



CYFERD

MASTER SERVICES AGREEMENT (PROFESSIONAL)

THESE TERMS/THIS MSA (AS DEFINED BELOW) GOVERN(S) THE CUSTOMER'S (AS DEFINED BELOW) PROCUREMENT OF ACCESS (AS DEFINED BELOW) TO, AND USE OF THE CYFERD PRODUCT (AS DEFINED BELOW) AND THE SERVICES (AS DEFINED BELOW) AS A PROFESSIONAL CUSTOMER (AS DEFINED BELOW) (INCLUDING IN RESPECT OF POC TRIALS AND/OR NO CHARGE PRODUCTS (EACH AS DEFINED BELOW)).

THE CUSTOMER WILL NOT BE ENTITLED TO ACCESS AND/OR USE THE CYFERD PRODUCT (OR ANY PART INCLUDING ANY TENANCY(IES), APP(S) AND FEATURE(S) (EACH AS DEFINED BELOW)) AND/ OR ANY SERVICES UNLESS AND UNTIL THE CUSTOMER HAS (1) (OTHER THAN IN RESPECT OF A POC TRIAL OR FOR NO CHARGE PRODUCTS) SIGNED OR OTHERWISE ACCEPTED OR DEEMED TO HAVE ACCEPTED THE APPLICABLE ORDER FORM (AS DEFINED BELOW) AND (2) ACCEPTED THESE TERMS.

BY (1) CLICKING OR CHECKING A BOX INDICATING ACCEPTANCE (ONLINE OR DIGITAL VERSION OF THESE TERMS/ THIS MSA), (2) SIGNING THESE TERMS/ THIS MSA (EXECUTION VERSION OF THESE TERMS/ THIS MSA), (3) EXECUTING AN ORDER FORM THAT REFERENCES OR IS DEEMED TO REFERENCE THESE TERMS/ THIS MSA, (4) 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, (5) USING THE CYFERD PRODUCT (OR ANY PART INCLUDING ANY APP(S) AND/OR FEATURE(S)), ANY OF THE APPLICABLE SERVICES FOR THE PURPOSES OF A POC TRIAL AND/OR (6) ACCESSING AND/OR USING ANY NO CHARGE PRODUCTS (OR ANY PART), THE CUSTOMER AGREES TO THESE TERMS/ THIS MSA (“**ACCEPTING THESE TERMS**” AND “**ACCEPT THESE TERMS**”, “**ACCEPTED THESE TERMS**” SHALL BE CONSTRUED ACCORDINGLY).

IF THE PERSON ACCEPTING THESE TERMS IS ACCEPTING ON BEHALF OF THE CUSTOMER (WHERE THE CUSTOMER IS A COMPANY, PARTNERSHIP OR OTHER ENTITY) THAT PERSON WARRANTS AND REPRESENTS THAT: (1) THEY HAVE FULL LEGAL AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS; (2) THEY HAVE READ AND UNDERSTAND THESE TERMS; AND (3) THEY AGREE TO THESE TERMS ON BEHALF OF THE CUSTOMER.

IN THE EVENT THAT THE PERSON ACCEPTING THESE TERMS DOES NOT HAVE SUCH AUTHORITY OR DOES NOT AGREE WITH THESE TERMS, SUCH PERSON MUST NOT ACCEPT THESE TERMS OR THE AGREEMENT (AS DEFINED BELOW) AND MAY NOT ACCESS OR USE THE CYFERD PRODUCT OR THE SERVICES IN WHOLE OR PART.

THIS MSA WAS LAST UPDATED ON 1 MAY 2024 AND IS EFFECTIVE BETWEEN CYFERD AND THE CUSTOMER AS OF THE COMMENCEMENT DATE (AS DEFINED BELOW).

THIS MSA IS MADE BETWEEN

- (1) **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**”); and
- (2) **THE CUSTOMER** (as defined below),
- (each of Cyferd and the Customer being a “**party**” and together Cyferd and the Customer are the “**parties**”).

1. Definitions and interpretation

- 1.1 The definitions and rules of interpretation set out in **SCHEDULE 2** shall apply in these Terms/ this MSA.
- 1.2 References in these Terms/ this MSA to “**accepting a ‘particular document’ on behalf of the Customer**” include the following: If the person accepting the particular document in question is accepting on behalf of the Customer (where the Customer is a company, partnership or other entity) that person warrants and represents that: (i) they have full legal authority to bind the Customer in accepting that particular document; (ii) that they have read and understand that particular document; and (iii) they agree to the provisions of that particular document on behalf of the Customer.
- 1.3 In respect of the Agreement, subject to **clause 1.4**, 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):
- 1.3.1 (subject always to and having strict regard to the provisions of **clause 7** in the case of a Cyferd Partner Order Form which is an Unapproved Order Form) the Order Form(s);
- 1.3.2 these Terms/ this MSA;
- 1.3.3 the Cyferd Policies;
- 1.3.4 any other document(s) that form part of the Agreement (other than that referred to in **clause 1.3.5**); and
- 1.3.5 (where any such Non-Agreement Terms are so determined to be Forced Terms this **clause 1.3.5** applies to the same at any time prior to, on, or following such determination) any Forced Terms,
- UNLESS AND TO THE EXTENT THAT** any such document (but not a Cyferd Partner Order Form which is an Unapproved Order Form or any Forced Terms) 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 this **clause 1.3**.
- 1.4 Subject to the order of priority between documents in **clause 1.3**, later versions of documents (other than any Forced Terms) shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 1.5 In pursuance and support of the definition of ‘*the Agreement*’ (in **paragraph 1** of **SCHEDULE 2**) and **clause 23** (*Entire Agreement*), any purchase order, other business form, other terms and conditions (of purchase or otherwise) or other document put forward by/ employed by/ which the Customer (or any Cyferd Partner where Ordered through a Cyferd Partner) purports to form

part of the agreement with Cyferd in respect of the subject matter of the Agreement (or any part of it) (whether before, on, or after the Commencement Date) (together “**Non-Agreement Terms**”):

- 1.5.1 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);
- 1.5.2 shall not form part of the Agreement;
- 1.5.3 shall not have any legal or binding effect on Cyferd whatsoever; and
- 1.5.4 (where any Non-Agreement Terms contain practical administrative type information such as a purchase order number, bank details of the Customer, other Customer identifier details and the like) such practical administrative information can be used by Cyferd (or the applicable Cyferd Partner) without triggering any kind of acceptance referred to in **clause 1.5.1**,

and, for the avoidance of doubt Access to and use of and/or continued Access to and use of the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and the Services (or any part) and/or any other Purchased Item(s) by the Customer or any of its Authorised Users shall not trigger any kind of acceptance referred to in **clause 1.5.1**. The Customer expressly, irrevocably and unconditionally agrees to and acknowledges the foregoing provisions of this **clause 1.5**. If, notwithstanding the foregoing provisions of this **clause 1.5** and the provisions of **clause 23** (*Entire Agreement*):

- 1.5.5 the Customer tries to enforce or rely on any Non-Agreement Terms then Cyferd may (at its sole discretion) suspend (in accordance with **clause 20**) or terminate (in accordance with **clause 21**) the Customer’s right to use the applicable products and services (which could for example be the Customer’s Access to and use of the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and the Services and/or the Customer’s use of a particular Premium Feature) and/or the Agreement; and/or
- 1.5.6 it is determined by a court of competent jurisdiction and from which there is no right of appeal or from whose judgment Cyferd is debarred by passage of time or otherwise from making an appeal that, to the extent so determined, any of the Non-Agreement Terms (“**Forced Terms**”) do form part of the Agreement then **clause 1.3** (and in particular **clause 1.3.5**) shall apply.

1.6 Any obligation of Cyferd under or in connection with the Agreement to comply or ensure compliance itself or by any other person with any law shall be limited to compliance only with laws of England and Wales and of any other Applicable Territory as generally applicable to businesses and to providers of PaaS solutions. Such obligations shall not be construed to create any obligation on Cyferd (or anyone acting on its behalf) under or in connection with the Agreement to comply with any laws or regulations which apply solely to specific commercial or other activities (such as insurance, legal advice or banking or other professional services) or which apply solely to a specific commercial or non-commercial sector (or part thereof) (such as the public, legal, accountancy, actuarial, insurance, banking or financial service sectors).

1.7 Where a Cyferd Partner provides Additional Services/ similar services or other products or services to the Customer under any Contract between the Customer and such Cyferd Partner such provision of Additional Services/ similar services or other products or services is **not** provided ‘*by or on behalf of Cyferd*’ for the purposes of these Terms/ this MSA.

1.8 Any reference to “**purchased**” or “**purchase**” or “**purchases**” in respect of any product(s) and/or service(s) being the subject matter of any Order Form means ‘*subscribed for*’ in the case of any Tenancy(ies), the Cyferd Product and the Services, any Premium Feature and any Premium Subscription and/or means ‘*purchased as a one-off purchase or in instalments*’ in the case of anything that is not subscription-based.

1.9 The first Order must be for Access to and use of the Cyferd Product and the Services and at the very least a Production Tenancy. Subsequent Orders can be for (and/or the first Order could also include):

- 1.9.1 additional Tenancy(ies) (which are *subscribed for* and will then link to and follow the Term but which could be terminated in isolation to the Agreement on the terms of the Agreement);
- 1.9.2 Pre-Paid Utilisation Units (which are *purchased as a one-off purchase*);
- 1.9.3 Premium Feature(s) (which are *subscribed for* and will then link to and follow the Term but which could be terminated in isolation to the Agreement on the terms of the Agreement);
- 1.9.4 Premium Subscription(s) (which are *subscribed for* and will then link to and follow the Term but which could be terminated in isolation to the Agreement on the terms of the Agreement); and/or
- 1.9.5 certain Additional Services (which are governed by the applicable ASA and not the Agreement).

1.10 Where a Customer has Ordered through a Cyferd Partner, the Customer agrees and acknowledges that Cyferd shall be entitled to require a change in the contractual relationship in respect of the Agreement where:

1.10.1 the Cyferd Partner in question ceases to be a Cyferd Partner;

1.10.2 Cyferd may from time to time consider that the Cyferd Partner in question is not best suited to continue to deal with the Customer (at all or in part);

1.10.3 the Customer notifies Cyferd or the Cyferd Partner that it wants to continue as a 'Cyferd Customer' but not through the Cyferd Partner but with Cyferd direct or with a different Cyferd Partner,

such that the applicable Order Form(s) are novated or amended or supplemented or even replaced with new Order Form(s) to effect the change such that the person with whom the Order is made (with the Customer) is Cyferd or a different Cyferd Partner/ different lead Cyferd Partner. No other material change(s) will be made to the Agreement as a result of the same and the Customer's overall rights and benefits will not be affected by the same. If Cyferd does seek to require such a change under this **clause 1.10** then the Customer will be notified of the same and of who will be the new contracting party with the Customer and given reasons why. Upon receipt of such notice the Customer will promptly work with Cyferd to effect such change and the Customer shall execute all such documents and do such things as Cyferd may consider necessary to give effect to this **clause 1.10**.

1.11 This **clause 1** and **SCHEDULE 2** shall survive the termination or expiry of the Agreement.

2. Term

2.1 The Agreement (and this MSA) commences on the Commencement Date and, unless terminated earlier in accordance with **clauses 11.5.3, 13.4** and/or **21** (by Cyferd) or **clauses 9.5, 11.5.3** and/or **21** (by the Customer), shall continue for a fixed period equal to the Minimum Term (the "Initial Term") whereupon it shall either continue in accordance with the provisions of **clause 2.2** or terminate in accordance with the provisions of **clause 2.3** (in each case, the "Term").

2.2 On the expiry of the Initial Term or any Further Term, except as expressly provided for to the contrary in the applicable Order Form, the Agreement (and the Customer's subscription for Access to and use of the Cyferd Product and the Services (including any then subscribed for Tenancy(ies), Premium Feature(s) and Premium Subscription(s)) and the right and ability to use any other Purchased Item(s)) shall automatically continue for a further consecutive period of 12 (twelve) months (each, a "Further Term"), unless either party has given the other party at least 3 (three) months' written notice to terminate in accordance with **clause 2.3**, or unless the Agreement is terminated sooner in accordance with **clauses 11.5.3, 13.4** and/or **21** (by Cyferd) or **clauses 9.5, 11.5.3** and/or **21** (by the Customer). The Subscription Fee(s) for the Further Term in question will be the amount expressly provided for in the applicable Order Form(s). The Utilisation Fees for the applicable Further Term will be the amount expressly provided for in the applicable Order Form(s) or calculated on the basis provided for in the applicable Order Form(s) (which could be Metered Utilisation). In this regard 'expressly' also includes where the Order Form(s) provide(s) a mechanism to agree an amount before the end of the Initial Term or the applicable Further Term (as the case may be) and, in the absence of such agreement in the case of Utilisation Fees, defaulting to the Metered Utilisation basis for calculating the same. If and where applicable, regard shall also be had to the provisions of **clause 10.41.2** in respect of payment terms.

2.3 The Agreement (and the Customer's Access to and use of the Cyferd Product and the Services (including any then subscribed for Tenancy(ies), Premium Feature(s) and Premium Subscription(s) and the right and ability to use any other Purchased Item(s))) shall terminate at the end of the Initial Term or at the end of the then Further Term if either party has given the other at least 3 (three) months' written notice to terminate the Agreement such notice to expire either upon the end of the Initial Term or the end of the then Further Term (as the case may be).

2.4 If the Agreement (and the Customer's Access to and use of the Cyferd Product and the Services (including any then subscribed for Tenancy(ies), Premium Feature(s) and Premium Subscription(s) and the right and ability to use any other Purchased Item(s))) is terminated then **clauses 10.39** and **22** shall apply.

3. What these Terms cover/ this MSA covers

3.1 This MSA governs the Customer's Access to and use of the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) and the Customer's use of any other Purchased Item(s). This MSA forms part of the Agreement.

3.2 Certain provisions in the applicable Order Form(s) apply in this MSA. Save and to the extent expressly provided for in this MSA, each and every Order Form forms part of the Agreement. To the extent that an Order Form only provides for or also provides for certain Additional Services to be provided by or on behalf of Cyferd that Order Form or the applicable part of that Order Form does not form part of the Agreement. To the extent that a Cyferd Partner Order Form only provides for, or also provides for, certain Additional Services/ similar services to be provided by or on behalf of the Cyferd Partner in question or any Non-Cyferd Products/ Services that Cyferd Partner Order Form or the applicable part of that Cyferd Partner Order Form does

- not** constitute an Order Form for the purposes of this MSA and does **not** form part of the Agreement. **Clause 7** also applies in terms of a Cyferd Partner Order Form and the extent to how the same is, or is deemed to be, an Order Form.
- 3.3 A EULA (<http://cyferd.com/cyferdcomm/>) applies to the Customer's access to and use of certain specific item in connection with that Customer's Access to and use of the Cyferd Product and the Services. By accepting these Terms/ this MSA and/or by Accessing or using any Tenancy, the Cyferd Product, any App, any Feature, any Premium Subscription, the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent, the Cyferd Web Client and/or any Services the Customer also accepts the terms of the EULA for that specific item. Each such EULA forms part of the Agreement.
- 3.4 This MSA includes the Cyferd Policies (<http://cyferd.com/cyferdcomm/>) (including the **Acceptable Use Policy**, the **Annual Professional Subscription Fee Price Policy**, the **Assumed Utilisation Fair Use Policy**, the **Cyferd Partner Approved Order Form Policy**, the **Data Protection Policy**, the **Hosting Policy**, the **Meter Based/ Unit Based Utilisation Pricing Policy**, the **Privacy Policy (Platform)**, the **Standard Support Services Policy**, the **Storage of and Access to Customer Data Policy** and the **Uptime Policy**). By accepting these Terms/ this MSA the Customer also accepts the terms of the Cyferd Policies. Each and every Cyferd Policy forms part of the Agreement.
- 3.5 The other document(s)/ supplemental document(s) referred to in the definition of '*the Agreement*' (in **paragraph 1 of SCHEDULE 2**), also apply to the Customer's Access to and use of the Cyferd Product and the Services (or any applicable part including any Tenancy(ies), App(s) and Feature(s)) and/or the Customer's use of any other Purchased Item(s) from time to time. By accepting these Terms/ this MSA the Customer also accepts the terms of such other document(s)/ supplemental document(s). Each and every such other document(s)/ supplemental document(s) forms part of the Agreement.
- 3.6 These Terms do **not** apply to any Additional Services/ similar services. Cyferd's supply of any Additional Services to the Customer are governed by the applicable ASA. The applicable ASA does **not** form part of the Agreement. **Clause 4.21** applies to any Additional Services or like services provided by third-party providers (including any applicable Cyferd Partners).
- 3.7 These Terms do **not** apply to the Cyferd Marketplace including the terms of use (including payment terms) of or in relation to the Cyferd Marketplace and the purchase of any products or services from it (including any Premium Features and/or Premium Subscriptions where the same is/are **not** Ordered through an Order Form).
- 4. Access to and use of the Cyferd Product and the Services and any other Purchased Item(s)**
- 4.1 This **clause 4.1** applies to the first Order made by a Customer which must be for or include Access to and use of the Cyferd Product and the Services (including the Production Tenancy). With effect from the Commencement Date and subject to Order Acceptance and the terms of the Agreement, Cyferd grants the Customer a non-exclusive, non-transferable, personal right to:
- 4.1.1 Access to and use of the Cyferd Product and the Services (including the Production Tenancy) (the "**Main Subscription**");
- 4.1.2 Access to and use of the Cyferd Product and the Services (including the other Tenancy(ies) Ordered as part of such Order);
- 4.1.3 (if and to the extent Ordered as part of such Order) use of any applicable Premium Feature(s) and/or any Premium Subscription(s); and
- 4.1.4 copy and use the Documentation as strictly necessary for its use by Authorised Users of the subscribed services referred to in the foregoing provisions of this **clause 4.1**,
- within (if applicable) the relevant Applicable Territory for the Term and for the Permitted Purpose.
- 4.2 This **clause 4.2** applies to any subsequent Order(s) made by a Customer which is/are for or include subscription-based products or services. With effect from the date of the Order in question and subject to Order Acceptance and the terms of the Agreement, Cyferd grants the Customer a non-exclusive, non-transferable, personal right to:
- 4.2.1 Access to and use of the Cyferd Product and the Services (including the Non-Production Tenancy(ies) Ordered as part of such Order);
- 4.2.2 (if and to the extent Ordered as part of such Order) use of any applicable Premium Feature(s) and/or any Premium Subscription(s); and
- 4.2.3 copy and use the Documentation as strictly necessary for its use by Authorised Users of the subscribed services referred to in the foregoing provisions of this **clause 4.2**,
- within (if applicable) the relevant Applicable Territory for the balance of the Term and for the Permitted Purpose and **PROVIDED THAT** the Customer has a valid and subsisting Main Subscription.
- 4.3 This **clause 4.3** applies to any Order(s) made by a Customer which is/are for or include Pre-Paid Utilisation Units. With effect from Commencement Date or the date of the Order in question

- (as applicable) and subject to Order Acceptance the Customer can use such Ordered Pre-Paid Utilisation Units in accordance with and subject to the provisions of the Agreement.
- 4.4 The applicable ASA (including the applicable part(s) of the applicable Order Form(s)) shall govern any Order(s) made by a Customer which is/are for or include certain Additional Services and then only to that extent.
- 4.5 The grant to the Customer of the non-exclusive, non-transferable, personal rights referred to in **clauses 4.1 and 4.2** is for general use (i.e., without regard for the Customer's particular use of the same) and include the right to:
- 4.5.1 download and install the Cyferd Remote Agent for the Cyferd Remote Agent Purpose and in accordance with the Documentation;
 - 4.5.2 download and install the Cyferd Android App and/or the Cyferd iOS App in accordance with the Documentation and (if and where applicable) a EULA;
 - 4.5.3 access the Cyferd Web Client (via a browser) in accordance with the Documentation and (if and where applicable) a EULA;
 - 4.5.4 utilise or interact with the Cyferd Product (via its Tenancy(ies)) for the Permitted Purpose and in accordance with the terms of the Agreement and the Documentation;
 - 4.5.5 (agreeing and acknowledging that not all Apps will be available as part of the Customer's basic subscription) extract, import or export Apps to and from its Tenancy(ies) for the Permitted Purpose and in accordance with the terms of the Agreement and the Documentation;
 - 4.5.6 create, modify, customise, maintain, update and/or test Apps using its Tenancy(ies) for the Permitted Purpose in accordance with the terms of the Agreement and the Documentation;
 - 4.5.7 (agreeing and acknowledging that not all Features will be available as part of the Customer's basic subscription, some being Premium Features) use Features in its Tenancy(ies) for the Permitted Purpose and in accordance with the terms of the Agreement and the Documentation.
- 4.6 The Customer acknowledges that access to the Purchased Item(s) may take up to 2 (two) Business Days from Order Acceptance to initially set up and that use of the same is at all times subject to the Customer's compliance with the Agreement and the requirements identified in the Agreement.
- 4.7 The Customer agrees that its purchase of Access to and use of the Cyferd Product and the Services (including any Tenancy(ies), App(s) or Feature(s)) or any other Purchased Item is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by or on behalf of Cyferd regarding future functionality or features.
- 4.8 The Customer acknowledges that the Purchased Item(s) do not include:
- 4.8.1 any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with its access to and use of the Purchased Item(s) (or any of them)); or
 - 4.8.2 legal, accounting or other professional or regulated services and that, except as expressly stated in the Agreement, no assurance is given that the Services will comply with or satisfy any legal or regulatory obligation of any person.
- 4.9 The Customer will be required to specify to Cyferd in writing a person or persons who will be designated as the Administrator. Once this has been done Access will be set up by Cyferd. Initially, such Access will only be made available to the Administrator. The Administrator will have important rights and controls over making available that Access to the Customer/ Authorised Users and hence Access to and use of the Cyferd Product, Authorised Users and Utilisation. This may include creating, modifying, customising, maintaining, updating and/or testing Apps using its Tenancy(ies); creating, de-provisioning, monitoring or modifying Authorised User Accounts, and setting Authorised User usage permissions and restrictions (which could include permissions similar to that of the Administrator); and managing access to Customer Data by Authorised Users or others. Without limiting **clause 4.11**, which fully applies to the Administrator, the Customer is responsible for whom it allows to become the Administrator and any actions the Administrator takes, including as described above. The Customer agrees that Cyferd's responsibilities do not extend to the internal management or administration of the Tenancy(ies) or the Cyferd Product for the Customer. No person(s) can be appointed as an Administrator where to do so would cause the Customer to be in breach of or acting contrary to any Access Parameter(s). Only Cyferd can set up a person as an Administrator. Any changes to the Administrator (including adding, removing and/or replacing persons as Administrator or replacement persons) can only be done by Cyferd for the Customer. Cyferd can require such information and/or verification/ approvals as it considers necessary from the Customer before acting on and/or effecting any requests for changes to the Administrator. Cyferd shall deal with any requests for changes to the Administrator as soon as it is reasonably practicable to do so.

