



GENERAL TERMS AND CONDITIONS**FOR****PLATFORM SERVICES****1. PRELIMINARIES**

- 1.1. Words and phrases in this document (hereinafter, the “**Platform GTCs**”) beginning with a capital letter shall, except where the context expressly requires otherwise, have their respective meanings given in Appendix 1.
- 1.2. The Supplier owns and operates the Platform and provides Platform Services to customers.
- 1.3. The Customer wishes, subject to the Agreement, to purchase and receive the Platform Services.
- 1.4. The parties agree that the Agreement applies to the provision and use of the Platform Services and comprises the following documents:
 - 1.4.1. the Order Form;
 - 1.4.2. these Platform GTCs;
 - 1.4.3. the Platform Specification;
 - 1.4.4. the Support Specification (describing the Support and related Service Levels applicable to the Platform Services);
 - 1.4.5. the Security Controls (describing the physical, technical, and organisational security measures applied by the Supplier in the provision of the Platform Services);
 - 1.4.6. the Data Processing Terms (describing how Personal Data may be processed by the Supplier when acting as a Data Processor under the Agreement); and
 - 1.4.7. the following policies:
 - 1.4.7.1. BCDR Plan (describing the business continuity and disaster recovery plans relevant to the Platform Services and the Supplier’s business operations); and
 - 1.4.7.2. Minimum Technical Requirements (describing the Minimum System Requirements and data standards / formats necessary to access and/or use the Platform).
- 1.5. The parties agree that subject to the execution of the Order Form and clause 4 of these Platform GTCs, the Agreement is a legally binding contract between the parties.
- 1.6. Each party warrants and represents to the other that it has the requisite power and authority to:
 - 1.6.1. enter into the Agreement; and
 - 1.6.2. carry out its obligations as contemplated by the Agreement.
- 1.7. The Agreement is for the provision and receipt of the Platform Services and, for the avoidance of doubt, the provision and receipt of Professional Services is subject to the Services GTCs.

2. ELECTRONIC SIGNATURES

- 2.1. The parties agree that:
 - 2.1.1. the Agreement may be electronically executed by the Customer acting through an authorised representative (e.g., by presentation through a *click-wrap*, *scroll-through*, or other similar online workflow and/or ordering or marketplace mechanism); and
 - 2.1.2. where the Customer’s authorised representative clicks “*Accept*” (and/or completes such other affirming act(s) required by the registration and/or ordering process) or downloads, installs, hosts, or otherwise accesses the Platform (the “**Electronic Signature**”), the Customer unconditionally agrees that:
 - 2.1.2.1. such authorised representative has all necessary authority to accept the terms of the Agreement for, and on behalf of, the Customer;
 - 2.1.2.2. the Agreement is binding on the parties from the Effective Date; and
 - 2.1.2.3. the Electronic Signature shall have equivalent standing in applicable Legislation to a physical signature.

3. ORDER FORMS AND THE AGREEMENT

- 3.1. Each Agreement is a separate contract between the parties for the Platform Services described in the relevant Order Form.

- 3.2. Each Order Form:
- 3.2.1. fully incorporates, and is subject to, these Platform GTCs (and the other documents comprising the Agreement);
 - 3.2.2. identifies:
 - 3.2.2.1. the Platform (including whether, or not, a licence to use the Mobile Application (including the AR Function) has been purchased); and
 - 3.2.2.2. additional Licence Conditions (*e.g.*, the number of individual items of Equipment that may be managed through the Platform from time to time within the Customer's purchased subscription and/or tier thresholds);
 - 3.2.3. describes and/or documents:
 - 3.2.3.1. the Subscription Period (*e.g.*, sixty (60) months from the Effective Date);
 - 3.2.3.2. the Customer's Sites (*i.e.*, the site(s) entitled to use the Platform for the purposes of clause 10 (*Acceptable Use of the Platform*));
 - 3.2.3.3. the Platform Specification;
 - 3.2.3.4. the Support Specification;
 - 3.2.3.5. any applicable Special Conditions;
 - 3.2.3.6. the Fees (and how the Fees are calculated) (*e.g.*, determined by the number of Equipment items managed in the Platform from time to time);
 - 3.2.3.7. the Customer's Responsibilities (in addition to those described elsewhere in the Agreement); and/or
 - 3.2.3.8. the Minimum Technical Requirements; and
 - 3.2.3.9. the Customer's key contacts and/or contract managers.

4. COMMENCEMENT AND SUBSCRIPTION PERIOD

- 4.1. The Agreement (and the Licence to use the Platform) shall:
- 4.1.1. be effective (and binding on the parties) from the Effective Date; and
 - 4.1.2. continue, unless and until terminated in accordance with these Platform GTCs, for the Subscription Period.
- 4.2. Upon expiry of the Initial Term, the Agreement shall automatically renew for successive periods of twelve (12) months (each a "**Renewal Term**"):
 - 4.2.1. unless either party notifies the other in writing that it does not wish to renew the Agreement and such notice is received at least sixty (60) days prior to the end of the Initial Term or the then current Renewal Term; and
 - 4.2.2. provided that the Fees payable for, and in respect of, each Renewal Term shall be the Supplier's then current standard pricing (as provided to the Customer not less than ninety (90) days' before the commencement of the relevant Renewal Term).
- 4.3. If written notice to terminate the Agreement is given under, and in accordance with, clause 4.2 then the Agreement will expire automatically at the end of the Initial Term or then current Renewal Term (as the case may be).

5. LICENCE

- 5.1. Subject to:
- 5.1.1. the Customer's compliance with the Licence Conditions; and
 - 5.1.2. payment of the Fees in accordance with these Platform GTCs,
- the Supplier hereby grants the Licence to the Customer for the Subscription Period.
- 5.2. The Customer agrees that the Platform (including any and all software and/or other materials made available by, or on behalf of, the Supplier in connection with the installation and/or use of the Platform) has been licensed for use (under the Licence) and not sold.
- 5.3. The Customer shall not licence, rent, lease, sell, assign, lend, transfer, charge, novate or otherwise deal with the Licence, Platform (including or Third-Party Materials), and/or the Agreement, or use the Platform, for the benefit of anyone other than the Customer or allow or permit a third party to do so.

6. SUPPLIER'S OBLIGATIONS

- 6.1. Subject to clause 8, the Supplier shall:

- 6.1.1. deliver or make available (as applicable to the Licence) the Platform described in the Order Form provided that:
 - 6.1.1.1. time is not of the essence of delivery;
 - 6.1.1.2. except as expressly agreed otherwise in the Order Form, all dates provided by the Supplier for the delivery and/or implementation of the Platform shall be construed as estimates only; and
 - 6.1.1.3. implementation of the Platform or transition to the Platform may be carried out by the Supplier as a Professional Service (by separate agreement) under the Services GTCs.
- 6.1.2. comply with all Legislation applicable to the Supplier as a provider of the Platform;
- 6.1.3. with respect to the Supplier's hosting environment:
 - 6.1.3.1. apply the Security Controls (including to prevent and/or mitigate the introduction of malicious code or other viruses into the Platform);
 - 6.1.3.2. in connection with the Security Controls, use and deploy industry accepted end-point security to prevent, check for, and delete viruses from the Supplier's computing environment;
 - 6.1.3.3. make available the Platform in a manner that meets or exceeds the applicable Service Levels; and
 - 6.1.3.4. ensure that it has in place (and makes available a summary on request) an appropriate BCDR Plan;
- 6.1.4. in all cases:
 - 6.1.4.1. provide Support as described in the Support Specification;
 - 6.1.4.2. provide Support in accordance with the applicable Service Levels;
 - 6.1.4.3. provide the Platform Services using reasonable skill and care;
 - 6.1.4.4. ensure that the Platform, under normal operating conditions, performs (in technical and functional respects) as described in the Platform Specification (except in trivial and/or immaterial respects not affecting functionality and/or use of the Platform); and
 - 6.1.4.5. ensure that, throughout the Subscription Period, it has and maintains the Certifications and Controls.
- 6.2. The Customer shall notify the Supplier promptly and without undue delay if it, acting reasonably and honestly, considers that the Supplier has materially breached any one (or more) of the obligations set out under clause 6.1 (a "**Performance Failure**").
- 6.3. For the avoidance of doubt, a Performance Failure shall not include a defect, problem, or incident the resolution of which is reasonably within the scope of Support.
- 6.4. Without prejudice to the Customer's rights under clause 23, the Supplier shall use commercially reasonable endeavours, at the Supplier's cost, to remedy Performance Failures reasonably promptly and without undue delay including (at the Supplier's option) in accordance with the Service Levels by:
 - 6.4.1. making available a corrected version of the Platform;
 - 6.4.2. supplying a reasonable way to work-around the problem causing the Performance Failure (provided that the workaround is not materially detrimental to the Customer); or
 - 6.4.3. re-performing the relevant Platform Services.
- 6.5. The Supplier shall perform secure back-ups of data submitted to the Platform by and/or on behalf of the Customer held in the HyBird Cloud not less than once in every period of twenty four (24) hours.

