

## ULTIMA GENERAL TERMS - CSP TERMS – ESSENTIALS AND MANAGED CLOUD

### 1. INTERPRETATION & DEFINITIONS

- 1.1 These CSP Terms form an integral part of the Agreement and are incorporated into the Agreement.
- 1.2 Except as expressly defined in these CSP Terms, all capitalised terms in these CSP Terms shall have the meaning given to them in the Agreement.
- 1.3 In these CSP Terms, the following terms have the following meanings:

**Break Fix:** a problem that has been caused by Microsoft, the platform or is defined in the Services that Ultima will triage and resolve under the support Services as set out in Ultima's 'CSP Break Fix Support – Essentials Document' within the CSP Essentials Schedule (the "**CSP Break Fix Support – Essentials Document**").

**Call Volume:** the volume of Service requests logged on the CSP Support Tool and is only relevant for review for specified tasks within the CSP Break Fix Support – Essentials Document.

**Cap:** the total monthly volume of Microsoft services which the Customer is permitted to use.

**Consumption Subscriptions:** the licences that are invoiced based on actual usage in the preceding month.

**CSP Essentials Schedule:** the additional terms related to the provision of the CSP Services as set out [here](#).

**CSP Support Desk:** the employees who are providing the support Services under the CSP Terms.

**CSP Support Tool:** the tool to be used to log tickets by the CSP Support Desk.

**Customer Agreement:** the Microsoft customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Customer enters into the Customer Agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time.

**Customer:** is as defined in the Agreement and for the purpose of this Schedule the definition of customer shall include Indirect Customer and Direct Customer.

**Direct Customer:** means when Ultima purchases the Services/ Products directly from Microsoft for the Customer.

**Fair Usage Policy:** the fair usage policy as set out in the CSP Essentials Schedule.

**Indirect Customer:** means when Ultima purchases the Services/ Products via a third party who will in turn purchase from Microsoft for the Customer.

**Licensed Software:** the Portals (as appropriate).

**Managed Cloud Schedule:** the additional terms of Managed Cloud which are set out [here](#).

**Minimum Users:** the minimum users as provisioned from time to time.

**Non-Commit Subscription(s):** the right to use the Products on a rolling Non-Commit Subscription Term basis.

**Non-Commit Subscription Term(s):** each individual non-commit subscription term shall be one calendar month.

**Online Service:** any of the Microsoft-hosted online services subscribed to by Customer under the Agreement, including (but not limited to) Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

**Party:** a party or parties to the Agreement.

**Portals:** in the case of an Indirect Customer, the Office 365 Adjustment Portal and the Azure Management Portal; in the case of a Direct Customer, the Direct Workspace portal and the Direct Azure portal.

**Products:** the products as they relate to Microsoft products. The Customer's use of the Products is subject to, and shall be in accordance with, the applicable Microsoft terms.

**Service Desk Tokens:** these are available for Customers to purchase to be used on any support vendor problem. More details, quotations and terms relating to these Tokens can be provided on request.

**Statement of Work:** has the meaning given to it in the Agreement. For clarity, in respect of CSP Services, the Statement of Work is also referred to as the 'Set Up Form' which describes the type of Subscriptions, the support offering (where applicable) and the pricing details.

**Subscription:** the purchase of a Subscription Service.

**Subscription Service:** a right to use the Product(s) for a defined term whether or not such term is a Non-Commit Subscription Term.

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**Third Party Distributor:** the third party who sells the Product(s) to Ultima.

**Unauthorised Disposition:** means theft, loss, transfer, sale, or distribution of the Products other than as permitted in these CSP Terms.

**2. CSP SERVICES**

2.1 By submitting an order through the Statement of Work, the Customer:

- (a) represents that any Subscription commitments and requirements disclosed are complete and accurate in all respects;
- (b) agrees to pay Ultima for all orders it submits for Products and the CSP Services in accordance with the terms of the Agreement; and
- (c) agrees to the terms of the Agreement and the Statement of Work.

2.2 By placing an order with Ultima, the Customer represents and warrants that the Customer has accepted and agreed to the Customer Agreement. If the Customer does not accept the terms of the Customer Agreement, Customer shall be liable to Ultima for any costs and damages incurred by Ultima due to such failure.

