



CYFERD

METER BASED/ UNIT BASED UTILISATION PRICING POLICY

1. Scope

- 1.1 This 'Cyferd – Meter Based/ Unit Based Utilisation Based Pricing Policy' (this "**Policy**") applies to Utilisation, Utilisation Units and to the calculation and/or use of Metered Utilisation (each as defined below). This Policy is made in connection with the provision by Cyferd Ltd ("**Cyferd**") of Access to and use of the Cyferd Product and the Services (each as defined below) to its customers (including those whose Access to and use of the Cyferd Product and the Services is/ was procured through a Cyferd Partner (as defined below)) who have an ongoing Professional Agreement or an ongoing Enterprise Agreement (each as defined below) for Access to and use of the Cyferd Product and the Services (in this Policy each a "**Customer**" and, in respect of each Customer, "**each Customer**", "**the Customer**", "**the Customer in question**" and "**that Customer**" shall be construed accordingly).
- 1.2 This Policy is supplemental to the MSA (as defined below) and, for each Customer, forms part of the Agreement (as defined below) with that Customer in respect of that Customer's Access to and use of the Cyferd Product and the Services.
- 1.3 This Policy is a Cyferd Policy (as defined below).
- 1.4 The Customer's acceptance of this Policy is as provided in the MSA (where 'acceptance' is as defined in the definition of 'Cyferd Policies' in the MSA).
- 1.5 In this Policy "**MSA**" means, in respect of the Customer in question, the master services agreement forming part of the Agreement with that Customer in respect of that Customer's Access to and use of the Cyferd Product and the Services (each version of the MSA (<https://cyferd.com/cyferdcomm/>)).
- 1.6 Terms defined in the MSA (including without limitation "**Access**", "**Agreement**", "**Applicable Currency**", "**Approved Order Form**", "**Assumed Utilisation**", "**Assumed Utilisation Fair Use Policy**", "**Commencement Date**", "**Cyferd Partner**", "**Cyferd Partner Order Form**", "**Cyferd Policy**", "**Cyferd Product**", "**Dollars**" and "**\$**", "**Enterprise**", "**Enterprise Agreement**", "**Enterprise Customer**", "**euro**" and "**€**", "**Excess Utilisation**", "**Feature**", "**Fixed Utilisation**", "**Further Term**", "**Metered Utilisation**", "**month**", "**Monthly Utilisation Summary**", "**New Document**", "**Non-Production Tenancy**", "**Order Form**", "**PaaS**", "**Premium Feature**", "**Premium Fees**", "**Premium Subscription**", "**Production Tenancy**", "**Professional**", "**Professional Agreement**", "**Professional Customer**", "**Services**", "**Sterling**" and "**£**", "**Subscription Fee**", "**Supplemental Terms**", "**Tenancies**", "**Tenancy**", "**Tenancy(ies)**", "**Update**", "**Update Notification**", "**Updates**", "**Utilisation**", "**Utilisation and Deliverable Based Variable Fees**", "**Utilisation Based Variable Fees**", "**Utilisation Fees**", "**Utilisation Units**", "**Variable Fees**", "**Variable Fees**

Pricing Terms, **“VAT”**, **“year”**) shall have the same meaning in this Policy unless the context otherwise requires or such term is defined separately in this Policy.

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

“Average Storage Units”	as defined in paragraph 5.11
“Compute Actions”	means the type of transactions referred to in paragraph 5.7
“Consumed Units”	as defined in paragraph 5.5
“Cyferd Perimeter”	the boundaries of the Cyferd Product (namely the ‘ <i>Cyferd platform</i> ’) within which Cyferd takes responsibility (on the terms and subject to the conditions of the Agreement with each Customer) to provide service to Customers (namely Access to and use of the Cyferd Product and the Services via Tenancy(ies)) further details of which are set out in the Hosting Policy (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy and as amended by Cyferd from time to time), the Storage of and Access to Customer Data Policy (https://cyferd.com/cyferdcomm/) (being a Cyferd Policy and as amended by Cyferd from time to time) and the ‘Annexure’ to both such Cyferd Policies
“Daily Minimum Standing Charge”	as defined in paragraph 5.10
“Ingress/ Egress Transactions”	means the type of transactions referred to in paragraph 5.9
“Non-Consumed Units”	as defined in paragraph 7.1
“Transaction Payloads”	means the type of transactions referred to in paragraph 5.8
“Pricing Factors”	as defined in paragraph 6.3
“Storage Units”	as defined in paragraph 5.6
“Unit Price”	as defined in paragraph 6.2
“Units Consumed”	as defined in paragraph 5.2