- 4.10 The Customer will provide all required disclosures to and will obtain and maintain all required consents from Authorised Users to allow: (i) the Administrator to have the Access described in these Terms and the **Privacy Policy (Platform)** (<http://cyferd.com/cyferdcomm/>); and (ii) Cyferd's provision of the Cyferd Product and the Services to the Customer (and the Customer making that Access available to Authorised Users). The Customer will provide evidence of such consents upon Cyferd's reasonable request.
- 4.11 The Administrator will be able to set prospective Authorised User onboarding flows. This could, for example, require prospective Authorised Users to be designated by the Administrator; could allow prospective Authorised Users to sign up for individual accounts which can become associated with the Tenancy or specific App(s) at a later time; or could allow Authorised Users to invite other prospective Authorised Users. In respect of: the authentication process(es) and/or requirements that an Authorised User will need to follow/ comply with to enable the Access (or relevant part thereof) to be made available to that Authorised User, the frequency as to when the same will be required and which third-party's or third-parties' authentication tools/ software is/are to be used and/or integrated for or in connection with such authentication process(es) and/or requirements (the "**Customer's Authentication Set Up**") – this can only be done by Cyferd for the Customer and (providing it is, in Cyferd's sole opinion, a suitable '*Identity Provider*') will be done using the Customer's '*Identity Provider*'. Cyferd can require such information and/or verification/ approvals as it considers necessary from the Customer before acting on and/or effecting any requests for the Customer's Authentication Set Up (or any changes to it). Cyferd shall deal with any requests for the Customer's Authentication Set Up (or any changes to it) as soon as it is reasonably practicable to do so. Authorised User Accounts cannot be shared or used by more than one individual at the same time. The Customer is responsible for understanding such settings, controls, onboarding flows, permissions, authentication process(es) and/or requirements for making available the Access to the Customer/ Authorised Users and hence Access to and use of the Cyferd Product and access to and use of any App(s), Feature(s), Premium Subscription(s), the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent, the Cyferd Web Client and/or any Services and for controlling whom the Customer, the Administrator or other Authorised Users with similar permissions to the Administrator allow to become an Authorised User. It is the Customer's responsibility to understand and be aware of the use of the Tenancy(ies) and the Cyferd Product by its Authorised Users and the Customer agrees and acknowledges that where its Utilisation Fees for the Term in question are based on: (i) Assumed Utilisation - such use could cause it to be in breach of the Customer's Expected Utilisation and therefore give rise to additional Utilisation Fees; or (ii) Metered Utilisation - then the higher such use the more Utilisation Fees will be payable. The Customer is responsible for compliance with these Terms and the Agreement by all Authorised Users (including the Administrator). The Customer is responsible for the activities of all Authorised Users (including the Administrator), including Orders they may place and how Authorised Users use Customer Data, even if those Authorised Users are not employees of the Customer. Cyferd will not be responsible for displaying any notices to Authorised Users or prospective Authorised Users at sign up, account creation, registration, or in-product. Cyferd recommends that the Customer implements (as a bare minimum) its own privacy policy and terms of use for all Authorised Users in making available the Access to Authorised Users and hence Access to and use of the Cyferd Product and access to and use of any App(s), Feature(s), Premium Subscription(s), the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent, the Cyferd Web Client and/or any Services. The Customer shall disclose and is responsible for disclosing to all prospective Authorised Users/ Authorised Users the **User Notice** (<http://cyferd.com/cyferdcomm/>) and for any damages resulting from its failure to do so. No person can be an Authorised User where to do so would cause the Customer to be in breach of or acting contrary to any Access Parameter(s).
- 4.12 The Customer (agreeing and acknowledging that Cyferd has nothing to do with the set up or maintenance of the Customer's Authorised User Accounts) is responsible for requiring that all Authorised Users (including the Administrator) keep their user IDs and passwords for obtaining Access to and use of the Cyferd Product strictly confidential and do not share such information with any unauthorised person. The Customer is responsible for any and all actions taken using Authorised User Accounts and passwords.
- 4.13 The Customer shall:
- 4.13.1 be liable for the acts and omissions of the Authorised Users as if they were its own; and
 - 4.13.2 procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on the Customer under the Agreement, including all obligations and restrictions relating to the Confidential Information.
- 4.14 The Customer shall (and shall ensure all Authorised Users shall) at all times comply with the terms of the Agreement including:
- 4.14.1 the applicable Order Form(s);
 - 4.14.2 these Terms/ this MSA;
 - 4.14.3 the Cyferd Policies; and

- 4.14.4 any other document(s)/ supplemental document(s) referred to in the definition of *'the Agreement'* (in **paragraph 1** of **SCHEDULE 2**).
- 4.15 The Customer shall comply (and shall ensure all Authorised Users comply) with all applicable laws, rules, and regulations that apply to the Cyferd Product and the Services (or any part including any Tenancy(ies), App(s) and Feature(s)) and/or any other Purchased Item.
- 4.16 Notwithstanding the generality of **clause 4.15**, the Customer shall comply (and shall ensure all Authorised Users comply) with all applicable laws, rules, and regulations governing export that apply to the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and Services, any other Purchased Item, the Customer Data and the Documentation (or any part), and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and Services, any other Purchased Item, the Customer Data and the Documentation (or any part) to, or access or use the same (or any part) in, any country or territory for which an export licence or other approval is required under the laws of the United Kingdom, the United States, the European Union or any of its member states or other applicable jurisdiction, without first obtaining such licence or other approval. Without prejudice to Cyferd's obligations under the **Data Protection Policy** the Customer shall be solely responsible for ensuring its access, importation and use of the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and Services, any other Purchased Item, the Customer Data and the Documentation in or into any part of: (i) (where first Order Form provides for any Applicable Territory) any Applicable Territory or elsewhere; or (ii) (where no Order Form provides for any Applicable territory) any of the Customer's territories where it is based or elsewhere, complies with all export and other laws.
- 4.17 Where the Customer is required to specify a domain for the operation of the Tenancy(ies) or the Cyferd Product or any of its Features or the provision of the Services, Cyferd may verify that the Customer owns or controls that domain. If the Customer does not own or control the domain it so specifies, or the '.com' or other key version of the domain it so specifies then Cyferd will have no obligation to provide the Customer with Access to and use of the Cyferd Product or the Services. If Cyferd suspects that the domain the Customer so specifies relates to/ is similar to/ could cause confusion with/ could infringe the brand/ domain/ rights of a third-party then Cyferd will have no obligation to provide the Customer with Access to and use of the Cyferd Product or the Services. Nothing in this **clause 4.17** obliges Cyferd to carry out any independent investigation in respect of the same or to protect the brand/ domain/ rights of any such third-party.
- 4.18 Access to and use of the Cyferd Product and the Services is strictly subject to the Permitted Purpose which includes the Access Parameters and the Utilisation Parameters.
- 4.19 In addition to those Access Parameters and Utilisation Parameters set out in the Order Form(s):
- 4.19.1 Neither the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) nor the Services (or any of them) may be Accessed or used: (i) for the purposes of monitoring their availability, performance, functionality or for any other benchmarking or competitive process; (ii) to build competitive product(s) or services(s) to the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and/or any of the Services; (iii) to build a product or service using similar ideas, features, functions or graphics of the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and/or any of the Services; (iv) to copy any ideas, features, functions or graphics of the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and/or any of the Services; (v) to publicly disseminate information regarding the performance of the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)); (vi) to determine whether the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and/or any of the Services are within the scope of any patent (vii) to sell, resell, licence, sublicense, distribute, rent or lease the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and/or any of the Services; (viii) to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (ix) to store or transmit Malicious Code; (x) to interfere with or disrupt the integrity or performance of the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) or any of the Services; (xi) to attempt to gain unauthorised access to the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and/or any of the Services; (xii) where such Access or use would breach/ cause the Customer to be in breach of and/or conflict or be inconsistent with the obligations on the Customer under any provision(s) of the Agreement (or any document comprising the same); (xiii) where such Access or use would conflict or be inconsistent with the contents of or otherwise not be in accordance with the Documentation (or any part of it); (xiv) to encourage or assist any third-party to breach and/or act contrary to any other Access Parameter(s). In this **clause 4.19.1** each of the matters in **(i)** to **(xiv)** (inclusive) is an Access Parameter and a Utilisation Parameter. Where

- applicable, this **clause 4.19.1** shall not prevent a Customer App Customisation being validly created by or on behalf of the Customer in accordance with and subject to the terms of the Agreement.
- 4.19.2 The Customer shall not incorporate the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) or any Service into a product or service the Customer provides to a third-party unless Cyferd expressly consents to the same in writing. Such express consent must be in the form of a supplemental document to this MSA and the applicable Order Form. This is an Access Parameter and a Utilisation Parameter.
- 4.19.3 The Customer shall not: (i) interfere with or otherwise circumvent mechanisms in the Cyferd Product (or any part of it including any Tenancy(ies) and Feature(s)) intended to limit the Customer's Access and/or Utilisation; (ii) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats, non-public APIs or Integrations to the Cyferd Product, any Tenancy, any Feature, the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent, the Cyferd Web Client and/or any Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to Cyferd); (iii) remove or obscure any proprietary or other notices contained in the Cyferd Product, any Tenancy, any Feature, the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent, the Cyferd Web Client and/or any Services; (iv) Access or use the Cyferd Product (or any part of it including any Tenancy(ies) and Feature(s)) and/or any Service to access, copy or use any Cyferd IPR except as permitted under the Agreement. In this **clause 4.19.3** each of the matters in (i) to (iv) is an Access Parameter and a Utilisation Parameter. This **clause 4.19.3** shall not prevent a Customer App Customisation being validly created by or on behalf of the Customer in accordance with and subject to the terms of the Agreement.
- 4.19.4 The Customer shall not reproduce, modify, adapt or create derivative works of the Cyferd Product (or any part of it including any Tenancy(ies) and Feature(s)), the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent, the Cyferd Web Client and/or any Services, save that, the Customer has the right to create, modify, customise, maintain, update and/or test Apps using its Tenancy(ies) during the Term for the Permitted Purpose whilst the Customer has a valid and subsisting Main Subscription and in accordance with the terms of the Agreement and the Documentation. This is an Access Parameter and a Utilisation Parameter. This **clause 4.19.4** shall not prevent a Customer App Customisation being validly created by or on behalf of the Customer in accordance with and subject to the terms of the Agreement.
- 4.19.5 The Customer shall not permit any use of the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) or any Service or Documentation in any manner by any third-party (including permitting use in connection with any timesharing or service bureau, outsourced or similar service to third-parties or making the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) or any Service or Documentation (or any part) available to any third-party or allowing or permitting a third-party to do any of the foregoing). This is an Access Parameter and a Utilisation Parameter.
- 4.19.6 The Access Parameter(s) and Utilisation Parameter(s) referred to in **clause 6**.
Together with:
- 4.19.7 (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; and
- 4.19.8 (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.
- 4.20 Subject to the rights granted under **clauses 4.1, 4.2** and **4.5** and subject to the terms and conditions of the Agreement, Cyferd, its Affiliates, and its/ their respective suppliers or licensors (including any Licensors) reserve, retain and hold all right(s), title(s) and interest(s) in and to the Relevant Items, the Cyferd IPR and all other Intellectual Property Rights embodied within the Relevant Items. In order to safeguard the Relevant Items, the Cyferd IPR and such other Intellectual Property Rights, the Customer shall maintain reasonable technical and procedural security, access controls and policies, as though ownership of Intellectual Property Rights were its own, and shall be directly and wholly responsible for any violations, be they intentional or non-intentional, of the Agreement by any person that the Customer or any of its Authorised

- Users has allowed access to the Cyferd Product. This **clause 4.20** shall be for the benefit of and capable of enforcement by Cyferd, its Affiliates, and its/ their respective suppliers or licensors by each of them as if they were all parties to these Terms/ this MSA.
- 4.21 The Customer (including its Administrator and Authorised Users) may choose to use or procure Non-Cyferd Products/Services in connection with the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) or other Purchased Item(s). The Customer's receipt or use of such Non-Cyferd Products/Services (and third-party provider's use of any of the Customer Data/ the Customer's other data) is solely between the Customer and any such third-party provider and will be governed by a separate Contract between the Customer and the third-party provider. **Cyferd is not responsible for any access to or use of Customer Data/ the Customer's other data by any third-party providers or any Non-Cyferd Products/Services, or for the security or privacy practices of any third-party provider or its Non-Cyferd Products/Services. The Customer is solely responsible for its decision to permit any third-party provider or Non-Cyferd Products/Services to use Customer Data/ the Customer's data. It is the Customer's responsibility to carefully review the Contract between the Customer and the third-party provider in question. CYFERD DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY NON-CYFERD PRODUCTS/SERVICES (WHETHER SUPPORT, AVAILABILITY, SECURITY OR OTHERWISE) OR FOR THE ACTS OR OMISSIONS OF ANY THIRD-PARTY PROVIDERS.** This **clause 4.21** applies to any Non-Cyferd Materials and/or Non-Cyferd Apps which are Non-Cyferd Products/Services and any Additional Services or like services provided by third-party providers (including any applicable Cyferd Partners).
- 4.22 **Clauses 4.9 to 4.21** (inclusive) in so far as they place or comprise obligations on the Customer shall survive termination or expiry of the Agreement.
- 5. The Services**
- 5.1 Subject to the provisions of the Agreement and receipt of the applicable Subscription Fee(s), Cyferd shall provide the Services to the Customer during any applicable service hours (which, if any, will be provided for in the applicable Cyferd Policy(ies) relating to such Service(s)) during the Term.
- 5.2 Cyferd shall ensure that the Services are performed with reasonable care and skill and:
- 5.2.1 (in the case of the Hosting Services) subject to the terms and conditions of the **Hosting Policy**;
- 5.2.2 (in the case of the Database Services) subject to the terms of and conditions of the **Storage of and Access to Customer Data Policy**;
- 5.2.3 (in the case of the Standard Support Services) subject to the terms of and conditions of the **Standard Support Services Policy**; and
- 5.2.4 (to the extent applicable) subject to the **Uptime Policy**, the **Data Protection Policy** and any other relevant Cyferd Policy.
- 5.3 Time shall not be of the essence in respect of the provision of the Services.
- 5.4 Cyferd shall use reasonable endeavours to notify the Customer in advance of scheduled maintenance to the Cyferd Product (including any Tenancy(ies) and Feature(s)), but the Customer acknowledges that it may receive no advance notification for downtime caused by a Relief Event or for other emergency maintenance.
- 6. POC Trials and No Charge Products**
- POC Trials**
- 6.1 Cyferd may provide the Customer with or make available to the Customer use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial. Such use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial is subject to any additional terms (including any additional Access Parameters and/or Utilisation Parameters) that Cyferd specifies and is only permitted during the period Cyferd expressly designates for such purpose (or, if not so expressly designated, until terminated in accordance with these Terms) and are provided 'AS-IS' without indemnification, maintenance, support, or warranty of any kind, express or implied. Except as expressly set out to the contrary in, this **clause 6**, these Terms and the Agreement, the terms and conditions of these Terms and the Agreement, fully apply in respect of a POC Trial. Cyferd may modify or terminate the Customer's use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and/or any of the applicable Services for the purposes of a POC Trial at any time and for any reason in Cyferd's sole discretion, without liability to the Customer. To the maximum extent permitted by applicable law, Cyferd disclaims all obligations or liabilities with respect to the Customer's use of the Cyferd Product (including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial including any warranty and indemnity obligations. **NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, CYFERD'S MAXIMUM AGGREGATE LIABILITY TO THE CUSTOMER IN RESPECT OF THE CUSTOMER'S USE OF THE CYFERD PRODUCT AND/OR ANY OF THE SERVICES FOR THE PURPOSES OF A POC TRIAL WILL BE £500 (FIVE HUNDRED POUNDS STERLING).**

- 6.2 Use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial will be time limited (set by Cyferd at its sole discretion) and in a non-production environment. This is an Access Parameter and a Utilisation Parameter.
- 6.3 Use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial does not need to be but can be the subject of an Order/ Order Form. By the Customer using the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial it shall be deemed to be the Customer accepting these Terms in respect of the same.
- 6.4 **No Charge Products**
Cyferd may provide the Customer with or make available to the Customer Access to and/or use of the Cyferd Product (or any part of it including any Tenancy(ies), App(s) and Feature(s)) and the Services at no charge and are provided 'AS-IS' without indemnification, maintenance, support, or warranty of any kind, express or implied, including free accounts, trial use and Beta Versions (collectively, "**No Charge Products**"). For the avoidance of doubt neither a POC Trial nor a Purchased Item can be a No Charge Product. Such No Charge Products is/are subject to any additional terms (including any additional Access Parameters and/or Utilisation Parameters) that Cyferd specifies and is only permitted during the period Cyferd expressly designates for such purpose (or, if not so expressly designated, until terminated in accordance with these Terms). Except as expressly set out to the contrary in, this **clause 6**, these Terms or the Agreement, the terms and conditions of these Terms and the Agreement, fully apply in respect of No Charge Products. Cyferd may modify or terminate the Customer's Access to and/or use of No Charge Products at any time and for any reason in Cyferd's sole discretion, without liability to the Customer. The Customer understands that any pre-release and beta Apps, Features, APIs, Integrations and/or other products, services and/or parts of the Cyferd Product (whether or not within the then generally available Cyferd Product (or any part of it including any Tenancy(ies))), that Cyferd makes available (collectively, "**Beta Versions**") are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than the then generally available and non-pre-release and non-beta Cyferd Product (or applicable part of it). Cyferd makes no promises that any Beta Versions will ever be made generally available. In some circumstances, Cyferd may charge a fee in order to allow the Customer to access Beta Versions, but the Beta Versions will still remain subject to this **clause 6.4**. All information regarding the characteristics, features or performance of any No Charge Products (including Beta Versions) constitutes Confidential Information. To the maximum extent permitted by applicable law, Cyferd disclaims all obligations or liabilities with respect to the Customer's Access to and/or use of use of any No Charge Products including any warranty and indemnity obligations. **NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS, CYFERD'S MAXIMUM AGGREGATE LIABILITY TO THE CUSTOMER IN RESPECT OF THE CUSTOMER'S ACCESS TO AND/OR USE OF NO CHARGE PRODUCTS WILL BE £500 (FIVE HUNDRED POUNDS STERLING).**
- 6.5 Access to and/or use of any No Charge Products will be time limited (set by Cyferd at its sole discretion) and (as required/ set by Cyferd) in a non-production environment and/or a production environment. This is an Access Parameter and a Utilisation Parameter.
- 6.6 Access to and/or use of any No Charge Products does not need to be but can be the subject of an Order/ Order Form. By the Customer Accessing and/or using any No Charge Products it shall be deemed to be the Customer accepting these Terms in respect of the same.
- 6.7 This **clause 6** shall survive termination or expiry of the Agreement.
7. **Ordering via a Cyferd Partner**
- 7.1 This **clause 7** applies to Cyferd Partner Order Forms. 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 these Terms. This includes where the Customer has entered into or otherwise accepted a Cyferd Partner Order Form.
- 7.2 The Customer (where that Customer has entered into or otherwise accepted a Cyferd Partner Order Form) agrees and acknowledges that such Cyferd Partner Order Form is subject to the **Cyferd Partner Approved Order Form Policy** (being the version in force as at the date of the Cyferd Partner Order Form in question).
- 7.3 The Cyferd Partner in question (by virtue of the agreement between Cyferd and that Cyferd Partner) has also separately agreed with Cyferd that such Cyferd Partner Order Form is subject to the **Cyferd Partner Approved Order Form Policy** and the operation of these Terms in that regard. The Customer shall be entitled to enforce this **clause 7.3** against the Cyferd Partner in question.
- 7.4 Where, by virtue of the application of the **Cyferd Partner Approved Order Form 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.