2.3 Once an order for a Subscription has been accepted by Ultima:

- (a) Subscriptions shall continue for the duration set out within the Statement of Work Term unless terminated in compliance with Clause 16 of the Agreement and Clause 10 of these CSP Terms; and/or
- (b) adjustments may only be made to increase the Minimum Users and not decrease below any current Minimum User provisioned as more fully set out in the Agreement, these terms and the Statement of Work (this is not applicable to Subscriptions purchased on a monthly term).

For the avoidance of any doubt, should the Customer purchase a Non-Commit Subscription (subject to the price as set out in the Statement of Work) the Customer shall have the ability to flex the number of users prior to the next Non-Commit Subscription Term, to take effect in the subsequent Non-Commit Subscription Term.

2.4 The Customer is responsible for giving Ultima any necessary information relating to the CSP Services within a reasonable time to enable Ultima to supply the CSP Services in accordance with the terms of the Agreement.

2.5 The Statement of Work for CSP Services shall only be deemed to be accepted when Ultima sets the Customer up on the Portal (or, where applicable, on the Managed Cloud portal) at which point, and on which date, the terms of the Agreement, these CSP Terms, the CSP Essentials Schedule and the Managed Cloud Schedule (if applicable) and the Customer Agreement shall come into existence.

2.6 The Customer hereby acknowledges and agrees, and shall procure that its End-Users acknowledge and agree, to the terms in the CSP Essentials Schedule (including the Portal-specific terms) and the Managed Cloud Schedule (if applicable).

2.7 If the Customer wishes to procure Managed Cloud Services as an additional Service, the Customer shall be required to complete a Statement of Work and agrees, and shall procure that its End-Users acknowledge and agree, to the terms and conditions of the Managed Cloud Schedule (if applicable).

2.8 The Customer will:

- (a) adhere to the Fair Usage Policy;
- (b) not arbitrarily change settings or configuration sets in the Licensed Software or any software provided to the Customer under these terms;
- (c) allow Ultima or its designated subcontractors and Third Party Distributors, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
- (d) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite or Office365), assign Ultima to the cloud subscription/s as the Claiming Partner of Record and/or Digital Partner of Record and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date; and
- (e) confirm when required that each of the Customer's End-Users are the primary user of a device using a Qualifying Operating System or other required operating system, as defined in the Product terms (available at <https://www.microsoft.com/licensing/terms/productoffering/WindowsDesktopOperatingSystem/MCA>).

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**3. CUSTOMER'S OBLIGATIONS**

- 3.1 The Customer agrees to adhere to the terms of the Customer Agreement which governs the use of the Subscription Services and the Online Services.
- 3.2 Customer will take commercially reasonable measures to protect Products from damage, destruction or Unauthorised Disposition and will comply with any additional security requirements as provided by Ultima from time to time. The Customer shall (i) promptly notify Ultima if it becomes aware of any material Unauthorised Disposition and (ii) reasonably cooperate with Ultima to investigate the suspected activities, and to share relevant information.

**4. FEES AND PAYMENT**

**4.1 Fixed Term Subscriptions:**

- (a) Products sold under fixed term Subscriptions are sold for a term as specified in the Statement of Work. The Statement of Work shall specify if such Subscriptions are to be invoiced on a monthly or annual basis.
- (b) Any subsequent adjustments to annual Subscriptions (e.g. adding users) made mid-billing cycle will be invoiced on or around the time of placing the order.
- (c) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and invoiced at the subsequent invoice.

**4.2 For all Consumption Subscriptions, the Customer agrees and acknowledges that:**

- (a) Consumption Subscriptions can only be cancelled in accordance with these CSP Terms (unless otherwise specified in the Statement of Work) and any usage before a cancellation and/or a transfer to another provider is in effect will be invoiced in the next scheduled invoice date;
- (b) Consumption Subscriptions will be invoiced monthly and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a consumption basis may change during the subscription period;
- (c) it shall pay all such usage and is responsible for monitoring its consumption needs;
- (d) In the event that the Customer requests an Azure reserved instance, the Fees will be invoiced in advance. In the event of termination within the term of the instance, the Fees remain payable and no refund of the Fees will be due to the Customer. The reserved instance may not be transferred to another provider. In the event that the actual consumption during the term of the instance is less than the reserved instance, the Fees remain payable and no refund of the Fees will be due to the Customer.

