



CYFERD

CYFERD PARTNER APPROVED ORDER FORM POLICY

1. Scope

1.1 This 'Cyferd – Cyferd Partner Approved Order Form Policy' (this "**Policy**") applies to enable a Relevant Cyferd Partner Order Form (being an order form entered into with a Cyferd Partner and **not** with Cyferd direct) between the Cyferd Partner and a Relevant Customer to become an Approved Order Form where, **but for the operation of paragraph 5 of this Policy**, it would otherwise be Unapproved (each as defined below). This Policy is made in connection with: (i) the SSSPA (as defined below) and (in such regard) applies to Cyferd Ltd ("**Cyferd**") and each Cyferd Partner from time to time (in this Policy and in respect of each Cyferd Partner, "**each Cyferd Partner**", "**the Cyferd Partner**", "**the Cyferd Partner in question**" and "**that Cyferd Partner**" being construed accordingly); and (ii) each Relevant Customer. Save and to the extent provided for in this **paragraph 1.1**, this Policy does **not** apply to any other customer of Cyferd in its capacity as a customer of Cyferd.

1.2 In this Policy a "**Relevant Customer**" means:

1.2.1 a person (as defined below) who has entered into a Cyferd Partner Order Form (as '*the Customer*') with a Cyferd Partner which is intended to be that person's first Order and for its Main Subscription for Access to and use of the Cyferd Product and the Services (a "**Relevant (New) Customer**"); or

1.2.2 a Customer (as defined below) (being an existing customer of Cyferd) who has entered into a Cyferd Partner Order Form (as '*the Customer*') with a Cyferd Partner which is intended to be a subsequent Order in connection with that Customer's Agreement (and is not that Customer's first Order for its Main Subscription),

and, in either case, where such Cyferd Partner Order Form will, **but for the operation of paragraph 5 of this Policy**, be Unapproved (and, in respect of each Relevant Customer, "**each Relevant Customer**", "**the Relevant Customer**", "**the Relevant Customer in question**" and "**that Relevant Customer**" shall be construed accordingly).

1.3 In this Policy and in respect of each Relevant Customer, the Cyferd Partner Order Form relating to that Relevant Customer referred to in **paragraph 1.2.1** or **1.2.2** (as the case may be) is the "**Relevant Cyferd Partner Order Form**" (and "**the Relevant Cyferd Partner Order Form in question**", "**such Relevant Cyferd Partner Order Form**" and "**that Relevant Cyferd Partner Order Form**" shall be construed accordingly).

1.4 This Policy is supplemental to the Partner Agreement (as defined below) and, for each Cyferd Partner, forms part of the SSSPA with that Cyferd Partner. This Policy is also

supplemental to the MSA (as defined below) and, for each Relevant Customer, forms part of the Agreement (as defined below) with that Relevant Customer in respect of that Customer's Access to and use of the Cyferd Product and the Services (on the strict assumption that, in the case of a Relevant Customer who is a Relevant (New) Customer, the Relevant Cyferd Partner Order Form in question is/will be, **by the operation of paragraph 5 of this Policy**, an Approved Order Form).

- 1.5 This Policy is a Cyferd Partner Policy for each Cyferd Partner. This Policy is also a Cyferd Policy for each Relevant Customer.
- 1.6 The Cyferd Partner's acceptance of this Policy is as provided in the Partner Agreement (defined below) (where 'acceptance' is as defined in the definition of 'Cyferd Partner Policies' in the Partner Agreement). The Relevant Customer's acceptance of this Policy is as provided in the MSA (where 'acceptance' is as defined in the definition of 'Cyferd Policies' in the MSA).
- 1.7 In this Policy "**Partner Agreement**" means, in respect of the Cyferd Partner in question, the sales, services and solutions partner agreement entered into between Cyferd and that Cyferd Partner forming part of the SSSPA with that Cyferd Partner.
- 1.8 In this Policy "**MSA**" (subject to **paragraph 1.9**) means, in respect of the Relevant Customer in question, the master services agreement forming part of the Agreement with that Relevant Customer (on the strict assumption that, in the case of a Relevant Customer who is a Relevant (New) Customer, the Relevant Cyferd Partner Order Form in question is/will be, **by the operation of paragraph 5 of this Policy**, an Approved Order Form) in respect of that Relevant Customer's Access to and use of the Cyferd Product and the Services (each version of the MSA (<https://cyferd.com/cyferdcomm/>)). See **paragraph 4.6.3** for further context here in terms of the Relevant Customer's acceptance of the MSA and the formation of the Agreement given the purpose and effect of this Policy.
- 1.9 Notwithstanding **paragraph 1.4** in terms of the Agreement and **paragraph 1.8** in terms of the MSA, in the case of a Relevant Customer who is a Relevant (New) Customer, pending **the operation of paragraph 5 of this Policy** to the Relevant Cyferd Partner Order Form in question:
 - 1.9.1 the "**MSA**" shall be the MSA for Professional or the MSA for Enterprise as applicable (each version of the MSA (<https://cyferd.com/cyferdcomm/>)); and
 - 1.9.2 the Agreement shall be the MSA (as referred to in **paragraph 1.9.1**) together with the Cyferd Policies (including this Policy) albeit subject to the Customer Consequences (as defined below).
- 1.10 In respect of each Cyferd Partner, terms defined in the Partner Agreement (including without limitation "**Approved Order Form**", "**Commencement Date**", "**Cyferd Partner**", "**Cyferd Partner Order Form**", "**Cyferd Partner Policy**", "**Cyferd Product**", "**Cyferd Product Contract**", "**Grading Policy**", "**Lead Preferred Partner**", "**Losses**", "**Partner Grade**", "**Preferred Partner**", "**Preferred Partners**", "**Pricing Policy**", "**Sales Partner**", "**Services Partner**", "**Solutions Partner**", "**SSSPA**", "**Update**", "**Update Notification**", "**Updates**") shall (subject to **paragraph 1.13**) have the same meaning in this Policy unless the context otherwise requires or such term is defined separately in this Policy.
- 1.11 Terms defined in the MSA (including without limitation "**Access**", "**Access Parameter**", "**Accessing**", "**Additional Subscription Fee Pricing Terms**", (subject to **paragraph 1.9**) "**Agreement**", "**Approved Order Form**", "**App**", "**Apps**", "**Assumed Utilisation**", "**Commencement Date**", "**Contract**", "**Customer's Expected Utilisation**", "**Cyferd Partner**", "**Cyferd Partner Order Form**", "**Cyferd Partner Policy**", "**Cyferd Policy**", "**Cyferd Product**", "**Enterprise**", "**Enterprise**

Agreement, **Feature**, **Features**, **Fixed Utilisation**, **Main Subscription**, **Metered Utilisation**, **Minimum Term**, **Non-Agreement Terms**, **Non-Production Tenancy**, **Order**, **Order Form**, **Premium Feature**, **Premium Fees**, **Premium Subscription**, **Product Fees**, **Production Tenancy**, **Professional**, **Professional Agreement**, **Purchased Item**, **Purchased Items**, **Services**, **Subscription Fee**, **Supplemental Terms**, **Tenancy**, **Tenancies**, **Tenancy(ies)**, **Unapproved Order Form**, **Update**, **Update Notification**, **Updates**, **Utilisation**, **Utilisation Fees**, **Utilisation Parameter**, **Variable Fees**, **Variable Fees Conditions**, **Variable Fees Pricing Terms**, **VAT**) shall (subject to **paragraph 1.13**) have the same meaning in this Policy unless the context otherwise requires or such term is defined separately in this Policy. The defined terms referred to in this **paragraph 1.11** also apply in respect of each Cyferd Partner by virtue of them being defined in the Partner Agreement by reference to the MSA (Professional and/or Enterprise as applicable).

1.12 In addition, in this Policy the following words and expressions shall have the following meaning unless the context otherwise requires:

“Customer”	means a customer of Cyferd (for Access to and use of the Cyferd Product and the Services) who has an ongoing Professional Agreement or an ongoing Enterprise Agreement with Cyferd (and “each Customer” , “such Customer” , “the Customer in question” , “that Customer” and “Customers” shall be construed accordingly)
“Customer Consequences”	as defined in paragraph 4.4
“Cyferd”	as defined in paragraph 1.1
“Cyferd Partner Consequences”	as defined in paragraph 4.5
“Missing Customer Details”	as defined in paragraph 5.2.1
“MSA Defined Terms Provision”	EITHER: as defined in paragraph 1.18 of Schedule 1 , OR: as defined in paragraph 1.19 of Schedule 2 , (as the case may be)
“Partner Agreement”	as defined in paragraph 1.7
“Pricing Policy”	<i>in respect of a Relevant Customer</i> – means the Cyferd Partner Policy which contains specific pricing and payment terms parameters in connection with the Cyferd Product that an applicable Cyferd Partner must comply with

“Proposed Customer”	means a potential Customer (and “Proposed Customers” shall be construed accordingly
“Related MSA Provisions”	as defined in paragraph 4.6
“Relevant Customer”	as defined in paragraph 1.2
“Relevant Cyferd Partner Order Form”	as defined in paragraph 1.3
“Relevant (New) Customer”	as defined in paragraph 1.2
“SSSPA”	<i>in respect of a Relevant Customer</i> - as defined in the Partner Agreement of the Cyferd Partner in question, and which in effect means the whole agreement and all applicable documents (including the Partner Agreement) that govern that Cyferd Partner’s appointment as a ‘Cyferd Partner’ and related matters.’
“Unapproved”	as defined in paragraph 4.3
“Utilisation Parameters Provision”	EITHER: as defined in paragraph 1.27 of Schedule 1 , OR: as defined in paragraph 1.28 of Schedule 2 , (as the case may be)]

1.13 Where a term is defined in both the Partner Agreement and the MSA and used in this Policy then, unless the context otherwise requires or such term is defined separately in this Policy:

- 1.13.1 the Partner Agreement defined term shall apply where the applicable provisions in this Policy relate to the Cyferd Partner in question in that capacity; and
- 1.13.2 the MSA defined term shall apply where the applicable provisions in this Policy relate to the Relevant Customer in question in that capacity.

1.14 In this Policy:

- 1.14.1 (subject to **paragraph 1.14.2**) references to paragraphs are to paragraphs of this Policy;
- 1.14.2 (unless the context otherwise requires) references to Schedules are to Schedules to this Policy and references to paragraphs in any such Schedule are to paragraphs of the relevant Schedule;
- 1.14.3 a reference to this Policy or to any other agreement or document referred to in this Policy is a reference to this Policy or such other agreement or document as amended in accordance with its terms and/or (in the case of

- a Cyferd Partner) the Partner Agreement and/or (in the case of a Relevant Customer) the MSA from time to time;
- 1.14.4 a reference to this Policy includes its Schedules and such Schedules form part of this Policy;
- 1.14.5 a reference to an “**amendment**” includes a novation, re-enactment, restatement, supplement, extension, variation or an amendment (and “**amend**” and “**amended**” shall be construed accordingly);
- 1.14.6 a reference to “**amended from time to time by Cyferd**” in the context of a Cyferd Partner Policy, a Cyferd Policy or other document referred to in this Policy includes where Cyferd can amend the same by itself in accordance with its terms and/or the Partner Agreement and/or the MSA;
- 1.14.7 a reference to a “**person**” includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns;
- 1.14.8 unless otherwise provided, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment made after the Commencement Date shall apply for the purposes of this Policy to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party;
- 1.14.9 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.14.10 any words that follow “**include**”, “**includes**”, “**including**”, “**in particular**”, “**for example**” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.14.11 a reference to “**writing**” or “**written**” includes any method of reproducing words in a legible and non-transitory form including email but excluding fax;
- 1.14.12 where the context permits, “**other**” and “**otherwise**” are illustrative and shall not limit the sense of the words preceding them;
- 1.14.13 any obligation on a Cyferd Partner and/or a Relevant Customer not to do something includes an obligation not to allow that thing to be done; and
- 1.14.14 references to any English legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than England be deemed to include what most approximates in that jurisdiction to the English legal or accounting term concerned.
- 1.15 In this Policy, if a paragraph contains the wording ‘*This **paragraph [X]** only applies to Cyferd Partners*’ or ‘***paragraph [X]** only applies to Cyferd Partners*’ or something similar, then the paragraph(s) in questions does/do not apply to Relevant Customers.
- 1.16 In this Policy, if a paragraph contains the wording ‘*This **paragraph [X]** only applies to Relevant Customers*’ or ‘***paragraph [X]** only applies to Relevant Customers*’ or something similar, then the paragraph(s) in questions does/do not apply to Cyferd Partners.

1.17 No:

1.17.1 failure, delay or omission by Cyferd in exercising any right, power or remedy provided under this Policy shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy; and

1.17.2 single or partial exercise of any right, power or remedy provided by law or under this Policy shall prevent any future exercise of it or the exercise of any other right, power or remedy.

This **paragraph 1.17** is in addition to and shall not fetter or amend any 'waiver provisions' (in the case of any Cyferd Partner) in the SSSPA/ the Partner Agreement relating to that Cyferd Partner and (in the case of any Relevant Customer) in the Agreement/ the MSA relating to that Relevant Customer.

2. Last Updated

This Policy was last updated on 1 June 2023. For previous versions of this Policy see <https://cyferd.com/cyferdcomm/>.