- 7.5 Where, by virtue of the application of the **Cyferd Partner Approved Order Form 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. The Cyferd Partner shall be entitled to rely on this **clause 7.5** and enforce it against the Customer. If such deemed amendments are held to be unenforceable as between the Customer and the Cyferd Partner in question the Customer agrees and undertakes to Cyferd that as far as the Customer and Cyferd is concerned, for the purposes of the operation of the Agreement, the Cyferd Order Form in question shall be construed at all times as if such deemed amendments were valid and subsisting. This **clause 7.5** is an Access Parameter and a Utilisation Parameter.
- 7.6 Pending a Cyferd Partner Order Form being an Approved Order Form, in respect of the Agreement, subject to **clause 1.4**, 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):
- 7.6.1 these Terms/ this MSA;
 - 7.6.2 the Cyferd Policies;
 - 7.6.3 any other document(s) that form part of the Agreement (other than the Cyferd Partner Order Form in question); and
 - 7.6.4 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 this **clause 7.6**.
- 7.7 Where the Cyferd Partner Order Form (if it was an Approved Order Form) needed to obtain certain information about or from the Customer and the deemed amendments referred to in **clause 7.5** cannot procure the production of that information automatically and the same cannot be otherwise assumed or implied then: (i) the Cyferd Partner Order Form in question cannot be an Approved Order Form without such information being provided, (ii) Cyferd will not be obliged to set up Access without such information, (iii) the Customer shall promptly provide such information to Cyferd and (iv) pending such information being provided to Cyferd, the grant to the Customer of the non-exclusive, non-transferable, personal rights referred to in **clauses 4.1 and/or 4.2 (as applicable) shall be delayed until such information has been so provided**. Once provided, such information will be deemed to have been included in the (then) Approved Order Form.
- 8. Indemnity**
- 8.1 The Customer shall indemnify, keep indemnified and hold harmless Cyferd (on Cyferd's own behalf and on behalf of each of Cyferd's Affiliates) from and against any Losses that Cyferd or any of Cyferd's Affiliates suffer, sustain or incur (directly or indirectly) arising from, in connection with or relating to the Customer's breach of the Agreement and/or any claim by a third-party of the type referred to in **clause 4.17** against Cyferd and/or the part of any IP Claim to the extent that it arises from, is in connection with or relates to that referred to in **clause 13.5** (other than **clauses 13.5.7 and 13.5.8**).
- 8.2 This **clause 8** shall survive termination or expiry of the Agreement.
- 9. Changes to the Agreement**
- 9.1 Cyferd may at its absolute discretion make, and notify the Customer of, updated versions of these Terms/ this MSA, the EULA, the Cyferd Policies (or any of them), any other document(s)/ supplemental document(s) that form(s) part of the Agreement from time to time (but not any Order Form), the Documentation (or any part of it) and/or any other document(s) (not included in the foregoing) referred to in any part of the Agreement from time to time (but not any ASA) by notifying the Customer of such update (an "**Update**") by e-mail (together with a copy of the update or a link to a copy of the update) or by any other means which Cyferd elects ("**Update Notification**"). Cyferd shall comply with its related obligations in the **Data Protection Policy**.
- 9.2 Cyferd may, from time to time, at its absolute discretion introduce, and notify the Customer of, a new Cyferd Policy (as opposed to an updated version of an existing Cyferd Policy), any other new document/ supplemental document that is to form part of the Agreement from time to time or a new document to form part of the Documentation (as opposed to an updated version of an existing document that forms part of the Documentation) by notifying the Customer of such new document (a "**New Document**") by e-mail (together with a copy of the New Document or a link to a copy of the New Document) or by any other means which Cyferd elects ("**New Document Notification**"). Cyferd shall comply with its related obligations in the **Data Protection Policy**.
- 9.3 The document(s) being the subject matter of an Update Notification shall replace the preceding version of the same document(s) for the purposes of and form part of the Agreement with effect from:

- 9.3.1 (where such document comprises this MSA and the Update Notification does not state that the updated version is to form part of the Agreement during the then current Term) at the next renewal of the Term and will automatically apply as of the renewal date unless the Customer elects not to renew (and gives notice to terminate) pursuant to **clause 2.3**;
- 9.3.2 (where such document comprises this MSA and the Update Notification states that the updated version is to form part of the Agreement during the then current Term) **EITHER**, the date falling 30 (thirty) days' after the date of the Update Notification in respect of the same or at such later date as Cyferd may specify; **OR**, if earlier, the date the Customer accepts the same as referred to in **clause 9.6**;
- 9.3.3 (where such document(s) comprise(s) the **Assumed Utilisation Fair Use Policy**, the **Cyferd Partner Approved Order Form Policy**, the **Data Protection Policy**, the **Hosting Policy**, the **Meter Based/ Unit Based Utilisation Pricing Policy**, the **Storage of and Access to Customer Data Policy** and/or the **Uptime Policy**) **EITHER**, the earlier of the date falling 30 (thirty) days' after the date of the Update Notification in respect of the same or the date the Customer accepts the same as referred to in **clause 9.6**; **OR** , if later, the 'last updated' date specified in such updated Cyferd Policy);
- 9.3.4 (where such document comprises any other Cyferd Policy, the EULA, or any other document/ supplemental document that forms part of the Agreement from time to time (but not any Order Form)):
- 9.3.4.1 and where the Update contains (in Cyferd's reasonable opinion) any material changes) **EITHER**, the earlier of the date falling 30 (thirty) days' after the date of the Update Notification in respect of the same or the date the Customer accepts the same as referred to in **clause 9.6**; **OR** , if later, the 'last updated' or 'effective' or similar date specified in such updated document); or
- 9.3.4.2 and where the Update does **not** contain (in Cyferd's reasonable opinion) any material changes and the Update Notification must expressly state that this is the case) the 'last updated' or 'effective' or similar date specified in such updated document,
- where "**material changes**" will for this purpose include changes that: increase pricing or accelerate payment terms for the Customer (other than where that change does not take effect for the Customer during the then Term), limit or reduce any key or significant obligations and liabilities on Cyferd under the Agreement, and/or increase or impose any key or significant obligations and liabilities on the Customer under the Agreement;
- 9.3.5 (where such document comprises a document that forms part of the Documentation) the 'last updated' or 'effective' or similar date specified in such updated document; and/or
- 9.3.6 (where such document comprises a document which is '*any other document(s) (not included in the foregoing) referred to in any part of the Agreement from time to time (but not any ASA)*' (as referred to in **clause 9.1**) **EITHER**, such amendment effective date in accordance with its terms where it contains provisions dealing with amendments to it; **OR**, the 'last updated' or 'effective' or similar date specified in such updated document (as applicable).
- 9.4 The document(s) subject to a New Document Notification will form part of the Agreement from:
- 9.4.1 (where the document (in Cyferd's reasonable opinion) will or could have a material impact on the Customer's Access to and use of the Cyferd Product and the Services) **EITHER**, the earlier of the date falling 30 (thirty) days' after the date of the New Document Notification in respect of the same or the date the Customer accepts the same as referred to in **clause 9.6**; **OR** , if later, the 'effective' or similar date specified in such updated document); and/or
- 9.4.2 (where the document (in Cyferd's reasonable opinion): **EITHER** will **not** have a material impact on; **OR** relates to any Apps, Features, Premium Features, Premium Subscriptions, Additional Services and/or types of Tenancy that the Customer does not use and/or has not purchased in connection with, the Customer's Access to and use of the Cyferd Product and the Services) the 'effective' or similar date specified in such new document,
- where "**material impact**" will for this purpose includes: increased pricing or accelerated payment terms for the Customer (other than where that change does not take effect for the Customer during the then Term), limiting or reducing any key or significant obligations and liabilities on Cyferd under the Agreement, and/or increasing or imposing any key or significant obligations and liabilities on the Customer under the Agreement.
- 9.5 In the event that the Customer reasonably believes that any Update referred to in **clause 9.3.2**, **clause 9.3.3** or **clause 9.3.4.1** or any New Document referred to in **clause 9.4.1** materially

- adversely impacts it in any manner then (as the Customer's exclusive remedy) it may by notice elect to terminate, effective immediately upon receipt by Cyferd of such notice:
- 9.5.1 the Agreement;
(if applicable and where possible where they are/ it is the sole item(s) affected by the Update/ New Document in question):
 - 9.5.2 its Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate; or
 - 9.5.3 the affected Ordered Premium Feature(s) and/or Premium Subscription(s), in any such case provided it exercises such right prior to such Update taking effect pursuant to **clause 9.3.2**, **clause 9.3.3** or **clause 9.3.4.1** (as the case may be) or the New Document taking effect pursuant to **clause 9.4.1** on not less than 14 (fourteen) days prior written notice and notifies Cyferd in writing at the time of exercising such right of the material adverse impact which has caused it to exercise this right. In the event of such valid termination the Customer shall (subject to **clause 27.2**) receive a refund in accordance with **clause 10.40**. If any such termination occurs then **clause 22** shall apply. For the avoidance of doubt, for the purposes of this **clause 9.5**:
 - 9.5.4 the Customer has no right to terminate in respect of any Update referred to in **clause 9.3.1**, **clause 9.3.4.2**, **clause 9.3.5** or **clause 9.3.6** or any New Document referred to in **clause 9.4.2** and any such Update or New Document shall be deemed to be accepted by the Customer; and
 - 9.5.5 "valid termination" means where the Customer has served such written notice within the prescribed time period and provided in writing details of the negative impact which has caused the Customer to exercise this right to Cyferd's reasonable satisfaction.
- 9.6 Cyferd will or may give the Customer the opportunity to positively accept an Update or a New Document by: (1) clicking or checking a box indicating acceptance (online or digital version of the same); or (2) acknowledging or confirming or indicating acceptance in writing (including by email). If Cyferd does not give such opportunity to positively accept the same or it does and the Customer does not positively accept the same in such manner and the Customer does not validly terminate under **clause 9.5** (as applicable or as the case may be) then the Customer will be deemed to have accepted the same by Accessing or continuing to Access or using or continuing to use the Cyferd Product and the Services (including any Tenancy(ies), App(s) or Feature(s)) or any other Purchased Item (or, in each case, the applicable part of any of the same) to which such Update or New Document applies and/or is relevant (whether in whole or in part). Acceptance in this manner will be the Customer 'accepting the same' for the purposes of **clauses 9.3** and **9.4**.
- 9.7 An Order Form can only be amended as follows:
- 9.7.1 (where not Ordered through a Cyferd Partner) with the written agreement of both the Customer and Cyferd;
 - 9.7.2 (where Ordered through a Cyferd Partner and the Order Form in question is an Approved Order Form/ is deemed to be an Approved Order Form) with the written agreement of the Customer, the Cyferd Partner in question and Cyferd;
 - 9.7.3 (where that Customer has entered into or otherwise accepted a Cyferd Partner Order Form which is an Unapproved Order Form) in accordance with **clause 7.5**.
- 9.8 The applicable ASA and/or any matters relating to any Additional Services can only be amended in accordance with the terms and conditions of the ASA Terms.
- 9.9 The Customer agrees and acknowledges that:
- 9.9.1 Cyferd shall be entitled to modify the features and functionality of the Cyferd Product and the Services (or any part), any Tenancy, any Cyferd Apps, any Features, any Premium Subscriptions, the Cyferd Remote Agent, the Cyferd iOS App, the Cyferd Android App, the Cyferd Web Client and/or the Cyferd Marketplace. Cyferd shall use reasonable endeavours to ensure that any such modification does not materially adversely affect the use of the Cyferd Product by Cyferd's customers generally. Such modifications could be, for example: (i) to improve Cyferd's customers' general experience, (ii) to respond to changes in the Cyferd Product and the Services (or any part), Cyferd's business or law; (iii) as necessary for new features.
 - 9.9.2 Cyferd may, without limitation to the generality of **clause 9.9.1**, establish new limits on the Cyferd Product and the Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Cyferd Product and the Services (or the part in question as the case may be), remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by Update to the relevant impacted contractual documents.

- 9.9.3 Subject to Cyferd's obligation to provide Access to and use of the Cyferd Product and the Services to the Customer and any other Purchased Item(s), Cyferd can discontinue any part of the Cyferd Product, any of the Services (or any part), or any portion or feature of the Cyferd Product for any reason at any time without liability to the Customer.
- 9.9.4 Cyferd shall comply with its related obligations in the **Data Protection Policy** where applicable in connection with the foregoing provisions of this **clause 9.9**.
- 10. Fees and payment**
- General**
- 10.1 Unless and then to the extent provided for to the contrary in any Order Form(s), Access to and use of the Cyferd Product and the Services is offered on an annual subscription basis. Other applicable product(s) or service(s) purchased by the Customer in connection with the Customer's Access to and use of the Cyferd Product and the Services could be subscription-based or purchased as a one-off purchase or in instalments.
- 10.2 In terms of fees and payment of the same, this MSA applies to Purchased Item(s), namely:
- 10.2.1 the Customer's subscription for Access to and use of the Cyferd Product and the Services (including at the very least 1 (one) Production Tenancy);
- 10.2.2 the Customer's subscription for all additional Tenancy(ies) where Ordered separately;
- 10.2.3 the Customer's subscription for all and any Premium Features and/or Premium Subscriptions;
- 10.2.4 the Customer's purchase of any Pre-Paid Utilisation Units; and
- 10.2.5 the Customer's Utilisation.
- 10.3 Certain Cyferd Policies will apply in connection with fees and payment for the products and services referred to in **clause 10.2** as and when applicable including the **Annual Professional Subscription Fee Price Policy**, and the **Assumed Utilisation Fair Use Policy**. Where the Customer is also a Cyferd Partner then certain Cyferd Partner Policies will apply in connection with fees and payment for the products and services referred to in **clauses 10.2.1, 10.2.2** and/or **10.2.5** as and when applicable. Where a Cyferd Policy contains pricing in more than one currency then the prices that apply in connection with the Agreement shall be the pricing in the Applicable Currency.
- 10.4 Where the Customer's Order is made through a Cyferd Partner (having regard to **clause 7**):
- 10.4.1 Instead of paying Cyferd, the Customer will pay the applicable amounts to the Cyferd Partner in question as agreed between the Customer and the Cyferd Partner.
- 10.4.2 Cyferd may (at its sole discretion) suspend (in accordance with **clause 20**) or terminate (in accordance with **clause 21**) the Customer's right to use the applicable products and services (which could for example be the Customer's Access to and use of the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and the Services and/or the Customer's use of a particular Premium Feature) and/or the Agreement if Cyferd does not receive the corresponding payment from the Cyferd Partner in question in accordance with the terms agreed between Cyferd and that Cyferd Partner.
- 10.4.3 The amount paid or payable by the Cyferd Partner to Cyferd for the Customer's right to use the applicable products and services (which could, for example, be the Customer's Access to and use of the Cyferd Product and the Services and/or the Customer's use of a particular Premium Feature) will be deemed to be the amount actually paid or payable by the Customer to Cyferd under these Terms/ this MSA for purposes of calculating the liability cap in **clauses 19.2** and **19.4**.
- 10.4.4 If the Customer is expressly entitled to a refund under these Terms/ this MSA, then unless Cyferd otherwise agrees (at its sole discretion) in writing with the Customer and the Cyferd Partner in question:
- 10.4.4.1 the amount of any refund payable by Cyferd be based on the **lower of**: (i) the relevant proportion of the applicable fees paid by the Customer to the Cyferd Partner in question being the subject matter of the refund; and (ii) the relevant proportion of the corresponding monies paid by the Cyferd Partner to Cyferd; and
- 10.4.4.2 Cyferd will make such refund (in the amount referred to in **clause 10.4.4.1**) to the Cyferd Partner and the Cyferd Partner will be solely responsible for refunding such amount to the Customer.
- 10.5 These Terms/ this MSA do/does **not** apply to fees and payment terms in respect of:
- 10.5.1 Additional Services/ similar services (whether ordered from Cyferd or through Cyferd Partner); and/or
- 10.5.2 the Customer's purchase of any products or services where the same is/are ordered through the Cyferd Marketplace and **not** via an Order Form.
- 10.6 Accordingly the Customer shall pay:
- 10.6.1 the Subscription Fee and the Utilisation Fees in any event; and

- 10.6.2 Premium Fees and/or Pre-Paid Utilisation Units Fees as and when applicable, in accordance with these Terms/ this MSA. All such fees will be invoiced and payable in the Applicable Currency.
- 10.7 All fees are exclusive of VAT. The Customer shall pay any applicable VAT to Cyferd on receipt of a valid VAT invoice.
- 10.8 Notwithstanding the generality of **clause 10.7**, Cyferd's fees do **not** include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, VAT or withholding taxes, assessable by any jurisdiction whatsoever (collectively "**Taxes**"). The Customer is responsible for paying all Taxes associated with its purchases under or in connection with the Agreement. If Cyferd has the legal obligation to pay or collect Taxes for which the Customer is responsible under this **clause 10.8**, Cyferd will invoice the Customer and the Customer will pay that amount unless the Customer provides Cyferd with a valid tax exemption certificate authorised by the appropriate taxing authority. For the avoidance of doubt, Cyferd is solely responsible for taxes assessable against it based on its income.
- Subscription Fee**
- 10.9 The Subscription Fee shall be the amount provided for in the applicable Order Form(s) whether in respect of the Initial Term and/or any Further Term on automatic renewal. The Subscription Fee is an aggregate annual fee for the products and services specified in such applicable Order Form(s). For the avoidance of doubt there could be more than one Subscription Fee where a Customer has Ordered additional Tenancy(ies) separately to the Main Subscription. References to "**Subscription Fee**" shall mean each and every Subscription Fee unless the context otherwise requires.
- 10.10 The Subscription Fee **excludes** the Customer's Utilisation of the Cyferd Product.
- 10.11 Unless and to the extent expressly provided for in the applicable Order Form(s) to the contrary (in which case such contrary terms shall apply in respect of the same), the Subscription Fee will be invoiced by Cyferd (or, where Ordered through a Cyferd Partner, that Cyferd Partner) annually in full in advance of the year to which it relates (whether in respect of the Initial Term and/or any Further Term on automatic renewal) and payable by the Customer in full in cleared funds to Cyferd (or, where Ordered through a Cyferd Partner, that Cyferd Partner) within 30 (thirty) days of the date of such invoice.
- Utilisation Fees**
- 10.12 Utilisations Fees relate to the Customer's Utilisation of the Cyferd Product on a Tenancy by Tenancy basis.
- 10.13 Unless and to the extent expressly provided for in the applicable Order Form(s) to the contrary (in which case such contrary terms shall apply in respect of the same), the Utilisation Fees will be invoiced by Cyferd (or, where Ordered through a Cyferd Partner, that Cyferd Partner) monthly in arrears and each invoice will be payable in full within 30 (thirty) days of the date of such invoice (whether in respect of the Initial Term and/or any Further Term on automatic renewal) and payable by the Customer in full in cleared funds to Cyferd (or, where Ordered through a Cyferd Partner, that Cyferd Partner) within 30 (thirty) days of the date of such invoice.
- 10.14 Subject to **clause 10.15**, the Customer can use Pre-Paid Utilisation Units as credits against Utilisation Fees. **Clauses 10.34 to 10.38** (inclusive) shall apply in this regard.
- 10.15 **Clause 10.14** shall **not** apply where the Customer's payment obligations in terms of Utilisation Fees are to a Cyferd Partner and not to Cyferd **UNLESS AND THEN TO THE EXTENT** that the exception referred to in **clause 10.35** applies.
- Metered Utilisation**
- 10.16 Utilisation Fees for the applicable Tenancy(ies) shall be calculated and payable on a Metered Utilisation basis where the applicable Order Form(s), the Agreement or any other document comprising the Agreement from time to time provide that is the case (and then to the extent provided) whether in respect of the Initial Term and/or any Further Term on automatic renewal. This could be:
- 10.16.1 as the express basis of calculation and payment for all Utilisation (on a Tenancy by Tenancy basis) for the applicable Tenancy(ies);
- 10.16.2 (in connection with Assumed Utilisation) as the basis of calculation and payment for any Excess Utilisation in accordance with the **Assumed Utilisation Fair Use Policy**;
- 10.16.3 (in connection with Assumed Utilisation) in respect of automatic renewal where prior to the Minimum Term or the then Further Term (as the case may be), Cyferd has **not** agreed 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 as the basis of calculation and payment for all Utilisation in respect of the applicable Further Term;
- 10.16.4 (in connection with Fixed Utilisation) in respect of automatic renewal where prior to the Minimum Term or the then Further Term (as the case may be), Cyferd has **not** agreed 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 as the basis of calculation and payment for all Utilisation in respect of the applicable Further Term; and/or
- 10.16.5 in the manner provided for in **clause 10.22**; and/or
- 10.16.6 as otherwise provided for in an applicable Order Form, the Agreement or any other document comprising the Agreement from time to time.
- 10.17 Utilisation calculated and payable on a Metered Utilisation basis shall be calculated and priced in accordance with the **Meter Based/ Unit Based Utilisation Pricing Policy** and any other applicable Cyferd Policy(ies) or other applicable documents forming part of the Agreement from time to time subject only to any special express terms in the applicable Order Form(s). Metered Utilisation is calculated and priced in terms of Utilisation Units. What comprises a Utilisation Unit and the price of a Utilisation Unit shall be as provided for in the **Meter Based/ Unit Based Utilisation Pricing Policy** and any other applicable Cyferd Policy(ies) or other applicable documents forming part of the Agreement from time to time subject only to any special express terms in the applicable Order Form(s).
- 10.18 The following pricing parameter is and shall be at all times included/ applied in principle in terms of pricing of Utilisation Units for Metered Utilisation: (assuming for this purpose only the calculation and pricing of Utilisation in respect of the same was done using the same input data and in Utilisation Units) a Professional Customer will pay more for the same Utilisation than an Enterprise Customer.
- 10.19 Where any part of the Utilisation Fees include that calculated and payable on a Metered Utilisation basis Cyferd shall (unless and to the extent expressly provided for in the applicable Order Form(s) to the contrary (in which case such contrary terms shall apply in respect of the same)), as soon as it is reasonably practicable to so, following the end of the month in question (and in any event within 5 (five) days following the end of such month) deliver to:
- 10.19.1 the Customer or, where Ordered through a Cyferd Partner, that Cyferd Partner the Monthly Utilisation Summary for the month in question showing, inter alia, the number of Utilisation Units consumed by the Customer for that month in respect of Utilisation and (if and where applicable) the amount of any Excess Utilisation for that month; and
- 10.19.2 (where the Customer Ordered from Cyferd) the Customer the invoice for such consumed Utilisation Units or (if and where applicable) such Excess Utilisation for the month in question.
- In this regard and for the avoidance of doubt:
- 10.19.3 the Monthly Utilisation Summary shall, save in respect of manifest error, be final and binding on the Customer (and the Cyferd Partner in question where applicable) and be deemed to reflect the number of Utilisation Units consumed in the month in question in respect of Utilisation and (if and where applicable) the amount of any Excess Utilisation for that month; and
- 10.19.4 where the Customer Ordered through a Cyferd Partner, the Customer agrees and acknowledges that it shall be that Cyferd Partner's responsibility to:
- 10.19.4.1 provide that referred to in **clause 10.19.1** to the Customer; and
- 10.19.4.2 invoice the Customer in respect of Utilisation Units consumed in respect of Utilisation and (if and where applicable) such Excess Utilisation for the month in question and (if and where applicable) any Utilisation Units referred to in **clause 10.21** and that Cyferd will invoice that Cyferd Partner for the '*corresponding payment*' to Cyferd payable by that Cyferd Partner (in accordance with its agreement with that Cyferd Partner) at or around the time Cyferd provides that referred to in **clause 10.19.1**. Cyferd shall be entitled to ignore any delay by the Cyferd Partner in invoicing the Customer for the purposes of **clause 10.4.2**.
- 10.20 Cyferd shall be entitled (at all times or at any time during the Term) to calculate and price the Customer's Utilisation on a Metered Utilisation basis even where the Customer's Utilisation is calculated and payable on a Fixed Utilisation basis or an Assumed Utilisation basis). This is to enable Cyferd to (from time to time):
- 10.20.1 calculate and price the Customer's actual Utilisation or to estimate the Customer's future Utilisation (including for any of the items referred to in **clause 10.16** and (in the case of Assumed Utilisation) to determine the accuracy of the Customer's Expected Utilisation);
- 10.20.2 monitor, track, peg, record, analyse, compare Utilisation of the Customer, all customers and/or any customers;
- 10.20.3 better understand how the Customer, all customers and/or any customers use the Cyferd Product and the Services (or any part);
- 10.20.4 calculate, price and/or estimate Utilisation generally for all and/or any customers;
- 10.20.5 price '*Subscription Fees*' generally, '*Premium Fees*' generally, Premium Features, Premium Subscriptions and/or any other fees generally;