1.8 In this Policy:

- 1.8.1 references to paragraphs are to paragraphs of this Policy;
- 1.8.2 a reference to this Policy or to any other agreement or document referred to in this Policy is a reference to this Policy or such other agreement or document as amended in accordance with its terms and/or the MSA from time to time;
- 1.8.3 a reference to an “**amendment**” includes a novation, re-enactment, restatement, supplement, extension, variation or an amendment (and “**amend**” and “**amended**” shall be construed accordingly);
- 1.8.4 a reference to “**amended from time to time by Cyferd**” in the context of a Cyferd Policy or other document referred to in this Policy includes where Cyferd can amend the same by itself in accordance with its terms and/or the MSA;
- 1.8.5 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;
- 1.8.6 unless otherwise provided, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment made after the Commencement Date shall apply for the purposes of this Policy to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party;
- 1.8.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.8.8 any words that follow “**include**”, “**includes**”, “**including**”, “**in particular**”, “**for example**” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.8.9 a reference to “**writing**” or “**written**” includes any method of reproducing words in a legible and non-transitory form including email but excluding fax;
- 1.8.10 where the context permits, “**other**” and “**otherwise**” are illustrative and shall not limit the sense of the words preceding them;
- 1.8.11 any obligation on a Customer not to do something includes an obligation not to allow that thing to be done; and
- 1.8.12 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.

2. **Last Updated**

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

3. **Changes to this Policy**

- 3.1 ***For any person who is not a Customer at the time of such posting*** - Cyferd shall, at its absolute discretion, be entitled to amend this Policy or any part of it by posting an updated version of this Policy at <https://cyferd.com/cyferdcomm/> and such updates will be effective upon such posting or, if later, the 'Last Updated' date specified in such updated version of this Policy.
- 3.2 ***For any person who is a Customer at the time such Update Notification is made*** – Cyferd may at its absolute discretion make, and notify the Customer of, updated versions of this Policy by notifying the Customer of any such Update(s) by way of Update Notification. Such Update(s) will be effective in respect of the Customer in question in accordance with the applicable provisions of the MSA which relate to Updates. The provisions of the MSA which relate to Updates shall apply in respect of any such Update(s).
- 3.3 If Cyferd makes any amendments to this Policy, it will change the 'Last Updated' date in **paragraph 2** above in such updated version of this Policy.
- 3.4 An Update Notification could be sent/ made by Cyferd in respect of this Policy by e-mail (together with a copy of the Update(s) or a link to a copy of the Update(s)) in accordance with the notices provision in the MSA or by adding a statement to Cyferd's main website page referencing such Update(s) (together with a copy of the Update(s) or a link to a copy of the Update(s)) or by any other reasonable means which Cyferd elects.

4. **Metered Utilisation**

- 4.1 **Professional Agreements only** - Metered Utilisation is used by Cyferd (in respect of a Customer and as applicable):
- 4.1.1 to calculate that Customer's actual Utilisation of the Cyferd Product on a per Tenancy basis;
- 4.1.2 to calculate that Customer's Utilisation Fees where they are to be calculated using Cyferd's applicable meter based/ unit based pricing for Utilisation Fees (which could include where Utilisation Fees were previously calculated on an Assumed Utilisation basis or a Fixed Utilisation basis and Cyferd and that Customer have **not** agreed (to Cyferd's satisfaction) what the Utilisation Fees should be for the purposes of automatic renewal in respect of the applicable Further Term and have defaulted to then being calculated on a Metered Utilisation basis);
- 4.1.3 (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** (<https://cyferd.com/cyferdcomm/>) (being a Cyferd Policy and as amended by Cyferd from time to time);
- 4.1.4 (in connection with Assumed Utilisation) to help it decide what the Utilisation Fees should be (where they are intended to be on an Assumed Utilisation basis) for the purposes of automatic renewal in respect of the applicable Further Term – it being acknowledged that any agreement between that Customer and Cyferd in respect of the same must be in a form to Cyferd's satisfaction;