3. Changes to this Policy

3.1 ***For any person who is not a Cyferd Partner or a Relevant Customer at the time of such posting*** – Cyferd shall, at its absolute discretion, be entitled to amend this Policy or any part of it by posting an updated version of this Policy at <https://cyferd.com/cyferdcomm/> and such updates will be effective upon such posting or, if later, the 'Last Updated' date specified in such updated version of this Policy.

3.2 ***For any person who is a Cyferd Partner at the time such Update Notification is made and, where/ to the extent the Update(s) in question relate(s) to provisions relating to the Cyferd Partner in question in that capacity*** – Cyferd may at its absolute discretion make, and notify that Cyferd Partner of, updated versions of this Policy by notifying that Cyferd Partner of any such Update(s) by way of Update Notification. Such Update(s) will be effective in respect of that in accordance with the applicable provisions of that Cyferd Partner's Partner Agreement which relate to Updates. The provisions of the Partner Agreement which relate to Updates shall apply in respect of any such Update(s). This **paragraph 3.2** does **not** apply to any Relevant Customer in that capacity.

3.3 ***For any person who is a Relevant Customer at the time such Update Notification is made and where/ to the extent the Update(s) in question relate(s) to provisions relating to the Relevant Customer in question in that capacity*** – Cyferd may at its absolute discretion make, and notify the Relevant Customer of, updated versions of this Policy by notifying the Relevant Customer of any such Update(s) by way of Update Notification. Such Update(s) will be effective in respect of the Relevant Customer in question in accordance with the applicable provisions of the MSA which relate to Updates. The provisions of the MSA which relate to Updates shall apply in respect of any such Update(s). This **paragraph 3.3** does **not** apply to any Cyferd Partner in that capacity.

3.4 For the avoidance of doubt, both **paragraph 3.2** and **paragraph 3.3** shall apply in respect of Update(s) made in respect of provisions in this Policy that relate to Cyferd Partners and Relevant Customers.

3.5 If Cyferd makes any amendments to this Policy, it will change the 'Last Updated' date in **paragraph 2** above in such updated version of this Policy.

3.6 An Update Notification could be sent/ made by Cyferd in respect of this Policy by e-mail (together with a copy of the Update(s) or a link to a copy of the Update(s)) in

accordance with the notices provision in the Partner Agreement of the Cyferd Partner in question and/or the MSA of the Relevant Customer in question (as applicable) or by adding a statement to Cyferd's main website page referencing such Update(s) (together with a copy of the Update(s) or a link to a copy of the Update(s)) or by any other reasonable means which Cyferd elects.

4. What is the purpose of this Policy?

4.1 As provided for in the Cyferd Partner's SSSPA and in the Relevant Customer's Agreement, for a Cyferd Partner Order Form to form part of the Cyferd Product Contract/ Agreement it must be an Approved Order Form.

4.2 For a Cyferd Partner Order Form to be an Approved Order Form it must be: (i) in a form that is approved by Cyferd (in its sole discretion) without any deemed amendments needing to be made to it by the application of this Policy; or (ii) otherwise in a form that is approved by Cyferd (in its sole discretion) in writing; or (iii) deemed to be approved by Cyferd under and in accordance with this Policy and will include all amendments deemed to have been made by the application of this Policy to make it so approved.

4.3 The purpose of this Policy is to enable a purported 'order form' between the Cyferd Partner and a Proposed Customer/ Customer (as the case may be) which:

4.3.1 is **not** in a form: (i) approved by Cyferd (in its sole discretion) without any deemed amendments needing to be made to it by the application of this Policy; or (ii) otherwise approved by Cyferd (in its sole discretion) in writing; and

4.3.2 does **not** contain (as the context requires) the details/ provisions set out in the provisions of **Schedule 1** or **Schedule 2** of this Policy (as applicable) and/or (as the context requires) deal/ address/ comply with the provisions of **Schedule 1** or **Schedule 2** of this Policy (as applicable); and

4.3.3 will, **but for the operation of paragraph 5 of this Policy**, be an Unapproved Order Form,

(and hence is unapproved ("**Unapproved**") and a Relevant Cyferd Partner Order Form) to become approved by deeming that certain necessary amendments are made to it by the operation of **paragraph 5** of this Policy so that it becomes (in Cyferd's sole opinion) an Approved Order Form.

4.4 Cyferd Partners who are Sales Partners or Solutions Partners are **not** authorised by Cyferd to enter into purported 'order forms' with Proposed Customers/ Customers which are Unapproved. Any such purported 'order form' will, **but for the operation of paragraph 5 of this Policy**, be an Unapproved Order Form and does **not**:

4.4.1 form part of or create (as the case may be) any Cyferd Product Contract/ Agreement with the Relevant Customer in question;

4.4.2 create any obligations or liabilities on Cyferd whatsoever (whether in favour of the Cyferd Partner and/or the Relevant Customer in question) to provide that Relevant Customer with: (i) Access to and use of the Cyferd Product or any of the Services, (ii) any applicable additional Tenancy(ies); and/or (iii) any other applicable Purchased Item(s), (as the case maybe); and/or

4.4.3 entitle the Relevant Customer in question to: (i) Access to and use of the Cyferd Product or any of the Services, (ii) any applicable Tenancy(ies); and/or (iii) any other applicable Purchased Item(s) (as the case maybe),

paragraphs 4.4.1 to 4.4.3 (inclusive) being the "Customer Consequences".

- 4.5 *This **paragraph 4.5** only applies to Cyferd Partners* - If the Cyferd Partner does enter into a purported 'order form' with a Proposed Customer/ Customer which is Unapproved then, in addition to the Customer Consequences, **to do so shall** (notwithstanding the operation of the operation of **paragraph 5** of this Policy so that it becomes (in Cyferd's sole opinion) an Approved Order Form) **be deemed to be a material breach by the Cyferd Partner in question** which is not capable of remedy of that Cyferd Partner's SSSPA. As a result of/ in connection with each and every such deemed material breach:
- 4.5.1 Cyferd may terminate that Cyferd Partner's SSSPA;
 - 4.5.2 (where that Cyferd Partner is a Sales Partner and in accordance with paragraph 1.4 of Schedule 2 of that Cyferd Partner's Partner Agreement) Cyferd may terminate that Cyferd Partner's appointment as a Sales Partner;
 - 4.5.3 (where that Cyferd Partner is a Solutions Partner and in accordance with paragraph 1.5 of Schedule 3 and paragraph 1.4 of Schedule 2 of that Cyferd Partner's Partner Agreement) Cyferd may terminate the part of that Cyferd Partner's appointment as a Sales Partner, and on such termination that Cyferd Partner shall cease to be a Solutions Partner (albeit such cessation shall **not** terminate the part of that Cyferd Partner appointment as a Services Partner nor shall it amount to the termination of the SSSPA);
 - 4.5.4 (where that Cyferd Partner has a particular Partner Grade and in accordance with the **Grading Policy** (<https://cyferd.com/cyferdcomm/>) (being a Cyferd Partner Policy and as amended by Cyferd from time to time)) Cyferd may change (by downgrading) and/or revoke that Cyferd Partner's Partner Grade;
 - 4.5.5 (pursuant to in accordance with its rights under that Cyferd Partner's SSSPA) Cyferd may consider that the Cyferd Partner in question is not best suited to deal with the Relevant Customer in question (at all or in part) and if so, notify the Cyferd Partner of the same and: (i) which other Cyferd Partner(s) will be the Preferred Partner(s) and, where there is more than one of them, the Lead Preferred Partner for that Relevant Customer; or (ii) if Cyferd will be the new contracting party in question, and (in either case), and the reason why shall be such deemed material breach. The provisions of the SSSPA shall apply in such circumstances; and/or
 - 4.5.6 Cyferd shall be entitled to rely on and enforce the applicable indemnities given by that Cyferd Partner under the SSSPA (in particular those relating to a Cyferd Partner Order Forms to the extent that it is not an Approved Order Form), the Cyferd Partner acknowledging that Losses in this regard shall be deemed to include consequential, indirect or special losses and (as applicable):
 - 4.5.6.1 loss of profit or revenue;
 - 4.5.6.2 loss of business;
 - 4.5.6.3 destruction, loss of use or corruption of data;
 - 4.5.6.4 loss or damage to equipment;
 - 4.5.6.5 loss of use;
 - 4.5.6.6 loss of production;
 - 4.5.6.7 loss of contract;
 - 4.5.6.8 loss of commercial opportunity;

- 4.5.6.9 loss of savings, discount or rebate (whether actual or anticipated);
- 4.5.6.10 harm to reputation or loss of goodwill; and/or
- 4.5.6.11 wasted expenditure,

in respect of each and every such deemed material breach (the foregoing provisions of this **paragraph 4.5** being the “**Cyferd Partner Consequences**”).

4.6 The MSA, amongst other things, provides that (the following provisions of this **paragraph 4.6** being the “**Related MSA Provisions**”):

- 4.6.1 An Order Form for the purposes of the MSA means (where the Customer has Ordered through a Cyferd Partner) an Approved Order Form.
- 4.6.2 The Customer will **not** be entitled to Access and/or use the Cyferd Product (or any part including any Tenancy(ies), App(s) and/or Feature(s)), any Services unless and until the Customer has (i) signed or otherwise accepted or deemed to have accepted the applicable Order Form and (ii) accepted the MSA.
- 4.6.3 The Customer agreeing to (and accepting) the MSA includes: (i) the Customer executing an Order Form that references or is deemed to reference the MSA; and/or (ii) Accessing or using any Tenancy, the Cyferd Product (or any part including any App(s) and/or Feature(s)), any of the Services and/or any other Purchased Item.
- 4.6.4 A Cyferd Partner Order Form (where the Customer has Ordered through a Cyferd Partner) means an order form entered into between the Cyferd Partner and the Customer for the Customer’s Access to and use of the Cyferd Product and the Services, any applicable Tenancy(ies) and/or any other applicable Purchased Items that the Cyferd Partner has the right to sell on behalf of Cyferd. Such order form, to form part of the Agreement, must be an Approved Order Form. To the extent that such order form is not an Approved Order Form then it will not form part of the Agreement.
- 4.6.5 Clause 7 of the MSA deals with a Customer ordering via a Cyferd Partner. In respect of a Customer, such clause, amongst other things, provides:
 - 4.6.5.1 For the avoidance of doubt, by accessing or using any Tenancy, the Cyferd Product (or any part including any App(s) and/or Feature(s)), any of the Services and/or any other Purchased Item, it shall be deemed to be the Customer accepting the MSA. This includes where the Customer has entered into or otherwise accepted a Cyferd Partner Order Form.
 - 4.6.5.2 The Customer agrees and acknowledges that such Cyferd Partner Order Form is subject to this Policy.
 - 4.6.5.3 Where, by virtue of the application of this Policy, the Cyferd Partner Order Form is an Approved Order Form without any deemed amendments needing to be made to it then the Cyferd Partner Order Form shall be an Order Form and the order contained in it an Order for the purposes of these Terms without deemed amendment.
 - 4.6.5.4 Where, by virtue of the application of this Policy, the Cyferd Partner Order Form is **not** an Approved Order Form without any deemed amendments needing to be made to it, then the

Cyferd Partner Order Form shall be deemed to have been amended with immediate effect to the extent necessary to make the Cyferd Partner Order Form in question an Approved Order Form. The Customer irrevocably and unconditionally agrees to and accepts all such deemed amendments. Such provision of the MSA is an Access Parameter and a Utilisation Parameter.

4.6.5.5 Pending a Cyferd Partner Order Form being an Approved Order Form, in respect of the Agreement, subject to clause 1.4 of the MSA, in the event of any conflict in respect of the provisions of the documents that comprise the Agreement the following order of priority shall prevail (in descending order of priority): (i) the MSA, (ii) the Cyferd Policies (including this Policy), (iii) any other document(s) that form part of the Agreement (other than the Cyferd Partner Order Form in question); and then, last of all, the Cyferd Partner Order Form in question **UNLESS AND TO THE EXTENT THAT** any such document (but not the Cyferd Partner Order Form in question) expressly provides that any provision(s) of it shall take priority over any document (or provision(s) of such document) ranked above it in such order of priority in which case such provision(s) shall not be considered to be conflicting for the purposes of such provision of the MSA.

4.6.6 Non-Agreement Terms, amongst other things:

4.6.6.1 shall never (in whole or in part) be accepted or deemed to be accepted by or on behalf of Cyferd and none of Cyferd's employees, officers, agents, subcontractors, representatives and no Cyferd Partner has any authority (actual or implied) to accept the same (in whole or in part);

4.6.6.2 shall not form part of the Agreement;

4.6.6.3 shall not have any legal or binding effect on Cyferd whatsoever.

The other applicable provisions of the MSA shall also apply in respect of Non-Agreement Terms.

4.7 Given the Customer Consequences, the Cyferd Partner Consequences and the overriding nature of the Related MSA Provisions, there is a presumed assumption by Cyferd that Cyferd Partners will not enter into purported 'order forms' with Proposed Customers/ Customers (as the case may be) which are Unapproved. In good faith Cyferd places reliance on such presumed assumption.

4.8 This Policy operates automatically even if Cyferd is, at that time, unaware of the existence of any such purported 'order form' which is Unapproved.