7. INSURANCE

- 7.1. The Supplier shall maintain in force at all times (including by ensuring that it does not act or omit to act in a manner which may invalidate an insurance) during the Subscription Period:
 - 7.1.1. professional indemnity insurance: £5,000,000 (five million pounds);
 - 7.1.2. public liability insurance: £5,000,000 (five million pounds); and
 - 7.1.3. data protection and cyber risk insurance: £2,000,000 (two million pounds).

8. EXCLUSIONS AND DISCLAIMERS

- 8.1. Subject to clause 25.3 and except to the extent expressly set out in clause 6:
 - 8.1.1. the Supplier does not warrant, represent, or undertake to the Customer that the Platform Services will be uninterrupted or error free;

- 8.1.2. the Supplier gives no warranties, representations, undertakings, or other commitments to the Customer (or its Authorised Users) as to the functionality, performance, availability, transmission speeds, content, latency, and/or accuracy of the Platform; and
- 8.1.3. all warranties, conditions, representations, and terms (whether written or oral, express or implied by Legislation, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable Legislation.
- 8.2. The Customer agrees that the Supplier is not responsible, and shall have no liability, for loss or damage (including any reduction to the functionality or performance of the Platform) resulting from, caused or contributed to by:
 - 8.2.1. delays or delivery failures resulting from the transfer of data over or through the Customer's System or any third party's communications networks and/or facilities (including the internet);
 - 8.2.2. use of the Platform contrary to the Documentation (or reasonable instructions given from time to time) including defects arising as a result of misuse, wilful damage, negligence on the part of any person other than the Supplier or its appointed representatives, abnormal operating conditions caused by the Customer or the Customer's Systems;
 - 8.2.3. combination or use of the Platform with software or system that has not been approved for interoperation by the Supplier;
 - 8.2.4. modification or alteration of Platform by any party other than the Supplier or the Supplier's contractors or agents (including any alteration to, or error in, the configuration of the Platform);
 - 8.2.5. a failure of the Customer's Systems to meet the Minimum System Requirements;
 - 8.2.6. defects, issues, and/or problems to the extent resulting from the Customer's System or a failure of the Customer to deploy patches, fixes and/or other maintenance updates released and/or made available by the Supplier (including as part of the Support);
 - 8.2.7. the Supplier's compliance with any designs, specifications, or other instructions provided by and/or on behalf of the Customer;
 - 8.2.8. use of the Customer's Property (excluding deliverables created by the Supplier and assigned to the Customer under an Order Form for Professional Services); and/or
 - 8.2.9. the Customer's breach of the Agreement (including a failure to perform a Customer's Responsibility).
- 8.3. In the event of any loss or damage to any data or information submitted to the Platform by or on behalf of the Customer (including by the Supplier), the Customer's sole and exclusive remedy shall be for the Supplier to use its reasonable commercial endeavours to restore the lost or damaged data from the last available back-up of such data maintained by the Supplier in connection with its obligations under clause 6.5.

9. CUSTOMER'S OBLIGATIONS

- 9.1. The Customer:
 - 9.1.1. shall perform its obligations under the Agreement (including all of the Customer's Responsibilities);
 - 9.1.2. shall provide and maintain the Equipment Register for use in connection with the Platform Services;
 - 9.1.3. shall monitor its use of the Platform (including the number of items of Equipment managed through the Platform from time to time) to ensure compliance with the Licence Conditions and acknowledges that use reports may be obtained through the functionality of the Platform;
 - 9.1.4. shall comply with all applicable Legislation and binding codes of practice applicable to the Customer and its use of the Platform;
 - 9.1.5. shall procure that each Authorised User keeps all access credentials used to access the Platform (*e.g.*, user-names and passwords) secure and confidential;
 - 9.1.6. warrants and represents that it has obtained, and undertakes to the Supplier that it shall maintain, all necessary licences, consents, and permissions for it to:
 - 9.1.6.1. provide or make available the Customer's Property; and
 - 9.1.6.2. connect the Customer's System to, or integrate the Customer's System with, the Platform, including by obtaining all licences necessary for the Supplier to use, connect to, and/or integrate with the EAM Platform or any other Customer licensed third party platforms in connection with the Platform Services;
 - 9.1.7. shall comply with the reasonable requests of the Supplier made in connection with the operation of the Platform and the receipt of Support;

- 9.1.8. shall ensure that the Customer's System meets the Minimum System Requirements at all times during the Subscription Period; and
- 9.1.9. shall be solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's System to the HyBird Cloud.
- 9.2. The Customer shall notify the Supplier promptly and without undue delay if it becomes aware that:
 - 9.2.1. it is in breach of any obligation contained in clauses 6 or 9; or
 - 9.2.2. a breach of clauses 6 or 9 has occurred with respect to an Authorised User.
- 9.3. Without limiting clause 8, in the event that the Supplier can demonstrate that its non-conformance with an obligation under the Agreement was caused or attributed to the acts and/or omissions of the Customer (a "**Customer Cause**"), the Supplier:
 - 9.3.1. shall not be in breach of the Agreement;
 - 9.3.2. may delay, postpone or revise any deadline, milestone, timeline, plan or obligation taking into account the consequences caused by the Customer Cause;
 - 9.3.3. may amend any related Professional Services (*e.g.*, implementing services) to reflect any consequences caused by the Customer Cause;
 - 9.3.4. shall be entitled to request an appropriate and reasonable change to the Agreement (including the Fees through a documented change note); and
 - 9.3.5. shall be entitled to invoice for Fees for all Platform Services delivered or made available, notwithstanding that a milestone has not yet been achieved and/or a Fee is not yet due for payment in accordance with a payment trigger event described in the Order Form,

provided, in each case, that the Supplier acts reasonably and uses commercially reasonable efforts to mitigate the impact resulting from the Customer Cause.

10. ACCEPTABLE USE OF THE PLATFORM

- 10.1. The Licence is granted subject to, and the Customer shall comply with, the following conditions:
 - 10.1.1. the Platform may not be used and/or accessed in breach of clause 26;
 - 10.1.2. only Equipment located at the Customer's Sites documented in the Order Form may be managed through the functionality of the Platform (as described in clause 11);
 - 10.1.3. any change or addition to the Customer's Sites may only be made by written agreement between the parties in accordance with clause 29.3;
 - 10.1.4. the Customer shall not:
 - 10.1.4.1. use the Platform for any purpose outside the scope of the Licence;
 - 10.1.4.2. authorise or allow any person to access and/or use the Platform who is not an Authorised User and shall ensure that all related Documentation is securely hosted and/or stored and is not accessible to any person who is not an Authorised User;
 - 10.1.4.3. access, store, distribute, or transmit any software, code, file, or programme which may prevent, impair, or otherwise adversely affect the operation of the Platform or the Security Controls (including worms, Trojan horses, viruses, and other similar things or devices) or submit any material to the Platform that:
 - 10.1.4.3.1. is harmful, discriminatory, threatening, defamatory, obscene, infringing, harassing, or offensive;
 - 10.1.4.3.2. may cause a breach of applicable Legislation (including breach of any applicable data protection Legislation or the Data Processing Terms);
 - 10.1.4.3.3. facilitates illegal activity (including fraud);
 - 10.1.4.3.4. is incomplete, materially inaccurate, or intended to deceive; or
 - 10.1.4.3.5. could cause damage or injury to any person or property;
 - 10.1.4.4. have any right to: convert the Platform or any software contained in the Platform (in whole or in part) to (or into) any programming language; or format or copy, adapt, reverse engineer, de-compile, disassemble, modify, adapt, or make error corrections to the Platform except, with respect to the de-compilation of software, to the extent such de-compilation:
 - 10.1.4.4.1. cannot be restricted under applicable Legislation (*e.g.*, section 50B of the UK Copyright, Designs and Patents Act 1988); and

- 10.1.4.4.2. is strictly necessary for the exclusive purpose of obtaining the information necessary to create an independent program which can be operated with the Platform or with another program.