- 4.1.5 (in connection with Fixed Utilisation) to help it decide what the Utilisation Fees should be (where they are intended to be on an Fixed Utilisation basis) for the purposes of such automatic renewal in respect of the applicable Further Term – it being acknowledged that any agreement between that Customer and Cyferd in respect of the same must be in a form to Cyferd’s satisfaction;
 - 4.1.6 as provided for in **paragraph 4.3**; and/or
 - 4.1.7 to provide the requisite information for the Monthly Utilisation Summary relating to that Customer (it being acknowledged that whether that Customer is entitled to receive the same for the month in question will depend on the basis on which that Customer’s Utilisation Fees are calculated); and/or
 - 4.1.8 as otherwise provided for in an applicable Order Form, the Agreement or any other document comprising the Agreement from time to time.
- 4.2 **Enterprise Agreements only** - Metered Utilisation is used by Cyferd (in respect of a Customer and as applicable):
- 4.2.1 to calculate that Customer’s actual Utilisation of the Cyferd Product on a per Tenancy basis;
 - 4.2.2 to calculate that Customer’s Variable Fees where or to the extent they are Utilisation Based Variable Fees and/or Utilisation and Deliverables Based Variable Fees calculated (in whole or in part) using Cyferd’s applicable meter based/ unit based pricing for Utilisation;
 - 4.2.3 as provided for in **paragraph 4.3**; and/or
 - 4.2.4 to provide the requisite information for the Monthly Utilisation Summary relating to that Customer (it being acknowledged that whether that Customer is entitled to receive the same for the month in question will depend on the basis on which that Customer’s Variable Fees are calculated); and/or
 - 4.2.5 as otherwise provided for in an applicable Order Form, the Agreement or any other document comprising the Agreement from time to time.

4.3 **Professional Agreements and Enterprise Agreements** – (as provided for in the MSA and in respect of each Customer) Cyferd shall be entitled to (at all times or at any time during the Term) calculate and price that Customer's Utilisation on a Metered Utilisation basis even where that Customer's Utilisation Fees/ Variable Fees are not calculated or payable on a Metered Utilisation basis or, in the case of Enterprise, that Customer's Subscription Fee may include all or any part of such Utilisation). This is to enable Cyferd to (from time to time):

4.3.1 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 **paragraphs 4.1** and **4.2** and (for Professional Agreements in the case of Assumed Utilisation) to determine the accuracy of the Customer's Expected Utilisation);

4.3.2 monitor, track, peg, record, analyse, compare Utilisation of that Customer, all Customers and/or any Customers;

4.3.3 better understand how that Customer, all Customers and/or any Customers use the Cyferd Product and the Services (or any part);

4.3.4 calculate, price and/or estimate Utilisation generally for all and/or any Customers;

4.3.5 price '*Subscription Fees*' generally, '*Premium Fees*' generally, Premium Features, Premium Subscriptions and/or any other fees generally;

4.3.6 help that Customer, all Customers and/or any Customers use the Cyferd Product and the Services (or any part) more efficiently; and/or

4.3.7 better understand sector or business needs and requirements,

and the Customer in question 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 **paragraph 4.3** (even on an anonymised basis) with any person other than that referred to in **paragraph 4.3.1** and then only and to the extent provided for in this Policy. Where that 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 **paragraph 4.3** with that Cyferd Partner from time to time.

5. **How is Metered Utilisation calculated and priced?**

5.1 This **paragraph 5** applies to each applicable Customer.

5.2 Metered Utilisation is calculated by Cyferd in Utilisation Units and in particular as to how many Utilisation Units that Customer has consumed in the month in question per Tenancy ("**Units Consumed**"). This is then calculated by Cyferd on a Tenancy by Tenancy basis. Units Consumed does **not** include any Non-Consumed Units.

5.3 Where that Customer's Utilisation Fees are to be calculated on a Metered Utilisation basis then the Utilisation Fees for the month in question and the Tenancy in question will be calculated by Cyferd by multiplying the Units Consumed by the Unit Price. Where a Customer has more than one Tenancy to which this **paragraph 5.3** applies, then the total Utilisation Fees payable by that Customer for the month in question will be the aggregate of all such Utilisation Fees (ignoring for this purpose any applicable Non-Consumed Units relating to that month).

5.4 In respect of a Tenancy, Cyferd will determine the Units Consumed as follows:

5.4.1 the aggregate of Compute Units consumed by that Customer for the month in question; plus