5. Deemed amendments to Relevant Cyferd Partner Order Forms

5.1 In respect of a Relevant Cyferd Partner Order Form that does not clearly provide or imply that it is to be Professional or Enterprise, Cyferd shall (in its sole discretion) determine in writing whether that Relevant Cyferd Partner Order Form is to be Professional or Enterprise. Upon such determination being made it shall be irrevocably deemed to apply to that Relevant Cyferd Partner Order Form and the rest of this **paragraph 5** shall apply accordingly.

5.2 **Relevant Cyferd Partner Order Form for Professional which is intended/ purports to be that Relevant Customer's first Order and for its Main Subscription** - If and to the extent that a Relevant Cyferd Partner Order Form for Professional which is intended/ purports to be that Customer's first Order and for its Main Subscription does **not** contain (as the context requires) the details/ provisions set out in **paragraphs 1.1 to 1.29** (inclusive) of **Schedule 1** and/or (as the context requires) deal/ address/ comply with **paragraphs 1.1 to 1.29** (inclusive) of **Schedule 1** then it will, irrevocably and unconditionally, be deemed to have been amended (including making any necessary deletions) with effect from the date it was entered into such that:

5.2.1 it does contain (as the context requires) the details/ provisions set out in **paragraphs 1.1 to 1.29** (inclusive) of **Schedule 1** and/or (as the context requires) deal/ address/ comply with **paragraphs 1.1 to 1.29** (inclusive) of **Schedule 1**; and

5.2.2 nothing in it is inconsistent with/ contrary to the details/ provisions set out in **paragraphs 1.1 to 1.29** (inclusive) of **Schedule 1**,

and such amendments are hereby irrevocably and unconditionally agreed by the Relevant Customer in question, the Cyferd Partner in question and Cyferd. Subject to the operation of (and anything to the contrary in) **paragraph 5.6** if and where applicable, the effect of this **paragraph 5.2** makes such Relevant Cyferd Partner Order Form an Approved Order Form.

5.3 **Relevant Cyferd Partner Order Form for Professional which is not that Relevant Customer's first Order for its Main Subscription but is intended/ purports to be a subsequent Order in connection with its Agreement** - If and to the extent that a Relevant Cyferd Partner Order Form for Professional which is **not** that Customer's first Order for its Main Subscription, but intended/ purports to be a subsequent Order in connection with its Agreement, does **not** contain (as the context requires) the details/ provisions set out in **paragraphs 2.1 to 2.13** (inclusive) of **Schedule 1** and/or (as the context requires) deal/ address/ comply with **paragraphs 2.1 to 2.13** (inclusive) of **Schedule 1** then it will, irrevocably and unconditionally, be deemed to have been amended (including making any necessary deletions) with effect from the date it was entered into such that:

5.3.1 it does contain (as the context requires) the details/ provisions set out in **paragraphs 2.1 to 2.13** (inclusive) of **Schedule 1** and/or (as the context requires) deal/ address/ comply with **paragraphs 2.1 to 2.13** (inclusive) of **Schedule 1**; and

5.3.2 nothing in it is inconsistent with/ contrary to the details/ provisions set out in **paragraphs 2.1 to 2.13** (inclusive) of **Schedule 1**,

and such amendments are hereby irrevocably and unconditionally agreed by the Relevant Customer in question, the Cyferd Partner in question and Cyferd. Subject to the operation of (and anything to the contrary in) **paragraph 5.6** if and where applicable, the effect of this **paragraph 5.3** makes such Relevant Cyferd Partner Order Form an Approved Order Form.

5.4 **Relevant Cyferd Partner Order Form for Enterprise which is intended/ purports to be that Relevant Customer's first Order and for its Main Subscription** - If and to the extent that a Relevant Cyferd Partner Order Form for Enterprise which is intended/ purports to be that Relevant Customer's first Order and for its Main Subscription does **not** contain (as the context requires) the details/ provisions set out in **paragraphs 1.1 to 1.30** (inclusive) of **Schedule 2** and/or (as the context requires) deal/ address/ comply with **paragraphs 1.1 to 1.30** (inclusive) of **Schedule 2** then it will, irrevocably and unconditionally, be deemed to have been amended (including making any necessary deletions) with effect from the date it was entered into such that:

5.4.1 it does contain (as the context requires) the details/ provisions set out in **paragraphs 1.1 to 1.30** (inclusive) of **Schedule 2** and/or (as the context requires) deal/ address/ comply with **paragraphs 1.1 to 1.30** (inclusive) of **Schedule 2**; and

5.4.2 nothing in it is inconsistent with/ contrary to the details/ provisions set out in **paragraphs 1.1 to 1.30** (inclusive) of **Schedule 2**,

and such amendments are hereby irrevocably and unconditionally agreed by the Relevant Customer in question, the Cyferd Partner in question and Cyferd. Subject to the operation of (and anything to the contrary in) **paragraph 5.6** if and where applicable, the effect of this **paragraph 5.4** makes such Relevant Cyferd Partner Order Form an Approved Order Form.

5.5 **Relevant Cyferd Partner Order Form for Enterprise which is not that Relevant Customer's first Order for its Main Subscription but is intended/ purports to be a subsequent Order in connection with its Agreement** - If and to the extent that a Relevant Cyferd Partner Order Form for Enterprise which is **not** that Relevant Customer's first Order for its Main Subscription, but intended/ purports to be a subsequent Order in connection with its Agreement, does **not** contain (as the context requires) the details/ provisions set out in **paragraphs 2.1 to 2.12** (inclusive) of **Schedule 2** and/or (as the context requires) deal/ address/ comply with **paragraphs 2.1 to 2.12** (inclusive) of **Schedule 2** then it will, irrevocably and unconditionally, be deemed to have been amended (including making any necessary deletions) with effect from the date it was entered into such that:

5.5.1 it does contain (as the context requires) the details/ provisions set out in **paragraphs 2.1 to 2.12** (inclusive) of **Schedule 2** and/or (as the context requires) deal/ address/ comply with **paragraphs 2.1 to 2.12** (inclusive) of **Schedule 2**; and

5.5.2 nothing in it is inconsistent with/ contrary to the details/ provisions set out in **paragraphs 2.1 to 2.12** (inclusive) of **Schedule 2**,

and such amendments are hereby irrevocably and unconditionally agreed by the Relevant Customer in question, the Cyferd Partner in question and Cyferd. Subject to the operation of (and anything to the contrary in) **paragraph 5.6** if and where applicable, the effect of this **paragraph 5.5** makes such Relevant Cyferd Partner Order Form an Approved Order Form.

- 5.6 This **paragraph 5.6** applies to all or any of the following circumstances:
- 5.6.1 Where the ‘Customer’ details referred to in **paragraph 1.1** of **Schedule 1** (in the case of Professional) or **paragraph 1.1** of **Schedule 2** (in the case of Enterprise) are **not** in the Relevant Cyferd Partner Order Form in question (the “**Missing Customer Details**”).
- 5.6.2 ***In respect of a Relevant Cyferd Partner Order Form relating to Professional where the Utilisation Fees are calculated on an Assumed Utilisation basis*** – where Cyferd’s prior written approval of: (i) the amount of the Utilisation Fees in question; and (ii) the justification and rationale behind setting such amount and the contents of the Customer’s Expected Utilisation has **not** been obtained by the Cyferd Partner in question/ given by Cyferd.
- 5.6.3 ***In respect of a Relevant Cyferd Partner Order Form relating to Professional where the Utilisation Fees are calculated on a Fixed Utilisation basis*** – where Cyferd’s prior written approval of: (i) the amount of the Utilisation Fees in question; and (ii) the justification and rationale behind setting such amount has **not** been obtained by the Cyferd Partner in question/ given by Cyferd.
- 5.6.4 ***In respect of a Relevant Cyferd Partner Order Form relating to Enterprise*** – where Cyferd’s prior written approval of:
- 5.6.4.1 any structure and pricing of the deal in question;
- 5.6.4.2 the amount of the Subscription Fee in respect of the same;
- 5.6.4.3 the amount of/ the calculation basis for any Variable Fees in respect of the same; and/or
- 5.6.4.4 the Supplemental Terms (and hence any Additional Subscription Fee Pricing Terms, any Variable Fees Conditions and the Variable Fees Pricing Terms) in respect of the same,
- has **not** been obtained by the Cyferd Partner in question/ given by Cyferd.
- 5.6.5 In respect of a Relevant Cyferd Partner Order Form, where Cyferd’s prior written approval of any other special pricing/payment terms (being terms inconsistent with:
- 5.6.5.1 (in the case of Professional) the applicable details/ provisions/ requirements set out in **Schedule 1**, the MSA and/or the other Cyferd Policies (or any of them); or
- 5.6.5.2 (in the case of Enterprise) the applicable details/ provisions/ requirements set out in **Schedule 2**, the MSA and/or the other Cyferd Policies (or any of them),
- (as the case may be)) has **not** been obtained by the Cyferd Partner in question/ given by Cyferd.

In which case the following shall apply:

- 5.6.6 In the case of the Missing Customer Details, then the Cyferd Partner in question shall promptly obtain and verify the same and provide them with evidence of such verification to Cyferd to its satisfaction. The Relevant Customer in question shall provide all assistance in the provision and verification of the same. Cyferd, that Relevant Customer and that Cyferd Partner shall then confirm the same in writing (by email). Pending the Missing Customer Details being so obtained, verified and confirmed then:

- 5.6.6.1 the Relevant Cyferd Partner Order Form in question will be and remain an Unapproved Order Form;
 - 5.6.6.2 (if Cyferd has not at that time provided that Customer with Access to and use of the Cyferd Product and the Services) Cyferd shall **not** be obliged to provide that Relevant Customer with any such Access or use; and/or
 - 5.6.6.3 (if Cyferd has at that time provided that Relevant Customer with Access to and use of the Cyferd Product and the Services) Cyferd shall be entitled to suspend any such Access or use pursuant to and in accordance with clause 20 of the MSA.
- 5.6.7 In the case of Cyferd's prior written approval having **not** been obtained by the Cyferd Partner in question/ given by Cyferd in the manner referred to in any one or more of **paragraphs 5.6.2 to 5.6.5** (inclusive):
- 5.6.7.1 (if Cyferd had refused to provide such consent previously):
 - 5.6.7.1.1 (pending the operation of **paragraph 5.6.7.1.3** or **5.6.7.1.4**) the Relevant Cyferd Partner Order Form in question will be and remain an Unapproved Order Form;
 - 5.6.7.1.2 (pending the operation of **paragraph 5.6.7.1.3** or **5.6.7.1.4**) Cyferd shall **not** be obliged to provide the Relevant Customer in question with any such Access or use; and (at Cyferd's sole discretion)
 - 5.6.7.1.3 **EITHER:** (in the case of **paragraph 5.6.2** or **5.6.3**) the Utilisation Fees in question shall be deemed to be calculated on a Metered Utilisation basis; and/or (in the case of **paragraph 5.6.5**) no special pricing/payment terms shall apply (as applicable), and in any event, the applicable provisions of **Schedule 1** shall apply in that regard, the Relevant Cyferd Partner Order Form in question shall be deemed to be construed accordingly and the same shall be deemed to be agreed to by that Relevant Customer and that Cyferd Partner;
 - 5.6.7.1.4 **OR:** if and to the extent that any Contract exists between that Relevant Customer and Cyferd (which is not admitted by Cyferd) such Contract shall irrevocably and unconditionally terminate without any obligation on or liability to Cyferd and such termination and terms shall be deemed to be agreed to by that Relevant Customer and that Cyferd Partner.
 - 5.6.7.2 (if Cyferd has **not** been asked to provide such consent previously):
 - 5.6.7.2.1 that Cyferd Partner and that Relevant Customer shall promptly provide Cyferd with all information and evidence that it requires to enable it to consider giving consent (at its sole

- discretion) for the subject matter of what should have been submitted to Cyferd for consent;
- 5.6.7.2.2 if and to the extent that Cyferd is prepared to consent to the subject matter of what should have been submitted to Cyferd for consent in the form provided it shall provide such consent in writing (and in doing so it can apply such conditions to such consent as it sees fit);
- 5.6.7.2.3 if and to the extent that Cyferd is **not** prepared to consent to the subject matter of what should have been submitted to Cyferd for consent without amendment, then it shall inform that Cyferd Partner and that Relevant Customer of the same in writing and Cyferd, that Relevant Customer and that Cyferd Partner shall use reasonable endeavours to consult with each with a view to agreeing the same to Cyferd's satisfaction. In the absence of any such agreement within 30 (thirty) days then **paragraph 5.6.7.3** shall apply in respect of Professional and **paragraph 5.6.7.4** shall apply in respect of Enterprise.
- 5.6.7.3 Where no agreement can be reached within such 30 (thirty) day period pursuant to **paragraph 5.6.7.2.3** in respect of Professional, then (at Cyferd's sole discretion):
- 5.6.7.3.1 **EITHER:** (in the case of **paragraph 5.6.2** or **5.6.3**) the Utilisation Fees in question shall be deemed to be calculated on a Metered Utilisation basis; and/or (in the case of **paragraph 5.6.5**) no special pricing/payment terms shall apply (as applicable), and in any event the applicable provisions of **Schedule 1** shall apply in that regard, the Relevant Cyferd Partner Order Form in question shall be deemed to be construed accordingly and the same shall be deemed to be agreed to by that Relevant Customer and that Cyferd Partner;
- 5.6.7.3.2 **OR:** if and to the extent that any Contract exists between that Relevant Customer and Cyferd (which is not admitted by Cyferd) such Contract shall irrevocably and unconditionally terminate without any obligation on or liability to Cyferd and such termination and terms shall be deemed to be agreed to by that Relevant Customer and that Cyferd Partner.
- 5.6.7.4 Where no agreement can be reached within such 30 (thirty) day period pursuant to **paragraph 5.6.7.2.3** in respect of Enterprise, Cyferd shall within 14 (fourteen) days of the end of such period submit to that Relevant Customer in writing on behalf of it and that Cyferd Partner a final pricing/payment proposition (as applicable for the subject matter of what

should have been submitted to Cyferd for consent) for agreement. That Relevant Customer must either agree to or reject such final pricing/payment proposition within 14 (fourteen) days of receipt of the same. From and including the date of the Relevant Cyferd Partner Order Form, pending the agreement to or the rejection of (as the case may be) such final pricing/payment proposition by that Relevant Customer then:

- 5.6.7.4.1 the order form in question will be and remain an Unapproved Order Form;
- 5.6.7.4.2 (if Cyferd has not at that time provided the Customer with Access to and use of the Cyferd Product and the Services) Cyferd shall **not** be obliged to provide the Customer with any such Access or use;
- 5.6.7.4.3 (if Cyferd has at that time provided the Customer with Access to and use of the Cyferd Product and the Services) Cyferd shall be entitled to suspend any such Access or use pursuant to and in accordance with clause 20 of the MSA.