The Customer's foregoing right to de-compile the software shall not apply if: (a) the Customer is in breach of the de-compilation conditions described in applicable Legislation; or (b) the Supplier: (i) is prepared to carry out, and/or procure the carrying out of, such de-compilation in return for a reasonable fee; or (ii) has provided the information necessary to achieve such interoperability without de-compilation of the Platform within a reasonable period, and the Customer shall request that the Supplier carries out such action or provides such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such de-compilation;

- 10.1.4.5. overload or otherwise attempt to overload or interfere with the operation of the Platform;
- 10.1.4.6. attempt to circumvent, disable, or otherwise interfere with any security related features of the Platform or the Security Controls (including features that enforce limitations of use or prevent copying, licence keys, digital interlocks, cryptographic protection, data collection, or recording mechanisms);
- 10.1.4.7. access, view, or otherwise use the Platform (or allow or permit any third party to access, view, or otherwise use the Platform) in order to build a product or service which competes with the Platform or the business of the Supplier (including to build, or to assist a third party to build, a product using similar ideas, features, or functions of the Platform);
- 10.1.4.8. use the Platform to provide services to any third party and shall, accordingly, only use the Platform for:
 - 10.1.4.8.1. its internal non-commercial business purposes (*i.e.*, commercial resale or use of the Platform to deliver services to third parties is prohibited); and
 - 10.1.4.8.2. the purposes described in the Agreement and the Documentation; or
- 10.1.4.9. access or use the Platform (or any Documentation) for purposes of:
 - 10.1.4.9.1. benchmarking or competitive analysis;
 - 10.1.4.9.2. publicly disseminating performance or comparison information or analysis; or
 - 10.1.4.9.3. performing penetration testing.

10.2. The Customer shall:

- 10.2.1. to the extent within its control, use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform;
- 10.2.2. in the event that the Customer discovers or is made aware of any such unauthorised access or use, give notice to the Supplier of such access or use promptly and without undue delay; and
- 10.2.3. where unauthorised access or use occurs, give the Supplier all reasonable assistance requested to bring an end to such unauthorised access or use.

11. CUSTOMER'S SITES

- 11.1. The Customer agrees that the Customer's Sites (in respect of which Equipment located thereto may be managed through the functionality of the Platform) shall be those listed in the Order Form.

12. PRODUCT ROADMAP

- 12.1. The Supplier has sole discretion and control over the Platform's product roadmap and may modify at any time (with or without notice to the Customer) the functionality, performance, configuration, appearance, and/or content of the Platform provided that, in each case, such modifications do not result in a material reduction to, or loss of, the functionality and/or performance of the Platform during the Subscription Period.
- 12.2. Nothing in the Agreement shall restrict the Supplier from developing and/or using any techniques, ideas, concepts, or know-how related to methods or processes acquired during the provision of the Platform Services.
- 12.3. The Customer agrees that the related Documentation may be updated or amended by the Supplier from time to time and at the Supplier's sole discretion (including for the purposes of documenting updates made to the Platform Services under clause 12.1).

13. UPDATES

- 13.1. Except as otherwise agreed between the parties in the Order Form (including as part of Support), the Supplier is not obliged to provide the Customer with any modifications, enhancements, upgrades, patches, releases, fixes, or new versions of the Platform that the Supplier may develop from time to time.
- 13.2. The Supplier shall not be responsible for the obsolescence of the Platform that results from:
 - 13.2.1. changes in the Customer's requirements or to the Customer's System; or
 - 13.2.2. the Customer's failure to implement any modifications, enhancements, upgrades, patches, releases, fixes, or new versions provided by the Supplier from time to time.

14. CONFIDENTIAL INFORMATION

- 14.1. Each party shall:
 - 14.1.1. hold the other party's Confidential Information in confidence (including by using the same degree of care and discretion to avoid disclosure, publication, or dissemination as it uses to protect its own similar information); and
 - 14.1.2. subject to clause 14.2 and clause 14.4, not use the other's Confidential Information for any purpose other than in connection with the provision or receipt of the Platform Services.
- 14.2. Subject to clause 14.3, a party may disclose the other party's Confidential Information if and to the extent:
 - 14.2.1. expressly agreed by the other party in writing;
 - 14.2.2. required by applicable Legislation;
 - 14.2.3. required by any regulatory body (including a taxation authority) having competent jurisdiction over that party; or
 - 14.2.4. required by the rules of any securities exchange (including stock exchanges or bourses) applicable to that party's stocks, bonds, and/or derivatives).
- 14.3. The parties agree that, with respect to disclosures made under clauses 14.2.2 to 14.2.4 (inclusive), the disclosing party shall:
 - 14.3.1. as soon as is reasonably practicable and, where possible and/or permitted, before making the disclosure; and
 - 14.3.2. to the extent permitted by applicable Legislation and/or the relevant regulatory body and/or securities exchange, notify the other party in writing of the circumstances of the intended disclosure and the Confidential Information to which such disclosure relates for the purpose of allowing the other party to seek an: (a) order that the Confidential Information does not need to be disclosed; (b) appropriate protection order; or (c) other assurance that confidentiality is maintained.
- 14.4. Subject to clause 14.5, either party shall be entitled to disclose the other party's Confidential Information to any employee, consultant, contractor (including sub-contractors), auditor, professional adviser, or other person engaged by that party who has a need to know the other party's Confidential Information in connection with the Agreement or the Platform Services (including for the purpose of the examination and certification of that party's accounts) provided that the Customer may not disclose any of the Supplier's Confidential Information to a competitor of the Supplier.
- 14.5. Both parties shall ensure that the person to whom the Customer's Confidential Information has been disclosed under clause 14.4 is bound by written or statutory confidentiality obligations that are materially as protective of that party's Confidential Information as those set out in this clause 14.
- 14.6. The Customer warrants and represents to the Supplier that it has the right to disclose all Confidential Information:
 - 14.6.1. provided and/or made available to the Supplier under and in connection with the Agreement; or
 - 14.6.2. uploaded or otherwise transmitted to Platform,
 and to authorise the Supplier to use such Confidential Information in connection with the provision of the Platform Services.
- 14.7. The obligations contained in this clause 14 shall not apply to Confidential Information that:
 - 14.7.1. is or becomes publicly known (other than through any act or omission of the receiving party);
 - 14.7.2. was in the receiving party's lawful possession before the disclosure;
 - 14.7.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 14.7.4. is independently developed by the receiving party without use or reference to the other party's Confidential Information.

15. PERSONAL DATA

- 15.1. Each party shall:
 - 15.1.1. have their respective rights; and

15.1.2. comply with their respective obligations,
described in the Data Processing Terms.

15.2. The Customer shall ensure that, to the extent it shares or makes available any personal data or personally identifiable information to the Supplier, it is lawfully entitled to do so and does so in accordance with the Data Processing Terms and applicable Legislation.

16. SUPPLIER'S DATA

16.1. The Customer agrees that the Supplier may:

16.1.1. collect use application-level metrics relating to the use of the Platform (*e.g.*, the date, time, number of logins, Authorised User identifiers, quantity and type of Equipment and workflows) including for the following uses:

- 16.1.1.1. making the Platform functional and available for use in accordance with the Agreement;
- 16.1.1.2. enforcing and/or monitoring compliance with and/or the administration of the Agreement;
- 16.1.1.3. providing Support;
- 16.1.1.4. verifying the Customer's compliance with the Licence;
- 16.1.1.5. protecting and/or enforcing the Supplier's IPR;
- 16.1.1.6. planning and implementing improvements to the Platform;
- 16.1.1.7. enabling scalability planning and performance monitoring activities to be carried out;
- 16.1.1.8. preparing accurate invoices; and
- 16.1.1.9. evaluating adoption rates and the success of new features and releases of the Platform; and

16.1.2. subject to clause 16.2, use the Supplier's Data for its business purposes including:

- 16.1.2.1. improving the Platform;
 - 16.1.2.2. developing new or additional products and/or services;
 - 16.1.2.3. developing and training large language models (LLMs);
 - 16.1.2.4. analysing market trends; and
 - 16.1.2.5. creating and publishing press releases, preparing case studies and white papers,
- and, in each case, the Customer hereby gives its consent to the same.

16.2. The Supplier shall ensure that the Supplier's Data:

- 16.2.1. does not contain personal data;
- 16.2.2. is not specifically attributable to the Customer; and
- 16.2.3. does not reveal the Customer's Confidential Information in breach of the Agreement.

16.3. For the avoidance of doubt, Supplier's Data includes geometric models, imagery, equipment configurations, and operational patterns derived from the Platform. Such data shall be considered anonymised provided it does not contain the Customer's name, logo, or other express branding. The removal of Customer-identifying characteristics does not require removal of site-specific technical or operational data.