- 10.20.6 help the Customer, all customers and/or any customers use the Cyferd Product and the Services (or any part) more efficiently; and/or
- 10.20.7 better understand sector or business needs and requirements, and the Customer hereby agrees to Cyferd doing the same. Cyferd does not have to share or disclose any of its findings in terms of the foregoing provisions of this **clause 10.20** (even on an anonymised basis) with any person other than that referred to in **clause 10.20.1** and then only and to the extent provided for in the **Meter Based/ Unit Based Utilisation Pricing Policy**. Where the Customer Ordered through a Cyferd Partner, Cyferd shall be entitled to share any share or disclose any of its findings in terms of the foregoing provisions of this **clause 10.20** with that Cyferd Partner from time to time.
- Other Use of Utilisation Units**
- 10.21 Utilisation Units can be used by Cyferd as the mechanism for the pricing of, invoicing for and payment of other products and/or services in connection with the Cyferd Product and the Services. An example of this could be as the mechanism for Premium Fees for Premium Feature(s) and/or Premium Subscription(s). An applicable Order Form could, for example, in this regard provide that the Premium Fees for a particular Premium Feature be “*X Utilisation Units per month for the balance of the Term*”. In that regard such pricing is not Utilisation based but based on/ tied to the pricing of Utilisation Units. What comprises a Utilisation Unit and the price of a Utilisation Unit shall be as provided for in the **Meter Based/ Unit Based Utilisation Pricing Policy** and any other applicable Cyferd Policy(ies) or other applicable documents forming part of the Agreement from time to time subject only to any special express terms in the applicable Order Form(s).
- 10.22 Unless and to the extent expressly provided for in the applicable Order Form(s) to the contrary (in which case such contrary terms shall apply in respect of the same), the Utilisation Units referred to in **clause 10.21** will **not** (where it is capable of being ‘*utilised*’) include the Utilisation of the product and/or service in question. Where so not included then, unless and to the extent expressly provided for in the applicable Order Form(s) to the contrary (in which case such contrary terms shall apply in respect of the same), the Utilisation of the product and/or service in question will be calculated and payable on a Metered Utilisation basis and **clause 10.19** shall apply in respect of the same. In this regard the Customer agrees and acknowledges the operation of the foregoing provisions of this **clause 10** in respect of Metered Utilisation (including **clause 10.16.5**, **clause 10.19** and **clause 10.20**) in this regard.
- 10.23 Unless and to the extent expressly provided for in the applicable Order Form(s) to the contrary (in which case such contrary terms shall apply in respect of the same), the Utilisation Units referred to in **clause 10.21** will be invoiced by Cyferd (or, where Ordered through a Cyferd Partner, that Cyferd Partner) monthly in arrears and each invoice will be payable in full within 30 (thirty) days of the date of such invoice (whether in respect of the Initial Term and/or any Further Term on automatic renewal) and payable by the Customer in full in cleared funds to Cyferd (or, where Ordered through a Cyferd Partner, that Cyferd Partner) within 30 (thirty) days of the date of such invoice.
- 10.24 Given the Utilisation Units referred to in **clause 10.21** are not Utilisation based, such Utilisation Units will **not** be included in the Monthly Utilisation Summary for the month in question as part of the number of Utilisation Units consumed by the Customer for that month in terms of Utilisation but can be included as a separate line item in the Monthly Utilisation Summary for non-Utilisation based Utilisation Units consumed by the Customer for that month.
- 10.25 The Utilisation referred to in **clause 10.22** will be included in the Monthly Utilisation Summary for the month in question as part of the number of Utilisation Units consumed by the Customer for that month in terms of Utilisation.
- Assumed Utilisation**
- 10.26 Utilisation Fees for the applicable Tenancy(ies) shall be calculated and payable on an Assumed Utilisation basis where the applicable Order Form(s) provide that is the case (and then to the extent provided). Assumed Utilisation is based on the Customer’s Expected Utilisation and is subject to the **Assumed Utilisation Fair Use Policy**.
- 10.27 The Customer agrees and acknowledges the operation of the foregoing provisions of this **clause 10** in respect of Metered Utilisation (including **clause 10.16.2**, **clause 10.16.3**, **clause 10.19** and **clause 10.20**) where the same applies even where Utilisation is intended to be calculated and payable on an Assumed Utilisation basis.
- 10.28 The Customer’s Expected Utilisation shall be documented (to Cyferd’s satisfaction) and needs to be agreed by Cyferd and the Customer (and, where Ordered through a Cyferd Partner, that Cyferd Partner).
- 10.29 The Customer’s Expected Utilisation shall be capable of being updated from time to time in writing where any updated version of the same is agreed (to Cyferd’s satisfaction) in writing by Cyferd and the Customer (and, where Ordered through a Cyferd Partner, that Cyferd Partner).
- 10.30 Cyferd shall be entitled to require that the Customer’s Expected Utilisation be updated to reflect the Customer’s actual or estimated future Utilisation in connection with agreeing:

- 10.30.1 Utilisation Fees for the purposes of such automatic renewal for the applicable Further Term where such Utilisation Fees are intended to be on an Assumed Utilisation basis; and/or
- 10.30.2 (subject to and having strict regard to the provisions of the **Assumed Utilisation Policy**) a revised pricing and payment for Utilisation Fees on an Assumed Utilisation basis when Excess Utilisation arises and the Customer would prefer to rebase the Assumed Utilisation pricing and payment structure rather than use the Metered Utilisation basis for dealing with the same.
- If such Customer's Expected Utilisation is not so updated then Cyferd shall be entitled to refuse to agree to the matter(s) referred to in **clause 10.30.1** and/or **clause 10.30.2** (as the case may be).
- 10.31 In respect of any Excess Utilisation where **clause 10.30.2** applies then Cyferd shall (unless and to the extent expressly provided for in the applicable Order Form(s) and/or the **Assumed Utilisation Policy** to the contrary (in which case such contrary terms shall apply in respect of the same)), as soon as it is reasonably practicable to do so, following the end of the month in question (and in any event within 5 (five) days following the end of such month) deliver to the Customer or, where Ordered through a Cyferd Partner, that Cyferd Partner the Monthly Utilisation Summary for the month in question showing, inter alia, the number of Utilisation Units consumed by the Customer for that month in respect of Utilisation and the amount of any Excess Utilisation for that month. In this regard and for the avoidance of doubt:
- 10.31.1 the Monthly Utilisation Summary shall, save in respect of manifest error, be final and binding on the Customer (and the Cyferd Partner in question where applicable) and be deemed to reflect the number of Utilisation Units consumed in the month in question and the amount of any Excess Utilisation for that month; and
- 10.31.2 where the Customer Ordered through a Cyferd Partner, the Customer agrees and acknowledges that it shall be that Cyferd Partner's responsibility to provide that referred to in **clause 10.31.1** to the Customer.
- In respect of any Excess Utilisation where **clause 10.30.2** does **not** apply then such Excess Utilisation shall be calculated and payable on a Metered Utilisation basis in accordance with the provisions of the **Assumed Utilisation Policy** and **clause 10.19** shall apply in respect of the same.
- Fixed Utilisation**
- 10.32 Utilisation Fees for the applicable Tenancy(ies) shall be calculated and payable on a Fixed Utilisation basis where the applicable Order Form(s) provide that is the case (and then to the extent provided).
- 10.33 The Customer agrees and acknowledges the operation of the foregoing provisions of this **clause 10** in respect of Metered Utilisation (including **clause 10.16.4** and **clause 10.20**) where the same applies even where Utilisation is intended to be calculated and payable on a Fixed Utilisation basis.
- Pre-Paid Utilisation Units**
- 10.34 Subject to **clause 10.35** Pre-Paid Utilisation Units can be purchased by the Customer pursuant to an Order Form. The Pre-Paid Utilisation Units Fee in question will be invoiced in full in advance and payable in full in cleared funds to Cyferd within 30 (thirty) days of the date of such invoice.
- 10.35 Where the Cyferd product and the Services were Ordered through a Cyferd Partner, the Customer will **not** be able to purchase Pre-Paid Utilisation Units from that Cyferd Partner and the Customer will **not** be able to use Pre-Paid Utilisation Units to pay all or any of its Utilisation Fees **UNLESS AND THEN TO THE EXTENT**, on a case by case basis and at Cyferd's sole discretion: (i) Cyferd permits in writing that the Customer can purchase Pre-Paid Utilisation Units from the Cyferd Partner in question and/or Cyferd and use them; **and** (ii) (in connection with (i)) Cyferd agrees with the Cyferd Partner in question that (i) will apply and how that will work in practice with and/or amend (if necessary) the arrangements it has for the pricing, invoicing and payment of the Customer's Utilisation as between it and that Cyferd Partner.
- 10.36 Cyferd shall record all transactions for the Customer in respect of purchases and/or use of Pre-Paid Utilisation Units and keep details of: (i) the number of Pre-Paid Utilisation Units held by the Customer from time to time; and (ii) the aggregate face value of the Pre-Paid Utilisation Units so held from time to time. Pre-Paid Utilisation Units will not be '*available*' for use by the Customer unless and until Cyferd has received in full in cleared funds the Pre-Paid Utilisation Units Fee for the same.
- 10.37 Where the Customer has a positive balance of available Pre-Paid Utilisation Units at the time an invoice for Utilisation Fees is raised by Cyferd to the Customer then Cyferd shall use a corresponding number of the Customer's available Pre-Paid Utilisations Units (in terms of the aggregate face value of the same) to settle all or as much as possible of such invoice and update the records referred to in **clause 10.36** accordingly.
- 10.38 Following any transaction(s) referred to in **clause 10.37** Cyferd shall, as soon as it is reasonably practicable to do so, notify the Customer of the transaction(s) in question, notify the Customer of its post transaction(s) balance (in terms of aggregate number and aggregate value) of

available Pre-paid Utilisation Units and provide the Customer with a remittance in respect of the same.

No renewal/ termination

10.39 Where the Customer is expressly entitled under these Terms/ this MSA to terminate under **clauses 2.3, 21.2.1, 21.3.1** and/or any other provision of the Agreement that expressly refers to this **clause 10.39** applying:

10.39.1 the Agreement during the Term and automatic renewal does not occur;
10.39.2 its Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy during the Term to take effect on an anniversary date of the Commencement Date (but not the end of the Term) and where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate; or

10.39.3 any Ordered Premium Feature(s) and/or Premium Subscription(s) during the Term to take effect on an anniversary date of the Commencement Date (but not the end of the Term) and where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate,

then the Customer will not be charged for what would be:

10.39.4 (in the case of **clause 10.39.1**) the next Further Term;

10.39.5 (in the case of **clause 10.39.2**) the Subscription Fee (or part of it (as the case may be)) for the Non-Production Tenancy in question for the next year(s) of the Term following such termination date; or

10.39.6 (in the case of **clause 10.39.3**) the Premium Fees (or part of it (as the case may be)) for the Purchased Item(s) in question for the next year(s) of the Term following such termination date,

and, unless and to the extent expressly provided for to the contrary in these Terms/ this MSA: (i) the Customer will not receive any refunds or credits for amounts that have already been charged; and (ii) and the Customer shall remain liable for all payments relating to the:

10.39.7 (in the case of **clause 10.39.1**) the Term; or

10.39.8 (in the case of **clause 10.39.2** or **clause 10.39.3**) the year ending with such termination date.

10.40 Where the Customer is expressly entitled under these Terms/ this MSA to terminate under **clauses 9.5, 11.5.3, 13.4, 21.5.4, 21.5.5**, any of **clauses 21.5.9 to 21.5.13** (inclusive) and/or any other provision of the Agreement that expressly refers to this **clause 10.40** applying:

10.40.1 the Agreement;

10.40.2 its Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate; or

10.40.3 any Ordered Premium Feature(s) and/or Premium Subscription(s), where such termination is effective immediately upon receipt by Cyferd of the notice to terminate, the Customer shall (subject to **clause 27.2**) receive a refund of:

10.40.4 (in the case of **clause 10.40.1**) any Subscription Fee(s) paid in respect of the part of the Term affected by such termination where it is the Agreement that has been terminated; or

10.40.5 (in the case of **clause 10.40.2**) the Subscription Fee (or part of it (as the case may be)) for the Non-Production Tenancy in question relating to the period after the date of termination;

10.40.6 (in the case of **clause 10.40.3**) the Premium Fees (or part of it (as the case may be)) for the Purchased Item(s) in question relating to the period after the date of termination,

within 30 (thirty) days of the date of such termination. Where any Purchased Item(s) is/are terminated under this **clause 10.40** then **clause 22** shall apply. For the avoidance of doubt, for the purposes of this **clause 10.40**:

10.40.7 the Customer shall **not** be entitled to any refund of Utilisation Fees or Pre-Paid Utilisation Fees;

10.40.8 the Customer shall remain liable for all payments relating to the period prior to such termination including Utilisation Fees in respect of the Purchased Item(s) in question;

10.40.9 the Customer cannot exercise its right to terminate whilst the Customer is in breach of the Agreement (or any part of it) (including late payment of any monies owing to Cyferd) and such breach is then continuing/ has not been resolved to Cyferd's satisfaction;

10.40.10 the Customer cannot exercise its right to terminate where the products and services the Customer has the benefit of are:

10.40.10.1 use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial; and/or

- 10.40.10.2 No Charge Products; and
- 10.40.11 (where the Customer Ordered through a Cyferd Partner) **clause 10.4.4** shall apply in respect of any such refund and this **clause 10.40** shall be construed accordingly.
- Late payment**
- 10.41 If any invoiced amount owing by the Customer under or in connection with the Agreement is not received in full in cleared funds by Cyferd by the due date for payment, then without limiting Cyferd's rights or remedies:
- 10.41.1 Cyferd shall have the right to charge interest any such overdue amount at the rate of 8% (eight percent) per year above the base rate of HSBC UK Bank plc, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment; and
- 10.41.2 Cyferd may condition future subscription renewals (including any automatic renewal under **clause 2.2**) and Order Forms on payment terms shorter than those specified in these Terms/ this MSA. This **clause 10.41.2** shall take precedence over anything to the contrary in any Order Form.
- Acceleration**
- 10.42 If any invoiced amount owing by the Customer under or in connection with the Agreement is 30 (thirty) or more days overdue, then without limiting Cyferd's rights or remedies, Cyferd may accelerate the Customer's payment obligations such that all monies payable by the Customer to Cyferd under or in connection with the Agreement become immediately due and payable. This **clause 10.42** shall take precedence over anything to the contrary in any Order Form.
- Changes to fees/ calculation of fees**
- 10.43 Cyferd shall be entitled to:
- 10.43.1 increase the annual price of Subscription Fees;
- 10.43.2 (in the case of Utilisation Fees calculated and payable on a Metered Utilisation basis) increase or decrease what comprises a Utilisation Unit and/or increase the price of a Utilisation Unit; and/or
- 10.43.3 increase any Premium Fees,
- at any time by notice to the Customer **PROVIDED THAT** Cyferd shall not be entitled to do so more than twice in any calendar year. If and to the extent such increase or (in the case of **clause 10.43.2**) decrease amounts to an Update or a New Document then **clause 9** shall also apply in that regard.
- 10.44 This **clause 10** shall survive termination or expiry of the Agreement.
- 11. Warranties**
- 11.1 Each party represents and warrants to the other that it has the right, power and authority to enter into these Terms/ this MSA and the Agreement and grant to the other the rights (if any) contemplated these Terms/ this MSA and the Agreement and to perform its obligations under these Terms/ this MSA and the Agreement.
- 11.2 Subject to the remainder of this **clause 11**, Cyferd warrants to the Customer only that:
- 11.2.1 (in respect of each Tenancy) that the Cyferd Product (including any Features (which are not Premium Features) but excluding any Apps for this purpose) made available to the Customer (via the Tenancy in question) pursuant to the Agreement will, for the duration of the Term, operate materially in accordance with its applicable Documentation when used (via that Tenancy and subject to the applicable Access Parameters and Utilisation Parameters) in accordance with the Agreement under normal use and normal circumstances;
- 11.2.2 during the Term Cyferd will not materially decrease the overall functionality of the Cyferd Product;
- 11.2.3 each Premium Feature Ordered shall operate materially in accordance with its applicable Documentation when used in accordance with the Agreement under normal use and normal circumstances during the applicable subscription term or, if not subscription-based, for a duration of 90 (ninety) days; and
- 11.2.4 it shall provide each of the Services with reasonable care and skill.
- In this regard and for the avoidance of doubt, the Customer will need to input certain data and other information that is outside the control of Cyferd to use the Tenancy in question, any Apps and any Features and to create, modify, customise, maintain, update and/or test any Apps.
- 11.3 The Customer acknowledges that the warranties in **clause 11.2** shall not apply to:
- 11.3.1 use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial;
- 11.3.2 No Charge Products;
- 11.3.3 Non-Cyferd Products/ Services;
- 11.3.4 Non-Cyferd Apps;
- 11.3.5 Cyferd Apps;
- 11.3.6 any other Apps; and/or
- 11.3.7 any Additional Services or the subject matter of any Additional Services. *Where any Additional Services are provided by or on behalf of Cyferd then any applicable*

warranties in the ASA Terms apply to such Additional Services subject to the terms of the applicable ASA.

The Customer further acknowledges that **Cyferd does not provide any support for and is not obliged to maintain Cyferd Apps.**

- 11.4 Access to and use of the Cyferd Product and the Services may be subject to delays, interruptions, errors, defects or other problems resulting from use of the internet or public electronic communications networks used by Cyferd, the Customer or third-parties. The Customer acknowledges that such risks are inherent in cloud services and that neither shall Cyferd have any liability for any such delays, interruptions, errors or other problems nor does Cyferd warrant that the Cyferd Product and the Services (or any Tenancy or any App or any Feature) will be wholly free from delays, interruptions, errors, defects or other problems at any time.
- 11.5 To the maximum extent permitted by law, Cyferd's sole liability, and the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for breach of the warranties in **clause 11.2** (or any of them) will be, at Cyferd's sole option, to either:
- 11.5.1 (use commercially reasonable efforts and at no charge to the Customer) repair or replace the non-conforming/ impacted Tenancy or Feature or Service within a reasonable time; or
- 11.5.2 (whether or not it has first attempted to repair or replace the non-conforming/ impacted Tenancy or Feature or Service) refund to the Customer the part of the Subscription Fee(s) and/or Premium Fees (but not any Utilisation Fees or any Pre-Paid Utilisation Fees) paid by the Customer for the non-conforming/ impacted Tenancy or Feature or Service, for the relevant impacted period/ period of non-conformance to the extent where the Customer has not had the benefit of or been able to use the non-conforming/ impacted Tenancy or Feature or Service; or
- 11.5.3 if Cyferd determines repair/ replacement to be impracticable, either party may by notice elect to terminate, effective immediately upon receipt of such notice:
- 11.5.3.1 the Agreement; or
(if applicable and where possible where they are/ it is the sole item(s) affected by the non-conforming/ impacted Tenancy or Feature or Service):
- 11.5.3.2 its Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate; or
- 11.5.3.3 any Ordered Premium Feature(s) and/or Premium Subscription(s). In the event of such valid termination the Customer shall (subject to **clause 27.2**) receive a refund in accordance with **clause 10.40**. Where any Purchased Item(s) is/are terminated under this **clause 11.5.3** then **clause 22** shall apply.
- 11.6 The Customer acknowledges that the warranties in **clause 11.2** are subject to the limitations set out in **clause 19** and shall not apply to the extent that any non-conforming/ impacted Tenancy or Feature or Service arises from, is in connection with, or relates to:
- 11.6.1 incorrect operation or use of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) by the Customer, the Administrator or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
- 11.6.2 any adaptation(s), modification(s) or alteration(s) by or on behalf of the Customer where the same caused a defect (unless and to the extent any such adaptation(s) or modification(s) or alteration(s) was/were made as part of the provision of any Additional Services by or on behalf of Cyferd);
- 11.6.3 any No Charge Products;
- 11.6.4 any Non-Cyferd Products/ Services;
- 11.6.5 any Non-Cyferd Apps;
- 11.6.6 any Cyferd Apps;
- 11.6.7 any other Apps;
- 11.6.8 any Additional Services or the subject matter of any Additional Services. *Where any Additional Services are provided by or on behalf of Cyferd then any applicable warranties in the ASA Terms apply to such Additional Services subject to the terms of the applicable ASA;*
- 11.6.9 use of any of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) other than for the purposes for which it is intended;
- 11.6.10 use of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) with other software or services or on equipment with which it is incompatible (unless and to the extent Cyferd expressly recommended or required the use of that other software or service or equipment in the Documentation or as part of the provision of any Additional Services by or on behalf of Cyferd);
- 11.6.11 any act by any third-party (including hacking or the introduction of any virus or malicious code);