In the event such final pricing/payment proposition is:

- 5.6.7.4.4 agreed to by that Relevant Customer then the same shall be deemed to be agreed to by that Cyferd Partner and the agreed subject matter in question shall be deemed to form part of the Relevant Cyferd Partner Order Form in question; or
- 5.6.7.4.5 rejected by that Relevant Customer then, if and to the extent that any Contract exists between that Relevant Customer and Cyferd (which is not admitted by Cyferd) such Contract shall irrevocably and unconditionally terminate without any obligation on or liability to Cyferd and such termination and terms shall be deemed to be agreed to by that Relevant Customer and that Cyferd Partner.

6. Failure to comply with/ breach of this Policy by the Cyferd Partner

If a Cyferd Partner fails to comply with or otherwise breaches the terms of this Policy then such failure to comply/ breach will be considered to be a material breach by the Cyferd Partner of that Cyferd Partner's Partner Agreement and that Cyferd Partner's SSSPA.

7. Failure to comply with/ breach of this Policy by the Relevant Customer

If a Relevant Customer fails to comply with or otherwise breaches the terms of this Policy then such failure to comply/ breach will be considered to be a material breach by the Relevant Customer of the MSA and that Relevant Customer's Agreement.

8. Law

The provisions of this Policy shall be governed by the laws of England and Wales.

SCHEDULE 1 – PROFESSIONAL

1. What provisions need to be in a first order form (Main Subscription) for Professional to make it an Approved Order Form?

An order form for Professional which is a Customer's first Order and for its Main Subscription must contain (as the context requires) the following details/ provisions and/or (as the context requires) deal/ address/ comply with the following:

- 1.1 **Customer details:** Full name/ corporate name of the Customer in question, (if any) its company/ registered number, (if applicable) its country/ place of incorporation/ registration, (if any) its registered office, its correspondence address, its correspondence email address(es), full name of contact person(s), VAT number (or equivalent). In the absence of any such details **paragraph 5.6** of this Policy shall apply.
- 1.2 A provision that makes it clear that for the purposes of that order form that Customer is defined as the "**Customer**".
- 1.3 A provision relating to such Customer details that states: '*Such address/ email address(es) will be used for the purposes of notices under any legal agreements with the Customer in connection with the subject matter of this Order Form. Such address/ email address(es) can be changed for such purpose strictly in accordance with the MSA as defined and referred to below.*'
- 1.4 **Cyferd Partner details:** Full name/ corporate name of the Cyferd Partner in question, (if any) its company/ registered number, (if applicable) its country/ place of incorporation/ registration, (if any) its registered office, its correspondence address. In the absence of any such details the applicable details from that Cyferd Partner's Partner Agreement will be deemed to be included and which can be provided by Cyferd upon written request.
- 1.5 A provision that makes it clear that for the purposes of that order form that Cyferd Partner is defined as the "**Cyferd Partner**".
- 1.6 A provision that makes it clear that the parties to that order form are that Customer and that Cyferd Partner.
- 1.7 A provision that states: '**Cyferd contract type:** *Professional.*'
- 1.8 A provision that states '**Applicable Currency:** *£(pounds Sterling)*' or '**Applicable Currency:** *\$(Dollars)*' or '**Applicable Currency:** *€(euro)*'. In the absence of any such provision such order form shall be deemed to contain a provision that states '**Applicable Currency:** *£(pounds Sterling)*'.
- 1.9 A provision that makes it clear that all prices and fees in/ referred to in the order form are exclusive of VAT.
- 1.10 A provision that makes it clear what the Commencement Date is. In the absence of any such provision such order form shall be deemed to contain a provision that states '**Commencement Date:** *the date of this Order Form or, if dated by the parties on different dates, the latter of the two dates.*'
- 1.11 A provision that states '**Cyferd:** *means Cyferd Ltd, a company incorporated in England and Wales with company number 12184449 whose registered office is at 128 City Road, London, EC1V 2NX ("Cyferd").*'
- 1.12 A provision that makes it clear what the Minimum Term is. This must be expressed in whole years or multiples of 12 (twelve) months and as beginning with the Commencement Date. In the absence of any such provision such order form shall be deemed to contain a provision that states '**Minimum Term:** *12 (twelve) months beginning with the Commencement Date.*'
- 1.13 Under that Cyferd Partner's SSSPA, that Cyferd Partner is prohibited from agreeing a Minimum Term of more than 3 (three) years without Cyferd's prior express written approval. If the order form contains a provision for a Minimum term of longer than 3 (three) years and Cyferd has not provided its prior express written approval then, unless and until Cyferd (in its sole discretion) provides its subsequent express written approval then the Minimum Term in such order form shall be deemed to be '**Minimum Term:** *3 (three) years beginning with the Commencement Date.*'. If Cyferd does provide its subsequent express written approval such approval shall not in any way waive the breach by that Cyferd Partner of the applicable provisions of its SSSPA in respect of the same.
- 1.14 A provision that makes it clear what Tenancy(ies) are the subject matter of the order form (which/ one of which must be a Production Tenancy) using wording similar to the following (as applicable):
 - '1 (one) Tenancy for the Customer's main use (being a Production Tenancy).'
 - '1 (one) Tenancy for the Customer's development/ testing use (for the creation, modification, customisation, maintenance, updating and/or testing of Apps) (being a Development Tenancy).'
 - '1 (one) Tenancy for the Customer's testing (of Apps) use (being a User Acceptance Tenancy).'
 - '**[X in numbers]** (**[X in words]**) Non-Production Tenancy(ies).'

In the absence of any such provision such order form shall be deemed to contain the applicable one of the following provisions that states:

'Tenancy(ies): 1 (one) Tenancy for the Customer's main use (being a Production Tenancy).'

'Tenancy(ies): 2 (two) Tenancies – 1 (one) Tenancy for the Customer's main use (being a Production Tenancy) and 1 (one) Tenancy for the Customer's development/ testing use (for the creation, modification, customisation, maintenance, updating and/or testing of Apps) (being a Development Tenancy).'

'Tenancy(ies): 3 (three) Tenancies – 1 (one) Tenancy for the Customer's main use (being a Production Tenancy) and 1 (one) Tenancy for the Customer's development use (for the creation, modification, customisation, maintenance and/or updating of Apps) (being a Development Tenancy) and 1 (one) Tenancy for the Customer's testing (of Apps) use (being a User Acceptance Tenancy).'

'Tenancy(ies): [X in numbers] ([X in words]) Tenancies - 1 (one) Tenancy for the Customer's main use (being a Production Tenancy) and [X-1 in numbers] ([X-1 in words]) Non-Production Tenancy(ies).'

In this paragraph 1.14, X = the total number of Tenancies being the subject matter of that order form.

- 1.15 A provision that states **'Master Services Agreement:** the master services agreement between Cyferd and the Customer that applies to this Order Form is the then current 'Cyferd – MSA (Professional)(<https://cyferd.com/cyferdcomm/>) (being the MSA).'
- 1.16 A provision that states **'SSS Partner Agreement:** the Cyferd partner agreement for 'Sales Partners', 'Services Partners' and 'Solutions Partners' entered into between Cyferd and the Cyferd Partner.'
- 1.17 A provision that states **'SSSPA:** as defined in the SSS Partner Agreement, and which in effect means the whole agreement and all applicable documents (including the SSS Partner Agreement) that govern the Cyferd Partner's appointment as a 'Cyferd Partner' and related matters.'
- 1.18 A provision (the **'MSA Defined Terms Provision'**) that states 'In this Order Form: "Access", "Access Parameters", "Affiliate", "Agreement", "annual", "annually", "App", "Applicable Currency", "Approved Order Form", "Authorised User", "Cyferd", "Cyferd Annual Professional Subscription Fee", "Cyferd Partner", "Cyferd Policy", "Cyferd Policies", "Cyferd Product", "Development Tenancy", "Dollars", "euro", "Further Term", "Metered Utilisation", "month", "monthly", "MSA", "Order Form", "Other Non-Production Tenancy(ies)", "Premium Feature", "Premium Fees", "Premium Subscription", "Product Fees", "Production Tenancy", "Professional", "Sterling", "Subscription Fee", "Tenancy", "Tenancy(ies)", "Tenancies", "Unapproved Order Form", "User Acceptance Tenancy", "User Notice", "Utilisation", "Utilisation Fees", "Utilisation Parameters", "VAT", "year" have the meanings given to them in the MSA.'
- 1.19 A provision that states 'Pursuant to the SSSPA the Cyferd Partner is authorised by Cyferd to enter into this Order Form with the Customer provided that it uses an Approved Order Form. The MSA contains provisions that automatically and irrevocably vary an Unapproved Order Form to such extent necessary so that it becomes an Approved Order Form.'
- 1.20 Provisions that provide that the Product Fees payable by that Customer comprise:
- 1.20.1 the Subscription Fee; and
- 1.20.2 Utilisation Fees,
- and, in the case of Utilisation Fees, that the same shall be calculated on:
- 1.20.3 a Metered Utilisation basis;
- 1.20.4 an Assumed Utilisation basis; or
- 1.20.5 a Fixed Utilisation basis.

In the absence of any such Utilisation basis provision, such order form shall be deemed to state that Utilisation Fees are calculated on a Metered Utilisation basis.

- 1.21 Provisions in respect of the Subscription Fee that state as follows:
- 1.21.1 **'Subscription Fee: [amount] plus VAT.** This amount is the aggregate annual such fee for each year of the Minimum Term. This fee **excludes** the Customer's Utilisation of the Cyferd Product. This fee only **includes** the Customer's Access to the Cyferd Product via the Customer's Tenancy(ies) provided for in this Order Form as at the Commencement Date and not any other Tenancy(ies) the Customer may have from time to time.'
- 1.21.2 **'Subscription Fee on automatic renewal:** If the Agreement automatically renews under clause 2.2 of the MSA then the Subscription Fee for the applicable Further Term shall be the aggregate of the higher of: (i) the Subscription Fee paid for each year of the Minimum Term; and (ii) the then prevailing Cyferd Annual Professional Subscription Fee for each of the Customer's then Tenancy(ies) **plus VAT.** This amount is the aggregate such fee for the

Further Term in question. This fee **excludes** the Customer's Utilisation of the Cyferd Product. This fee only **includes** the Customer's Access to the Cyferd Product via the Customer's then Tenancy(ies) and not any other Tenancy(ies) the Customer may have from time to time.'