17. FEES AND PAYMENT

17.1. The Fees are:

- 17.1.1. except where a custom and/or alternative metric is agreed in the Order Form, calculated by reference to the number of items of Equipment managed in the Platform by reference to the subscription tier purchased from time to time (as described in the Order Form); and
- 17.1.2. payable in the currency and frequency described in the Order Form.

17.2. Unless expressly provided otherwise in the Order Form, the Fees:

- 17.2.1. are payable in advance of the Platform Services (determined by reference to the subscription tier purchased in the Order Form); and
- 17.2.2. where the quantity of Equipment items managed in the Platform in any Contract Year period exceeds the tier described in clause 17.2.1, upwardly adjusted to reflect of actual consumption on an annual basis.

17.3. The Supplier may raise its invoices for the Fees described in:

- 17.3.1. clause 17.2.1, at any time before, on, or after the beginning of each Contract Year; and
- 17.3.2. clause 17.2.2, at any time before, on, or after the expiry of the previous Contract Year.
- 17.4. The Customer shall pay each invoice for the Fees (without set-off or deduction) before the expiry of the Due Date.
- 17.5. If the Customer is in breach of clause 17.4 then, without prejudice to any other of the Supplier's rights or remedies, the Supplier may:
 - 17.5.1. if the Supplier does not receive payment of the Fees in full (without set-off or deduction) within ten (10) days of delivering a written reminder notice to pay, suspend the provision of the Platform Services (in whole or in part) unless and until the Fees are paid; and
 - 17.5.2. charge the Customer interest, accruing on a daily basis, on the overdue Fees at the maximum rate permitted or prescribed by applicable Legislation, commencing on the Due Date and continuing until full payment of the Fees (whether before or after judgment).
- 17.6. The Customer agrees that:
 - 17.6.1. the Fees are calculated exclusive of all sales taxes (*e.g.*, any value added tax); and
 - 17.6.2. sales tax (if applicable) shall be added to the Fees, and specified in the invoice, at the appropriate rate.
- 17.7. If the Customer is required by applicable Legislation to make any deduction or withholding from any payment to the Supplier then the sum due in respect of such payment shall be increased so that, after making such deduction or withholding, the Supplier receives a net sum that is equal to the sum it would have received had no such deduction or withholding been made.
- 17.8. Subject to clause 17.9, the Supplier shall be entitled to be reimbursed for any expenses (such as travel or subsistence expenses) incurred in the performance of the Agreement provided that such expenses have been authorised by the Customer in advance in writing (*e.g.*, by e-mail or in the Order Form).
- 17.9. The Customer shall reimburse the Supplier for all expenses incurred in compliance with clause 17.8 provided that the Supplier provides the Customer with an invoice for such expenses and if requested by the Customer provides receipts or other proof of payment for such expenses.
- 17.10. The Supplier reserves the right to charge reasonable additional Fees, at its then current rates, to complete any Customer requested questionnaires (*e.g.*, security or compliance) and/or reports which are not part of the Platform Services and require material effort over and above the provision of the Platform Services.

18. FEES ADJUSTMENTS

- 18.1. The Supplier shall be entitled to upwardly adjust the Fees:
 - 18.1.1. as described in any fees adjustments provisions contained in the Order Form; and
 - 18.1.2. by indexation as described in clause 18.2;
- 18.2. Without limiting clause 18.1, the Supplier shall be entitled to increase the Fees payable on the commencement of each successive Contract Year by up to a sum equal to three percent (3%) above the percentage change in the Consumer Price Index published by the UK Office for National Statistics over the most recent twelve (12) month period for which data is available at the time the adjustment is to occur.

19. SUPPLIER'S IPR

- 19.1. As between the parties, the Supplier:
 - 19.1.1. owns all present; and
 - 19.1.2. shall own all future,
Intellectual Property Rights in (and to) the Supplier's IPR.
- 19.2. For the avoidance of doubt, the ownership, rights, and licences applicable to outputs and/or deliverables arising under and in connection with the provision of Professional Services shall be as described in the Services GTCs.
- 19.3. The Supplier may freely incorporate any feedback or suggested improvements to the Supplier's IPR given by the Customer or an Authorised User from time to time.
- 19.4. Except as provided in clause 5, the Customer acquires no right, licence, or interest in the Supplier's IPR under and/or in connection with the Agreement.
- 19.5. The Customer agrees that the Supplier's IPR comprises commercially valuable proprietary assets and trade secrets of the Supplier or its licensors, the design and development of which reflect the effort of skilled developers and the investment of considerable time and money by the Supplier.
- 19.6. If (at any time):

- 19.6.1. through use of the Platform;
- 19.6.2. receipt of the Support;
- 19.6.3. by operation of applicable Legislation; or
- 19.6.4. otherwise,

the Customer comes to own Intellectual Property Rights in the Supplier's IPR, then the Customer shall (promptly at the Supplier's request and without delay) assign (or procure the assignment of) such Intellectual Property Rights to the Supplier and, to the extent permitted by applicable Legislation, waive (or procure the waiver of) all moral rights (and analogous rights) worldwide in connection with such Supplier's IPR.

- 19.7. The Customer shall not remove the Supplier's trademark, copyright notice, or any other proprietary notice from the Supplier's IPR and shall ensure that all copies of the Supplier's IPR made under the Licence include the Supplier's trademark and copyright notice.

20. SUPPLIER'S INDEMNITY

- 20.1. Subject to clauses 20.2 to 20.5 (inclusive) the Supplier shall defend and indemnify the Customer against any claim made against the Customer by a third party claimant alleging that the Customer's use of the Platform in accordance with the Agreement infringes any Intellectual Property Rights belonging to that third party claimant (the "**Supplier's Indemnity**").
- 20.2. The Supplier's Indemnity shall not apply unless:
 - 20.2.1. the Supplier is given prompt written notice of any claim to which the Supplier's Indemnity applies (the "**Indemnified Claim**") and, in any event, is given written notice of the Indemnified Claim within five (5) days of the Customer becoming aware of, or being notified of, the Indemnified Claim;
 - 20.2.2. the Customer provides the Supplier with all reasonably requested co-operation and assistance in connection with the defence and settlement of the Indemnified Claim;
 - 20.2.3. the Customer takes all reasonable and timely action necessary to mitigate all Losses arising from the Indemnified Claim (including such reasonable actions as the Supplier may request to avoid, dispute, resist, appeal, compromise, or defend the Indemnified Claim); and
 - 20.2.4. the Supplier is given sole authority to defend and/or settle the Indemnified Claim.
- 20.3. In the defence or settlement of any Indemnified Claim, the Supplier may:
 - 20.3.1. procure the right for the Customer to continue using the Platform Services;
 - 20.3.2. replace or modify the Platform Services so that it becomes non infringing; or
 - 20.3.3. if such remedies are not reasonably available, terminate or suspend the Agreement (and the Customer's access to the Platform Services) and refund the Customer any pre-paid fees for any Platform Services not delivered.
- 20.4. The Supplier's Indemnity shall not apply if, and to the extent, the Indemnified Claim is based on:
 - 20.4.1. a modification of the Supplier's IPR by any person other than the Supplier or the Supplier's authorised representatives (except with the Supplier's express prior agreement and technical direction);
 - 20.4.2. infringing Customer's Property; or
 - 20.4.3. the Customer's use of the Platform in breach of the Agreement or in a manner contrary to the reasonable instructions given to it by the Supplier.
- 20.5. The Supplier's Indemnity shall only apply to the extent Losses:
 - 20.5.1. have been finally awarded against the Customer in judgment of the Indemnified Claim by a court or other body having competent jurisdiction; or
 - 20.5.2. have been agreed to be paid (with the consent of the Supplier) to the third-party claimant in settlement of the Indemnified Claim; and
 - 20.5.3. in all cases, comprise reasonably and properly incurred legal fees and disbursements, fees levied by any court of competent jurisdiction, arbitrator or mediator, or fees and disbursements charged by expert witnesses.

21. MONITORING AND AUDIT

Remote Monitoring

- 21.1. The Customer agrees that the Supplier may monitor and log the Customer's and the Authorised Users' activity on the Platform (including the number of Equipment items managed on the Platform) for licence compliance, security, audit, and invoicing purposes and to ensure the operation of the Platform.