- 11.6.12 any modification of the Cyferd Product and the Services (or any part including any Tenancy or Feature) (other than that undertaken by Cyferd or at its direction); and/or
 - 11.6.13 any breach of the Agreement by the Customer (or by the Administrator or any Authorised User).
- 11.7 Cyferd may make Non-Cyferd Materials available for the Customer's use in connection with the Cyferd Product and the Services (or any part including any Tenancy, App or Feature). The Customer agrees that:
- 11.7.1 Cyferd has no responsibility for the use or consequences of use of any Non-Cyferd Materials;
 - 11.7.2 the Customer's use of any Non-Cyferd Materials shall be governed by the applicable terms between the Customer and the owner or licensor of the relevant Non-Cyferd Materials;
 - 11.7.3 the Customer is solely responsible for any Non-Cyferd Materials used in connection with the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and for compliance with all applicable third-party terms which may govern the use of such Non-Cyferd Materials; and
 - 11.7.4 the continued availability, compatibility with the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and performance of the Non-Cyferd Materials is outside the control of Cyferd and Cyferd has no responsibility for any unavailability of or degradation in the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) to the extent resulting from the availability, incompatibility or performance of any of the Non-Cyferd Materials;
- 11.8 The Customer acknowledges that no liability or obligation is accepted by Cyferd (howsoever arising whether under contract, tort, in negligence or otherwise):
- 11.8.1 that the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and any other Purchased Item(s) shall meet the Customer's individual needs, whether or not such needs have been communicated to Cyferd;
 - 11.8.2 that the operation of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and any other Purchased Item(s) shall not be subject to minor errors or defects; or
 - 11.8.3 that the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and any other Purchased Item(s) shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible in the Documentation.
- 11.9 Unless expressly provided for in this **clause 11** or elsewhere in the Agreement, and subject to **clause 19.7** all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise are disclaimed and excluded to the maximum extent permitted by law. This includes, but is not limited to:
- 11.9.1 warranties of title; or
 - 11.9.2 warranties of non-infringement; or
 - 11.9.3 warranties of merchantability; or
 - 11.9.4 warranties of satisfactory quality; or
 - 11.9.5 warranties of fitness for a particular purpose (even in cases where Cyferd has been informed of such a purpose).
- 11.10 This **clause 11** shall survive termination or expiry of the Agreement.
- 12. Intellectual property**
- 12.1 All Intellectual Property Rights in and to the Cyferd Product (including in all Tenancy(ies) and Features), all Cyferd Apps, all Cyferd App Customisations, all Documentation, all Cyferd Materials, the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent and the Cyferd Web Client and, in each case and where applicable, the *'look and feel'* of the same and any and all underlying technology, software and any modifications or derivative works of the same created by or for Cyferd from time to time (including any Intellectual Property Rights assigned to Cyferd (or to such third-party as Cyferd may have elected) under the Agreement but, for the avoidance of doubt, excluding Intellectual Property Rights in and to any Customer App Customisations) (together the "**Relevant Items**") belong to and shall remain vested in Cyferd or the relevant Licensor. To the extent that the Customer, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Relevant Items (or any of them or any part of them), the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Cyferd or such third-party as Cyferd may elect against no or nominal consideration. The Customer shall execute all such documents and do such things as Cyferd may consider necessary to give effect to this **clause 12.1**.
- 12.2 Cyferd has no obligation to deliver any copies of any software to the Customer in connection with the Agreement.
- 12.3 The Customer and Authorised Users may be able to store or transmit Customer Data using the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)), the

- Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent and the Cyferd Web Client and the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) the Cyferd Android App, the Cyferd iOS App, the Cyferd Remote Agent and the Cyferd Web Client may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for Cyferd (and each of its direct and indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the applicable services under the Agreement or to exercise or perform Cyferd's rights, remedies and obligations under the Agreement.
- 12.4 To the extent Non-Cyferd Materials are made available to, or used by or on behalf of the Customer or any Authorised User in connection with the use or provision of the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s), such use of Non-Cyferd Materials (including all licence terms) shall be exclusively governed by applicable third-party terms notified or made available by Cyferd or the third-party and not by the Agreement. Cyferd grants no Intellectual Property Rights or other rights in connection with any Non-Cyferd Materials.
- 12.5 Cyferd grants no Intellectual Property Rights or other rights in connection with any Customer App Customisation(s). Cyferd does not claim to own any Intellectual Property Rights or other rights in any Customer App Customisation(s) unless and to the extent that the same:
- 12.5.1 is or comprises any Relevant Items (or any of them or any part of them) in which case **clause 12.1** applies to that extent; and/or
- 12.5.2 (notwithstanding the generality of **clause 12.5.1** and as referred to in **clause 12.6.2**) is independently created by or for Cyferd (without any prior actual knowledge of the Customer App Customisation(s) in question) and the same comprises a Cyferd App or a Cyferd App Customisation (and a Relevant Item (or part of one)).
- Subject to that granted under **clause 12.3**, Cyferd does not claim to own any Intellectual Property Rights or other rights in any Customer Data or any Non-Cyferd Materials or any Non-Cyferd Products/ Services.
- 12.6 The Customer agrees and acknowledges the following in respect of a Customer App Customisation:
- 12.6.1 it could be the subject matter of an IP Claim or other third-party challenge in which case **clause 13.5.2** shall apply where such IP Claim arises in whole or in part from such Customer App Customisation;
- 12.6.2 it may not be unique - any other Cyferd Customer, any Cyferd Partner and/or Cyferd could create/ carry out the same or similar Customer App Customisation and may have already done so at the time the Customer App Customisation is created/ carried out;
- 12.6.3 (where it is created/ carried out by a third-party (as certain Additional Services/ similar services or otherwise and not by or on behalf of Cyferd) for the Customer, and the Contract in respect of such Customer App Customisation purports to provide that the Intellectual Property Rights in respect of the same belong to and shall remain vested in the third-party) neither the Customer nor such third-party has any Intellectual Property Rights or other rights in the Relevant Items (or any of them or any part of them) and **clause 12.1** applies in that regard; and
- 12.6.4 the Customer will only be able to use the Customer App Customisation (and any App) if it has a valid and subsisting Main Subscription. The Customer App Customisation cannot (and no App can) operate without the Cyferd Product and the applicable other Relevant Items.
- 12.7 Without prejudice to the right of the Customer or any third-party to challenge the validity of the Cyferd IPR, the Customer shall not do, or authorise any third-party to do, any act which would, or might invalidate, or be inconsistent with, Cyferd IPR or any Intellectual Property Rights of Cyferd and its Affiliates and its/ their respective suppliers or licensors and shall not omit or authorise any third-party to omit to do any act which, by its omission, would have that effect or character.
- 12.8 Cyferd makes no representation or warranty as to the validity or enforceability of the Cyferd IPR and/or all other Intellectual Property Rights embodied within Relevant Items (or any of them or any part of them) of Cyferd and its Affiliates and its/ their respective suppliers or licensors (including any Licensors) nor as to whether the same infringe on any Intellectual Property Rights of third-parties.
- 12.9 Cyferd may use any feedback and suggestions for improvement relating to the Cyferd Product and the Services (or any part) any Cyferd Apps, any Cyferd App Customisations, any Features and/or any other Purchased Item(s) (or any part) provided (directly or indirectly) by the Customer or any Authorised User without charge or limitation ("**Feedback**"). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Cyferd or such third-party as Cyferd may elect at the time such Feedback is first provided to

- Cyferd against no or nominal consideration. The Customer shall execute all such documents and do such things as Cyferd may consider necessary to give effect to this **clause 12.9**.
- 12.10 The Customer hereby waives (and shall ensure all relevant third-parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to Cyferd (or to such third-party as Cyferd may have elected) under the Agreement. The Customer shall execute all such documents and do such things as Cyferd may consider necessary to give effect to this **clause 12.10**.
- 12.11 Except for the rights expressly granted in the Agreement, the Customer, any Authorised User, any Affiliate of the Customer and their direct and indirect sub-contractors, shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Relevant Items (or any of them or any part of them) and no Intellectual Property Rights of either party are transferred or licensed as a result of the Agreement.
- 12.12 This **clause 12** shall survive the termination or expiry of the Agreement.
- 13. Defence against infringement claims**
- 13.1 Subject to **clauses 13.2** and **13.5**, Cyferd shall:
- 13.1.1 defend at its own expense any claim brought against the Customer by any third-party alleging that the Customer's use of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom, (if applicable) any Applicable Territory and any other territory expressly provided for in the applicable Order Form as applying for the purposes of this **clause 13.1.1** (an "IP Claim");
- 13.1.2 pay, subject to **clause 13.3**, all costs and damages awarded or agreed in settlement or final judgment of an IP Claim.
- 13.2 The provisions of **clause 13.1** shall not apply unless the Customer:
- 13.2.1 promptly (and in any event within 7 (seven) days) notifies Cyferd upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
- 13.2.2 makes no comment or admission and takes no action that may adversely affect Cyferd's ability to defend or settle the IP Claim;
- 13.2.3 provides all assistance reasonably required by Cyferd subject to Cyferd paying the Customer's reasonable costs; and
- 13.2.4 gives Cyferd sole authority to defend or settle the IP Claim as Cyferd considers appropriate.
- 13.3 The provisions of **clause 19** shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under **clause 13.1**.
- 13.4 In the event of any IP Claim Cyferd may elect to terminate the Agreement immediately by written notice effective immediately upon receipt by Cyferd of such notice. In the event of such valid termination the Customer shall (subject to **clause 27.2**) receive a refund in accordance with **clause 10.40**. Where the Agreement is terminated under this **clause 13.4** then **clause 22** shall apply. This **clause 13.4** is without prejudice to the Customer's rights and remedies under **clause 13.1**.
- 13.5 Cyferd shall have no liability or obligation under this **clause 13** in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- 13.5.1 any adaptation(s), modification(s) or alteration(s) by or on behalf of the Customer of the type referred to in **clauses 11.6.2** and/or **11.6.12** or otherwise of or to the Cyferd Product and the Services (or any part including any Tenancy, App or Feature);
- 13.5.2 any Customer App Customisation;
- 13.5.3 any Non-Cyferd Materials;
- 13.5.4 any Non-Cyferd Apps;
- 13.5.5 any Non-Cyferd Products/ Services;
- 13.5.6 any Customer Data;
- 13.5.7 POC Trial or No Charge Products (or any Services provided in connection with them);
- 13.5.8 any Open Source Software;
- 13.5.9 any breach of the Agreement by the Customer (or by the Administrator or any Authorised User);
- 13.5.10 installation or use of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and/or any other Purchased Item(s) otherwise than in accordance with the Agreement and the Documentation; or
- 13.5.11 installation or use of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and/or any other Purchased Item(s) in combination with any software, hardware or data that has not been supplied or expressly authorised by Cyferd.

- 13.6 Subject to **clause 19.7**, the provisions of this **clause 13** set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.
- 13.7 This **clause 13** shall survive the termination or expiry of the Agreement.
- 14. Customer Data**
- 14.1 Customer Data shall at all times remain the property of the Customer or its licensors.
- 14.2 Except to the extent Cyferd has direct obligations under data protection laws, the Customer acknowledges that Cyferd has no control over any Customer Data hosted as part of the provision of the Services and will not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data and that its use (including use in connection with the Cyferd Product and the Services) complies with all applicable laws and Intellectual Property Rights.
- 14.3 The **Storage of and Access to Customer Data Policy** shall apply in respect of or in connection with Customer Data.
- 14.4 Cyferd routinely undertakes regular backups of the Cyferd Product (including all Tenancy(ies) (which may include Customer Data) for its own business continuity purposes and/or to comply with applicable laws/ regulatory requirements. The Customer acknowledges that such steps do not in any way make Cyferd responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. Subject to its direct obligations under data protection laws and to **clause 14.3**, to the maximum extent permitted by applicable law, Cyferd shall not be responsible (under any legal theory, including in negligence) for any loss of availability of, or corruption or damage to, any Customer Data.
- 14.5 Unless otherwise set out in the applicable Order Form or subsequently agreed by the parties in writing and having regard to any provisions in this regard in the **Storage of and Access to Customer Data Policy**, the Customer hereby irrevocably instructs that Cyferd shall within 45 (forty-five) days of the date of termination of:
- 14.5.1 the Agreement; or
- 14.5.2 the Customer's Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate; or
- 14.5.3 any Ordered Premium Feature(s) and/or Premium Subscription(s),
(as the case may be) relating to the processing of (in terms of **clause 14.5.1**) the Customer Data/ (in terms of **clause 14.5.2** and/or **clause 14.5.3**) the Customer Data in question securely dispose of such Customer Data/ Customer Data in question processed in relation to:
- 14.5.4 (in terms of **clause 14.5.1**) the Customer's Access to and use of the Cyferd Product (including all applicable App(s) and Feature(s)) and the Services and any other and any other Purchased Item(s) in connection with the same under and in accordance with the Agreement;
- 14.5.5 (in terms of **clause 14.5.2**) the Customer's Access to and use of the Cyferd Product in respect of such particular Non-Production Tenancy; or
- 14.5.6 (in terms of **clause 14.5.3**) the Customer's use of the Cyferd Product in respect of the Premium Feature(s) and/or Premium Subscription(s) in question,
(as the case may be). Cyferd obligations under this **clause 14.5** shall not apply to any backups referred to in **clause 14.4**.
- 14.6 This **clause 14** shall survive termination or expiry of the Agreement.
- 15. Confidentiality and security of Customer Data**
- 15.1 *It being acknowledged in this regard by the Customer that Cyferd will only 'see' or 'have access to' Customer Data if the Customer discloses the same to Cyferd or where Cyferd is expressly entitled to/ required to 'see' or 'have access' to the same under or in connection with the Agreement (in this **clause 15**, "**Disclosed Customer Data**"):* Cyferd shall maintain the confidentiality of any Disclosed Customer Data and any Administrative Data shall not without the prior written consent of the Customer or in accordance with the Agreement, disclose or copy the Disclosed Customer Data or Administrative Data other than as necessary for the performance of providing Access to and use of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s) or its express rights and obligations under the Agreement.
- 15.2 Cyferd shall implement technical and organisational security measures in accordance with the **Data Protection Policy**, the **Privacy Policy (Platform)** and/or the **Storage of and Access to Customer Data Policy** (as applicable).
- 15.3 Cyferd:
- 15.3.1 undertakes to disclose the Disclosed Customer Data and/or the Administrative Data only to those of its officers, employees, agents, contractors and direct and indirect sub-contractors (including any relevant Cyferd Partner(s)) and its, Affiliates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Agreement or as otherwise reasonably necessary for the

- provision or receipt of Access to and use of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s), and
- 15.3.2 shall be responsible to the Customer for any acts or omissions of any of the persons referred to in **clause 15.3.1** in respect of the confidentiality and security of the Disclosed Customer Data and/or the Administrative Data as if it was Cyferd's own.
- 15.4 The provisions of this **clause 15** shall not apply to information which:
- 15.4.1 is or comes into the public domain through no fault of Cyferd, its officers, employees, agents or contractors;
- 15.4.2 is lawfully received by Cyferd from a third-party (including any Cyferd Partner) free of any obligation of confidence at the time of its disclosure;
- 15.4.3 is independently developed by Cyferd (or any of its Affiliates or any person acting on its or their behalf (including any Cyferd Partner)): (i) without access to or use of such Confidential Information; or (ii) is generic or general or anonymised in its nature (including that referred to in **clause 17.5(iii)**); or (iii) is of the type referred to in **clause 10.20**; or
- 15.4.4 is required by law, by court or governmental or regulatory order to be disclosed, provided that **clauses 15.4.1 to 15.4.3** (inclusive) shall not apply to Protected Data.
- 15.5 This **clause 15** shall survive the termination or expiry of the Agreement for a period of 5 (five) years.
- 15.6 To the extent any Disclosed Customer Data or Administrative Data is Protected Data, Cyferd shall ensure that such Disclosed Customer Data or Administrative Data may be disclosed or used only to the extent such disclosure or use does not conflict with any of Cyferd's obligations under the **Data Protection Policy**. **Clauses 15.1 to 15.5** (inclusive) are subject to this **clause 15.6**.
- 16. Cyferd's Confidential Information**
- 16.1 The Customer shall maintain the confidentiality of Confidential Information and shall not without the prior written consent of Cyferd, disclose, copy or modify the Confidential Information (or permit others to do so) other than as necessary for the performance of its express rights and obligations under the Agreement.
- 16.2 The Customer undertakes to:
- 16.2.1 disclose the Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Agreement;
- 16.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this **clause 16**; and
- 16.2.3 be responsible for the acts and omissions of those third-parties referred to in this **clause 16.2** as if they were the Customer's own acts or omissions
- 16.3 The Customer shall give notice to Cyferd of any unauthorised use, disclosure, theft or loss of the Confidential Information immediately upon becoming aware of the same.
- 16.4 The provisions of this **clause 16** shall not apply to information which:
- 16.4.1 is or comes into the public domain through no fault of the Customer, its officers, employees, agents or contractors;
- 16.4.2 is lawfully received by the Customer from a third-party free of any obligation of confidence at the time of its disclosure;
- 16.4.3 is independently developed by the Customer, without access to or use of the Confidential Information; or
- 16.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the Customer: (i) to the extent it is legally permitted to do so, discloses solely the part of the Confidential Information strictly necessary to do so; (ii) where possible, notifies Cyferd at the earliest opportunity before making any disclosure; and (iii) takes into account the reasonable requests of Cyferd in relation to the content of such disclosure.
- 16.5 If the Customer has entered into a confidentiality agreement or non-disclosure agreement or similar document (in this **clause 16.5** an "NDA") with Cyferd, the Customer agrees that the NDA is incorporated by reference and the terms of the NDA will continue to apply to the Agreement except that: the terms of the NDA will continue to apply to the Agreement with respect to the Confidential Information (as defined in the NDA) disclosed pursuant to this Agreement even if the NDA expires; the Confidential Information (as defined in the NDA) revealed or otherwise disclosed through the Customer's performance of its obligations under the Agreement may be used or reproduced solely to the extent necessary to further and fulfil the purposes of this Agreement; and termination or expiry of the Agreement will not affect the validity and effect of the NDA. The NDA is solely designed to supplement the Agreement and is not a replacement of/for any term of the Agreement.
- 16.6 This **clause 16** shall survive the termination or expiry of the Agreement for a period of 5 (five) years.

17. Monitoring compliance

- 17.1 During the Term and for 12 (twelve) months thereafter the Customer shall maintain full and accurate records relating to the Administrator's, Authorised Users' and the Customer's Access to and use of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s).
- 17.2 The Customer shall allow and procure for Cyferd (and any representatives of Cyferd) access to its premises and the premises of any applicable third-parties (albeit in the case of any such third-party premises such obligation shall be qualified to using its reasonable endeavours to procure such access) to:
- 17.2.1 inspect use of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s); and
- 17.2.2 audit (and take copies of) the relevant records of the Customer,
- in each case to the extent necessary to verify that the Customer is in compliance with its obligations under the Agreement. In this regard the Customer also expressly and irrevocably authorises Cyferd to monitor, review, evaluate and record the data logs (these show activity and behaviour but not Customer Data) that Cyferd has/ has access to from time to time in connection with the Customer's use of the Cyferd Product and the Services.
- 17.3 Unless: (i) otherwise agreed in writing; (ii) Cyferd suspects the Customer has committed fraud or is in breach of the Agreement; and/or (iii) such inspection and audit is required by law, by court or by a governmental or regulatory authority, the inspection and audit referred to in **clause 17.2** shall be undertaken:
- 17.3.1 during the Customer's normal business hours on Business Days;
- 17.3.2 subject to the provision by Cyferd of a minimum of 7 (seven) days' notice; and
- 17.3.3 not more than twice in any calendar year.
- This **clause 17.3** does not apply to the monitoring, reviewing, evaluating and recording by Cyferd in respect of the data logs referred to in **clause 17.2**.
- 17.4 At Cyferd's request from time to time the Customer shall promptly (and in any event within 5 (five) days of such request) provide Cyferd with copies of the records referred to in **clause 17.1**.
- 17.5 Cyferd may monitor, collect, store and use information on the use and performance of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s) to detect threats or errors to the same and/or Cyferd's operations and for the purposes of: (i) the further development and improvement of Cyferd's products and services; (ii) for the matters referred to in **clause 10.20**, and (iii) (where such information is generic or general or anonymised in its nature) to provide (whether with or without similar information from other Cyferd Customers) data analysis or trending analysis to the Customer, to Cyferd Customers within the same or a similar or a complementary industry, to industry groups or marketers within the same or a similar or a complementary industry and/or to applicable governmental or regulatory authorities, provided that such activities at all times comply with the **Privacy Policy (Platform)** and the **Data Protection Policy**.
- 17.6 This **clause 17** shall survive termination or expiry of the Agreement for a period of 12 (twelve) months.