- 1.21.3 'As per the terms of the MSA, the Subscription Fee will be invoiced by the Cyferd Partner to the Customer annually in full in advance of the year to which it relates and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Subscription Fee.'
- 1.22 Provisions in respect of Utilisation Fees as follows:
- 1.22.1 **Where the Utilisation Fees are calculated on a Metered Utilisation basis – 'Utilisation Fees:** During the Minimum Term the Utilisation Fees shall be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (being Metered Utilisation). Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) provided for in this Order Form as at the Commencement Date. Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'
- 1.22.2 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – 'Utilisation Fees:** [amount] **plus VAT.** This amount is an assumed/ estimated aggregate fee for each year of the Minimum Term based on the Customer's Expected Utilisation and is subject to the Assumed Utilisation Fair Use Policy (being a Cyferd Policy) (being Assumed Utilisation). Such Utilisation Fees calculated on an Assumed Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) provided for in this Order Form as at the Commencement Date. Utilisation Fees calculated on an Assumed Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time subject to appropriate changes being made to or it being based on new/ separate: (i) the assumed/ estimated annual aggregate fee; and (ii) the Customer's Expected Utilisation.'
- 1.22.3 **Where the Utilisation Fees are calculated on a Fixed Utilisation basis – 'Utilisation Fees:** [amount] **plus VAT.** This amount is the aggregate fee for each year of the Minimum Term (being Fixed Utilisation). Such Utilisation Fees calculated on such Fixed Utilisation basis only apply to the Customer's Utilisation of the Customer's Tenancy(ies) provided for in this Order Form as at the Commencement Date and no other Tenancy(ies) the Customer may have from time to time.'
- 1.22.4 In the absence of any of the three Utilisation basis provisions above such order form shall be deemed to contain the one where Utilisation Fees are calculated on a Metered Utilisation basis.
- 1.22.5 **Where the Utilisation Fees are calculated on a Metered Utilisation basis – 'Utilisation Fees on automatic renewal:** During the applicable Further Term the Utilisation Fees shall be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (being Metered Utilisation). Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) to which such automatic renewal relates. Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'
- 1.22.6 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – 'Utilisation Fees on automatic renewal:** **UNLESS**, prior to the end of the Minimum Term or the then Further Term (as the case may be), Cyferd agrees in writing (in a form to Cyferd's satisfaction) with the Customer what the Utilisation Fees will be (where they are intended to be on an Assumed Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term then, the Utilisation Fees will be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (on a Metered Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term. During the applicable Further Term the Utilisation Fees shall be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (being Metered Utilisation). If the Utilisation Fees for the purposes of such automatic renewal for the applicable Further Term are on an Assumed Utilisation basis then such agreed amount is the assumed/ estimated aggregate fee for the applicable Further Term based on the Customer's Expected Utilisation and is subject to the Assumed Utilisation Fair Use Policy (being a Cyferd Policy). Such Utilisation Fees calculated on an Assumed Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) to which such automatic renewal relates. Utilisation Fees calculated on an Assumed Utilisation basis can also apply to the Customer's Utilisation of

any other Tenancy(ies) it may have from time to time subject to appropriate changes being made to or it being based on new/ separate: (i) the assumed/ estimated annual aggregate fee; and (ii) the Customer's Expected Utilisation. Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) to which such automatic renewal relates. Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'

- 1.22.7 **Where the Utilisation Fees are calculated on a Fixed Utilisation basis – 'Utilisation Fees on automatic renewal: UNLESS, prior to the end of the Minimum Term or the then Further Term (as the case may be), Cyferd agrees in writing (in a form to Cyferd's satisfaction) with the Customer what the Utilisation Fees will be (where they are intended to be on a Fixed Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term then, the Utilisation Fees will be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time plus VAT (on a Metered Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term. If the Utilisation Fees for the purposes of such automatic renewal for the applicable Further Term are on a Fixed Utilisation basis then such agreed amount is the aggregate agreed fee for the applicable Further Term. Such Utilisation Fees calculated on such Fixed Utilisation basis only apply to the Customer's Utilisation of the applicable Customer's Tenancy(ies) provided for in this Order Form to which such automatic renewal relates and no other Tenancy(ies) the Customer may have from time to time. Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the applicable Customer's Tenancy(ies) provided for in this Order Form to which such automatic renewal relates and no other Tenancy(ies). Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'**
- 1.22.8 In the absence of any of the three Utilisation basis provisions on automatic renewal above such order form shall be deemed to contain the version that corresponds with the Utilisation basis that applies or is deemed to apply in such order form.
- 1.22.9 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – in the MSA Defined Terms Provision the following additional definitions shall be included: "Assumed Utilisation", "Assumed Utilisation Fair Use Policy", "Customer's Expected Utilisation".**
- 1.22.10 **Where the Utilisation Fees are calculated on a Fixed Utilisation basis – in the MSA Defined Terms Provision the following additional definition shall be included: "Fixed Utilisation".**
- 1.22.11 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – in the Utilisation Parameters Provision (as defined below) the following additional Utilisation Parameter: 'If and where the Customer's Utilisation basis is Assumed Utilisation - the Assumed Utilisation Fair Use Policy, (being a Cyferd Policy) shall apply to the Customer's Utilisation. If the Customer's actual Utilisation (calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time) for the month in question infringes/ breaches the Assumed Utilisation Fair Use Policy (being a Cyferd Policy), then Cyferd shall be entitled to (but not obliged to) charge the Customer for any Excess Utilisation in accordance with such Cyferd Policy.'**
- 1.22.12 'As per the terms of the MSA, the Utilisation Fees will be invoiced by the Cyferd Partner to the Customer monthly in arrears and each invoice will be payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Utilisation.'
- 1.23 If applicable, provisions in respect of Premium Fees as follows:
- 1.23.1 Specifying the Premium Feature(s) and/or Premium Subscription(s) being the subject matter of the order form and whether the pricing for the same is a one off price, a recurring annual price, a recurring monthly price or any other recurring periodic price.
- 1.23.2 **Where the pricing for the Premium Fees is a one off price – 'Premium Fees: [amount] plus VAT. This amount is for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'**
- 1.23.3 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees: [amount] plus VAT. This amount is the aggregate annual such fee for each year of the Minimum Term for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'**
- 1.23.4 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees on automatic renewal: If the Agreement automatically renews under clause 2.2 of the MSA**

then the Premium Fees for the applicable Further Term shall be the aggregate of the higher of: (i) the Premium Fees paid for each year of the Minimum Term; and (ii) Cyferd's then applicable pricing in respect of the same annualised (such pricing being that published by Cyferd or notified by Cyferd to the Cyferd Partner as the case may be) **plus VAT**. This amount is the aggregate such fee for the Further Term in question.'

- 1.23.5 **Where the pricing for the Premium Fees is a one off price** – 'As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer in full in advance and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'
- 1.23.6 **Where the pricing for the Premium Fees is an annual recurring price** – 'As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer annually in full in advance of the year to which it relates and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'
- 1.23.7 **Where the pricing for the Premium Fees is a monthly or other periodic (but not annual) recurring price** – 'As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer [monthly][**other period**] in arrears and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'
- 1.24 A provision that states 'Neither the Subscription Fee nor the Utilisation Fees include access to and use of any Premium Features and/or any Premium Subscriptions, which subject to availability, can be purchased separately.'
- 1.25 Provided that Cyferd has (in its sole discretion) expressly approved the same in writing in advance, such pricing or payment terms in respect of the Subscription Fee, any Utilisation Fees and/or Premium Fees could be subject to 'Special Payment/Pricing Terms' which would need to be provided for in that order form (in the form so approved by Cyferd and having strict regard to any terms and conditions that Cyferd may apply in respect of the same).
- 1.26 That order form in respect of the pricing and payment terms for the Subscription Fee, any Utilisation Fees and/or Premium Fees must comply with and cannot be in breach of the terms of the **Pricing Policy** (<https://cyferd.com/cyferdcomm/>) (being a Cyferd Partner Policy and as amended by Cyferd from time to time).
- 1.27 The following provisions (those relating to Utilisation Parameters being the "**Utilisation Parameters Provision**"): **'Access Parameters**
- The Customer shall abide by all and any Utilisation Parameters.*
- The Customer shall not be entitled to any Access to or use of the Cyferd Product where the Customer is a competitor of Cyferd or provides services which are competitive with or to the Cyferd Product **unless and then to the extent that Cyferd expressly consents to the same in writing to the Customer.***
- The Customer shall procure that only Authorised Users have Access to/ use of the Tenancy to which they have been granted Access.*
- The Customer shall not grant a person Authorised User status who is not an employee or worker of the Customer, or where that person or the entity who employs that person: (i) is a different member of the Customer's group or an associated entity to the Customer or an Affiliate of the Customer; (ii) is a competitor of Cyferd or provides services which are competitive with or to the Cyferd Product; (iii) is a software or application developer (unless that person or the entity who employs that person is a Cyferd Partner/ the Cyferd Partner); (iv) is being granted such status for any purpose other than the bona fide business purposes of the Customer; and/or (v) has not acknowledged the existence and the terms of the User Notice in writing to the Customer **unless and then to the extent that Cyferd expressly consents to the same in writing to the Customer.***
- The Customer shall not use any Tenancy for any unlawful purpose, activity, business or enterprise.*
- Only a Production Tenancy can be used for the Customer's live data or everyday business operations use.*
- A Development Tenancy, User Acceptance Tenancy and/or Other Non-Production Tenancy(ies) **cannot** be used for the Customer's live data or everyday business operations use.*
- Together with: (i) such other Access Parameter(s) (designated as such by Cyferd) in any other document that comprises the Agreement from time to time; and (ii) such other Access Parameter(s) (designated as*

such by Cyferd) as may be agreed in writing by Cyferd and the Customer from time to time for the purposes of the Agreement.

Utilisation Parameters

The Customer shall not use the Cyferd Product in any way that will give rise to a breach of an Access Parameter.

Together with: (i) such other Utilisation Parameter(s) (designated as such by Cyferd) in any other document that comprises the Agreement from time to time; and (ii) such other Utilisation Parameter(s) (designated as such by Cyferd) as may be agreed in writing by Cyferd and the Customer from time to time for the purposes of the Agreement.’

1.28 The following provisions:

‘The Agreement

In addition to this Order Form, the following documents have been provided to/ made available to the Customer (the “**Documents**”, each a “**Document**”):

Document	Location
the MSA	https://cyferd.com/cyferdcomm/
all Cyferd Policies applicable to Professional	https://cyferd.com/cyferdcomm/

By signing this Order Form the Customer:

1. warrants and represents to Cyferd Partner and separately to Cyferd that it is a business and it is entering into this Order form as a business;
2. warrants and represents to Cyferd Partner and separately to Cyferd that it has read and understood this Order Form and the Documents;
3. agrees to and accepts the terms of each of the Documents (as ‘Customer’, ‘Licensee’, ‘User’, ‘Data Subject’, ‘You’, ‘Your’ and any other similar designated term (as the case may be));
4. agrees and acknowledges that the Documents form part of the Agreement;
5. agrees to and acknowledges the existence of the Agreement;
6. agrees and acknowledges that whilst this Order Form is between the Customer and the Cyferd Partner the Agreement is between the Customer and Cyferd
7. agrees and acknowledges that **Cyferd can enforce the provisions of this Order Form against the Customer as if it was the Cyferd Partner** save that the Customer shall not be obliged to pay any invoice referred to in this Order Form more than once;
8. agrees and acknowledges that no warranty, representation, agreement, acknowledgement or acceptance above in this provision shall be affected and/or fettered in any way if the Customer signs or accepts any the Documents (or any of them) separately.

If the person signing and accepting this Order Form is signing and accepting on behalf of the Customer (where the Customer is a company, partnership or other entity) that person warrants and represents to Cyferd Partner and separately to Cyferd:

1. they have full legal authority to bind the Customer to this Order Form and separately to the Agreement;
2. they have read and understood this Order Form and the Documents; and
3. they agree to this Order Form, the Documents and separately to the Agreement on behalf of the Customer.

Miscellaneous

Entire agreement

This Order Form supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between the Cyferd Partner and the Customer, whether written or oral, relating to its subject matter.

The Agreement (together with the other documents referred to in it) constitutes the entire agreement between Cyferd and the Customer and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between Cyferd and the Customer, whether written or oral, relating to their subject matter.

The Customer acknowledges that in entering into the Agreement and any documents referred to in it, it does not rely on, and shall have no rights or remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

The Customer agrees that it shall not have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement or warranty in this Agreement.

Counterparts and electronic signature

This Order Form may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one document.

Each of the Cyferd Partner and the Customer hereby agrees that this Order Form can be executed by electronic signature (having the meaning given to it in section 7 of the Electronic Communications Act 2000 (being legislation in England and Wales)) (whatever form the electronic signature takes) and that, if a party does execute this Order Form by electronic signature, such method of signature is conclusive of that party's intention to be bound by this Order Form as if signed by the Cyferd Partner's or the Customer's manuscript signature.

This Order Form shall not be effective until each of the Cyferd Partner and the Customer has signed and returned one counterpart.

Third party rights

Save as expressly provided for in this Order Form in respect of Cyferd, a person who is not a party to this Order Form shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Order Form.

Law and jurisdiction

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

Each of Cyferd Partner, Cyferd and the Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

1.29 That order form must be signed by that Customer and that Cyferd Partner each acting by a duly authorised signatory.

2. What provisions need to be in a subsequent order form for Professional to make it an Approved Order Form?

An order form for Professional which is **not** a Customer's first Order for its Main Subscription but a subsequent Order in connection with its Agreement (for example for an additional Tenancy and/or a Premium Subscription) must contain (as the context requires) the following details/ provisions and/or (as the context requires) deal/ address/ comply with the following:

2.1 The details referred to in **paragraphs 1.1 and 1.4** of this **Schedule 1**. Such details should be the same as those in the first Order Form of that Customer for its Main Subscription. In the absence of any such details those details from the first Order Form of that Customer for its Main Subscription shall be deemed to apply in such order form.

2.2 Those provisions referred to in **paragraphs 1.2, 1.3, 1.5 to 1.10 (inclusive), 1.11, 1.15 to 1.19 (inclusive), (if applicable) 1.24, 1.27 and 1.28** of this **Schedule 1**.

2.3 (If applicable) the requirement and provision in **paragraph 1.25** of this **Schedule 1**.

2.4 The requirements in **paragraphs 1.26 and 1.29** of this **Schedule 1**.

2.5 A provision stating '**Applicable Date**: the date of this Order Form or, if dated by the parties on different dates, the latter of the two dates.'

2.6 The Commencement Date for such order form shall be that provided (or deemed to have been provided) in the first Order Form of that Customer for its Main Subscription having regard to **paragraph 1.10** of this **Schedule 1**. It is therefore likely that the Commencement Date will predate such order form.