Mutual Audit Rights

- 21.2. Each party (as the “**Auditing Party**”) may require an Audit of the other party (the “**Audited Party**”) subject to the remaining provisions of this clause 21
- 21.3. Where the Customer is the Auditing Party it shall, before submitting a request to conduct an onsite Audit of the Supplier, thoroughly assess the content of:
- 21.3.1. Documentation;
 - 21.3.2. certifications; and
 - 21.3.3. internal and independent audit reports,
- in each case, provided or made available by Supplier on a confidential basis (including by taking account of the scope, depth of detail, currency, and suitability of such documentation, certification, and audit reports) to assess the proportionality and necessity of an on-site audit.
- 21.4. The Audited Party shall, promptly and without undue delay following the Auditing Party’s written request made during the Audit Period, provide or otherwise make available to the Auditing Party such information as the Auditing Party reasonably requests to evidence the Audited Party’s compliance the Agreement.
- 21.5. Subject to clauses 21.6 to 21.8 (inclusive), the Audited Party agrees that during the Audit Period:
- 21.5.1. the Auditing Party has the right to conduct Audit(s); and
 - 21.5.2. it shall give the Auditing Party all assistance and access reasonably requested in connection with the Audit.
- 21.6. The Auditing Party shall ensure that:
- 21.6.1. except where prior notice of the Audit may reasonably render the Audit ineffective (e.g., to investigate Licence overuse or a breach of applicable Legislation), the Audited Party is given not less than least sixty (60) days’ advance written notice of the Audit;
 - 21.6.2. each Audit is conducted during the Audited Party’s normal office hours;
 - 21.6.3. its representatives conducting the Audit comply with the Audited Party’s reasonable internal policies applicable to the Audited Party’s premises (including with respect to health and safety and on-premise security); and
 - 21.6.4. the Audit does not unreasonably interfere with the Audited Party’s business activities.
- 21.7. The parties agree that:
- 21.7.1. Audits of the Customer’s Systems shall be conducted under the Customer’s control and supervision;
 - 21.7.2. Audits of the Supplier’s systems supporting the provision of the Platform shall be conducted under the Supplier’s control and supervision and shall be appropriately restricted where an Audit may (or is reasonably likely to):
 - 21.7.2.1. have an adverse impact on the operation or security of the Platform; and/or
 - 21.7.2.2. disclose any data and/or information belonging to a third party (including other of the Supplier’s customers and/or users);
 - 21.7.3. Audit access, in all cases, does not include unsupervised access to production environments or live business data within the other party’s systems and/or computing environments.
- 21.8. The Auditing Party shall, except where an Audit carried out within the previous twelve (12) months revealed a material breach of the Agreement, perform no more than one (1) Audit in each Contract Year.
- 21.9. If, as a result of an Audit, it is revealed that the Customer has used the Platform in excess of the Licence Conditions then:
- 21.9.1. the Supplier shall notify the Customer of the amount of Fees (together with interest and excluding all applied discounts) undercharged determined from the later of:
 - 21.9.1.1. the Effective Date; or
 - 21.9.1.2. the previous Audit,
 unless the Customer provides, to the Supplier’s reasonable satisfaction, written documentation evidencing later first excess use;
 - 21.9.2. the Supplier shall raise an appropriate invoice for such Fees; and
 - 21.9.3. the Supplier’s invoice shall be payable in accordance with clause 17.4.

22. CUSTOMER’S PROPERTY

- 22.1. As between the parties, the Customer:
- 22.1.1. owns all Intellectual Property Rights in and to all the Customer’s Property; and

- 22.1.2. shall, except to the extent expressly agreed otherwise as part of associated Professional Services, have sole responsibility for the acquisition, deployment, licensing, legality, non-infringement, reliability, integrity, accuracy, and quality of the Customer's Property.
- 22.2. The Customer grants the Supplier (and its representatives and sub-contractors) a non-exclusive right and licence to use the Customer's Property to the extent necessary for the Supplier (or the Supplier's representative or sub-contractor as the case may be) to perform its obligations and to exercise its rights under the Agreement.
- 22.3. The Customer shall defend and indemnify the Supplier, its Affiliates, its and their officers, directors, sub-contractors, and employees against any and all Losses arising out of, or in connection with, any allegation or claim made against them that their use of the Customer's Property in accordance with clause 22.2 infringes any third party's Intellectual Property Rights (the "**Customer's Indemnity**").
- 22.4. The Supplier shall, where the Customer's Indemnity applies:
 - 22.4.1. give the Customer prompt written notice of any claim to which the Customer's Indemnity applies and, in any event, is given written notice of such indemnified claim within five (5) days of the Supplier becoming aware of, or being notified of, the claim;
 - 22.4.2. provide the Customer with all reasonably requested co-operation and assistance in connection with the defence and settlement of the claim;
 - 22.4.3. take all reasonable and timely action necessary to mitigate all Losses arising from the claim (including such reasonable actions as the Customer may request to avoid, dispute, resist, appeal, compromise, or defend the claim); and
 - 22.4.4. give the Customer sole authority to defend and/or settle the claim.
- 22.5. The Customer's Indemnity shall not apply if, and to the extent, the claim is based on:
 - 22.5.1. infringing Supplier's Property; or
 - 22.5.2. the Supplier's use of the Customer's Property in breach of the Agreement or in a manner contrary to the reasonable instructions given to it by the Customer.
- 22.6. The Customer's Indemnity shall only apply to the extent Losses:
 - 22.6.1. have been finally awarded against the Supplier in judgment of the claim by a court or other body having competent jurisdiction; or
 - 22.6.2. have been agreed to be paid (with the consent of the Customer) to the third-party claimant in settlement of the claim; and
 - 22.6.3. in all cases, comprise reasonably and properly incurred legal fees and disbursements, fees levied by any court of competent jurisdiction, arbitrator or mediator, or fees and disbursements charged by expert witnesses.
- 22.7. The Customer shall, included within the Fees, be entitled to receive one (1) full export of the data comprising the Model within the Platform.
- 22.8. The Customer may request the export described in clause 22.7 once at any time during the Subscription Period and any additional requests for data exports shall be:
 - 22.8.1. agreed between the parties; and
 - 22.8.2. subject to an additional Fee calculated using the Supplier's then current standard data processing rates.

23. TERMINATION

- 23.1. A party may terminate the Agreement by written notice having immediate effect if the other party commits:
 - 23.1.1. an irremediable Material breach of the Agreement; or
 - 23.1.2. a Material breach (or series of persistent breaches which, when taken together, amount to a Material breach) of the Agreement which is not remedied within sixty (60) calendar days from the date of written notice requiring the Material breach to be remedied,

provided that Performance Failures shall be remedied in accordance with clauses 6.2 to 6.4 (inclusive).
- 23.2. Without limiting its rights under clause 23.1, the Supplier may, at its option, suspend (for so long as the breach persists) or terminate the Agreement for cause:
 - 23.2.1. in accordance with clause 17.5; and
 - 23.2.2. except if, and to the extent, prohibited under applicable Law (*e.g.*, under Section 233B of the UK Insolvency Act 1986), on the occurrence of an Insolvency Event.