18. Relief

To the maximum extent permitted by law, Cyferd shall **not** be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of the Agreement (or any part of it) to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

19. Limitation of liability

- 19.1 The extent of Cyferd's liability under or in connection with the Agreement (regardless of whether such liability arises in tort, contract, breach of statutory duty, or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this **clause 19**.
- 19.2 Subject to **clauses 19.3, 19.4** and **19.7**, Cyferd's aggregate liability in respect of each individual Purchased Item (and all Services provided in connection with the same) (howsoever arising under or in connection with the Agreement) shall not exceed an amount equal to (as applicable) the Subscription Fee or the Premium Fees (or, where Ordered through a Cyferd Partner, the amount referred to in **clause 10.4.3**) for the relevant Purchased Item paid (or deemed to have been paid for the purposes of **clause 10.4.3**) to Cyferd by the Customer in the 12 (twelve) month period immediately preceding the first incident giving rise to any claim under the Agreement. For the avoidance of doubt, Utilisation Fees shall be ignored for the purposes of this **clause 19.2**.
- 19.3 Subject to **clauses 19.4** and **19.7**, Cyferd's aggregate liability in respect of each POC Trial or No Charge Product (and all Services provided in connection with the same) (howsoever arising under or in connection with the Agreement) shall not exceed £500 (five hundred pounds Sterling).
- 19.4 Subject to **clause 19.7**, Cyferd's total aggregate liability howsoever arising under or in connection with the Agreement shall not exceed an amount equal to the aggregate of all Subscription Fees and Premium Fees for all Purchased Item(s) (or, where Ordered through a

- Cyferd Partner, the amount referred to in **clause 10.4.3**) for the relevant Purchased Item(s) paid (or deemed to have been paid for the purposes of **clause 10.4.3**) to Cyferd by the Customer in the 12 (twelve) month period immediately preceding the first incident giving rise to any claim under the Agreement. For the avoidance of doubt, Utilisation Fees shall be ignored for the purposes of this **clause 19.4**.
- 19.5 Subject to **clause 19.7**, Cyferd shall **not** be liable for consequential, indirect, pure economic, punitive or special losses.
- 19.6 Subject to **clause 19.7**, Cyferd shall **not** be liable for any of the following (whether direct or indirect):
- 19.6.1 loss of profit or revenue;
 - 19.6.2 loss of business;
 - 19.6.3 destruction, loss of use or corruption of data;
 - 19.6.4 loss or corruption of software or systems;
 - 19.6.5 loss or damage to equipment;
 - 19.6.6 loss of use;
 - 19.6.7 loss of production;
 - 19.6.8 loss of contract;
 - 19.6.9 loss of commercial opportunity;
 - 19.6.10 loss of savings, discount or rebate (whether actual or anticipated);
 - 19.6.11 harm to reputation or loss of goodwill; and/or
 - 19.6.12 wasted expenditure.
- 19.7 Notwithstanding any other provision of these Terms/ this MSA (or any other provision of any other document that comprises the Agreement), Cyferd's liability shall not be limited in any way in respect of the following:
- 19.7.1 death or personal injury caused by negligence;
 - 19.7.2 fraud or fraudulent misrepresentation; or
 - 19.7.3 any other losses which cannot be excluded or limited by applicable law.
- 19.8 Subject to **clause 19.7**, no action, regardless of form arising out of the Agreement may be brought by the Customer more than 1 (one) year following the date the cause of action in question arose.
- 19.9 The Customer agrees that the limitations in this **clause 19** are reasonable given its commercial position and its ability to obtain insurance in respect of the risks arising under or in connection with the Agreement.
- 19.10 This **clause 19** shall survive the termination or expiry of the Agreement.
- 20. Suspension**
- 20.1 Cyferd may suspend the Customer's Access to and use of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) (or any part) and/or any specific other Purchased Item(s) if:
- 20.1.1 Cyferd suspects that there has been any misuse of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) or any other Purchased Item(s) or breach of the Agreement;
 - 20.1.2 the Customer fails to pay any sums due to Cyferd by the due date for payment;
 - 20.1.3 (where Ordered through a Cyferd Partner and as referred to in **clause 10.4.2**) Cyferd does not receive any corresponding payment(s) from the Cyferd Partner in question in accordance with the terms agreed between Cyferd and that Cyferd Partner;
 - 20.1.4 (as referred to in **clause 1.5.5**) the Customer tries to enforce or rely on any Non-Agreement Terms; or
 - 20.1.5 (where a Cyferd Policy or other document that forms part of the Agreement provides that, in certain circumstances, Cyferd shall be entitled to suspend Customer's Access to and use of the Cyferd Product and the Services) such entitlement to so suspend occurs; or
 - 20.1.6 required by law, by court or governmental or regulatory order.
- Such suspension would be (in respect of a Tenancy) to all of the Authorised Users, the Administrator and the Customer. Cyferd shall **not** be liable for any costs or losses sustained by the Customer as a result of such suspension.
- 20.2 Where the reason for the suspension is suspected misuse of the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) or any other Purchased Item(s) or breach of the Agreement, without prejudice to its rights under with **clause 21**, Cyferd will take steps to investigate the issue and may restore or continue to suspend access at its discretion.
- 20.3 Access to and use of the Cyferd Product and the Services (including all applicable Tenancy(ies), App(s) and Feature(s)) (or any part) and/or any specific other Purchased Item(s) (as the case may be) will be restored promptly:
- 20.3.1 (in relation to suspensions under **clauses 20.1.2** and/or **20.1.3**) after Cyferd receives payment in full and cleared funds; or

- 20.3.2 (in relation to suspension under **clauses 20.1.4**) the Customer irrevocably agrees and acknowledges in writing that such Non-Agreement Terms do not form part of the Agreement.
- 20.4 All Product Fees, Premium Fees and any other applicable fees shall remain payable during any period of suspension notwithstanding that the Customer, the Administrator and/or some or all of the Authorised Users may not have access to the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) or any other Purchased Item(s).
- 21. Termination**
- 21.1 Subject to **clause 21.6**, the Agreement (and the Customer's Access to and use of the Cyferd Product and the Services (including any then subscribed for Tenancy(ies), Premium Feature(s) and Premium Subscription(s) and the right and ability to use any other Purchased Item(s))) shall terminate:
- 21.1.1 by either party giving the requisite notice pursuant to and in accordance with **clause 2.3**;
- 21.1.2 immediately as provided for in **clauses 11.5.3** and/or **13.4** (by Cyferd);
- 21.1.3 immediately as provided for in with **clauses 9.5** and/or **11.5.3** (by the Customer);
- 21.1.4 as provided for in: **clause 21.4** and/or **clause 21.5**; and/or
- 21.1.5 as expressly provided for in any other document forming part of the Agreement.
- 21.2 Subject to **clause 21.6**, the Customer's Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy shall terminate:
- 21.2.1 by either party giving at least 3 (three) months' written notice to so terminate, such notice to expire on and such termination to take effect on the next anniversary date of the Commencement Date (but not the end of the Term), and, where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate (and if so terminated then **clause 10.39** shall apply);
- 21.2.2 immediately as provided for in **clause 11.5.3** (by Cyferd);
- 21.2.3 immediately as provided for in **clauses 9.5** and/or **11.5.3** (by the Customer);
- 21.2.4 as provided for in: **clause 21.4** and/or **clause 21.5**; and/or
- 21.2.5 as expressly provided for in any other document forming part of the Agreement.
- 21.3 Subject to **clause 21.6**, an Ordered Premium Feature(s) and/or Premium Subscription(s) shall terminate:
- 21.3.1 by either party giving at least 3 (three) months' written notice to so terminate, such notice to expire on and such termination to take effect on the next anniversary date of the Commencement Date (but not the end of the Term), and, where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate (and if so terminated then **clause 10.39** shall apply);
- 21.3.2 immediately as provided for in **clause 11.5.3** (by Cyferd);
- 21.3.3 immediately as provided for in with **clauses 9.5** and/or **11.5.3** (by the Customer);
- 21.3.4 as provided for in: **clause 21.4** and/or **clause 21.5**; and/or
- 21.3.5 as expressly provided for in any other document forming part of the Agreement.
- 21.4 As referred to in **clause 1.5.5**, if the Customer tries to enforce or rely on any Non-Agreement Terms, Cyferd may terminate the Customer's right to use the applicable products and services (which could for example be the Customer's Access to and use of the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and the Services and/or the Customer's use of a particular Premium Feature) and/or the Agreement by the Cyferd giving 30 (thirty) days' written notice to so terminate such termination to take effect on the expiry of the notice unless, prior to the end of that notice period, the Customer irrevocably agrees and acknowledges in writing that such Non-Agreement Terms do not form part of the Agreement. If the Customer does provide such irrevocable agreement and acknowledgement then such notice to terminate shall lapse. In the event of such valid termination by Cyferd under this **clause 21.4** then:
- 21.4.1 the Customer shall **not** be entitled to any refund of Subscription Fee(s), Premium Fees, Utilisation Fees or Pre-Paid Utilisation Fees;
- 21.4.2 (if and to the extent then not paid) the Customer shall remain liable to pay all Subscription Fee(s) and Premium Fees for the then current year of the Term (to the next anniversary of the Commencement Date) **UNLESS AND THEN TO THE EXTENT THAT** Cyferd, in its sole discretion, waives in writing the Customer's obligations under this **clause 21.4.2** in whole or in part;
- 21.4.3 (if and to the extent then not paid and over and above that referred to in **clause 21.4.2**) the Customer shall remain liable to pay all Subscription Fee(s) and Premium Fees for the remainder of the Term **UNLESS AND THEN TO THE EXTENT THAT** Cyferd, in its sole discretion, waives in writing the Customer's obligations under this **clause 21.4.3** in whole or in part;
- 21.4.4 the Customer shall remain liable for all payments relating to the period prior to such termination including Utilisation Fees in respect of the Purchased Item(s) in question.

- 21.5 Subject to **clause 21.6**, either party or Cyferd only (as applicable) shall be entitled to terminate:
- 21.5.1 the Agreement; or
 - (if applicable and where possible where they are/ it is the sole affected item(s)):
 - 21.5.2 its Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy where the Customer's Access to and use of the Cyferd Product and the Services in respect of at least the Production Tenancy does not terminate;
 - 21.5.3 any Ordered Premium Feature(s) and/or Premium Subscription(s), immediately at any time by giving notice in writing to the other party if:
 - 21.5.4 (in the case of **clauses 21.5.1, 21.5.2 and/or 21.5.3**) the other party commits a material breach of the Agreement and such breach is not remediable;
 - 21.5.5 (in the case of **clauses 21.5.1, 21.5.2 and/or 21.5.3**) the other party commits a material breach of the Agreement which is not remedied within 30 (thirty) days of receiving written notice of such breach;
 - 21.5.6 (in the case of Cyferd only and in the case of **clauses 21.5.1, 21.5.2 and/or 21.5.3**) the Customer has failed to pay any amount due under the Agreement on the due date and such amount remains unpaid within 30 (thirty) days after Cyferd has notified the Customer that the payment is overdue;
 - 21.5.7 (in the case of Cyferd only and in the case of **clauses 21.5.1, 21.5.2 and/or 21.5.3**) (where Ordered through a Cyferd Partner and as referred to in **clause 10.4.2**) Cyferd does not receive any corresponding payment(s) from the Cyferd Partner in question in accordance with the terms agreed between Cyferd and that Cyferd Partner on the due date and such amount remains unpaid within 30 (thirty) days after Cyferd has notified the Cyferd Partner (such notice to be copied to the Customer) that the payment is overdue;
 - 21.5.8 (in the case of Cyferd only and in the case of **clause 21.5.1** only) the Customer undergoes a change of Control;
 - 21.5.9 (in the case of **clause 21.5.1** only) becomes the subject of a voluntary arrangement under the Insolvency Act 1986 (being legislation in England and Wales);
 - 21.5.10 (in the case of **clause 21.5.1** only) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
 - 21.5.11 (in the case of **clause 21.5.1** only) (where the party is not an individual or a partner of a partnership) has a resolution passed for its winding up;
 - 21.5.12 (in the case of **clause 21.5.1** only) (where the party is not an individual or a partner of a partnership) has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 21.5.13 (in the case of **clause 21.5.1** only) (where the party is an individual or a partner of a partnership) has a petition presented to any court/ application made for that party's bankruptcy or that party has a bankruptcy order made against him/her or compound with or enter into any voluntary arrangements with that party's creditors; or
 - 21.5.14 (in the case of **clause 21.5.1** only) is subject to any events or circumstances analogous to those in **clauses 21.5.9 to 21.5.13** (inclusive) in any jurisdiction, such termination to take effect on the expiry of the notice. In the event of such valid termination by the Customer under **clause 21.5.4, clause 21.5.5** or any of **clauses 21.5.9 to 21.5.13** (inclusive)) the Customer shall (subject to **clause 27.2**) receive a refund in accordance with **clause 10.40**. In the event of such valid termination by Cyferd under any of **clauses 21.5.4 to 21.5.13** (inclusive)) then:
 - 21.5.15 the Customer shall **not** be entitled to any refund of Subscription Fees, Premium Fees, Utilisation Fees or Pre-Paid Utilisation Fees;
 - 21.5.16 (if and to the extent then not paid) the Customer shall remain liable to pay all Subscription Fee(s) and Premium Fees for the then current year of the Term (to the next anniversary of the Commencement Date) **UNLESS AND THEN TO THE EXTENT THAT** Cyferd, in its sole discretion, waives in writing the Customer's obligations under this **clause 21.5.16** in whole or in part;
 - 21.5.17 (if and to the extent then not paid and over and above that referred to in **clause 21.5.16**) the Customer shall remain liable to pay all Subscription Fee(s) and Premium Fees for the remainder of the Term **UNLESS AND THEN TO THE EXTENT THAT** Cyferd, in its sole discretion, waives in writing the Customer's obligations under this **clause 21.5.17** in whole or in part
 - 21.5.18 the Customer shall remain liable for all payments relating to the period prior to such termination including Utilisation Fees in respect of the Purchased Item(s) in question.
- 21.6 For the purposes of this **clause 21.5** and any other provision in this Agreement relating to the Customer's right to terminate:

- 21.6.1 the Customer cannot exercise its right to terminate whilst the Customer is in breach of the Agreement (or any part of it) (including late payment of any monies owing to Cyferd) and such breach is then continuing/ has not been resolved to Cyferd's satisfaction; and
- 21.6.2 the Customer cannot exercise its right to terminate where the products and services the Customer has the benefit of are:
- 21.6.2.1 use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and the applicable Services for the purposes of a POC Trial; and/or
- 21.6.2.2 No Charge Products.
- 21.7 Cyferd may terminate or suspend the Customer's use of the Cyferd Product (or any part of it including any App(s) and Feature(s)) and/or any of the applicable Services for the purposes of a POC Trial at any time with or without notice and for any reason in Cyferd's sole discretion, without liability to the Customer.
- 21.8 Cyferd may terminate or suspend the Customer's Access to and/or use of No Charge Products at any time with or without notice and for any reason in Cyferd's sole discretion, without liability to the Customer.
- 21.9 Any breach by the Customer of the **Acceptable Use Policy**, any Access Parameter, any Utilisation Parameter, clause 12, clause 16, any other provision of these Terms, a Cyferd Policy or any other document that comprises the Agreement and which expressly states that any breach of it will be deemed to be a '*material breach of the Agreement which is not remediable*' shall be deemed a material breach of the Agreement which is not remediable.
- 21.10 If any termination occurs under this **clause 21** then **clause 22** shall apply.
- 22. Consequences of termination**
- 22.1 Immediately on termination or expiry of the Agreement (for any reason), the rights granted by Cyferd under the Agreement shall terminate and the Customer shall (and shall procure that each Authorised User):
- 22.1.1 immediately cease use of the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) and other Purchased Item(s) and the Documentation; and
- 22.1.2 confirm in writing within 14 (fourteen) days of termination (or expiration) of the Agreement, that any and all copies of the Documentation (or any of it) and any other Cyferd Materials, and all other Confidential Information in the Customer's possession (or that of its Authorised Users) has been destroyed. This **clause 22.1.2** shall not impact or fetter the Customer's rights under **clause 22.3**, **clause 14.5** and the **Storage of and Access to Customer Data Policy** in respect of what happens to the Customer Data on such termination.
- 22.2 Where the Agreement is not terminated but: (i) the Customer's Access to and use of the Cyferd Product in respect of a particular Non-Production Tenancy is terminated; and/or (ii) any Ordered Premium Feature(s) and/or Premium Subscription(s) is/ are terminated, immediately on termination or expiry of the same, the rights granted by Cyferd under the Agreement in respect of the same shall terminate and the Customer shall (and shall procure that each Authorised User):
- 22.2.1 immediately cease use of the affected Non-Production Tenancy/ Ordered Premium Feature(s) and/or Premium Subscription(s) so terminated or expired (as applicable) and any related Documentation; and
- 22.2.2 confirm in writing within 14 (fourteen) days of termination (or expiration) of the affected Non-Production Tenancy/ Ordered Premium Feature(s) and/or Premium Subscription(s), that any and all copies of the related Documentation (or any of it) and/or other related Cyferd Materials in the Customer's possession (or that of its Authorised Users) has been destroyed. This **clause 22.2.2** shall not impact or fetter the Customer's rights under **clause 22.3**, **clause 14.5** and the **Storage of and Access to Customer Data Policy** in respect of what happens to the applicable Customer Data on such termination.
- 22.3 The **Storage of and Access to Customer Data Policy** shall apply in respect of what happens to the Customer Data on termination of the Agreement, termination of a particular Tenancy(ies) or termination of a Premium Feature(s) and/or Premium Subscription(s). **SUCH POLICY REQUIRES THE CUSTOMER TO TAKE PROACTIVE ACTION TO EXTRACT THE CUSTOMER DATA OR RISK LOSING IT. THE TIME PERIOD IN WHICH TO DEAL WITH THIS IS NOT LONG. Clause 14.5** also applies in this regard.
- 22.4 Having strict regard to **clause 12.6** and in particular **clause 12.6.4**, the Customer shall be entitled to retain a copy (in metadata form only and not including any Relevant Items) of any Customer App Customisation(s) and only to the extent the same comprises such Customer App Customisation(s).
- 22.5 The termination or expiry of the Agreement shall not itself give rise to any liability on the part of Cyferd to pay any compensation, damages or losses to the Customer or to reimburse the Customer for any costs relating to or resulting from such termination.

- 22.6 Termination or expiry of the Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of the Agreement that is expressly or by implication intended to continue beyond termination.
- 22.7 This **clause 22** shall survive termination or expiry of the Agreement.
- 23. Entire Agreement**
- 23.1 The Agreement (and the documents that comprise the same including these Terms/ this MSA) constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.
- 23.2 Each party acknowledges that it has not entered into the Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Agreement (or any of the documents that comprise the same including these Terms/ this MSA).
- 23.3 Nothing in the Agreement shall limit or exclude any liability for fraud.
- 23.4 This **clause 23** shall survive termination or expiry of the Agreement.
- 24. Notices**
- 24.1 For the purposes of this **clause 24**, but subject to **clause 24.6**, notice includes any communication.
- 24.2 Any notice given by a party under or in connection with the Agreement shall be:
- 24.2.1 in writing and in English;
- 24.2.2 signed by, or on behalf of, the party giving it (except for notices sent by email); and
- 24.2.3 sent to the relevant party at the address or email address set out in **clause 24.4**.
- 24.3 Notices may be given, and are deemed received:
- 24.3.1 by hand: on receipt of a signature at the time of delivery at the correct address;
- 24.3.2 by pre-paid first-class post, recorded delivery or special delivery: at 9.00 am on the 2nd (second) Business Day after posting;
- 24.3.3 by pre-paid airmail or by reputable international overnight courier (if the notice is to be served by post to an address outside the country from which it is sent): (i) at 9.00 am on the 5th (fifth) Business Day after posting in the case of pre-paid airmail; or (ii) on receipt of a signature at the time of delivery in the case of international overnight courier at the correct address; and
- 24.3.4 by email: (i) at the time of transmission where sent by Cyferd to the correct recipient email address or (ii) when received where sent to Cyferd at the correct recipient email address.
- 24.4 Notices shall be sent to:
- 24.4.1 in the case of those to Cyferd, to **Cyferd Ltd**
for the attention of: the Directors
address: Cyferd Ltd, Part Ground Floor, Regent House, 80 Regent Road, Leicester, LE1 7NH, United Kingdom
email address: legal.department@cyferd.com; and
- 24.4.2 in the case of those to the Customer, to any email or physical address or contact details notified on the Order Form (as updated from time to time pursuant to **clause 24.5**).
- 24.5 Any change to the contact details of a party as set out in **clause 24.4** shall be notified to the other party in accordance with **clause 24.2** and shall be effective:
- 24.5.1 on the date specified in the notice as being the date of such change; or
- 24.5.2 if no date is so specified, 5 (five) Business Days after the notice is deemed to be received.
- 24.6 This **clause 24** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 24.7 A notice or other communication given under or in connection with this Agreement is not valid if sent by fax.
- 24.8 This **clause 24** shall survive termination or expiry of the Agreement.
- 25. Variation**
- 25.1 No variation of the Agreement shall be valid or effective unless it is:
- 25.1.1 an Update made in accordance with the Agreement; or
- 25.1.2 a result of a New Document introduced in accordance with the Agreement; or
- 25.1.3 made in writing, refers to the Agreement and is duly signed or executed by, or on behalf of, each party.
- 25.2 For the avoidance of doubt, **clause 25.1** also applies to a variation of these Terms/ this MSA.
- 25.3 This **clause 25** shall survive termination or expiry of the Agreement.
- 26. Assignment and subcontracting**
- 26.1 Except as expressly provided in the Agreement, Cyferd may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights or obligations under the Agreement.
- 26.2 Except as expressly permitted by the Agreement, the Customer shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any

- or all of its rights or obligations under the Agreement (including the licence rights granted), in whole or in part, without Cyferd's prior written consent.
- 26.3 This **clause 26** shall survive termination or expiry of the Agreement.
- 27. Set off**
- 27.1 Subject to **clause 27.2**, each party shall pay all sums that it owes to the other party under the Agreement without any set off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 27.2 Where Cyferd is obliged to pay a refund under the Agreement to the Customer, it shall be entitled to set off from and against such payment any unpaid monies due and owing to it at the time in question. Where such refund exceeds the amount of such unpaid monies then such set off shall settle in full such unpaid monies and Cyferd shall pay the balance of such refund to the Customer. Where such refund equals the amount of such unpaid monies then such set off shall settle in full both such refund and such unpaid monies. Where such refund is less than the amount of such unpaid monies then such set off shall settle in full such refund and the Customer shall continue to owe and shall pay the balance of such unpaid monies to Cyferd.
- 27.3 This **clause 27** shall survive termination or expiry of the Agreement.
- 28. No partnership or agency**
- The parties are independent and are not partners or principal and agent and the Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf. This **clause 28** shall survive termination or expiry of the Agreement.
- 29. Severance**
- 29.1 If any provision of the Agreement (or part of any provision) including any provision of these Terms is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Agreement shall not be affected.
- 29.2 If any provision of the Agreement (or part of any provision) including any provision of these Terms is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 29.3 This **clause 29** shall survive termination or expiry of the Agreement.
- 30. Waiver**
- 30.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 30.2 No single or partial exercise of any right, power or remedy provided by law or under the Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 30.3 A waiver of any term, provision, condition or breach of the Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.
- 30.4 This **clause 30** shall survive termination or expiry of the Agreement.
- 31. Costs and expenses**
- Each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Agreement (and any documents referred to in it). This **clause 31** shall survive termination or expiry of the Agreement.
- 32. Third-party rights**
- 32.1 Subject to **clause 32.2**, a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 (being legislation in England and Wales) to enforce any of its provisions.
- 32.2 Where Ordered through a Cyferd Partner, **clause 32.1** shall not operate so as to fetter or affect the Customer's and/or that Cyferd Partner's rights or obligations as between them under the Order Form in question (having strict regard to **clause 7**).
- 32.3 This **clause 32** shall survive termination or expiry of the Agreement.
- 33. Language**
- 33.1 The language of these Terms/ this MSA is English. All documents, notices, waivers, variations and other written communications relating to the Agreement shall be in English.
- 33.2 If the Agreement and any document relating to it (including these Terms/ this MSA) is translated, the English version shall prevail.
- 33.3 This **clause 33** shall survive termination or expiry of the Agreement.
- 34. Counterparts and electronic execution**
- 34.1 These Terms or any other applicable document that forms part of the Agreement (in this **clause 34** each a "**Relevant Document**") can be (but may not be required to be) entered into / accepted by the parties to them (or any of them) (in this **clause 34** each a "**Relevant Party**") signing an

- engrossment version of the same the (in this **clause 34 “Signing Manner”**). This **clause 34** applies to Relevant Documents being entered into/ accepted in the Signing Manner.
- 34.2 In respect of the Signing Manner, a Relevant Document 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 agreement.
- 34.3 In respect of the Signing Manner, a Relevant Party may evidence their execution of the Relevant Document in question by transmitting by email:
- 34.3.1 a signed signature page of that Relevant Document in PDF format together with the final version of that Relevant Document in PDF or Word format; or
- 34.3.2 a signed counterpart of that Relevant Document in PDF format together with the final version of that Relevant Document in PDF or Word format,
- which shall constitute an original signed counterpart of that Relevant Document. A Relevant Party adopting this method of execution shall, following circulation by email, provide the original, hard copy signed signature page/ signed counterpart to the other Relevant Parties as soon as reasonably practicable.
- 34.4 In respect of the Signing Manner, each Relevant Party hereby agrees that a Relevant Document can be (but may not be required to 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 Relevant Party does execute that Relevant Document by electronic signature, such method of signature is conclusive of that Relevant Party's intention to be bound by that Relevant Document as if signed by that Relevant Party's manuscript signature.
- 34.5 In respect of the Signing Manner, a Relevant Document shall not be effective until a Relevant Party has executed and delivered one counterpart/ entered into or otherwise accepted that Relevant Document in such other permitted manner provided for in the Agreement.