**4.3 Ultima may change credit or payment terms for unfilled orders if, in Ultima's reasonable opinion, the general commercial arrangements, the Customer's financial condition, previous payment record, or relationship with Ultima merits such change.**

**4.4 The Fees in relation to the Office 365 Adjustment Portal are subject to the following clauses:**

- (a) The Fees for Office 365 Adjustment Portal are based on the Microsoft price list and the number of licenses provisioned. Changes to licence counts will result in an increase to the Fees. At the end of each month Ultima shall validate the number of licenses provisioned during that month;
- (b) Under Ultima's CSP program the support provided is Break Fix. Ultima has detailed the support that will be provided within the CSP Break Fix Support – Essentials Document. Troubleshooting activities will have no strict limitations yet will be subject to reasonable usage. For certain administrative tasks a Call Volume has been added;
- (c) Where a Customer exceeds these monthly Call Volume limits these tasks will thereafter be classed as out of scope and the Customer may purchase support to resolve these tasks at an additional fee.

**4.5 In the event the total Call Volume is below the agreed Call Volume, no credit or rollover is permitted.**

**4.6 The Fees in relation to the Azure Management Portal are subject to the following clauses:**

- (a) The Fees in relation to the Azure Management Portal will be provided in writing from [CSP@Ultima.com](mailto:CSP@Ultima.com) based on the Customer's initial requirements. Pricing for Azure services is delivered as a discount to Ultima from Microsoft to reflect Ultima maintaining admin rights over the Customer's tenant for Microsoft Azure. Such admin rights are required by Microsoft. Accordingly, should the Customer choose either not to allow or to remove Ultima's admin rights using the dedicated function in the Azure Management Portal (as appropriate), the Fees visible in the Azure Management Portal and payable by the Customer will increase

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and be reflected within subsequent invoicing. Such increase shall be, as a minimum, fifteen percent (15%); and

- (b) Hybrid or on-premise infrastructure support is out of scope of the CSP Services and such support may be purchased at an additional fee.

4.7 Fees for any additional CSP Services shall be as set out in the applicable Statement of Work.

4.8 All the Fees set out in this Clause 4 are subject to change by Microsoft and/or Third Party Distributors and are subject to the provisions of the remainder of this Clause 4 and Clause 2.3(b). Any such change shall be reflected in the Fees as set out in the corresponding invoice issued to the Customer.

4.9 The Customer hereby acknowledges and agrees that the Fees may vary subject to prior written notice to the Customer in the following circumstances:

- (a) in relation to the Office 365 Adjustment Portal as set out in this Clause 4;
- (b) in relation to the Azure Management Portal as set out in this Clause 4;
- (c) in relation to the Managed Cloud Services (where applicable), as set out in the Managed Cloud Schedule and this Clause 4; and
- (d) in relation to the Subscription Services, at any time in accordance with any increases imposed on Ultima by Microsoft and or its Third Party Distributor and in line with the terms of the Customer Agreement.

**5. LICENCE**

5.1 In consideration of the Fees paid by the Customer to Ultima (and relevant subscription), Ultima grants to the Customer either a non-exclusive licence to use the Portals or non-exclusive licence to use the Managed Cloud portal. The Customer may elect to subscribe to the Portals and Managed Cloud Services subject to completing the necessary (and applicable) Statement of Work.

5.2 The Customer will at all times protect the Portals and Managed Cloud access from unauthorised access, use or damage by any party. The Customer shall immediately notify Ultima in writing of any unauthorised access, use or damage of the Portals or Managed Cloud and, if requested by Ultima, report such situation to the local authorities.

5.3 The Customer acknowledges that all Intellectual Property in the Portals and Managed Cloud belongs and shall belong to Ultima, its partner providers or its licensors and the Customer shall have no rights in or to the Portals or Managed Cloud, other than the right to use them in accordance with the terms of the Agreement.

5.4 The Customer grants Ultima, its partner providers and its licensors a worldwide, non-exclusive, perpetual, irrevocable, fully paid, royalty-free, sublicensable license to use and incorporate into the Licensed Software and the software provided to the Customer under the Customer Agreement any suggestions, enhancement requests, recommendations or other feedback regarding features or functions of the software provided by the Customer relating to the software.

5.5 The Customer acquires only such limited rights to use the Products as is explicitly described in the Customer Agreement. Any use by the Customer of these rights beyond the scope permitted by the Customer Agreement shall constitute a material breach hereof.

5.6 Ultima is not liable for defects in, or delays related to the Products.

5.7 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the Customer Agreement shall apply and is a separate action between the Customer and Microsoft.

**6. SERVICE LEVELS**

6.1 The Service Levels that are to apply to the use of the Portals are as set out in section 5 of the CSP Essentials Schedule and, if applicable, the Managed Cloud Schedule.