24. CONSEQUENCES OF TERMINATION AND EXIT SERVICES

- 24.1. Without prejudice to the Exit Services (if any) described in the Order Form or any documented and agreed exit plan, the parties agree that on termination or expiry of the Agreement (which shall include the Licence):
- 24.1.1. the Customer shall, except for the limited purposes described in clause 24.2, immediately stop all use of Platform and the Supplier's Materials;
 - 24.1.2. promptly, following the Supplier's request, return (or, at the Supplier's option, delete) all of the Supplier's Materials and any copies of the Platform in its possession and/or under its control (including from the Customer's Systems);
 - 24.1.3. except where termination is due to the Supplier's Material breach of the Agreement, all Fees payable to the Supplier shall become immediately due and owing, without any set off, withholding or deductions whatsoever (for the avoidance of doubt, no refund of Fees paid in advance shall be due by the Supplier to the Customer in respect of any unexpired portion of the Subscription Period and the Customer shall not set off, withhold or deduct any such Fees paid in advance from any amounts payable by the Customer to the Supplier);
 - 24.1.4. each party shall, subject to clauses 22.7 and 22.8, return or destroy (at the proprietor party's option), and make no further use of, any equipment, property, Confidential Information, or other items belonging to the other party (including all copies); and
 - 24.1.5. the Supplier may destroy, otherwise dispose of, or put beyond use, any of the Customer's Property within its possession unless, with respect to the Customer's Data, the Supplier receives (by no later than ten (10) Business Days from the effective date of the termination or expiry of the Agreement) a written request for temporary and limited access to the Platform as described in clause 24.2.
- 24.2. Without prejudice to clauses 22.7 and 22.8, where the Customer requests the Customer's Data under clause 24.1.5, the Supplier may (at its option) provide the Customer with:
- 24.2.1. temporary and limited access to the Platform, not to exceed ten (10) days, for the sole purpose of retrieving the Customer's Data; or
 - 24.2.2. a copy of the Customer's Data held within the Platform in an appropriate and commonly used electronic format, and shall thereafter destroy, otherwise dispose of, or put beyond use, the Customer's Data.
- 24.3. Termination or expiry of the Agreement shall:
- 24.3.1. be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry; and
 - 24.3.2. not affect the coming into force, or the continuance in force, of any provisions which are expressly, or by implication, intended to come into, or to continue in force, on or after termination or expiry of the Agreement.
- 24.4. The parties agree that, in the event that the Platform Services are suspended by the Supplier in accordance with the Agreement:
- 24.4.1. clause 24.1.1 shall apply during the period of suspension;
 - 24.4.2. the Supplier shall recommence the provision of the Platform Services promptly (and without undue delay) once the event(s) giving rise to and/or cause(s) of the suspension have been removed, resolved, or otherwise remedied to the Supplier's reasonable satisfaction; and
 - 24.4.3. the Fees shall remain payable and continue to accrue during any period of suspension.
- 24.5. The Customer shall, promptly and without undue delay following the Supplier's request, certify in writing to the Supplier that it has complied with the requirements of this clause 24.
- 24.6. Subject to the Supplier's continuing obligations of confidentiality under clause 14, nothing in the Agreement shall prohibit the Supplier from retaining computer generated backup copies of any data or information where required for legal, archival or regulatory purposes, or for such reasonable period until permanently deleted and/or put beyond practical use by the Supplier in accordance with its usual backup processes, including the Customer's Data and Confidential Information.

25. LIMITS AND EXCLUSIONS OF LIABILITY

- 25.1. The limits and exclusions of liability described in this clause 25 apply to all Losses:
- 25.1.1. arising under and/or in connection with the Agreement; and
 - 25.1.2. under any and all Causes of Action.
- 25.2. Nothing in the Agreement shall be construed as limiting or fettering either party's general obligation to mitigate its Losses arising out of, or in connection with, a breach of the Agreement (including in respect of Losses arising under an indemnity).

- 25.3. Nothing in the Agreement shall limit or exclude (or seeks to limit or exclude), to a greater extent than is permitted under applicable Legislation, either party's liability to the other for Losses to the extent caused by or resulting from:
- 25.3.1. personal injury or death caused by the negligence of the defaulting party;
 - 25.3.2. fraud or fraudulent misrepresentation; or
 - 25.3.3. any matter which, under applicable Legislation, a party cannot exclude or limit (or attempt to exclude or limit) its liability.
- 25.4. Nothing in the Agreement shall limit or exclude:
- 25.4.1. the Customer's liability to pay the Fees;
 - 25.4.2. the Customer's liability for Losses resulting from or caused by a breach of clause 10.1.4.7 or clause 26; or
 - 25.4.3. subject to clause 25.2, Losses that are subject to the Supplier's Indemnity or the Customer's Indemnity.
- 25.5. Subject to clauses 25.3 and 25.4, neither party shall be liable to the other (or to any third party claiming under or through the other) for Losses to the extent comprising:
- 25.5.1. profit or revenue (except for incurred or anticipated Fees);
 - 25.5.2. anticipated savings;
 - 25.5.3. loss of contract or business opportunity;
 - 25.5.4. loss or depletion of goodwill;
 - 25.5.5. without limiting the Supplier's obligations under clause 8.3, loss or corruption of data or information; and
 - 25.5.6. any special, indirect, or consequential loss or damage,
- in each case, whether arising directly or indirectly under or in connection with the Agreement and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen, or actually contemplated by a party at the Effective Date or during the Subscription Period.
- 25.6. Subject to clauses 25.1 to 25.5 (inclusive), each party's total aggregate liability to the other (and to any third party claiming under or through the other):
- 25.6.1. in each Contract Year; and
 - 25.6.2. in respect of all Causes of Action arising in that Contract Year (determined at the date when the liability giving rise to the Cause of Action arose),
- shall not exceed the sum equivalent to the total Fees paid and payable under the Agreement for the Contract Year in question.
- 25.7. The parties agree that the provisions of this clause 25 are reasonable in all the circumstances, having taken into account applicable Legislation and the nature of the Platform Services and the Fees.

26. SOCIAL RESPONSIBILITY LAWS AND SANCTIONS RESTRICTIONS

- 26.1. With regard to all activities carried out under or in connection with the Agreement, each party shall (and shall use reasonable efforts to procure that its employees, directors, officers, agents, sub-contractors, and other representatives shall) comply with all applicable Social Responsibility Laws and Sanctions Restrictions.
- 26.2. Each party shall have, and shall maintain in place throughout the Subscription Period, such policies and procedures as are reasonable and necessary to ensure its compliance with the Social Responsibility Laws and Sanctions Restrictions.
- 26.3. The Customer shall not use the Platform to breach or circumvent (or in breach or circumvention of) any Sanctions Restrictions including by directly or indirectly, exporting, re-exporting, releasing, or making accessible the Platform (or any of the Supplier's Materials) to any jurisdiction, territory, country, or person to which export, re-export, or release is prohibited by Sanctions Restrictions.

27. FORCE MAJEURE

- 27.1. Neither party shall have any liability to the other under the Agreement if, and to the extent, it is prevented from, or delayed in, performing an obligation under the Agreement by a Force Majeure Event.
- 27.2. A party prevented from performing its obligations under the Agreement (in whole or in part) by a Force Majeure Event shall:
- 27.2.1. promptly notify the other party of the Force Majeure Event; and
 - 27.2.2. notwithstanding the occurrence of the Force Majeure Event, use reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Agreement (e.g., in the case of the Supplier, by implementing the BCDR Plan).

- 27.3. In the event that a Force Majeure Event interrupts the provision of the Platform Services for a period in excess of thirty (30) days, either party may terminate the Agreement on the provision of written notice to the other and the terms of clause 24 shall apply, save to the extent that termination and/or exit assistance is itself impacted by the Force Majeure Event.

28. PUBLICITY AND ANNOUNCEMENTS

- 28.1. Subject to clause 28.2 and except to the extent required otherwise by applicable Legislation (for example, under the binding rules of any stock exchange or governmental authority), neither party shall make, or permit any third party to make, any public disclosure or announcement regarding any matter connected with the Agreement without first obtaining the prior written consent of the other party.
- 28.2. For the purposes of clause 28.1 the Customer hereby gives its consent for the Supplier to identify the Customer as a user of the Platform (and to use the Customer's name, trademarks, and service marks for this purpose) provided that the Supplier complies with:
- 28.2.1. clause 14; and
 - 28.2.2. any written brand guidelines made available to the Supplier by the Customer.

29. MISCELLANEOUS PROVISIONS

- 29.1. Provisions of these Platform GTCs which expressly, or by their nature, are intended to survive termination or expiry of the Agreement shall, thereafter, remain in full force and effect.
- 29.2. The Supplier may subcontract the performance of its obligations (or any part thereof) to any third-party service provider provided that the Supplier shall:
- 29.2.1. remain responsible for all acts and omissions of its subcontractors (which shall not include third parties appointed by the Customer) that cause a breach of the Agreement; and
 - 29.2.2. comply with the Data Processing Terms (including with respect to international data transfers and the disclosure of sub-processor lists).
- 29.3. No variation of these Platform GTCs (or of the Agreement) shall be effective unless made in writing (which may be by e-mail) and agreed by the parties.
- 29.4. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by applicable Legislation shall:
- 29.4.1. constitute a waiver of that (or any other) right or remedy; or
 - 29.4.2. prevent or restrict the further exercise of that (or any other) right or remedy.
- 29.5. The parties agree that, if any provision (in whole or in part) of the Agreement is found by any court or administrative body having competent jurisdiction over the parties and the Agreement to be invalid, unenforceable, or illegal, then:
- 29.5.1. the other provisions shall remain in full force and effect; and
 - 29.5.2. to the extent the invalid, unenforceable, or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 29.6. Except as expressly provided otherwise in the Agreement, any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by:
- 29.6.1. hand or courier;
 - 29.6.2. in the case of notices given or received by parties in the same country (which shall include all constituent countries of the United Kingdom), prepaid first class post, pre-paid special delivery, recorded delivery, or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
 - 29.6.3. in the case of notices given by parties outside of the same country, by ordinary pre-paid airmail, or pre-paid recorded, or special delivery outside of the same country at its registered office (if a company) or its principal place of business (in any other case); or
 - 29.6.4. except with respect to the service of legal proceedings, e-mail to the addresses specified in the Order Form.
- 29.7. Any notice or communication shall be deemed to have been received:
- 29.7.1. if delivered by hand or courier on a Business Day before 17:00 p.m. local time, on the date of delivery;
 - 29.7.2. if delivered by hand or courier on a Business Day on or after 17:00 p.m. local time, on the Business Day following the date of delivery;