35. Governing law

The Agreement (and each of the documents that comprise it including these Terms/ this MSA) and any dispute or claim arising out of, or in connection with, it/ them, its/ their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. This **clause 35** shall survive termination or expiry of the Agreement.

36. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have the non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Agreement (and each of the documents that comprise it including these Terms/ this MSA), its subject matter or formation (including non-contractual disputes or claims). This **clause 36** shall survive termination or expiry of the Agreement.

SCHEDULE 1 THE SERVICES

Services

The Services comprise:

- the hosting by or on Cyferd's behalf of the Tenancy(ies) (the "**Hosting Services**");
 - in respect of a Tenancy, the provision by or on Cyferd's behalf of a database for that Tenancy alone with unique access credentials for that Tenancy (the "**Database Services**");
 - Cyferd making available the Cyferd Product for use as a PaaS; and
 - Cyferd providing standard support services (the "**Standard Support Services**"),
- but excluding all and any Additional Services, Premium Features and Premium Subscriptions.

SCHEDULE 2 DEFINITIONS AND INTERPRETATION

1. In these Terms/ this MSA the following words and expressions shall have the following meaning unless the context otherwise requires:

“Acceptable Use Policy”	the ‘ Cyferd – Acceptable Use Policy ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“Access”	(in respect of each Tenancy) means Cyferd setting up an online account for the Customer and creating the Tenancy in question for the Customer to enable the Customer to access and use the Cyferd Product from/with that Tenancy in accordance with and subject to the terms of the Agreement having strict regard to any Access Parameters and any Utilisation Parameters and “ Access to and use of the Cyferd Product ”, “ Access to and use of the Cyferd Product and the Services ”, “ Accessed ”, “ Accesses ” and “ Accessing ” shall be construed accordingly
“Access Parameters”	(in respect of a Customer’s Tenancy) means the scope of and any restrictions to the Access to and use of the Cyferd Product as provided for in the Agreement (including in these Terms and/or the applicable Order Form(s)) from time to time that apply to that Tenancy. For the avoidance of doubt different Tenancies could have different Access Parameters
“Additional Fees”	means fees payable by the Customer to Cyferd in respect of Additional Services or any Additional Service
“Additional Services”	means the ‘ <i>Additional Services</i> ’ (as defined in the ASA Terms) and “ Additional Service ” shall be construed accordingly
“Administrative Data”	means the following data and information of the Customer (that is not Customer Data) that Cyferd holds in respect of the Customer in connection with its use of the Cyferd Product and the Services: (i) billing information; (ii) data logs; (iii) information relating to or obtained in connection with the provision of the Standard Support Services; and (iv) information relating to the Customer’s account with Cyferd
“Administrator”	means the person or persons designated by the Customer who administers the Tenancy(ies) and the Cyferd Product to the Customer and/or Authorised Users on the Customer’s behalf and who has the oversight administrative function in respect of the Tenancy(ies)
“Affiliate”	means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with, another entity
“Agreement”	(in respect of the Customer and subject to clause 1.5.6) means together this MSA, the applicable Order Form(s), the Cyferd Policies and any other document(s)/ supplemental document(s) (including any EULA): (i) issued by Cyferd to the Customer; or (ii) entered into or deemed to have been entered into between Cyferd and the Customer; or (iii) issued by Cyferd, and in each case which has/ have been approved by Cyferd in writing and which is in respect of, which relates to and/or which is in connection with the Customer’s Access to or use of the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) and/or any other Purchased Item(s) from time to time
“Annual Subscription Policy”	Professional Fee Price the ‘ Cyferd – Annual Professional Subscription Fee Price Policy ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“API”	means an application program interface that allows two or more different software programs to talk to each other and leverage and share information

“App”	means an application built on and using the Cyferd Product and “Apps” shall be construed accordingly. In this regard an “application” is made up of a collection of data entities associated together with additional meta data to automate process flows and control views. For this purpose, an App does not include a Mobile App or the Cyferd Web Client or any API or any Integration or any Feature
“Applicable Currency”	the currency being either Sterling, Dollars or euro as stated in the applicable Order Form. Where the Order Form does not expressly provide for the ‘ <i>Applicable Currency</i> ’ it shall mean the currency (being either Sterling, Dollars or euro) in which the pricing in such Order Form is expressed or, failing that, it shall mean Sterling
“Applicable Territory”	the territory or those territories provided for in the first Order Form for the Main Subscription and any other Purchased Item(s) unless and to the extent it is illegal (including as a result of any embargo) under the laws of the United States, any member of the European Union or the United Kingdom (as binding on any person) for the Customer’s Access to and use of the Cyferd Product and the Services to be provided to or received within from time to time
“Approved Order Form”	means a Cyferd Partner Order Form which is: (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 the Cyferd Partner Approved Order Form 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 the Cyferd Partner Approved Order Form Policy including all amendments deemed to have been made by the application of the Cyferd Partner Approved Order Form Policy to make it so approved
“ASA”	(where a Customer orders certain Additional Services from time to time from Cyferd) as defined in the ASA Terms and being the overall agreement between Cyferd and the Customer in respect of the Additional Services in question and includes, inter alia, the applicable order form (which could be included in an Order Form) and the ASA Terms
“ASA Terms”	(where a Customer orders certain Additional Services from time to time from Cyferd) the ‘ <i>Additional Services Terms and Conditions</i> ’ between Cyferd and the Customer (set out at https://cyferd.com/cyferdcomm/) referred to in, and which applies to, the applicable order form (which could be included in an Order Form) for the provision by or on behalf of Cyferd of those Additional Services being the subject matter of the ASA
“Assumed Utilisation”	the Customer’s (including all of its Authorised User’s) Utilisation where the basis for calculating Utilisation Fees for each year of the Initial Term (or the Initial Term where it is a year) and/or any Further Term (as the case may be) is stated in the applicable Order Form(s) as being an assumed/ estimated aggregate annual fee based on the (applicable) Customer’s Expected Utilisation and subject to, at all times, the Assumed Utilisation Fair Use Policy and the other applicable terms of the Agreement
“Assumed Utilisation Fair Use Policy”	the ‘ Cyferd – Assumed Utilisation Fair Use Policy ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“Authorised User”	(in respect of a Tenancy and strictly subject to any Access Parameters and/or Utilisation Parameters in respect of the same) means an employee or independent contractor of the Customer or such other person for whom an Authorised User Account set up for him/her/it by the Administrator and as a result is authorised by the

“Authorised User Account”	Customer to have Access to use of the Cyferd Product and the Services (including any applicable App(s) and Feature(s)) and any other applicable Purchased Item(s) within such Tenancy and at all times in accordance with and subject to the terms and conditions of the Agreement (in respect of a Tenancy) an account set up by or on behalf of the Customer to help with the governance/ administration of an Authorised User’s Access to use of the Cyferd Product and the Services (including any applicable App(s) and Feature(s)) and any other applicable Purchased Item(s) within such Tenancy, such account containing all requisite details for or in respect of such Authorised User including the usage permissions and restrictions and special rights to be applied for that Authorised User and “ Authorised User Accounts ” shall be construed accordingly
“Beta Versions”	as defined in clause 6.4
“Business Day”	means a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business
“calendar year”	as defined in the definition of ‘year’ in this paragraph 1 of SCHEDULE 2
“Commencement Date”	means the date specified or deemed to be specified in the applicable Order Form
“Confidential Information”	all confidential information (however recorded or preserved) that is disclosed or made available (in any form or by any method) by or on behalf of Cyferd or any of its Affiliates whether before, on or after the Commencement Date relating to or in connection with Cyferd and its Affiliates (of any of them) including: (i) its/their business or affairs, financial or trading position, funding/ proposed funding, assets, rights, interests, Intellectual Property Rights customers, clients, suppliers, employees, plans, operations, methods, systems, processes, (past, present or future) products and/or services, (past, present or future contracts), intentions or business/ market opportunities; (ii) the Agreement (or any part of it including each and every Order Form and all pricing and (if any) special terms therein); (iii) the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and the Services (or any part) and/or any other product(s) or service(s) of Cyferd or which relate to the Cyferd Product; (iv) the Documentation and any other technical or operational specifications or data relating to the Cyferd Product (including any Tenancy(ies), App(s) and Feature(s)) and the Services (or any part) or any other related product(s) or service(s); (v) its/ their Intellectual Property Rights (including the Cyferd IPR); (vi) any Additional Services provided to the Customer from time to time by or on behalf of Cyferd (including any scoping documents, plans and pricing and/or special terms in relation to the same); (vii) any information in respect of which Cyferd or any of its Affiliates owes an obligation of confidentiality to any third-party; and (viii) any other information that is identified as being of a confidential or proprietary nature or commercially sensitive
“Contract”	a legally binding contract, agreement, licence, commitment or other arrangement (whether or not reduced to writing)
“Control”	has the meaning given in the Corporation Tax Act 2010 (being legislation in England and Wales), section 1124 and “ Controls ”, “ Controlled ” and “ under common Control ” shall be construed accordingly
“Customer”	the person specified or deemed to be specified as the ‘ <i>Customer</i> ’ in the applicable Order Form(s) or, in the case of a POC Trial where there is no Order Form, the person designated in writing by Cyferd as the ‘ <i>Customer</i> ’ and/or

“Customer Customisation”	App	<p>who is receiving the benefit of the POC Trial, or in the case of a No Charge Product where there is no Order Form and that person is not already a Customer, the person designated in writing by Cyferd as the ‘<i>Customer</i>’ and/or who is receiving the benefit of the No Charge Product in respect of an App, the creation of and/or any modification, customisation, maintenance and/or update of or to an App by or on behalf of the Customer that is not a Cyferd App Customisation or to the extent that it is not or does not include any Cyferd App Customisation(s) (and “Customer App Customisations” shall be construed accordingly)</p>
“Customer Data”		<p>means any electronic data and information (in any form including data, content, code, video, or other materials) that the Customer or any of its Authorised Users or the Administrator submit to the Cyferd Product (including via any Tenancy, App, Feature or Service) (but excluding Feedback). In this context, “submit” (and any similar term) includes submitting, uploading, transmitting or otherwise making available Customer Data to or through the Cyferd Product (including via any Tenancy, App, Feature or Service)</p>
“Customer’s Utilisation”	Expected	<p>(in respect of Utilisation being calculated on an Assumed Utilisation basis) means the (written) information provided by the Customer to Cyferd (or to the Cyferd Partner in question where Ordered through a Cyferd Partner) and the (written) factors, assumptions and rationale set by or approved by Cyferd that underpins and supports the amount of the annual Utilisation Fees agreed upon between the Customer and Cyferd (and (in the case of the first one) the Cyferd Partner in question where Ordered through a Cyferd Partner) as the estimated Utilisation Fees of the Customer for the Initial Term or the Further Term in question (as applicable) on an Assumed Utilisation basis and as the same may be amended from time in accordance with the Assumed Utilisation Fair Use Policy</p>
“Customer Systems”		<p>means all software and systems used by or on behalf of the Customer, any of its direct or indirect sub-contractors, or any Authorised User in connection with its Access to and use of the Cyferd Product and the Services (including any Tenancy(ies) , App(s) and Feature(s)) and any other Purchased Item(s) or that the same otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly)</p>
“Cyferd Android App”		<p>means the client software packaged for Authorised Users to install onto their mobile device from the ‘<i>Google Play store</i>’ to access the Tenancy and the related Customer Data. The Cyferd Android App is designed to offer a native experience on a mobile device operating the Android operating system and is licensed as part of the Agreement and in particular the applicable EULA. The Administrator can block access from the Cyferd Android App if required</p>
“Cyferd Annual Professional Subscription Fee”		<p>means the then prevailing Professional annual Subscription Fee for a Production Tenancy or a Development Tenancy or a User Acceptance Tenancy or any Other Non-Production Tenancy (as the case may be) as set out in the Annual Professional Subscription Fee Price Policy. Such fee only includes the Customer’s Access to and use of the Cyferd Product and the Services via the Tenancy in question. Such fee excludes the Customer’s Utilisation of the Cyferd Product and the Services via the Tenancy in question</p>
“Cyferd Apps”		<p>together all Cyferd General Apps and all Cyferd Bespoke Apps (and “Cyferd App” shall mean any of them)</p>
“Cyferd App Customisation”		<p>means: (i) a Cyferd General App to that extent; (ii) a Cyferd Bespoke App to that extent; (iii) any modification,</p>

	<p>customisation, maintenance and/or update of or to a Cyferd General App by or on behalf of Cyferd where the ‘end product’ is made available (generally and/or to purchase as the case may be) to Cyferd Customers as a new, updated or replacement version of that Cyferd General App; (iv) any modification, customisation, maintenance and/or update of or to a Cyferd App or any other App (including any Non-Cyferd App) by or on behalf of Cyferd (as Additional Services or otherwise) for the Customer (or for any other Cyferd Customer) where and to the extent that the Contract in respect of creation of the same (including any ASA where applicable) expressly provides that the Intellectual Property Rights in respect of the same belong to and shall remain vested in Cyferd; and (v) (to the extent not provided for in (i) to (iv) (inclusive)) in respect of any App, the extent to which the Cyferd Product (including any Features) and its underlying technology and software (whether for or on behalf of Cyferd, the Customer, any other Cyferd Customer, any Services Partner or any other applicable person): (a) creates that App; and/or (b) carries out, performs or executes any modification, customisation, maintenance and/or update to that App, the Cyferd Product (including any Features) and its underlying technology and software and the use of the same (and “Cyferd App Customisations” shall be construed accordingly)</p>
“ Cyferd Bespoke App ”	<p>the completed version of an App created by or on behalf of Cyferd (as Additional Services or otherwise) for the Customer (or for any other Cyferd Customer) where and to the extent that the Contract in respect of creation of the same (including the applicable ASA where applicable) expressly provides that the Intellectual Property Rights in respect of the same belong to and shall remain vested in Cyferd or the relevant Licensor</p>
“ Cyferd Customer ”	<p>any customer of Cyferd for the Cyferd Product and the Services from time to time (including the Customer)</p>
“ Cyferd General App ”	<p>the released (by Cyferd) version or (if maintained and/or updated by or on behalf of Cyferd) each released (by Cyferd) version of a Cyferd App created by or on behalf of Cyferd and which is made available (generally and/or to purchase as the case may be) to Cyferd Customers as a Template App, a No Charge Product, or otherwise. This could be an App that is also or was previously a Cyferd Bespoke App</p>
“ Cyferd iOS App ”	<p>means the client software packaged for Authorised Users to install onto their mobile device from the ‘App Store’ to access the Tenancy and the related Customer Data. The Cyferd iOS App is designed to offer a native experience on a mobile device operating the iOS operating system and is licensed as part of the Agreement and any applicable EULA. The Administrator can block access from the Cyferd iOS App if required</p>
“ Cyferd IPR ”	<p>means all Intellectual Property Rights owned and/or used by Cyferd in connection with the Cyferd Product from time to time including that referred to in clause 12.1</p>
“ Cyferd Marketplace ”	<p>means Cyferd’s online marketplace of Apps, APIs and Integrations (as further described in the ‘Cyferd – Marketplace Terms of Use’ (https://cyferd.com/cyferdcomm/) as the same may be amended by Cyferd from time to time)</p>
“ Cyferd Materials ”	<p>means all of the Materials provided or made available by or on behalf of Cyferd, but excluding all Customer Data and all Non-Cyferd Materials</p>
“ Cyferd Partner Approved Order Form Policy ”	<p>the ‘Cyferd – Cyferd Partner Approved Order Form Policy’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd</p>

“Cyferd Partner Order Form”	(where 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 Item(s) 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 an Unapproved Order Form then it will not form part of the Agreement. Such order form could contain other products and services including certain Additional Services/ similar services) in which case clause 4.21 applies in that regard. To the extent that the order form contains other products and services it shall not form part of the Agreement. “Cyferd Partner Order Forms” and “Cyferd Partner Order Form(s)” shall be construed accordingly
“Cyferd Partner Policies”	means the policies, ancillary terms and conditions, charters and documents of Cyferd which are set out at https://cyferd.com/cyferdcomm/ and each of which is designated by or on behalf of Cyferd as a ‘ <i>Cyferd Partner Policy</i> ’ and “Cyferd Partner Policy” shall be construed accordingly
“Cyferd Partners”	means the formally appointed (by Cyferd) partners of Cyferd in connection with the Cyferd Product from time to time (each such partner being a ‘ <i>Referral Partner</i> ’, a ‘ <i>Sales Partner</i> ’, a ‘ <i>Services Partner</i> ’ a ‘ <i>Solutions Partner</i> ’ or such other type of partner that Cyferd expressly designates as a ‘ <i>Cyferd Partner</i> ’ from time to time) and “Cyferd Partner” shall be construed accordingly. In this MSA where context of the term ‘ <i>Cyferd Partner</i> ’ relates to: any Order(s), ‘ <i>Ordered through</i> ’, the Cyferd Partner Approved Order Form Policy , Cyferd Partner Order Form(s) then the type of Cyferd Partner in question is a ‘ <i>Sales Partner</i> ’, a ‘ <i>Solutions Partner</i> ’ (making sales) or other type of partner that Cyferd expressly designates as a ‘ <i>Cyferd Partner</i> ’ from time to time (making sales) but not a ‘ <i>Services Partner</i> ’ or a ‘ <i>Referral Partner</i> ’. In this MSA where context of the term ‘ <i>Cyferd Partner</i> ’ relates to: any Cyferd Partner Policies then the type of Cyferd Partner in question is a Cyferd Partner other than a ‘ <i>Referral Partner</i> ’
“Cyferd Policies”	means the applicable (to all Professional Agreements, to all Professional Customers, to the Customer and to the Customer’s Purchased Item(s) (or any of them)) policies, ancillary terms and conditions, charters and documents of Cyferd which are set out at https://cyferd.com/cyferdcomm/ and each of which is designated by or on behalf of Cyferd as a ‘ <i>Cyferd Policy</i> ’: (i) as at the Commencement Date; or (ii) (where accepted by or on behalf of the Customer) after the Commencement Date, in each case as the same may be amended from time to time (each a “Cyferd Policy”). In this regard “accepted” (and “acceptance” shall be (subject to clause 9 where the same involves an Update or a New Document) construed accordingly) means by (1) clicking or checking a box indicating acceptance (online or digital version of a Cyferd Policy); (2) acknowledging or confirming or indicating acceptance in writing (including by email); and/or (3) Accessing or continuing to Access or using or continuing to use the Cyferd Product and the Services (including any Tenancy(ies), App(s) or Feature(s)) or any other Purchased Item (or, in each case, the applicable part of any of the same) to which such Cyferd Policy applies and/or is relevant (whether in whole or in part)
“Cyferd Product”	means the cloud-native ‘Platform as a Service’ “PaaS” known as ‘Cyferd’ providing agile ‘ <i>Digital Transformation</i> ’

