a waiver of any subsequent breach or default of a similar nature or as a waiver of any such provision, right of privilege hereunder.

26. Notices

Any notice, given or made under this Agreement shall be in writing, signed by an authorised representative and shall be delivered personally or sent by post, recorded delivery, courier, or electronic communication (including email) to the registered address of the Party or such other address as each Party may notify in writing to the other. Notices, other than notices of dispute or termination for breach of contract may also be sent by electronic communication to the address details set out in the relevant Service Specification or provided by the Customer through My Services. Any such notice, demand or other communication shall be deemed to have been received:

- a) if delivered personally, at the time of delivery;
- b) if sent by post, 5.00 pm on the second Working Day after posting;
- c) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt;
- d) if sent by recorded delivery, 9.00 am on the second Working Day after posting;
- e) if sent by airmail, 9.00 am on the fifth Working Day after posting; or
- f) if sent by electronic communication, 5:00 pm on the first Working Day after the electronic communication is sent.

27. Amendments

- 27.1. This Agreement and any of its provisions may be altered or added to only by agreement in writing signed by a duly authorised person on behalf of each of the Parties.
- 27.2. HybrIT may make minor amendments to this Agreement and/or the Service Specifications from time to time for operational reasons or due to changes in Applicable Laws, provided that such amendments are reasonable and do not materially affect the nature and scope or cost of the Services to be provided to the Customer. Save in respect of any non-material amendments to this Agreement for the purposes of compliance with legislative or regulatory requirements, no alterations to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

28. Confidentiality

- 28.1. Each Party shall keep confidential all information (including the terms of this Agreement) and documentation, including (without limitation) information concerning the business or trade secrets, processes, know-how or methods used by the other Party in carrying on business ("**Confidential Information**"), obtained from the other Party pursuant to or in connection with this Agreement. In order to protect the other Party's rights and interests hereunder, a Party may only disclose Confidential Information regarding the other Party to those of its personnel and its Associated Companies personnel who require such Confidential Information for the purpose of this Agreement. Each Party shall take the

same care to avoid disclosing Confidential Information of the other Party to any third party as the receiving Party takes with similar information of its own which it does not wish so to disclose.

- 28.2. Each Party agrees that it shall not use any Confidential Information regarding the other Party for any purpose other than the performance of its respective obligations or enforcing its rights under this Agreement or as otherwise permitted hereunder, nor copy or disclose any such Confidential Information to any third party without the written consent of the other Party's authorised representative. However, both Parties shall be permitted to disclose this Agreement to their personnel or their Associated Companies professional advisers, agents or representatives (including those who are assisting it in connection with this Agreement) subject to appropriate confidentiality obligations.
- 28.3. The provisions of this Clause shall not apply to Confidential Information which the recipient can show to the disclosing Party's reasonable satisfaction:
- a) was known to the recipient (without obligation to keep the same confidential) at the date of its disclosure;
 - b) is after the date of disclosure lawfully acquired by the recipient in good faith from an independent third party who is not subject to any obligation of confidentiality in respect of such Confidential Information;
 - c) was in its entirety at the time of disclosure or has become public knowledge otherwise than by reason of the recipient's neglect or breach of the restrictions set out in this or any other Agreement;
 - d) is independently developed by or on behalf of the recipient without access to any or all of the Confidential Information;
 - e) is required by process of law, judicial action, recognised stock exchange, governmental department or agency or other regulatory authority to be disclosed in which event the recipient shall take all reasonable steps to consult and take into account the reasonable requirements of the other Party in relation to such disclosure; or
 - f) agreement in writing was given for disclosure.

29. Non- Solicitation

- 29.1. Either party shall not (except with the prior written consent) during the term of this Agreement and for a period of twelve months thereafter, solicit the services of any staff of the other party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of either party.

30. Press Announcements

- 30.1. No press or public announcements, circulars or communications relating to this Agreement or the subject matter of it shall be made or sent by either of the Parties without the prior written approval of the other Party such approval not to be unreasonably withheld or delayed.
- 30.2. Notwithstanding Clause 30.1, HybrIT may refer to the Customer in its marketing materials, including, without limitation, on its website and in correspondence with

prospective customers subject always to the Customer's prior written approval (which shall not be unreasonably withheld or delayed).