**7. RESTRICTIONS**

7.1 The Customer shall at all times comply with any specifications for any CSP Services provided by Ultima from time to time or a third party if the Customer is an Indirect Customer (and procure that all its End-Users do so).

7.2 Where a Customer is an Indirect Customer, the third party Office 365 Adjustment Portal and the Azure Management Portal are not designed, authorised or warranted to be suitable for use in medical, military, aircraft, space or life support equipment, nor in applications where failure or malfunction of the portals can reasonably be expected to result in personal injury, death or severe property or environmental damage, inclusion or use of the Office 365 Adjustment Portal and the Azure Management Portal in such equipment or applications, without prior authorisation in writing by Ultima, is not permitted and is done at the Customer's and End-User's own risk.

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**8. CSP LICENCE TERMS**

- 8.1 Where the CSP Services include Microsoft Office 365 licenses and / or Microsoft Azure usage, CSP Essential support is included as part of the Fees, as set out in more detail in the Statement of Work.
- 8.2 Hybrid or on-premise infrastructure is out of scope for CSP support and can be provided at an additional fee by procuring Service Desk Tokens.
- 8.3 The Customer acknowledges that Ultima has not and does not warrant or guarantee the performance of the Portals, Managed Cloud or any aspect or portion thereof including, but not limited to, warranties of merchantability, fitness for any particular purpose, title and non-infringement relating to anything provided or used under the Agreement for the provision of the Portals, Managed Cloud and that any equipment, material, goods or other tangible or intangible asset that is conveyed, sold, or otherwise provided to Customer in any manner, or as to any other matter, all of which warranties are hereby expressly excluded and disclaimed and Customer agrees that nothing in the Agreement shall be construed as any such warranty or guarantee.
- 8.4 The Customer shall (unless otherwise specified in the Statement of Work or as otherwise set out in the Agreement and or these CSP Terms):
- (a) where the CSP Services include access to the Portals, comply with the terms set out in CSP Essentials Schedule or the Managed Cloud Schedule, as appropriate;
  - (b) refrain from arbitrarily changing settings or configuration sets in the Licensed Software or any software provided to the Customer under the CSP Essentials Schedule or the Managed Cloud Schedule; and
  - (c) send any details and set up to the End-User where any tooling for remote access and sharing is required. Any costs incurred would be quoted to the Customer and accepted prior to any Statements of Work being initiated.
- 8.5 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Customer Agreement form part of these CSP Terms.

**9. DATA PROTECTION**

- 9.1 The provisions of the Agreement apply in relation to these CSP Terms, save that Annex 1 of these CSP Terms sets out the scope, nature and purpose of processing by Ultima, the duration of the processing and the types of personal data and categories of data subject in relation to CSP Services.

**10. TERM & TERMINATION**

- 10.1 The provision of the CSP Services shall commence on the date set out in the Statement of Work.
- 10.2 The Customer's perpetual licences and licences granted on a Subscription basis will continue for the duration of the Subscription period(s), subject to the terms in the Agreement. Unless otherwise specified in the applicable Statement of Work, the Customer shall remain liable for any and all payments due in respect of the licences until the end of the respective Subscription period.
- 10.3 Fixed term subscriptions for Products will automatically renew at the end of the initial subscription term (and each subsequent renewal term) for a term equal to the initial subscription term, unless either Party gives the other Party at least forty-five (45) days' prior written notice of non-renewal, such notice to expire at the next renewal date.
- 10.4 Certain Subscriptions or Product licences may not automatically renew at the end of the term. Ultima will use reasonable endeavours to inform Customers where such purchased Subscriptions or Product licences will require manual renewal or repurchase at the end of its term. For the avoidance of doubt, Ultima is not responsible for, and has no liability in relation to, the Customer being unlicensed as a result of any non-automatic renewal of Subscriptions or Product licences.
- 10.5 Termination of the licences will not affect any other Services provided under the Agreement.
- 10.6 Ultima shall not be liable whatsoever to the Customer following any termination or suspension of the Subscription for legal, regulatory or any other reason reasons by Microsoft or the Third Party Distributor.
- 10.7 If the Customer has not complied with its payment obligations under the Agreement Ultima will give the Customer written notice of the breach with fourteen (14) days' notice to remedy it. If the Customer does not remedy the breach Ultima may suspend the CSP Services and/or Products. Ultima is not responsible or liable if the CSP Services and/or Products do not to comply with the Set Up Form as a direct result of the Customer being in breach of its obligations under the Agreement.
- 10.8 Ultima may terminate the Subscription Services immediately on giving written notice to the Customer:

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- (a) if payment of any amount due from the Customer under these terms is overdue by ten (10) Business Days or more provided that Ultima has given the Customer ten (10) days' written notice of such failure to pay; and/or
- (b) upon termination by Microsoft and/or the Third Party Distributor of the licence(s); and/or
- (c) on termination of the Third Party Distributor's agreement relating to the Customer's subscription, in which event Ultima will not be liable whatsoever to the Customer; and/or
- (d) in accordance with the Customer Agreement.