	<p>solutions. The PaaS offering enables the Customer, via its Tenancy(ies) to build any operational solution, to its exact requirements, to help it digitally transform any current manual or painful operational process, and Cyferd does this by providing the Customer with the software tools within its Tenancy(ies) to build out solutions by building Apps. The Cyferd Product uses the software platform and includes all components that are required for it to function as intended (including all software and code that enables such platform to operate on) as updated, enhanced and/ or modified from time to time</p>
“Cyferd Remote Agent”	<p>means the software in the form of an application, in object code form, initially provided or made available to the Customer as well as updates thereto that Cyferd elects to make available at no additional charge (being a part of the Cyferd Product) that can be setup on the Customer’s private network to enable/ facilitate certain secure communication between the Customer’s private network and the Customer’s Tenancy(ies). This allows the Customer to connect its on-premise systems and databases to its Tenancy(ies) without needing to open up its firewall to the internet. The Cyferd Remote Agent creates a continuous web socket connection to the Customer’s Tenancy(ies) to allow for two-way communication (i.e. requesting/delivering data from/to on-premise integrations). The explanation in this definition as to the purpose of the Cyferd Remote Agent is the “Cyferd Remote Agent Purpose”</p>
“Cyferd Remote Agent Purpose”	<p>as defined in the definition of ‘<i>Cyferd Remote Agent</i>’ in this in paragraph 1 of SCHEDULE 2</p>
“Cyferd Web Client”	<p>means the client front end that an Authorised User can access through a web browser. There is no install required to use the web client as it loads directly from the Cyferd Product (via the Tenancy(ies) in question) to the browser to allow Authorised Users access to all the eligible features of the Cyferd Product for the Tenancy(ies) in question. The Cyferd Web Client runs on any standard modern browsers (such as Google Chrome, Mozilla Firefox, Microsoft Edge, Apple Safari)</p>
“Database Services”	<p>as defined in SCHEDULE 1 (being one of the Services)</p>
“Data Protection Policy”	<p>the ‘Cyferd – Data Protection Policy’ (http://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd</p>
“Development Tenancy”	<p>means a Non-Production Tenancy for the Customer’s development use (for the creation, modification, customisation, maintenance and/or updating of Apps) and (if the Customer does not have a separate User Acceptance Tenancy) for the Customer’s testing (of Apps) use. The Customer’s Access to and use of a Development Tenancy is subject to, inter alia, those Access Parameters and Utilisation Parameters that apply to a Development Tenancy and, separately, to a Non-Production Tenancy</p>
“Documentation”	<p>means the then current user and support documentation and guides (in whatever form) for (as applicable) the Cyferd Product and the Services (or any part including any Tenancy(ies), App(s) or Feature(s)) and/or any other Purchased Item(s) as the same may be provided by and modified from time to time in the sole discretion of, Cyferd. Documentation is available upon the request of the Customer at any time or upon Access</p>
“Dollars” and “\$”	<p>the lawful currency of the United States of America</p>
“Enterprise”	<p>means where the Order Form for the Main Subscription states that the ‘<i>Cyferd contract type</i>’ is ‘<i>Enterprise</i>’. “Enterprise Agreements” means all Enterprise agreements (being the equivalent of the Agreement) Cyferd is a party to and “Enterprise Agreement” shall be construed accordingly. “Enterprise Customer” means a</p>

	Cyferd Customer who is party to an Enterprise Agreement and “Enterprise Customers” shall be construed accordingly
“EULA”	means an end user licence agreement between Cyferd (as licensor) and the Customer (as licensee) in connection with the Cyferd Product (each such EULA being set out at https://cyferd.com/cyferdcomm/) as amended from time to time. A EULA may be required to be accepted by the Customer and/or each Authorised User in respect of each of the Mobile Apps, the Cyferd Web Client, certain items purchased from the Cyferd Marketplace, and/or other applicable applications or software (which are not Apps)
“euro”, “€” and “EUR”	the lawful single currency of the applicable participating member states of the European Union
“Excess Utilisation”	as defined and calculated/ determined in the Assumed Utilisation Fair Use Policy
“Feature”	means a particular/ specific feature of the Cyferd Product that is not an App but which is embedded into the Cyferd Product (and “Features” shall be construed accordingly). Certain Features can or will be made available to the Customer as part of its Access to and use of the Cyferd Product and the Services and such Access to and use (but not Utilisation) will be included in the applicable Subscription Fee(s). Certain Features can or will be Premium Features and Access to and use of the same will need to be purchased by the Customer separately for the applicable Premium Fees
“Feedback”	as defined in clause 12.9
“Fixed Utilisation”	the Customer’s (including all of its Authorised User’s) Utilisation where the basis for calculating Utilisation Fees for each year of the Initial Term (or the Initial Term where it is a year) and/or any Further Term (as the case may be) is stated in the applicable Order Form(s) as being a fixed aggregate annual fee subject to, at all times, the other applicable terms of the Agreement
“Forced Terms”	as defined in clause 1.5.6
“Force Majeure”	means an event or sequence of events beyond a party’s reasonable control preventing or delaying it from performing its obligations under the Agreement (provided that an inability to pay is not Force Majeure), including any matters relating to the transfer of data over public communications networks and any delays or problems associated with any such networks or with the internet
“Further Term”	has the meaning given in clause 2.2
“Hosting Policy”	the ‘Cyferd - Hosting Policy’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“Hosting Services”	as defined in SCHEDULE 1 (being one of the Services)
“Initial Term”	has the meaning given in clause 2.1 . For the avoidance of doubt the Minimum Term and the Initial Term are the same period
“Integration”	means the record that is created and securely managed in a Tenancy that provides the access details for a connection to an external source system
“Intellectual Property Rights”	means copyright, rights relating to copyright such as moral rights and performers rights, patents, rights in inventions, rights in confidential information, know-how, trade secrets, trade marks, trade names, geographical indications, service marks, design right, rights in get-up, database rights, databases, data exclusivity rights, utility models, chip topography rights, mask works, utility models, domain names, rights in computer software, mask works, the right to sue for infringement, unfair competition and passing off and all similar rights of whatever nature, any other intellectual property rights, and all similar rights of whatever nature and, in each case: (a) whether registered or not; (b) including any applications to protect or register

	such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; and (e) wherever existing
“IP Claim”	as defined in clause 13.1.1
“know-how”	means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, the results and procedures for experiments and tests, reports, component lists, manuals, instructions, designs, sketches, drawings, information relating to customers and suppliers (whether written or in any other form and whether confidential or not)
“Licensor”	a third-party who owns any Intellectual Property Rights in any Relevant Item (or part of it) the use of which by Cyferd has been or is deemed to have been licenced to Cyferd for such purpose or for which Cyferd has the right to use the same for such purpose (whether under any Contract or otherwise)
“Losses”	includes all losses, liabilities, compensation, reasonably and properly incurred costs, charges and expenses, actions, proceedings, claims and demands (including but not limited to any interest, penalties and reasonably and properly incurred legal and professional costs and expenses)
“Main Subscription”	as defined in clause 4.1.1
“Malicious Code”	means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses
“Materials”	means all services, data, information, content, Intellectual Property Rights, websites, software, personnel and other materials provided in connection with the Cyferd Product and the Services (or any part including any Tenancy, App or Feature) and any other Purchased Item(s) but excluding all Customer Data
“Meter Based/ Unit Based Utilisation Pricing Policy”	the ‘ Cyferd – Meter Based/ Unit Based Utilisation Pricing Policy ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“Metered Utilisation”	the Customer’s (including all of its Authorised Users’) Utilisation: (i) where the basis for calculating Utilisation Fees for each year of the Initial Term (or the Initial Term where it is a year) and/or any Further Term (as the case may be) is stated in the applicable Order Form(s) as being calculated using Cyferd’s applicable meter based/ unit based pricing for Utilisation Fees from time to time; and/or (ii) where the Agreement provides that the basis for calculating certain Utilisation Fees will be calculated using Cyferd’s applicable meter based/ unit based pricing for Utilisation Fees from time to time. Such calculations shall be done subject to, at all times, and in accordance with the Meter Based/ Unit Based Utilisation Pricing Policy and the other applicable terms of the Agreement
“Minimum Term”	the period (in multiples of 12 (twelve) month periods) specified in the applicable Order Form and which cannot be less than 12 (twelve) months beginning with the Commencement Date. In the absence of any specified period in the applicable Order Form then such period shall be deemed to be 12 (twelve) months. For the avoidance of doubt the Minimum Term and the Initial Term are the same period
“Mobile App”	the Cyferd Android App or the Cyferd iOS App and “ Mobile Apps ” shall be construed accordingly
“month”	means a calendar (based on the Gregorian calendar) month and “ months ” and “ monthly ” shall be construed accordingly
“Monthly Summary”	(in respect of a month) a written summary generated at or immediately following the end of the month in question identifying: (i) (no matter what the basis for calculating the

Customer's Utilisation Fees) the daily Utilisation Units consumed by the Customer on each day of such month and for the month in aggregate; (ii) (no matter what the basis for calculating the Customer's Utilisation Fees) the amount of Utilisation Fees that would be payable by the Customer on a Metered Utilisation basis (or will be) for each day of such month and for the month in aggregate; and (iii) (where the Customer's Utilisation Fees or any of them are to be calculated on a Metered Utilisation basis) if different to (ii) the amount of Utilisation Fees that are payable by the Customer on a Metered Utilisation basis for each applicable day of such month and for the month in aggregate (including where that amount (in whole or in part) is Excess Utilisation the amount of such Excess Utilisation)

<p>“MSA”, “this MSA”, “these Terms”</p> <p>“New Document”</p> <p>“New Document Notification”</p> <p>“No Charge Products”</p> <p>“Non-Agreement Terms”</p> <p>“Non-Cyferd App”</p> <p>“Non-Cyferd Materials”</p>	<p>this master services agreement as amended from time to time</p> <p>as defined in clause 9.2</p> <p>as defined in clause 9.2</p> <p>as defined in clause 6.4</p> <p>as defined in clause 1.5</p> <p>an App which is not a Cyferd App and “Non-Cyferd Apps” shall be construed accordingly</p> <p>means Materials provided, controlled or owned by or on behalf of a third-party the use of which is subject to a separate Contract between the Customer and the relevant third-party (including such Non-Cyferd Materials which may be linked to, interact with or used by the Cyferd Product and the Services (including any Tenancy(ies), App(s) and Feature(s)) and any other Purchased Item(s)) and all other Materials expressly identified as <i>‘Non-Cyferd Materials’</i> in the Agreement and/or the Documentation</p>
<p>“Non-Cyferd Products/ Services”</p>	<p>means products or services not provided by or on behalf of Cyferd but by or on behalf of a third-party (including via the Cyferd Marketplace) and could include Non-Cyferd Apps and/or Non-Cyferd Materials</p>
<p>“Non-Production Tenancy”</p>	<p>a Development Tenancy, a User Acceptance Tenancy or an Other Non-Production Tenancy</p>
<p>“Open Source Software”</p>	<p>means any software subject to a version of the General Public Licence, together with any other ‘open source’ software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) at the Commencement Date and any ‘free software’ as defined by the Free Software Foundation (www.gnu.org/philosophy/free-sw.html) at the Commencement Date</p>
<p>“Order”</p>	<p>the order being the subject matter of an Order Form and “Ordered” and “Orders” shall be construed accordingly</p>
<p>“Order Acceptance”</p>	<p>means when an Order has been accepted by Cyferd which will be: (i) (in the case of an Order with Cyferd) the later of the Commencement Date or the date the parties enter into the Order Form in question; or (ii) (in the case of an Order through a Cyferd Partner where Utilisation Fees are Metered Utilisation based) the date Cyferd receives an Order Confirmation Form from the Cyferd Partner in question in respect of the Order Form in question (being the Cyferd Partner Order Form to the extent it is an Approved Order Form); or (iii) (in the case of an Order through a Cyferd Partner where Utilisation Fees are Assumed Utilisation based or Fixed Utilisation based) the date Cyferd acknowledges in writing receipt and acceptance of an Order Confirmation Form from the Cyferd Partner in question in respect of the Order Form in question (being the Cyferd Partner Order Form to the extent it is an Approved Order Form). Order Acceptance can be after the Commencement Date</p>

“Order Confirmation Form”	(in the case of an Order through a Cyferd Partner) a written confirmation in the form required by Cyferd containing certain key details about the Order Form (being the Cyferd Partner Order Form to the extent it is an Approved Order Form) in question to enable Cyferd set up Access and/or use of the Purchased Item(s) in question
“Order Form”	means (i): an order form entered into between Cyferd 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 Item(s); or (ii) (where Ordered through a Cyferd Partner) an Approved Order Form. Such order form could contain other products and services including Additional Service/ similar services) in which case clauses 3.6 and/or 4.21 applies in that regard. To the extent that the order form contains other products and services it shall not form part of the Agreement. “Order Forms” and “Order Form(s)” shall be construed accordingly
“Other Non-Production Tenancy”	means a Non-Production Tenancy for the Customer’s use in a ‘non-live’ environment (<i>‘non-live’</i> being in terms of the Customer’s data and/or everyday business operations). It could be similar to a Development Tenancy and/or a User Acceptance Tenancy. The Customer’s Access to and use of any Other Non-Production Tenancy is subject to, inter alia, those Access Parameters and Utilisation Parameters that apply to a Non-Production Tenancy
“PaaS”	as defined in the definition of ‘Cyferd Product’ in this in paragraph 1 of SCHEDULE 2
“Permitted Purpose”	means use solely for the Customer’s internal business operations in accordance with the applicable Documentation and the Agreement. Permitted Purpose expressly excludes anything that would cause the Customer to be in breach of an Access Parameter and/or a Utilisation Parameter or otherwise be in breach of the Agreement
“POC Trial”	means a ‘proof of concept’ trial being time-bound access to a dedicated Cyferd operated tenancy for the purposes of evaluating the Cyferd Product’s features and functionality
“Premium Feature”	means a Feature that is not available free of charge but is or will be available for (an) additional payment(s) on a subscription basis
“Premium Fees”	means fees payable by a Customer to Cyferd for Ordered Premium Feature(s) and/or Premium Subscription(s)
“Premium Subscription”	a subscription or the like that is or will be available for (an) additional payment(s) on a subscription basis
“Pre-Paid Utilisation Units”	means Cyferd’s form of Utilisation based credits each of which, when purchased, will have a face value which will be recorded by Cyferd along with the number held from time to time as described in clause 10.36 and which can be used to pay Utilisation Fees from time to time (and “Pre-Paid Utilisation Unit” shall be construed accordingly)
“Pre-Paid Utilisation Units Fee”	(in respect of an Order for Pre-Paid Utilisation Units) means the aggregate price of the Pre-Paid Utilisation Units to be purchased by the Customer as set out in the applicable Order Form. For the avoidance of doubt where purchased at a discount the price per Pre-Paid Utilisation Unit will be less than the face value of that Pre-Paid Utilisation Unit
“Privacy Policy (Platform)”	the ‘ Cyferd – Privacy Policy (Platform) ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“Product Fees”	means together the Subscription Fee and the Utilisation Fees
“Production Tenancy”	means a Tenancy for the Customer’s main use in a ‘live’ environment (<i>‘live’</i> being in terms of the Customer’s data

	and/or everyday business operations). The Customer's Access to and use of a Production Tenancy is subject to, inter alia, those Access Parameters and Utilisation Parameters that apply to a Production Tenancy
"Professional"	means where the Order Form for the Main Subscription states that the 'Cyferd contract type' is 'Professional'. "Professional Agreements" means all Professional agreements (being the equivalent of and including the Agreement) Cyferd is a party to and "Professional Agreement" shall be construed accordingly. "Professional Customer" means a Cyferd Customer who is party to a Professional Agreement and "Professional Customers" shall be construed accordingly
"Protected Data"	as defined in the Data Protection Policy
"Purchased Item"	a product and/or service being the subject matter of an Order Form but not including any products and/or services referred to as not forming part of or being governed by the Agreement (and "Purchased Items" shall be construed accordingly). Purchased Items will include: Access to and use of the Cyferd Product and the Services (including all Tenancies), (which are Cyferd Apps), Premium Features, Premium Subscriptions and Pre-Paid Utilisation Units
"Relevant Items"	as defined in clause 12.1 (and "Relevant Item" shall be construed accordingly)
"Relief Event"	means: (i) any breach of the Agreement by the Customer; or (ii) any Force Majeure
"SaaS"	as defined in the definition of 'Cyferd Product' in this in paragraph 1 of SCHEDULE 2
"Service Days"	as defined in the ASA Terms
"Service Units"	as defined in the ASA Terms
"Services"	means together the services set out in SCHEDULE 1 together with any other services that Cyferd (in its sole discretion) designates in writing as being one or more of the 'Services'
"Standard Support Services"	as defined in SCHEDULE 1 (being one of the Services)
"Standard Support Services Policy"	the ' Cyferd – Standard Support Services Policy ' (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
"Sterling" and "£"	the lawful currency of the United Kingdom
"Storage of and Access to Customer Data Policy"	the ' Cyferd – Storage of and Access to Customer Data Policy ' (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
"Subscription Fee"	means the aggregate subscription fee payable by the Customer as stated/ provided for in the applicable Order Form: (i) for Access to and use of the Cyferd Product and the Services (including any specified Tenancy(ies) Ordered as/ as part of the Customer's first Order including the Main Subscription; (ii) for Access to and use of the Cyferd Product and the Services (including the specified Tenancy(ies) Ordered as part of such Order) as/ as part of any subsequent Order made by the Customer, for each year of the Initial Term (or the Initial Term where it is a year) and/or any Further Term (as the case may be)
"Taxes"	as defined in clause 10.8
"Template App"	means an unsupported 'template' App built which can then be subsequently used by and/or modified by or on behalf of any Cyferd Customer(s)
"tenancy"	in respect of any Cyferd Customer or those held and used by Cyferd itself, means a unique account of the Cyferd Product created by Cyferd for that Cyferd Customer/ Cyferd with its own URL enabling that Customer/ Cyferd to, inter alia, Access and use the Cyferd Product and the Services (including any App(s) and Feature(s)) and "tenancies" and "tenancy(ies)" shall be construed accordingly. Each tenancy is segregated from all other tenancy(ies). For the avoidance of doubt a tenancy is not

“Tenancy”	a separate stand-alone instance but still part of a multi tenancy cloud environment. A Tenancy is also a tenancy in respect of the Customer means a tenancy enabling the Customer to Access and use the Cyferd Product and the Services (including any App(s) and Feature(s)) and any other applicable Purchased Item(s), in accordance with and subject to the terms of the Agreement having strict regard to any Access Parameters and any Utilisation Parameters and “Tenancies” and “Tenancy(ies)” shall be construed accordingly
“Term”	as defined in clause 2.1
“Unapproved Order Form”	a Cyferd Partner Order Form which is not an Approved Order Form
“Update”	as defined in clause 9.1
“Update Notification”	as defined in clause 9.1
“Uptime Policy”	the ‘ Cyferd – Uptime Policy ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“User Acceptance Tenancy”	means a Non-Production Tenancy for the Customer’s testing (of Apps) use. The Customer’s Access to and use of a User Acceptance Tenancy is subject to, inter alia, those Access Parameters and Utilisation Parameters that apply to a User Acceptance Tenancy and, separately, to a Non-Production Tenancy
“User Notice”	the ‘ Cyferd – User Notice ’ (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy) as the same is amended from time to time by Cyferd
“Utilisation”	in respect of the Customer and Professional, means the way and manner in which the Customer actually and specifically uses/ utilises/ consumes the Cyferd Product and the Services (in whole or in part) including any Tenancy(ies), any Apps and any Features) and/or any other Purchased Item(s) from time to time under the terms of and subject to the conditions of the Agreement including taking into account: (i) consumption (by the Customer) components; and (ii) (where applicable) elective (by the Customer) components (more detail of which in terms of what comprises ‘ <i>Utilisation</i> ’ in principle can be found in the Meter Based/ Unit Based Utilisation Pricing Policy)
“Utilisation Fees”	means the aggregate utilisation fees payable by the Customer as stated/ provided for in the applicable Order Form for its Utilisation – such fees to be calculated/ determined on a Metered Utilisation basis, an Assumed Utilisation basis and /or a Fixed Utilisation basis (as the case may be) - for each year of the Initial Term (or the Initial Term where it is a year) and/or any Further Term (as the case may be). Utilisation Fees will, where applicable, include that payable in respect of any Excess Utilisation
“Utilisation Parameters”	(in respect of a Customer’s Tenancy) means the scope of and any restrictions to the Customer’s Utilisation of the Cyferd Product and the Services as provided for in the Agreement (including in these Terms and/or the applicable Order Form(s)) from time to time that apply to that Tenancy. For the avoidance of doubt different Tenancies could have different Utilisation Parameters
“Utilisation Units”	means the basis for which Metered Utilisation is calculated and priced. What comprises a Utilisation Unit and the price of a Utilisation Unit shall be as provided for in the Meter Based/ Unit Based Utilisation Pricing Policy and any other applicable Cyferd Policy(ies) or other applicable documents forming part of the Agreement from time to time subject only to any special express terms in the applicable Order Form(s)
“VAT”	means: (i) value added tax, as defined by the Value Added Tax Act 1994 (being legislation in England and Wales); or (ii) any other value added tax or sales tax or other tax of a similar nature, whether imposed in substitution for, or

levied in addition to, such tax referred to in (i) above, in any jurisdiction where such tax referred to in (i) above does not apply

“year”

means a period of 12 (twelve) months and “years”, “annual”, “yearly” and “annually” shall be construed accordingly and “calendar year” shall mean a year beginning with and including 1 January

2. **Interpretation**

- 2.1 any clause, SCHEDULE or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of these Terms/ this MSA;
- 2.2 references to clauses and SCHEDULES are to the clauses of and SCHEDULES to these Terms/ this MSA and references to paragraphs are to paragraphs of the relevant SCHEDULE;
- 2.3 a reference to this to “**these Terms/ this MSA**” or to any other agreement or document referred to in these Terms/ this MSA is a reference to these Terms/ this MSA or such other agreement or document as amended accordance with its terms from time to time and, in the case of these Terms/ this MSA, includes its SCHEDULES, appendices and annexes (if any);
- 2.4 a reference to a party includes that party’s personal representatives, successors and permitted assigns;
- 2.5 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;
- 2.6 a reference to a “**company**” includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 2.7 unless the context otherwise requires, a reference to a gender includes each other gender;
- 2.8 unless the context otherwise requires, words in the singular include the plural and vice versa;
- 2.9 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;
- 2.10 a reference to “**writing**” or “**written**” includes any method of reproducing words in a legible and non-transitory form including email but excluding fax;
- 2.11 where the context permits, “**other**” and “**otherwise**” are illustrative and shall not limit the sense of the words preceding them;
- 2.12 references to “**to Cyferd’s satisfaction**” or similar wording means Cyferd’s express written consent to or agreement with the matter requiring its satisfaction by Cyferd or on its behalf;
- 2.13 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 these Terms/ this MSA 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;
- 2.14 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 2.15 any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 2.16 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);
- 2.17 a reference to “**amended from time to time by Cyferd**” in the context of a Cyferd Policy or other document referred to in these Terms/ this MSA includes where Cyferd can amend the same by itself in accordance with its terms and/or these Terms/ this MSA; and
- 2.18 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.