- 29.7.3. if delivered by ordinary pre-paid first class post, or pre-paid special, or recorded delivery within the same country, on the second Business Day from the day of posting;
- 29.7.4. if delivered by ordinary pre-paid airmail, or pre-paid recorded, or special delivery outside of the same country, six (6) Business Days after the day of posting; or
- 29.7.5. if delivered by email, where permitted by the Agreement, on:
 - 29.7.5.1. receipt of an automated delivery receipt; or
 - 29.7.5.2. confirmation of receipt from the relevant server,
 if delivered before 17:00 p.m. local time on a Business Day and otherwise on the next Business Day.
- 29.8. The Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understandings or agreements between them relating to the subject matter they cover.
- 29.9. Each party agrees that, in entering into the Agreement, it does not rely on any undertaking, promise, assurance, statement, representation, warranty, or understanding (whether in writing or not) of any person (whether party to the Agreement or not) except as expressly set out in the Agreement.
- 29.10. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement made prior to the Effective Date.
- 29.11. Subject to clause 29.12, neither party shall assign any of its rights under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 29.12. The Supplier may assign its rights under the Agreement without the prior written consent of the Customer:
 - 29.12.1. for the purposes of invoice financing or the recovery of a debt owed;
 - 29.12.2. to any of the Supplier's Affiliates (including for the purpose of a merger or internal reorganisation);
 - 29.12.3. to a purchaser of all, or substantially all, of the assets or entities that comprise an identifiable segment, portion, division, or unit of a business of the Supplier; or
 - 29.12.4. as part of a corporate reorganisation, amalgamation, consolidation, or merger,
 provided, in each case, there is no material deterioration to the Platform Services.
- 29.13. The Agreement does not confer any rights on any person or party (other than the parties to the Agreement) under any applicable Legislation (including, for example, pursuant to the UK Contracts (Rights of Third Parties) Act 1999).
- 29.14. Nothing in the Agreement (or through use of Platform) is intended to, or shall be deemed to:
 - 29.14.1. establish any partnership or joint venture between the parties;
 - 29.14.2. constitute any party the agent of the other party; or
 - 29.14.3. authorise a party to make or enter into any commitments for or on behalf of the other party.
- 29.15. Each party shall (and shall procure that all relevant employees, agents and sub-contractors shall) act with courtesy, respect and professionalism, in all dealings, communications, and interactions with the other.
- 29.16. The Agreement may consist of a number of counterparts, each of which when executed and delivered (whether in original, copy, or via email) shall together constitute one and the same instrument binding on them.
- 29.17. The Agreement and any dispute or claim arising out of, or in connection with, the Agreement (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England & Wales.
- 29.18. Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement (including non-contractual disputes or claims).

30. INTERPRETATION

- 30.1. For the purposes of interpreting the Agreement:
 - 30.1.1. all clause headings are for convenience and shall not affect the interpretation of the provisions that follow;
 - 30.1.2. an obligation on a party not to do something includes an obligation not to agree, allow, permit, or acquiesce in, or to, that thing being done;
 - 30.1.3. the Customer shall be responsible for all acts and omissions of the Authorised Users (including in breach of the Agreement) as if such acts or omissions were its own;
 - 30.1.4. an obligation on the Customer (unless the context reasonably requires otherwise) includes an obligation on the Customer to ensure that an Authorised User does not act, or omit to act, in breach of that obligation;

- 30.1.5. references to Legislation will be construed as references to such Legislation as replaced, amended, consolidated, or re-enacted (with or without modification) from time to time and includes all orders, rules, regulations, or other binding provisions made under such Legislation;
- 30.1.6. any list, word, or phrase following the words '**including**', '**include**', '**in particular**', '**for example**', or any such similar expression shall be construed as having the phrase '**without limitation**' following them;
- 30.1.7. references to '**from**' with respect to a timeline or date shall be construed as having the phrase '**and including**' following it;
- 30.1.8. the word '**Material**' in the context of classifying the seriousness of a breach means that the breach:
 - 30.1.8.1. is more than trivial but need not be repudiatory; and
 - 30.1.8.2. if not remedied (or if not capable of remedy), may or is likely to have, a serious impact on the benefit which the innocent party would otherwise derive from performance of the Agreement in accordance with its terms.
- 30.2. If, and to the extent, there is any conflict, inconsistency, or ambiguity between the constituent parts of the Agreement then such conflict, inconsistency, or ambiguity shall be resolved in the following order of precedence (with the document earlier in the list prevailing over a document later in the list):
 - 30.2.1. the Order Form (including the Special Conditions (if any));
 - 30.2.2. these Platform GTCs;
 - 30.2.3. the Data Processing Terms;
 - 30.2.4. the remaining documents comprising the Agreement.
 - 30.2.5.

Appendix 1**DEFINITIONS**

Affiliate	with respect to any entity, any other entity Controlling, Controlled by, or under common Control with, such entity.
Agreement	the binding contract between the Supplier and the Customer for the provision and receipt of the Platform Services comprising the documents listed under clause 1.4.
Audit	where the Supplier is the Auditing Party, an audit and inspection of the Customer's System, relevant personnel, and relevant premises for the purpose of ascertaining the Customer's: 1. use of the Platform (and the related Licence); and 1. general compliance with the Agreement. where the Customer is the Auditing Party, an audit and inspection of the Supplier's relevant premises (excluding the premises and/or systems of any third party) for the purpose of ascertaining the Supplier's: 1. implementation of the Security Controls; and 2. general compliance with the Agreement.
Auditing Party and Audited Party	have their respective meanings given clause 21.2.
Audit Period	the Subscription Period and for twelve (12) months following the termination and/or expiry of the Subscription Period.
AR Features	the augmented reality features and functionality in the Mobile Application and as described in the Platform Specification.
Authorised User	the employees, consultants, agents and other representatives appointed by the Customer to access and use the Platform (provided that an Authorised User may not be a competitor of the Supplier).
BCDR Plan	an appropriate general disaster recovery and/or business continuity plan that reflects good industry practice and is designed to mitigate the adverse impact of a disaster on the provision of the Platform Services.
Business Day	a day other than a Saturday, Sunday or public holiday in the Supplier's home territory.
Cause(s) of Action	any claim, proceeding, or other cause of action arising under and/or in connection with the Agreement and whether arising: 1. in contract (including under warranty or indemnity); 1. in tort (including negligence); 2. from misrepresentation (other than fraud or fraudulent misrepresentation); 3. from breach of statutory duty; or 4. otherwise.
Certifications and Controls	the following independent third-party audit controls: SOC 2 Type II.
Confidential Information	any and all information that is proprietary or confidential in nature and is either clearly labelled as such or would, by its nature, be considered by a reasonable businessperson to be confidential (including, with respect to the Supplier, all information and materials concerning and/or relating to the Platform Services).
Contract Year	each successive period of twelve (12) months from the Effective Date.
Control	and its derivatives means the power of a person to secure: 1. by means of the holding of shares or the possession of voting power in an entity; or

	2. by virtue of any powers conferred by the articles of association or other document regulating or relating to an entity, that the affairs of that entity are conducted in accordance with that person's wishes and "Controlled" and "Controlling" shall be construed accordingly.
Customer	the corporate entity that has subscribed to receive the Platform Services (as identified in the Order Form).
Customer Cause	has the meaning given in clause 9.3.
Customer's Data	the Customer's proprietary data or information submitted (by and/or on behalf of the Customer) to: - the Platform; - the Supplier's help and/or ticket desk in connection with Support.
Customer's Indemnity	has the meaning given in clause 22.3.
Customer's Materials	the Customer's proprietary (or third party licensed): - content; - materials; - logos or other creative, graphic or design assets, provided or made available to the Supplier by the Customer under or in connection with the Agreement.
Customer's Property	the Customer's Data, Customer's Materials, and Customer's System.
Customer's Sites	the sites and/or facilities (or part thereof) controlled by the Customer and, in respect of which, Equipment is to be managed through the Platform. The Customer's Sites shall be as described in the Order Form.
Customer's System	the computing environment and/or systems used, and/or made available for use, by the Customer (or any of its relevant Affiliates) in connection with the Platform Services (including the equipment, machinery, hardware, devices, equipment, computer and communications systems, on-premise or third party cloud hosting infrastructure and networks, proprietary software, third-party software, and databases).
Customer's Responsibilities	all dependencies (including implementing, resourcing, and technical dependencies (including those described in the Minimum Technical Requirements)) and other obligations specified in the Order Form.
Data Processing Terms	the data processing terms referred in, or incorporated into, the Order Form or available for viewing or download at the following URLs: Data Processing Terms Available for viewing and/or download through the Trust Site. Fair Processing Notice https://www.hybird.ai/privacy-policy
Documentation	any user manuals, technical manuals, or other materials provided by the Supplier in connection with the Platform (whether in printed, electronic or other form) that describe the installation, operation, use, or technical specifications of the Platform, and the Minimum System Requirements.
Due Date	means: - the period of thirty (30) days from the date that the Supplier's invoice is issued to the Customer; or - such other replacement period expressly specified in the Order Form.
EAM Platform	the Customer's (or third party licensed) enterprise asset management (EAM) system described or listed in the Order Form (e.g., SAP S/4 HANA).