2.7 The Minimum Term for such order form shall be that provided (or deemed to have been provided) in the first Order Form of that Customer for its Main Subscription having regard to **paragraphs 1.12** (and if applicable) **1.13** of this **Schedule 1**.

2.8 A provision making it clear what Purchased Items are the subject matter of such order form, namely:

2.8.1 Access to and use of the Cyferd Product and the Services via additional Tenancy(ies);

2.8.2 Premium Feature(s); and/or

2.8.3 Premium Subscription(s),

as the case may.

2.9 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) a provision that makes it clear what Tenancy(ies) are the subject matter of that order form using wording similar to the following (as applicable):

'1 (one) additional Tenancy for the Customer's main use (being an additional Production Tenancy).'

'1 (one) Tenancy for the Customer's development/ testing use (for the creation, modification, customisation, maintenance, updating and/or testing of Apps) (being a Development Tenancy).'

'1 (one) Tenancy for the Customer's testing (of Apps) use (being a User Acceptance Tenancy).'

'[X in numbers] ([X in words]) Non-Production Tenancy(ies).'

In the absence of any such provision (where the Purchased Item(s) include additional Tenancy(ies)) that order form shall be deemed to contain the applicable one of the following provisions that states (as applicable):

'Tenancy(ies): [X in numbers] ([X in words]) Production Tenancy(ies).'

'Tenancy(ies): [Y in numbers] ([Y in words]) Non-Production Tenancy(ies).'

'Tenancy(ies): [X+Y in numbers] ([X+Y in words]) Tenancies - [X in numbers] ([X in words]) Production Tenancy(ies) [Y in numbers] ([Y in words]) Non-Production Tenancy(ies).'

In this paragraph 2.9, X = the total number of Production Tenancy(ies) being the subject matter of that order form and Y = the total number of Non-Production Tenancy(ies) being the subject matter of that order form.

2.10 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) provisions that provide that the Product Fees payable by that Customer in respect of such additional Tenancy(ies) comprise:

2.10.1 the Subscription Fee; and

2.10.2 Utilisation Fees,

and, in the case of Utilisation Fees, that the same shall be calculated on:

2.10.3 a Metered Utilisation basis;

2.10.4 an Assumed Utilisation basis; or

2.10.5 a Fixed Utilisation basis.

In the absence of any such Utilisation basis provision, such order form shall be deemed to state that Utilisation Fees are calculated on a Metered Utilisation basis.

2.11 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) provisions in respect of the Subscription Fee that state as follows:

2.11.1 **'Subscription Fee: [amount] plus VAT. This amount is the aggregate annual such fee for [each year of the Minimum Term][the current Further Term]. This fee excludes the Customer's Utilisation of the Cyferd Product. This fee only includes the Customer's Access to the Cyferd Product via the Customer's Tenancy(ies) provided for in this Order Form as at the Applicable Date and not any other Tenancy(ies) the Customer may have from time to time. If, the period from and including the Applicable Date to but excluding the next anniversary date of the Term, is less than a year then, the Subscription Fee for that period will be a proportionate amount of such aggregate annual fee.'**

2.11.2 **'Subscription Fee on automatic renewal: If the Agreement automatically renews under clause 2.2 of the MSA then the Subscription Fee for the applicable Further Term shall be the aggregate of the higher of: (i) the Subscription Fee paid for [each year of the Minimum Term][the Further Term in which the Applicable Date occurs]; and (ii) the then prevailing Cyferd Annual Professional Subscription Fee for each of the Customer's then Tenancy(ies) plus VAT. This amount is the aggregate such fee for the Further Term in question. This fee excludes the Customer's Utilisation of the Cyferd Product. This fee only includes the Customer's Access to the Cyferd Product via the Customer's then Tenancy(ies) and not any other Tenancy(ies) the Customer may have from time to time.'**

2.11.3 **'As per the terms of the MSA, the Subscription Fee will be invoiced by the Cyferd Partner to the Customer annually in full in advance of the year to which it relates and payable in full**

within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Subscription Fee'.

- 2.12 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) provisions in respect of Utilisation Fees as follows:
- 2.12.1 **Where the Utilisation Fees are calculated on a Metered Utilisation basis – 'Utilisation Fees:** During the [Minimum Term][current Further Term] the Utilisation Fees shall be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (being Metered Utilisation). Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) provided for in this Order Form as at the Applicable Date. Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'
- 2.12.2 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – 'Utilisation Fees: [amount] plus VAT.** This amount is an assumed/ estimated aggregate fee for [each year of the Minimum Term][the current Further Term] based on the Customer's Expected Utilisation and is subject to the Assumed Utilisation Fair Use Policy (being a Cyferd Policy) (being Assumed Utilisation). Such Utilisation Fees calculated on an Assumed Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) provided for in this Order Form as at the Applicable Date. Utilisation Fees calculated on an Assumed Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time subject to appropriate changes being made to or it being based on new/ separate: (i) the assumed/ estimated annual aggregate fee; and (ii) the Customer's Expected Utilisation.'
- 2.12.3 **Where the Utilisation Fees are calculated on a Fixed Utilisation basis – 'Utilisation Fees: [amount] plus VAT.** This amount is the aggregate fee for [each year of the Minimum Term][the current Further Term] (being Fixed Utilisation). Utilisation Fees calculated on such Fixed Utilisation basis only apply to the Customer's Utilisation of the Customer's Tenancy(ies) provided for in this Order Form as at the Applicable Date and no other Tenancy(ies) the Customer may have from time to time.'
- 2.12.4 In the absence of any of the three Utilisation basis provisions above such order form shall be deemed to contain the one where Utilisation Fees are calculated on a Metered Utilisation basis.
- 2.12.5 **Where the Utilisation Fees are calculated on a Metered Utilisation basis – 'Utilisation Fees on automatic renewal:** During the applicable Further Term the Utilisation Fees shall be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (being Metered Utilisation). Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) to which such automatic renewal relates. Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'
- 2.12.6 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – 'Utilisation Fees on automatic renewal: UNLESS** prior to the end of [the Minimum Term or the] then Further Term [(as the case may be)], Cyferd agrees in writing (in a form to Cyferd's satisfaction) with the Customer what the Utilisation Fees will be (where they are intended to be on an Assumed Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term then, the Utilisation Fees will be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (on a Metered Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term. During the applicable Further Term the Utilisation Fees shall be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time **plus VAT** (being Metered Utilisation). If the Utilisation Fees for the purposes of such automatic renewal for the applicable Further Term are on an Assumed Utilisation basis then such agreed amount is the assumed/ estimated aggregate fee for the applicable Further Term based on the Customer's Expected Utilisation and is subject to the Assumed Utilisation Fair Use Policy (being a Cyferd Policy). Such Utilisation Fees calculated on an Assumed Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) to which such automatic renewal relates. Utilisation Fees calculated on an Assumed Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time subject to appropriate changes being made to or it being based on new/ separate: (i) the assumed/ estimated annual aggregate fee; and (ii) the Customer's Expected Utilisation. Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the Customer's Tenancy(ies) to which such automatic renewal relates. Utilisation Fees calculated on a Metered Utilisation

basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'

- 2.12.7 **Where the Utilisation Fees are calculated on a Fixed Utilisation basis – 'Utilisation Fees on automatic renewal: UNLESS, prior to the end of[the Minimum Term or] the then Further Term[(as the case may be)], Cyferd agrees in writing (in a form to Cyferd's satisfaction) with the Customer what the Utilisation Fees will be (where they are intended to be on a Fixed Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term then, the Utilisation Fees will be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time plus VAT (on a Metered Utilisation basis) for the purposes of such automatic renewal for the applicable Further Term. If the Utilisation Fees for the purposes of such automatic renewal for the applicable Further Term are on a Fixed Utilisation basis then such agreed amount is the aggregate agreed fee for the applicable Further Term. Such Utilisation Fees calculated on such Fixed Utilisation basis only apply to the Customer's Utilisation of the applicable Customer's Tenancy(ies) provided for in this Order Form to which such automatic renewal relates and no other Tenancy(ies) the Customer may have from time to time. Such Utilisation Fees calculated on a Metered Utilisation basis apply to the Customer's Utilisation of the applicable Customer's Tenancy(ies) provided for in this Order Form to which such automatic renewal relates and no other Tenancy(ies). Utilisation Fees calculated on a Metered Utilisation basis can also apply to the Customer's Utilisation of any other Tenancy(ies) it may have from time to time.'**
- 2.12.8 In the absence of any of the three Utilisation basis provisions on automatic renewal above such order form shall be deemed to contain the version that corresponds with the Utilisation basis that applies or is deemed to apply in such order form.
- 2.12.9 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – in the MSA Defined Terms Provision the following additional definitions shall be included: "Assumed Utilisation", "Assumed Utilisation Fair Use Policy", "Customer's Expected Utilisation".**
- 2.12.10 **Where the Utilisation Fees are calculated on a Fixed Utilisation basis – in the MSA Defined Terms Provision the following additional definition shall be included: "Fixed Utilisation".**
- 2.12.11 **Where the Utilisation Fees are calculated on an Assumed Utilisation basis – in the Utilisation Parameters Provision (as defined below) the following additional Utilisation Parameter: 'If and where the Customer's Utilisation basis is Assumed Utilisation - the Assumed Utilisation Fair Use Policy, (being a Cyferd Policy) shall apply to the Customer's Utilisation. If the Customer's actual Utilisation (calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees from time to time) for the month in question infringes/ breaches the Assumed Utilisation Fair Use Policy (being a Cyferd Policy), then Cyferd shall be entitled to (but not obliged to) charge the Customer for any Excess Utilisation in accordance with such Cyferd Policy.'**
- 2.12.12 'As per the terms of the MSA, the Utilisation Fees will be invoiced by the Cyferd Partner to the Customer monthly in arrears and each invoice will be payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Utilisation.'
- 2.13 (Where the Purchased Items being the subject matter of such order form is/are/include additional Premium Feature(s) and/or Premium Subscription(s)) provisions in respect of Premium Fees as follows:
- 2.13.1 Specifying the Premium Feature(s) and/or Premium Subscription(s) being the subject matter of that order form and whether the pricing for the same is a one off price, a recurring annual price, a recurring monthly price or any other recurring periodic price.
- 2.13.2 **Where the pricing for the Premium Fees is a one off price – 'Premium Fees: [amount] plus VAT. This amount is for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'**
- 2.13.3 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees: [amount] plus VAT. This amount is the aggregate annual such fee for [each year of the Minimum Term][the current Further Term] for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'**
- 2.13.4 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees on automatic renewal: If the Agreement automatically renews under clause 2.2 of the MSA then the Premium Fees for the applicable Further Term shall be the aggregate of the higher of: (i) the Premium Fees paid for [each year of the Minimum Term][the Further Term in which the Applicable Date occurs]; and (ii) Cyferd's then applicable pricing in respect of the same annualised (such pricing being that published by Cyferd or notified by Cyferd to the Cyferd**

Partner as the case may be) **plus VAT**. This amount is the aggregate such fee for the Further Term in question.’

- 2.13.5 **Where the pricing for the Premium Fees is a one off price** – ‘As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer in full in advance and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer’s Premium Fees.’
- 2.13.6 **Where the pricing for the Premium Fees is an annual recurring price** – ‘As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer annually in full in advance of the year to which it relates and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer’s Premium Fees.’
- 2.13.7 **Where the pricing for the Premium Fees is a monthly or other periodic (but not annual) recurring price** – ‘As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer [monthly][**other period**] in arrears and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer’s Premium Fees.’

SCHEDULE 2 – ENTERPRISE

1. What provisions need to be in a first order form (Main Subscription) for Enterprise to make it an Approved Order Form?