- 5.4.2 the Average Storage Units consumed by that Customer for the month in question.
- 5.5 Utilisation Units that are derived from:
- 5.5.1 Compute Actions;
 - 5.5.2 (per Megabyte (MB) of) Transaction Payloads; and/or
 - 5.5.3 (per Megabyte (MB) of) Transaction Payloads through Ingress/ Egress Transactions,
- relating to that Customer and in connection with a particular Tenancy are “**Compute Units**”.
- 5.6 Utilisation Units that are derived from the size (in Bytes) of the ‘DataStore’ stored inside the Cyferd Perimeter relating to that Customer and in connection with a particular Tenancy are “**Storage Units**”. Storage Units are determined daily by Cyferd at the time Cyferd carries out its nightly backup of the ‘DataStore’ in question subject always to the application of the Daily Minimum Standing Charge. Such storage will incur costs for Cyferd.
- 5.7 Compute Actions relating to that Customer and in connection with a particular Tenancy relate to every transaction to/ from/ in/ using that Tenancy (and hence the Cyferd Product) other than the actual storage of data. Such transactions include ‘child’ transactions between services, Transaction Payloads and Ingress/Egress Transactions. Such transactions will incur costs for Cyferd.
- 5.8 Transaction Payloads relating to that Customer and in connection with a particular Tenancy are specific Compute Actions (or series of Compute Actions) - which are classed as ‘*high frequency light payload*’ or ‘*low frequency heavy payload*’ or ‘*high frequency heavy payload*’ or similar – for which Cyferd will (at its sole discretion) allocate additional ‘chargeable units’ on top of the ‘chargeable units’ relating the corresponding Compute Actions in determining Compute Units. Such transactions will incur additional costs for Cyferd.
- 5.9 Ingress/ Egress Transactions relating to that Customer and in connection with a particular Tenancy are specific Compute Actions (or series of Compute Actions) - which involve data flowing into and out of the Cyferd Perimeter and in some cases intra ‘Datacenter’ within the Cyferd Perimeter – for which Cyferd will allocate (at its sole discretion) additional ‘chargeable units’ on top of the ‘chargeable units’ relating the corresponding Compute Actions in determining Compute Units. Such transactions will incur additional costs for Cyferd.
- 5.10 In respect of Storage Units consumed by that Customer per Tenancy per day, Cyferd will apply a minimum number of ‘consumed’ Storage Units. Such minimum amount will be a token amount to reflect a small charge even when that Tenancy is ‘*at rest*’ (dormant) (because Cyferd still incurs costs in relation to that Tenancy even when it is ‘*at rest*’) and shall be set by Cyferd at its sole discretion from time to time (such minimum number of Storage Units to be allocated per day per Tenancy being the “**Daily Minimum Standing Charge**”). For the avoidance of doubt, where the Storage Units consumed by that Customer per Tenancy per day exceed the Daily Minimum Standing Charge then the Daily Minimum Standing Charge will **not** apply for that Customer for that Tenancy for that day.

- 5.11 In respect of Storage Units consumed by that Customer per Tenancy per month Cyferd will (using the amount of Storage Units consumed by that Customer per Tenancy per day for each day of that month and having regard to the Daily Minimum Standing Charge) calculate the average amount of Storage Units consumed by that Customer per Tenancy per day for each day of that month (such average amount of Storage Units for the month in question being the “**Average Storage Units**”).
- 5.12 All calculations/ determinations of Utilisation Units made by Cyferd under this Policy Calculations will be **rounded up to the nearest whole Utilisation Unit**.
- 5.13 If Cyferd makes any calculation/ determination/ allocation/ setting under or in connection with this Policy and/or issues any certificate, determination or notification of a rate or any amount under or in connection with this Policy, it shall be (in the absence of manifest error) conclusive evidence of the matter to which it relates and binding on the Customer in question.

6. Unit Price

- 6.1 As provided for in the MSA, 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.
- 6.2 Having regard to the pricing parameter in **paragraph 6.1, paragraph 5.13** and the Pricing Factors, the price of a Utilisation Unit will be:
- 6.2.1 **(if applicable) Professional Agreement not procured through a Cyferd Partner** - the price per Utilisation Unit specified (as a ‘*Special Term*’) in the Order Form;
- 6.2.2 **(if applicable) Professional Agreement procured through a Cyferd Partner** - the price per Utilisation Unit specified (as a ‘*Special Term*’) in the Cyferd Partner Order Form (which must be an Approved Order Form) strictly provided that Cyferd has (in its sole discretion) first approved such price in writing;
- 6.2.3 **(if applicable) Enterprise Agreement not procured through a Cyferd Partner** - the price per Utilisation Unit specified in the Variable Fees Pricing Terms or otherwise in the Supplemental Terms or (as a ‘*Special Term*’) in the Order Form;
- 6.2.4 **(if applicable) Enterprise Agreement procured through a Cyferd Partner** - the price per Utilisation Unit specified in the Variable Fees Pricing Terms or otherwise in the Supplemental Terms or (as a ‘*Special Term*’) in the Cyferd Partner Order Form (which must be an Approved Order Form) strictly provided that Cyferd has (in its sole discretion) first approved such price in writing and (where applicable) the relevant provisions of the Variable Fees Pricing Terms/ the Supplemental Terms;
- 6.2.5 **(if applicable) Professional Agreement** - Cyferd’s then price per Utilisation Unit for Professional being that notified by Cyferd to that Customer (and, where procured through a Cyferd Partner, that Cyferd Partner) in writing from time to time;
- 6.2.6 **(if applicable) Enterprise Agreement** - Cyferd’s then price per Utilisation Unit for Enterprise being that notified by Cyferd to that Customer (and, where procured through a Cyferd Partner, that Cyferd Partner) in writing from time to time;