31. Associated Company Orders & Third Parties

- 31.1. Customer's Associated Companies may place orders under and in accordance with the terms of this Agreement, and HybrIT shall accept such Service Specifications provided that the Customer shall remain fully liable for the performance of the Associated Company thereunder.
- 31.2. This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

32. Customer Obligations

- 32.1. The Customer must, and must procure that the Customer's Associated Companies, use the Services in accordance with each Schedule or Order (in the case of optional services as set out in any applicable Schedule), if relevant, HybrIT's Acceptable Use Policy (which will be made available to the Customer) and any reasonable written instructions provided in advance which HybrIT give the Customer from time to time.
- 32.2. The Customer must provide HybrIT with such information and access to the Customer and where relevant, the Customer's Associated Companies', equipment and premises (and those of any relevant third parties) as HybrIT or our Third Party Providers require to enable HybrIT or our Third Party Providers to provide the Customer with the Services. In particular:
- a) to take all reasonable precautions to protect the health and safety of our personnel, agents and sub-contractors whilst at Customer or the Customer's Associated Companies' premises; and
 - b) to provide HybrIT with all assistance, materials and accurate information for the purposes of enabling HybrIT to provide the Services included within this Agreement.
- 32.3. The Customer must not, and shall ensure that the Customer's Associated Companies do not, to (a) modify, redistribute, or copy the Services nor allow any third party to do so or (b) use or permit the use of the Services for the benefit of any third party (other than the Customer's Associated Companies), including on a "service bureau" basis/reselling the Services (and in any such event the Customer must inform us immediately).
- 32.4. The Customer must co-operate with HybrIT's reasonable requests for information regarding the Customer and/or the Customer's Associated Companies' use of the Services and supply such information to us without delay, providing such requests and provided reasonably in advance in writing.
- 32.5. The Customer shall ensure that each of the Customer and Customer's Associated Companies' employees, agents, and associates comply with HybrIT's reasonable instructions.
- 32.6. The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Customer Agreement (which is a direct agreement

between Microsoft and the Customer, and which may be updated by Microsoft from time to time). For the avoidance of doubt, in the event the applicable Licence Agreements and/or the Customer Agreement is not applicable to the Services being received or delivered by HybrIT to the Customer under the Agreement, such agreements shall not apply.

32.7. The Customer shall:

- a) allow HybrIT or its designated subcontractors, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
- b) where a Microsoft Cloud service is deployed / utilised within the project (including Azure, Enterprise Mobility Suite or Office365) HybrIT will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and/or Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date; and
- c) in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the seven (7) days' notice period, HybrIT may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in this Agreement.
- d) accept that ticket handling will be fulfilled by the HybrIT support desk, however, any ticket that is responded to by HybrIT and thereafter remains unanswered or is not responded to by the Customer for three concurrent chases will be closed without further notice.

32.8. The Customer and HybrIT shall take such measures to protect each other against computer viruses or similar malicious code as are commensurate with good industry practice and HybrIT shall not be liable to provide the Services in relation to any error or failure that is a result of the Customer's failure to comply with its obligations under this Clause 32.8;

32.9. Both parties warrant that:

- a) each is the owner of all of the components utilised by either party which may form part of this agreement and relevant Service Specification (including any machines, drawings, connectors, cables, parts or other items, computer room documents, manuals, tapes, disk media, items of furniture and other equipment), or is authorised by the owner to make it available to either party to enable delivery of the Services;
- b) All licences which are provided by the Customer for any software that are supplied by the Customer outside of the service as described in any Schedule but may be used by HybrIT as a prerequisite or dependency of any Service, are valid and will remain so throughout the term of this Agreement; and
- c) All data and other information provided by either party shall not be obscene, defamatory or otherwise illegal or likely to result in any claim being made against HybrIT by any third party.