An order form for Enterprise which is a Customer's first Order and for its Main Subscription must contain (as the context requires) the following details/ provisions and/or (as the context requires) deal/ address/ comply with the following:

- 1.1 **Customer details:** Full name/ corporate name of the Customer in question, (if any) its company/ registered number, (if applicable) its country/ place of incorporation/ registration, (if any) its registered office, its correspondence address, its correspondence email address(es), full name of contact person(s), VAT number (or equivalent). In the absence of any such details **paragraph 5.6** of this Policy shall apply.
- 1.2 A provision that makes it clear that for the purposes of that order form that Customer is defined as the "**Customer**".
- 1.3 A provision relating to such Customer details that states: '*Such address/ email address(es) will be used for the purposes of notices under any legal agreements with the Customer in connection with the subject matter of this Order Form. Such address/ email address(es) can be changed for such purpose strictly in accordance with the MSA as defined and referred to below.*'
- 1.4 **Cyferd Partner details:** Full name/ corporate name of the Cyferd Partner in question, (if any) its company/ registered number, (if applicable) its country/ place of incorporation/ registration, (if any) its registered office, its correspondence address. In the absence of any such details the applicable details from that Cyferd Partner's Partner Agreement will be deemed to be included and which can be provided by Cyferd upon written request.
- 1.5 A provision that makes it clear that for the purposes of that order form that Cyferd Partner is defined as the "**Cyferd Partner**".
- 1.6 A provision that makes it clear that the parties to that order form are that Customer and that Cyferd Partner.
- 1.7 A provision that states: '**Cyferd contract type:** Enterprise'.
- 1.8 A provision that states '**Applicable Currency:** £(pounds Sterling)' or '**Applicable Currency:** \$(Dollars)' or '**Applicable Currency:** €(euro)'. In the absence of any such provision such order form shall be deemed to contain a provision that states '**Applicable Currency:** £(pounds Sterling)'.
- 1.9 A provision that makes it clear that all prices and fees in/ referred to in the order form are exclusive of VAT.
- 1.10 A provision that makes it clear what the Commencement Date is. In the absence of any such provision such order form shall be deemed to contain a provision that states '**Commencement Date:** the date of this Order Form or, if dated by the parties on different dates, the latter of the two dates'.
- 1.11 A provision that states '**Cyferd:** means **Cyferd Ltd**, a company incorporated in England and Wales with company number 12184449 whose registered office is at 128 City Road, London, EC1V 2NX ("**Cyferd**").'.
- 1.12 A provision that makes it clear what the Minimum Term is. This must be expressed in whole years or multiples of 12 (twelve) months and as beginning with the Commencement Date. In the absence of any such provision such order form shall be deemed to contain a provision that states '**Minimum Term:** 12 (twelve) months beginning with the Commencement Date.'.
- 1.13 Under that Cyferd Partner's SSSPA, that Cyferd Partner is prohibited from agreeing a Minimum Term of more than 3 (three) years without Cyferd's prior express written approval. If the order form contains a provision for a Minimum term of longer than 3 (three) years and Cyferd has not provided its prior express written approval then, unless and until Cyferd (in its sole discretion) provides its subsequent express written approval then the Minimum Term in such order form shall be deemed to be '**Minimum Term:** 3 (three) years beginning with the Commencement Date.'. If Cyferd does provide its subsequent express written approval such approval shall not in any way waive the breach by that Cyferd Partner of the applicable provisions of its SSSPA in respect of the same.
- 1.14 A provision that states '**Tenancies:** up to 20 (twenty) Tenancies – at least 1 (one) of which must be a Tenancy for the Customer's main use (being a Production Tenancy). The other Tenancies can be additional Production Tenancy(ies) and/or Non-Production Tenancy(ies) (including Tenancy(ies) for the Customer's development use (for the creation, modification, customisation, maintenance and/or updating of Apps) (being Development Tenancy(ies)) and Tenancy(ies) for the Customer's testing (of Apps) use (being User Acceptance Tenancy(ies)).'.
- 1.15 A provision that states '**Master Services Agreement:** the master services agreement between Cyferd and the Customer that applies to this Order Form is the then current 'Cyferd – MSA (Enterprise)(<https://cyferd.com/cyferdcomm/>) (being the MSA)'.

- 1.16 A provision that states '**SSS Partner Agreement:** the Cyferd partner agreement for 'Sales Partners', 'Services Partners' and 'Solutions Partners' entered into between Cyferd and the Cyferd Partner.'
- 1.17 A provision that states '**SSSPA:** as defined in the SSS Partner Agreement, and which in effect means the whole agreement and all applicable documents (including the SSS Partner Agreement) that govern the Cyferd Partner's appointment as a 'Cyferd Partner' and related matters.'
- 1.18 A provision that states '**Supplemental Terms:** means the final form terms document annexed to and supplemental to this Order Form signed by or on behalf of Cyferd, the Customer and the Cyferd Partner and designated as the 'Supplemental Terms' and which contains (if and to the extent applicable) the Additional Subscription Fee Pricing Terms, the Variable Fees Conditions and the Variable Fees Pricing Terms.'
- 1.19 A provision (the "**MSA Defined Terms Provision**") that states 'In this Order Form: "Access", "Access Parameters", "Additional Subscription Fee Pricing Terms", "Affiliate", "Agreement", "annual", "annually", "App", "Applicable Currency", "Approved Order Form", "Authorised User", "Cyferd", "Cyferd Partner", "Cyferd Policy", "Cyferd Policies", "Cyferd Product", "Deliverables Based Variable Fees", "Development Tenancy", "Dollars", "Enterprise", "euro", "Further Term", "Included Tenancies", "Metered Utilisation", "month", "monthly", "MSA", "Order Form", "Other Non-Production Tenancy(ies)", "Premium Feature", "Premium Fees", "Premium Subscription", "Product Fees", "Production Tenancy", "Sterling", "Subscription Fee", "Tenancy", "Tenancy(ies)", "Tenancies", "Unapproved Order Form", "User Acceptance Tenancy", "User Notice", "Utilisation", "Utilisation Based Variable Fees", "Utilisation and Deliverables Based Variable Fees", "Utilisation Parameters", "Variable Fees", "Variable Fees Conditions", "Variable Fees Pricing Terms", "VAT", "year" have the meanings given to them in the MSA.'
- 1.20 A provision that states 'Pursuant to the SSSPA the Cyferd Partner is authorised by Cyferd to enter into this Order Form with the Customer provided that it uses an Approved Order Form. The MSA contains provisions that automatically and irrevocably vary an Unapproved Order Form to such extent necessary so that it becomes an Approved Order Form.'
- 1.21 Provisions that provide that the Product Fees payable by that Customer comprise:
- 1.21.1 the Subscription Fee; and
- 1.21.2 Variable Fees.
- 1.22 Provisions in respect of the Subscription Fee and the Variable Fees that state as follows:
- 1.22.1 '**Subscription Fee:** [amount] plus VAT. This amount is the aggregate annual such fee for each year of the Minimum Term. This fee **includes:**

Item description
Up to 20 (twenty) Tenancies – at least 1 (one) of which must be a Tenancy for the Customer's main use (being a Production Tenancy). The other Tenancies can be additional Production Tenancy(ies) and/or Non-Production Tenancy(ies) (including Development Tenancy(ies) and User Acceptance Tenancy(ies)) (being Included Tenancies)
The Customer's Utilisation of the Cyferd Product other than any Utilisation which is the subject of and provided for in the Variable Fees
The Customer's Access to the Cyferd Product via the Customer's Tenancies provided for in this Order Form as at the Commencement Date
[anything else expressly agreed by Cyferd in writing that can be included within the Subscription Fee]

This fee only **includes** the Customer's Access to the Cyferd Product via the Customer's then Included Tenancies and not any other Tenancy(ies) the Customer may have from time to time.'

- 1.22.2 '**Variable Fees:** The Variable Fees shall be calculated in accordance with the Variable Fees Pricing Terms **plus VAT** for the Minimum Term. Variable Fees could be based on the Customer's Utilisation (Utilisation Based Variable Fees), certain deliverables being met/ milestones being achieved (being Deliverables Based Variable Fees) and/or on both Utilisation Based Variable Fees and Deliverables Based Variable Fees (being Utilisation and Deliverables Based Variable Fees); and, in the case of the Customer, such Variable Fees Conditions are as provided for in the Variable Fees Pricing Terms for the Minimum Term. The Variable Fees shall apply for the Minimum Term. Such Variable Fees Pricing

Terms can be amended, replaced and/or supplemented from time to time with the written agreement (in a form to Cyferd's satisfaction) of Cyferd and the Customer and the Cyferd Partner. Any such amendment, replacement and/or supplement shall then become such or part of such Variable Fees Pricing Terms (as applicable).'

- 1.22.3 **'Subscription Fee and Variable Fees on automatic renewal:** The Agreement shall **not** be capable of automatic renewal under clause 2.2 of the MSA **UNLESS**, prior to the end of the Minimum Term or the then Further Term (as the case may be), Cyferd agrees in writing (in a form to Cyferd's satisfaction) with the Customer: (i) what the Subscription Fee will be and what it comprises and what (if any) the Additional Subscription Fee Pricing Terms will be; and (ii) how the Variable Fees will be calculated, what (if any) are the Variable Fees Conditions and what the Variable Fees Pricing Terms will be, in each case for the purposes of such automatic renewal for the applicable Further Term. In the absence of any such written agreement the Agreement shall not automatically renew under clause 2.2 of the MSA and shall terminate at the end of the Minimum Term or the then Further Term (as the case may be). If the Agreement does automatically renew under clause 2.2 of the MSA then the Subscription Fee only **includes** the Customer's Access to the Cyferd Product via the Customer's then Included Tenancies and not any other Tenancy(ies) the Customer may have from time to time.'
- 1.22.4 'Unless and to the extent provided for in the Additional Subscription Fee Pricing Terms (if any), as per the terms of the MSA, the Subscription Fee will be invoiced annually in full in advance of the year to which it relates and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Subscription Fee.'
- 1.22.5 'The Variable Fees are payable in accordance with the Variable Fees Pricing Terms. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Variable Fees. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Variable Fees.'
- 1.23 If applicable, provisions in respect of Premium Fees as follows:
- 1.23.1 Specifying the Premium Feature(s) and/or Premium Subscription(s) being the subject matter of the order form and whether the pricing for the same is a one off price, a recurring annual price, a recurring monthly price or any other recurring periodic price.
- 1.23.2 **Where the pricing for the Premium Fees is a one off price – 'Premium Fees: [amount] plus VAT.** This amount is for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'
- 1.23.3 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees: [amount] plus VAT.** This amount is the aggregate annual such fee for each year of the Minimum Term for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'
- 1.23.4 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees on automatic renewal:** If the Agreement automatically renews under clause 2.2 of the MSA then the Premium Fees for the applicable Further Term shall be the aggregate of the higher of: (i) the Premium Fees paid for each year of the Minimum Term; and (ii) Cyferd's then applicable pricing in respect of the same annualised (such pricing being that published by Cyferd or notified by Cyferd to the Cyferd Partner as the case may be) **plus VAT.** This amount is the aggregate such fee for the Further Term in question.'
- 1.23.5 **Where the pricing for the Premium Fees is a one off price – 'Unless and to the extent provided for in the Supplemental Terms, as per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer in full in advance and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'**
- 1.23.6 **Where the pricing for the Premium Fees is an annual recurring price – 'Unless and to the extent provided for in the Supplemental Terms, as per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer annually in full in advance of the year to which it relates and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'**
- 1.23.7 **Where the pricing for the Premium Fees is a monthly or other periodic (but not annual) recurring price – 'Unless and to the extent provided for in the Supplemental Terms, as per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer [monthly][other period] in arrears and payable in full within 30**

(thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'

- 1.24 A provision that states 'Unless and to the extent expressly provided for to the contrary in this Order Form and/or the Additional Subscription Fee Pricing Terms and/or the Variable Fees Pricing Terms neither the Subscription Fee nor the Variable Fees include access to and use of any Premium Features and/or any Premium Subscriptions, which subject to availability, can be purchased separately. Unless and to the extent agreed otherwise, Utilisation Fees for such additional Utilisation will be calculated on a Metered Utilisation basis.'
- 1.25 Cyferd's express prior written approval (in its sole discretion) is required for such order form and its terms and in particular to/for:
- 1.25.1 any structure and pricing of the deal in question
 - 1.25.2 all pricing and payment terms for Enterprise
 - 1.25.3 any special pricing and payment terms for Enterprise
 - 1.25.4 the amount of the Subscription Fee in respect of the same;
 - 1.25.5 the amount of/ the calculation basis for any Variable Fees in respect of the same; and/or
 - 1.25.6 the Supplemental Terms (and hence any Additional Subscription Fee Pricing Terms, any Variable Fees Conditions and the Variable Fees Pricing Terms) in respect of the same.
- 1.26 Provided that Cyferd has (in its sole discretion) expressly approved the same in writing in advance, such pricing or payment terms in respect of the Subscription Fee, the Variable Fees and/or Premium Fees could be subject to 'Special Payment/Pricing Terms' which would need to be provided for in that order form/ the Supplemental Terms (and hence in any Additional Subscription Fee Pricing Terms, any Variable Fees Conditions and the Variable Fees Pricing Terms) (in the form so approved by Cyferd and having strict regard to any terms and conditions that Cyferd may apply in respect of the same).
- 1.27 That order form in respect of the matters referred to in **paragraphs 1.25 and 1.26** of this **Schedule 2** must comply with and cannot be in breach of the terms of the **Pricing Policy** (<https://cyferd.com/cyferdcomm/>) (being a Cyferd Partner Policy and as amended by Cyferd from time to time).
- 1.28 The following provisions (those relating to Utilisation Parameters being the "**Utilisation Parameters Provision**"): **'Access Parameters**
- The Customer shall abide by all and any Utilisation Parameters.*
- The Customer shall not be entitled to any Access to or use of the Cyferd Product where the Customer is a competitor of Cyferd or provides services which are competitive with or to the Cyferd Product **unless and then to the extent that Cyferd expressly consents to the same in writing to the Customer.***
- The Customer shall procure that only Authorised Users have Access to/ use of the Tenancy to which they have been granted Access.*
- The Customer shall not grant a person Authorised User status who is not an employee or worker of the Customer, or where that person or the entity who employs that person: (i) is a different member of the Customer's group or an associated entity to the Customer or an Affiliate of the Customer; (ii) is a competitor of Cyferd or provides services which are competitive with or to the Cyferd Product; (iii) is a software or application developer (unless that person or the entity who employs that person is a Cyferd Partner/ the Cyferd Partner); (iv) is being granted such status for any purpose other than the bona fide business purposes of the Customer; and/or (v) has not acknowledged the existence and the terms of the User Notice in writing to the Customer **unless and then to the extent that Cyferd expressly consents to the same in writing to the Customer.***
- The Customer shall not use any Tenancy for any unlawful purpose, activity, business or enterprise.*
- Only a Production Tenancy can be used for the Customer's live data or everyday business operations use.*
- A Development Tenancy, User Acceptance Tenancy and/or Other Non-Production Tenancy(ies) **cannot** be used for the Customer's live data or everyday business operations use.*
- Together with: (i) such other Access Parameter(s) (designated as such by Cyferd) in any other document that comprises the Agreement from time to time; and (ii) such other Access Parameter(s) (designated as such by Cyferd) as may be agreed in writing by Cyferd and the Customer from time to time for the purposes of the Agreement.*

Utilisation Parameters

The Customer shall not use the Cyferd Product in any way that will give rise to a breach of an Access Parameter.