10.9 On termination of the Agreement for any reason:

- (a) the Customer shall pay all outstanding sums owing to Ultima up to and including the date of termination;
- (b) all licences granted herein will terminate immediately except for fully-paid, perpetual licences;
- (c) for metered Products invoiced periodically based on usage, the Customer must immediately pay for unpaid usage as of the termination date; and
- (d) if Microsoft is in breach and the Customer is entitled to a credit for any Subscription Service fees, on receipt of the same, Ultima will pass on any such credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date. Ultima is not liable to the Customer if Microsoft do not issue a credit.

**11. CANCELLATION**

- 11.1 Subject to Clause 11.2, where the Customer has procured Products or Online Services from Ultima, the Customer may cancel the applicable order in line with the terms set out by Microsoft if the Customer notifies Ultima within twenty four (24) hours of placing the initial order for the applicable Microsoft Products or Online Services. For such notice to cancel to be effective it must be received by Ultima within the hours of 9am – 4pm (in London) on a Business Day.
- 11.2 The Customer acknowledges and accepts that any cancellation pursuant to Clause 11.1 will only be accepted if submitted by Ultima within Microsoft's designated cancellation period for the applicable Online Service or Product and is approved by Microsoft and/or the Third Party Distributor in accordance with any other requirements of Microsoft and/or the Third Party Distributor at the time of cancellation.
- 11.3 If cancellation is approved by Microsoft and/or the Third Party Distributor, then the order will be cancelled and depending on the service or product being cancelled, if and to the extent any credit of the purchase price (in full or pro-rata) is issued by Microsoft or the Third Party Distributor to Ultima, on receipt of the same Ultima will pass on any such credit to the Customer less any Microsoft and/or the Third Party Distributor handling fee as a proportion of the value of any order submitted and approved after the designated period for the relevant Microsoft Product or Microsoft Service. Ultima is not liable to the Customer if Microsoft and/or Third Party Distributor do not issue a credit.

**12. LIMITATION OF LIABILITY**

- 12.1 Subject to Clauses 12.2 and 12.3, Ultima's total aggregate liability to the Customer, however caused, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent) restitution or otherwise, arising in connection with the performance or contemplated performance of its obligations contained in these CSP Terms shall be limited to the Fees paid for the CSP Services during the twelve (12) months preceding the date on which the claim arose.
- 12.2 For the avoidance of doubt, the terms set out in the Customer Agreement govern the rights and responsibilities of the Customer and Microsoft in relation to the use of the Subscription Services and Online Services and Ultima excludes any and all liability in relation to the use of the Products.
- 12.3 Notwithstanding anything to the contrary in the Agreement, the Customer shall indemnify Ultima from and against any claims, including but not limited to claim for Fees that directly or indirectly arises from the Customer's use of the Subscription Services or reporting under these terms or the Agreement.

**ANNEX 1 OF CSP TERMS – DATA PROCESSING**

- 1.1 Processing by Ultima and its sub processors
  - 1.1.1 Scope, nature and purpose of processing:  
As necessary to perform Ultima’s obligations under these terms including the CSP Services to the Customer.
  - 1.1.2 Duration of the processing:  
For the duration of each Statement of Work unless otherwise instructed by the Customer.
  - 1.1.3 List of sub-processors  
The following list of sub-contractors are used in order to deliver the CSP Services:  
  
Ultima Companies  
Other sub processors as identified [here](#)  
  
Ultima reserves the right to amend and update this section 1.1.3 subject to Ultima notifying the Customer in writing in accordance with the Agreement.
  - 1.1.4 Types of Personal Data  
  
Business contact details including name, postal address, email address, telephone number (landline and mobile), and job title.
- 1.2 Categories of Data Subject
  - 1.2.1 Customer’s employees and representatives.
  - 1.2.2 End-User’s employees and representatives.