33. HybrIT Obligations

HybrIT undertakes to perform its obligations under this Agreement and provide the Services:

- 33.1. As applicable, in accordance with the engagement documentation;
- 33.2. in accordance with the terms of this Agreement;
- 33.3. using reasonable skill and care;
- 33.4. in a good workmanlike manner;
- 33.5. deploying personnel who are competent, properly trained and suitably qualified and experienced to undertake the work assigned to them;
- 33.6. deploying good quality materials, assets and software which are fit for purpose (and free from any virus) and utilising appropriate techniques and standards;
- 33.7. in a manner which minimises (so far as is reasonably practicable) any disruption and inconvenience to the Customer, its employees, members of the public;
- 33.8. in accordance with Good Industry Standards;
- 33.9. in accordance with all relevant legislation, and as applicable agreed Partner policies and Security Standards;
- 33.10. to the Service Levels relevant to the Services ; and
- 33.11. in accordance with manufacturer guidelines, contracts or programmes.

34. Governing Law & Jurisdiction

- 34.1. This Agreement shall be construed in accordance with and shall be governed by the laws of England and Wales.
- 34.2. Any dispute arising out of or in connection with this Agreement, including a dispute regarding its existence, validity or termination or the consequences of its nullity, shall be subject to the non-exclusive jurisdiction of the English courts provided that HybrIT may commence proceedings in any jurisdiction in which the Customer is incorporated, resident or domiciled.

35. Data Protection

- 35.1. For the purposes of this Clause 35 only, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Legislation.
- 35.2. Both Parties will comply with all applicable requirements of Applicable Data Protection Legislation. This Clause 35.2 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Legislation.
- 35.3. The Parties have determined that, for the purposes of Applicable Data Protection Legislation, HybrIT shall process the personal data set out in the applicable Service Specification, as a processor on behalf of the Customer.
- 35.4. Without prejudice to the generality of Clause 35.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to HybrIT for the duration and purposes of this Agreement.

- 35.5. In relation to the Customer Personal Data, Annex 1 of this Agreement sets out the scope, nature, and lawful basis of processing by HybrIT, the duration of the processing and the types of personal data and categories of data subject.
- 35.5.1. In the event that the details in Annex 1 of this Agreement are not accurate, any changes should be identified in the specific Annex 1 in each Service Specification, as applicable.
- 35.5.1.1. To allow for the different data privacy requirements of various services, every amended service specification(s) Annex 1 will persevere in parallel to any other Annex 1 and will apply to the relevant service specification only.
- 35.6. Without prejudice to the generality of Clause 35.2 HybrIT shall, in relation to Customer Personal Data:
- 35.6.1. Process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process that Customer Personal Data for the delivery of the contracted services, as set out in Annex 1, any addended Annexes which are specific to any service specification and the **HybrIT Privacy Policy**.
- 35.6.2. implement and maintain appropriate technical and organisational security measures as outlined in the **HybrIT Privacy Policy** to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- a) In the event that the measures described in the **HybrIT Privacy Policy** do not meet the security needs for the data being held or processed, the customer will define the requirements or the specific data protection requirements in Annex 1 and HybrIT will endeavour to enhance the proposal or design and align a commercial proposal to meet such needs and for the customer to accept.
- 35.6.3. Ensure that any personnel engaged and authorised by HybrIT to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- 35.6.4. assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to HybrIT), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 35.6.5. notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- 35.6.6. at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless HybrIT is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this Clause 35.6.6 Customer Personal Data shall be considered deleted where it is put beyond further use by HybrIT; and
- 35.6.7. maintain records to demonstrate its compliance with this Clause 35.6.7 and allow for

reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

- 35.7. The Customer hereby provides its prior, general authorisation for HybrIT to:
- 35.7.1. appoint processors to process the Customer Personal Data, provided that HybrIT:
- a) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Legislation, and are consistent with the obligations imposed on HybrIT in this Clause 35;
 - b) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of HybrIT; and
 - c) shall inform the Customer of any intended changes concerning the addition or replacement of the sub processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to HybrIT's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Legislation, the Customer shall indemnify HybrIT for any losses, damages, costs (including legal fees) and expenses suffered by HybrIT in accommodating the objection;
 - d) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that HybrIT shall ensure that all such transfers are effected in accordance with Applicable Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of HybrIT, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 35.7.2. In accordance with clause 35.7.1, HybrIT UK and HybrIT New Zealand from time to time may both be engaged in data processing activities to enable your Services procured through HybrIT UK. New Zealand has "equivalency" status with GDPR and as a further measure of control, mutual Data Processing Agreements are in place between both locations. HybrIT NZ operates to UK processes and our UK systems which are audited as part of our ISO27001 standard and access and use the same data locations and toolsets as the UK business.
- 35.8. HybrIT will maintain ISO27001 as a business and if this lapses, will notify the customer.