Together with: (i) such other Utilisation Parameter(s) (designated as such by Cyferd) in any other document that comprises the Agreement from time to time; and (ii) such other Utilisation Parameter(s) (designated as such by Cyferd) as may be agreed in writing by Cyferd and the Customer from time to time for the purposes of the Agreement.’

1.29 The following provisions:

‘The Agreement

In addition to this Order Form, the following documents have been provided to/ made available to the Customer (the “**Documents**”, each a “**Document**”):

Document	Location
the MSA	https://cyferd.com/cyferdcomm/
all Cyferd Policies applicable to Enterprise	https://cyferd.com/cyferdcomm/

By signing this Order Form the Customer:

1. warrants and represents to Cyferd Partner and separately to Cyferd that it is a business and it is entering into this Order form as a business;
2. warrants and represents to Cyferd Partner and separately to Cyferd that it has read and understood this Order Form and the Documents;
3. agrees to and accepts the terms of each of the Documents (as ‘Customer’, ‘Licensee’, ‘User’, ‘Data Subject’, ‘You’, ‘Your’ and any other similar designated term (as the case may be));
4. agrees and acknowledges that the Documents form part of the Agreement;
5. agrees to and acknowledges the existence of the Agreement;
6. agrees and acknowledges that whilst this Order Form is between the Customer and the Cyferd Partner the Agreement is between the Customer and Cyferd
7. agrees and acknowledges that **Cyferd can enforce the provisions of this Order Form against the Customer as if it was the Cyferd Partner** save that the Customer shall not be obliged to pay any invoice referred to in this Order Form more than once;
8. agrees and acknowledges that no warranty, representation, agreement, acknowledgement or acceptance above in this provision shall be affected and/or fettered in any way if the Customer signs or accepts any the Documents (or any of them) separately.

If the person signing and accepting this Order Form is signing and accepting on behalf of the Customer (where the Customer is a company, partnership or other entity) that person warrants and represents to Cyferd Partner and separately to Cyferd:

1. they have full legal authority to bind the Customer to this Order Form and separately to the Agreement;
2. they have read and understood this Order Form and the Documents; and
3. they agree to this Order Form, the Documents and separately to the Agreement on behalf of the Customer.

Miscellaneous

Entire agreement

This Order Form supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between the Cyferd Partner and the Customer, whether written or oral, relating to its subject matter.

The Agreement (together with the other documents referred to in it) constitutes the entire agreement between Cyferd and the Customer and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between Cyferd and the Customer, whether written or oral, relating to their subject matter.

The Customer acknowledges that in entering into the Agreement and any documents referred to in it, it does not rely on, and shall have no rights or remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

The Customer agrees that it shall not have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement or warranty in this Agreement.

Counterparts and electronic signature

This Order Form may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one document.

Each of the Cyferd Partner and the Customer hereby agrees that this Order Form can be executed by electronic signature (having the meaning given to it in section 7 of the Electronic Communications Act 2000 (being legislation in England and Wales)) (whatever form the electronic signature takes) and that, if a party does execute this Order Form by electronic signature, such method of signature is conclusive of that party's intention to be bound by this Order Form as if signed by the Cyferd Partner's or the Customer's manuscript signature.

This Order Form shall not be effective until each of the Cyferd Partner and the Customer has signed and returned one counterpart.

Third party rights

Save as expressly provided for in this Order Form in respect of Cyferd, a person who is not a party to this Order Form shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Order Form.

Law and jurisdiction

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

Each of Cyferd Partner, Cyferd and the Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

1.30 That order form must be signed by that Customer and that Cyferd Partner each acting by a duly authorised signatory.

2. What provisions need to be in a subsequent order form for Enterprise to make it an Approved Order Form?

An order form for Enterprise which is **not** a Customer's first Order for its Main Subscription but a subsequent Order in connection with its Agreement (for example for an additional Tenancy and/or a Premium Subscription) must contain (as the context requires) the following details/ provisions and/or (as the context requires) deal/ address/ comply with the following:

2.1 The details referred to in **paragraphs 1.1 and 1.4** of this **Schedule 2**. Such details should be the same as those in the first Order Form of that Customer for its Main Subscription. In the absence of any such details those details from the first Order Form of that Customer for its Main Subscription shall be deemed to apply in such order form.

2.2 Those provisions referred to in **paragraphs 1.2, 1.3, 1.5 to 1.9 (inclusive), 1.11, 1.15 to 1.19 (inclusive), (if applicable) 1.24, 1.28 and 1.29** of this **Schedule 2**.

2.3 (If applicable) the requirement and provision in **paragraph 1.25** of this **Schedule 1**.

2.4 The requirements in **paragraphs 1.25, 1.27 and 1.30** of this **Schedule 2**.

2.5 A provision stating '**Applicable Date**: the date of this Order Form or, if dated by the parties on different dates, the latter of the two dates.'

2.6 The Commencement Date for such order form shall be that provided (or deemed to have been provided) in the first Order Form of that Customer for its Main Subscription having regard to **paragraph 1.10** of this **Schedule 2**. It is therefore likely that the Commencement Date will predate such order form.

2.7 The Minimum Term for such order form shall be that provided (or deemed to have been provided) in the first Order Form of that Customer for its Main Subscription having regard to **paragraphs 1.12** (and if applicable) **1.13** of this **Schedule 2**.

2.8 A provision making it clear what Purchased Items are the subject matter of such order form, namely:

2.8.1 Access to and use of the Cyferd Product and the Services via additional Tenancy(ies);

2.8.2 Premium Feature(s); and/or

2.8.3 Premium Subscription(s),

as the case may.

2.9 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) a provision that makes it clear what Tenancy(ies) are the subject matter of that order form using wording similar to the following (as applicable):

'1 (one) additional Tenancy for the Customer's main use (being an additional Production Tenancy).'

'1 (one) Tenancy for the Customer's development/ testing use (for the creation, modification, customisation, maintenance, updating and/or testing of Apps) (being a Development Tenancy).'

'1 (one) Tenancy for the Customer's testing (of Apps) use (being a User Acceptance Tenancy).'

'[X in numbers] ([X in words]) Non-Production Tenancy(ies).'

In the absence of any such provision (where the Purchased Item(s) include additional Tenancy(ies)) that order form shall be deemed to contain the applicable one of the following provisions that states (as applicable):

'Tenancy(ies): [X in numbers] ([X in words]) Production Tenancy(ies).'

'Tenancy(ies): [Y in numbers] ([Y in words]) Non-Production Tenancy(ies).'

'Tenancy(ies): [X+Y in numbers] ([X+Y in words]) Tenancies - [X in numbers] ([X in words]) Production Tenancy(ies) [Y in numbers] ([Y in words]) Non-Production Tenancy(ies).'

In this paragraph 2.9, X = the total number of Production Tenancy(ies) being the subject matter of that order form and Y = the total number of Non-Production Tenancy(ies) being the subject matter of that order form.

2.10 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) provisions that provide that the Product Fees payable by that Customer in respect of such additional Tenancy(ies) comprise:

2.10.1 the Subscription Fee; and

2.10.2 Variable Fees.

2.11 (Where the Purchased Items being the subject matter of such order form is/are/include additional Tenancy(ies)) provisions in respect of the Subscription Fee that state as follows:

2.11.1 **'Subscription Fee: [amount] plus VAT. This amount is the aggregate annual such fee for [each year of the Minimum Term][the current Further Term]. This fee includes:**

Item description
<i>The [Tenancy][Tenancies] provided for in this Order Form (being Included Tenancies)</i>
<i>The Customer's Utilisation of the Cyferd Product other than any Utilisation which is the subject of and provided for in the Variable Fees</i>
<i>The Customer's Access to the Cyferd Product via the Customer's [Tenancy][Tenancies] provided for in this Order Form as at the Applicable Date</i>
[anything else expressly agreed by Cyferd in writing that can be included within the Subscription Fee]

*This fee only **includes** the Customer's Access to the Cyferd Product via the Customer's then Included Tenancies and not any other Tenancy(ies) the Customer may have from time to time. If, the period from and including the Applicable Date to but excluding the next anniversary date of the Term, is less than a year then, the Subscription Fee for that period will be a proportionate amount of such aggregate annual fee.'*

2.11.2 **'Variable Fees:** *The Variable Fees shall be calculated in accordance with the Variable Fees Pricing Terms **plus VAT** for [each year of the Minimum Term][the current Further Term]. Variable Fees could be based on the Customer's Utilisation (Utilisation Based Variable Fees), certain deliverables being met/ milestones being achieved (being Deliverables Based Variable Fees) and/or on both Utilisation Based Variable Fees and Deliverables Based*

Variable Fees (being Utilisation and Deliverables Based Variable Fees); and, in the case of the Customer, such Variable Fees Conditions are as provided for in the Variable Fees Pricing Terms for the Minimum Term. The Variable Fees shall apply for [the Minimum Term][the current Further Term]. Such Variable Fees Pricing Terms can be amended, replaced and/or supplemented from time to time with the written agreement (in a form to Cyferd's satisfaction) of Cyferd and the Customer and the Cyferd Partner. Any such amendment, replacement and/or supplement shall then become such or part of such Variable Fees Pricing Terms (as applicable).'

- 2.11.3 **'Subscription Fee and Variable Fees on automatic renewal:** The Agreement shall **not** be capable of automatic renewal under clause 2.2 of the MSA **UNLESS**, prior to the end of the [Minimum Term or the]then Further Term[(as the case may be)], Cyferd agrees in writing (in a form to Cyferd's satisfaction) with the Customer: (i) what the Subscription Fee will be and what it comprises and what (if any) the Additional Subscription Fee Pricing Terms will be; and (ii) how the Variable Fees will be calculated, what (if any) are the Variable Fees Conditions and what the Variable Fees Pricing Terms will be, in each case for the purposes of such automatic renewal for the applicable Further Term. In the absence of any such written agreement the Agreement shall not automatically renew under clause 2.2 of the MSA and shall terminate at the end of the [Minimum Term or the]then Further Term[(as the case may be)]. If the Agreement does automatically renew under clause 2.2 of the MSA then the Subscription Fee only **includes** the Customer's Access to the Cyferd Product via the Customer's then Included Tenancies and not any other Tenancy(ies) the Customer may have from time to time.'
- 2.11.4 'Unless and to the extent provided for in the Additional Subscription Fee Pricing Terms (if any), as per the terms of the MSA, the Subscription Fee will be invoiced annually in full in advance of the year to which it relates and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Subscription Fee.'
- 2.11.5 'The Variable Fees are payable in accordance with the Variable Fees Pricing Terms. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Variable Fees. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Variable Fees.'
- 2.12 (Where the Purchased Items being the subject matter of such order form is/are/include additional Premium Feature(s) and/or Premium Subscription(s)) provisions in respect of Premium Fees as follows:
- 2.12.1 Specifying the Premium Feature(s) and/or Premium Subscription(s) being the subject matter of that order form and whether the pricing for the same is a one off price, a recurring annual price, a recurring monthly price or any other recurring periodic price.
- 2.12.2 **Where the pricing for the Premium Fees is a one off price – 'Premium Fees: [amount] plus VAT.** This amount is for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'
- 2.12.3 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees: [amount] plus VAT.** This amount is the aggregate annual such fee for [each year of the Minimum Term][the current Further Term] for the applicable Purchased Items specified in this Order Form that are Premium Feature(s) and/or Premium Subscription(s).'
- 2.12.4 **Where the pricing for the Premium Fees is a recurring price – 'Premium Fees on automatic renewal:** If the Agreement automatically renews under clause 2.2 of the MSA then the Premium Fees for the applicable Further Term shall be the aggregate of the higher of: (i) the Premium Fees paid for [each year of the Minimum Term][the Further Term in which the Applicable Date occurs]; and (ii) Cyferd's then applicable pricing in respect of the same annualised (such pricing being that published by Cyferd or notified by Cyferd to the Cyferd Partner as the case may be) **plus VAT.** This amount is the aggregate such fee for the Further Term in question.'
- 2.12.5 **Where the pricing for the Premium Fees is a one off price – 'Unless and to the extent provided for in the Supplemental Terms, as per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer in full in advance and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'**
- 2.12.6 **Where the pricing for the Premium Fees is an annual recurring price – 'Unless and to the extent provided for in the Supplemental Terms, as per the terms of the MSA, the Premium Fees As per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer annually in full in advance of the year to which it relates and**

payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'

2.12.7

Where the pricing for the Premium Fees is a monthly or other periodic (but not annual) recurring price – *'Unless and to the extent provided for in the Supplemental Terms, as per the terms of the MSA, the Premium Fees will be invoiced by the Cyferd Partner to the Customer [monthly][other period] in arrears and payable in full within 30 (thirty) days of the date of such invoice. The Cyferd Partner is responsible under the SSSPA to pay Cyferd in respect of the Customer's Premium Fees.'*

[End of Policy]