- 6.2.7 **(if applicable) Professional Agreement** - Cyferd's then price per Utilisation Unit for Professional being that published by Cyferd in writing from time to time; and/or
- 6.2.8 **(if applicable) Enterprise Agreement** - Cyferd's then price per Utilisation Unit for Enterprise being that published by Cyferd in writing from time to time,

in each case in the Applicable Currency and **plus VAT** (such price per Utilisation Unit being the "**Unit Price**"). The prices in **paragraphs 6.2.1 to 6.2.4** (inclusive) shall take priority over the prices in **paragraphs 6.2.5 and 6.2.6** which, in turn, shall take priority over the prices in **paragraphs 6.2.7 and 6.2.8**.

6.3 The following (non-exhaustive) factors shall be considered by Cyferd in setting and/or applying the pricing of Utilisation Units:

- 6.3.1 currency fluctuations as between £(pounds Sterling), \$(Dollars) and €(euro);
- 6.3.2 analysing and/or benchmarking the information and data gleaned from the matters referred to in **paragraph 4.3**;
- 6.3.3 the cost to Cyferd of hosting and maintaining the Cyferd Perimeter and the storage of data;
- 6.3.4 the difference in the cost to Cyferd of hosting and maintaining the Cyferd Perimeter and the storage of data per 'Datacenter location' used by Cyferd from time to time;
- 6.3.5 a change in cost to Cyferd of hosting and maintaining the Cyferd Perimeter and the storage of data, whether generally and/or in respect of any particular 'Datacenter location' used by Cyferd from time to time;
- 6.3.6 a change to/ additional 'Datacenter location' used by Cyferd from time to time;
- 6.3.7 different Tenancy types (Production Tenancies and Non-Production Tenancies);
- 6.3.8 market for utilisation fees/ utilisation: (i) generally; (ii) for PaaS providers; and/or (iii) for specific business application software providers;
- 6.3.9 inflation;
- 6.3.10 other local and/or global economic factors from time to time;
- 6.3.11 compliance with laws/ regulatory requirements (which could differ in different locations) and/or changes to what Cyferd has to do/ accommodate from time to time in relation to such compliance;
- 6.3.12 to enable: (i) general; (ii) structured; and/or (iii) ad hoc/ bespoke incentivisation, on a Customer by Customer basis and at Cyferd's sole discretion. For example to enable Cyferd to provide progressive discounts to committed users of the Cyferd Product;
- 6.3.13 Customer behaviour;
- 6.3.14 feedback from Customers and/or Cyferd Partners;
- 6.3.15 the release of new Feature(s)/ updates to Feature(s);
- 6.3.16 changes to the Services (or any of them) to the extent it impacts Utilisation; and/or
- 6.3.17 other relevant factor(s) determined by Cyferd for time to time,

(together the “**Pricing Factors**”).

- 6.4 As provided for in the MSA, Cyferd shall be entitled to increase or decrease what comprises a Utilisation Unit and/or increase the price of a Utilisation Unit 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 decrease amounts to an Update to this Policy or a New Document in connection with/ supplemental to this Policy then **paragraph 3/** the provisions of the MSA which relate to Updates/ New Documents shall also apply in that regard.

7. Non-Consumed Units

- 7.1 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. Such Utilisation Units are not consumed by the Customer in the manner contemplated in this Policy and are accordingly “**Non-Consumed Units**”.
- 7.2 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), Non-Consumed will **not** (where the subject matter of the same is capable of being ‘*utilised*’) include the Utilisation of the product and/or service in question. Accordingly the Utilisation of the product and/or service in question could be calculated and payable on a Metered Utilisation basis in which case that form part of the Units Consumed and this Policy will apply to such Utilisation.

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

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

9. Law

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

[End of Policy]