36. Signatories

The parties to this Agreement or their duly authorised representatives have signed and agreed to these terms.

EXECUTED and DELIVERED for and on behalf of the Customer	Signature: Title: Date:
EXECUTED and DELIVERED for and on behalf of Hybrit Services Ltd	Signature: Title: Chief Executive Officer Date:

37. Annex 1 - Particulars of the Data Processing

Populated sections of this annex are based on assumptions made by HybrIT. It is the responsibility of the data controller / customer to determine that these are correct and appropriate for the processing being requested of HybrIT and the data being provided.

It is the data controller / customers responsibility to update and flag changes to HybrIT prior to signing in alignment with clauses 35.5 – 35.6.1 of the MSA.

In order to conduct its day to day business the lawful basis for which Hybrit Services May use personal data is as follows:

Purpose/Activity	Type of data	Lawful basis for processing including basis of legitimate interest
To register customer as a new customer or prospective customer	(a) Identity (b) Contact	Performance of the Agreement and provision of Services
To process and deliver customer's order including: (a) Manage payments, Fees and charges (b) Collect and recover money owed to HybrIT	(a) Identity (b) Contact (c) Financial (d) Transaction (e) Marketing Communications	(a) Performance of the Agreement and provision of Services (b) Necessary for HybrIT's legitimate interests (to recover debts due)
To manage the relationship between HybrIT and which will include: (a) Notifying the Customer about changes to HybrIT's terms or privacy policy (b) Asking the Customer to leave a review or take a survey	(a) Identity (b) Contact (c) Financial (d) Transaction (e) Marketing Communications	(a) Performance of the Agreement and provision of Services (b) Necessary to comply with a legal obligation (c) Necessary for HybrIT's legitimate interests (to keep records updated and to study how customers use HybrIT's products/services)
To enable the Customer to partake in a or complete a survey	(a) Identity (b) Contact (c) Profile (d) Usage (e) Marketing Communications	(a) Performance of the Agreement and provision of Services (b) Necessary for HybrIT's legitimate interests (to study how customers use HybrIT's products/services, to develop them and grow HybrIT's business)
To administer and protect HybrIT's business (including troubleshooting, data	(a) Identity (b) Contact	(a) Necessary for HybrIT's legitimate interests (for running HybrIT's business, provision of

analysis, testing, system maintenance, support, reporting and hosting of data)	(c) Technical	administration and IT services, network security, to prevent fraud and in the context of a business reorganisation or group restructuring exercise) (b) Necessary to comply with a legal obligation
To deliver relevant website content and advertisements to the Customer and measure or understand the effectiveness of the advertising HybrIT serves to the Customer	(a) Identity (b) Contact (c) Profile (d) Usage (e) Marketing Communications (f) Technical	Necessary for HybrIT's legitimate interests (to study how customers use HybrIT's products/services, to develop them, to grow HybrIT's business and to inform HybrIT's marketing strategy)
To use data analytics to improve HybrIT's website, products/services, marketing, customer relationships and experiences	(a) Technical (b) Usage	Necessary for HybrIT's legitimate interests (to define types of customers for HybrIT's products and services, to keep HybrIT's website updated and relevant, to develop HybrIT's business and to inform HybrIT's marketing strategy)
To make suggestions and recommendations to the Customer about goods or services that may be of interest to the Customer	(a) Identity (b) Contact (c) Technical (d) Usage (e) Profile	Necessary for HybrIT's legitimate interests (to develop HybrIT's products/services and grow HybrIT's business)

Any specific personal data processing requirement which is aligned to a specific service and service deliverable will be covered in the relevant service schedule and will be addended to this annex 1 as part of the overall contract.