Effective Date	the: 1. the '<i>Effective Date</i>' specified in the Order Form; or 2. where the '<i>Effective Date</i>' has not been specified in the Order Form, the date that the Order Form is last signed by the parties or, where applicable, the Electronic Signature is made.
Electronic Signature	has the meaning given in clause 2.1.2.
Equipment	individual items or pieces of equipment that are: 1. formally managed and maintained in the Customer's Site; and 2. listed (from time to time) in the Equipment Register.
Equipment Register	the register of the Equipment stored on the Platform (for the avoidance of doubt the Equipment Register is the " <i>Clarity Asset Register</i> " and not a connecting EAM asset register (e.g., an integration to SAP).
Exit Services	the provision (at the Customer's cost) of reasonable assistance (over and above the Platform Services) to transition of all or part of the services from the Supplier to a successor supplier or in-house to the Customer in accordance with, and to the extent described in, the Order Form and any documented exit plan agreed between the parties.
Fee(s)	the consideration payable for the Platform as specified in the Order Form (or attached Fees schedule) and calculated in accordance with the Agreement and expenses incurred in accordance with clause 17.
Force Majeure Event	acts, events, omissions, or accidents beyond a party's reasonable control (including strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, epidemic or pandemic, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, or storm).
HyBird Cloud	the multi-tenanted hosting infrastructure operated by and/or made available or controlled by or on behalf of the Supplier.
Indemnified Claim	has the meaning given in clause 20.2.1.
Initial Term	the initial term of the Agreement as specified in the applicable Order Form.
Insolvency Event	in relation to the Customer; 1. it suspends, or threatens to suspend, payment of its debts or becomes insolvent or unable to pay its debts; 1. it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; 2. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer; 3. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer; 4. the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; 5. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; 6. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within fourteen (14) days; 7. it suffers or is subject to any equivalent event, circumstance or procedure to those set out above in paragraphs 1 to 7 above in any other jurisdiction; or

Intellectual Property Right(s) or IPR	8. it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business. 1. patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, applications for any of the foregoing (including continuations, continuations-in-part, and divisional applications), the right to apply for and be granted any of the foregoing, and rights in inventions; 4. copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights; 5. trade marks, service marks, and rights in trade-names, business names, brand names, get-up, logos, domain names, URLs, and all applications for the foregoing; 6. rights in know-how, trade secrets, and confidential information, data exclusivity rights; and 7. all other forms of intellectual property right having equivalent or similar effect to any of the above which may exist anywhere in the world.
Legislation	enactments, statutory provisions, or subordinate legislation made under applicable laws.
Licence	a non-exclusive, non-sublicensable and non-transferable (except to the extent expressly described otherwise in the Agreement (<i>e.g.</i> , as a Special Condition), limited, and revocable and/or terminable (to the extent described in these Platform GTCs) right to permit Authorised Users to access and use the Platform (including the Documentation and updates and releases made available from time to time as part of Support) in accordance with, and subject to, clause 5.1.
Licence Conditions	1. the provisions and restrictions contained in clause 10; and 1. any additional licence conditions and/or restrictions applicable to the Platform set out in the Order Form.
Loss(es)	all losses, liabilities, damages, costs, charges, and reasonably incurred expenses (including management time, legal fees, other professional advisers' fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines, penalties, and remedial actions) howsoever arising in connection with a party's breach of the Agreement or under an indemnity.
Minimum System Requirements	the minimum technical requirements that the Customer's System must meet in order for the Platform to perform in accordance with the Agreement (as described or referenced in the Documentation).
Mobile Application	the mobile application known as the " <i>Clarity Mobile Application</i> " and described in the Platform Specification.
Model	the digital twin of the Customer's Site.
Order Form	the Supplier's quotation or order form document (which may be in digital form) within which these Platform GTCs have been incorporated or referenced.
party	the Supplier or the Customer (as the case may be).
parties	the Supplier and the Customer (taken together).
Performance Failure	has the meaning given in clause 6.2.
Platform	1. the Supplier's software platform known as "<i>Clarity</i>"; and 2. where the Customer has expressly purchased a subscription in the Order Form, the Mobile Application and AR Features.
Platform GTCs	has the meaning given in clause 1.1.
Platform Services	means, as specified in the Order Form, the provision of the: 1. Platform; and 1. Support.

Platform Specification	the document describing the technical and functional specification(s) for the Platform as referred in, or incorporated into, the Order Form.
Professional Services	professional consultancy, training, design, implementation, site scanning, development, or other supplemental services (such as managed services) related to the implementation of the Platform Services and falling outside the scope of the Platform Services.
Renewal Term	has the meaning given in clause 4.2.
Sanctions Restrictions	any economic sanctions laws, regulations, embargoes, or restrictive measures (including export control laws) administered, enacted or enforced by an applicable sanctions authority including by: 1. the United Nations; 2. the European Union; 3. the United Kingdom; and 4. the United States of America.
Security Controls	the technical and organisational security measures adopted by the Supplier in connection with the provision of the Platform Services as referred in, or incorporated into, the Order Form and Data Processing Terms.
Services GTCs	the separate terms and conditions applicable to the provision of Professional Services and available for viewing and/or download through the Trust Site.
Service Levels	the key performance indicators and/or service levels applicable to the Platform Services as described in the Support Specification.
Social Responsibility Laws	all applicable Legislation concerning anti-bribery, anti-slavery, anti-discrimination, or the facilitation of financial crime and tax evasion (including, in the United Kingdom, the Criminal Finances Act 2017, the Terrorism Act 2006, the Money Laundering Regulations 2017, and the Bribery Act 2010).
Special Condition(s)	means : 1. a variation; and/or amendment of; and/or 1. an additional term or condition to, the Platform GTCs identified as a “ <i>Special Condition</i> ” in the Order Form and, if applicable, expressly referencing the clause(s) being so varied and/or amended.
Subscription Period	the: 1. Initial Term; and 2. all Renewal Terms.
Supplier	HyBird Ltd. , a private limited company incorporated in England with company number 09863415 and whose registered office is located at 167 Great Portland Street, 5 th Floor, London, England W1W 5PF.
Supplier's Data	collected, grouped, anonymised, and aggregated data and/or information uploaded and/or otherwise transmitted to the Platform or provided and/or made available to the Supplier in connection with the provision and/or receipt of the Platform Services.
Supplier's Indemnity	has the meaning given in clause 20.1.
Supplier's IPR	all present and future Intellectual Property Rights in: 1. the Platform and Support (excluding the Customer's Property); 8. the Supplier's Materials; 9. any and all adaptations, add-ons, modifications, updates, and enhancements to the Platform, Support and/or the Supplier's Materials (including, in each case, at the request or suggestion of the Customer or an Authorised User); and 10. the Supplier's Data.

Supplier's Materials

all materials provided or made available by, or on behalf of, the Supplier in connection with the provision of the Platform Services (including the Documentation).

Support

the provision of:

1. troubleshooting and incident / problem classification, response, and resolution services; and
 1. upgrades, maintenance releases, improvements, versions, or enhancements to the Platform,
- in each case, to the extent described in the Support Specification by reference to the level of Support purchased in the Order Form (e.g., standard or "*Premium*" support).

Support Specification

the document describing the:

1. Support; and
 2. Service Levels,
- applicable to the Platform as referred in, or incorporated into, the Order Form.