

## BACKGROUND

This agreement (the “**Agreement**”) governs the provision by Ultima to the Customer of certain CSP products and/or services under Microsoft’s New Commerce Experience. Where the Set Up Form (as defined below) includes the provision of such products and services, these will be provided in accordance with this Agreement.

## AGREED TERMS

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

#### **Applicable Data Protection Laws:**

- a) To the extent the UK GDPR and UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Ultima is subject, which relates to the protection of personal data.

**Applicable Laws:** means all laws, statutes, orders, rules, provisions, regulations, directives, codes, policies and guidelines which apply to the provision of the Services, including any requirements of any applicable Authority.

**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**”).

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Business Hours:** 9am to 5.30pm local UK time on Business Days.

**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.

**Commissioner:** the Information Commissioner (as set out in section 114, DPA 2018).

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its **Representatives**) to the other Party and that Party’s Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Consumption Subscriptions:** refers to 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 Services as set out [here](#).

**CSP Support Desk:** the employees who are providing the support Services pursuant to this Agreement.

**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 this 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:** the name of the customer which purchases the Services and/or Products from Ultima, as set out in the Set Up Form. Ultima may purchase the Services and/or Products (i) directly from Microsoft making the Customer a “Direct Customer” or (ii) via a third party who will purchase from Microsoft making the Customer an “Indirect Customer”.

**Customer Personal Data:** any personal data which Ultima processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679).

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

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**Fees:** the fees payable to Ultima, as described in this Agreement and in the Set Up Form as may be varied from time to time pursuant to the terms of this Agreement.

**Force Majeure Event:** has the meaning set out in Clause 18.12.

**Indirect Customer:** as defined within the definition of 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 this 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.

**Services:** the services (excluding use of the Products) as described in the Set Up Form to be performed by Ultima in accordance with this Agreement.

**Set Up Form:** means the order form which describes the type of Subscriptions, the support offering (where applicable) and the pricing details. The Set Up Form forms part of this Agreement and shall be issued under separate cover.

**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.

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

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018); the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

**Ultima:** Ultima Business Solutions Ltd, registered in England and Wales with company number 02521249, whose registered office is at Gainsborough House, Manor Park, Basingstoke Road, Reading, RG2 0NA

**Ultima Company:** Ultima and any company, which could be a UK or a non-UK registered entity, that is from time to time (a) a holding company of Ultima, (b) a subsidiary of Ultima, (c) a subsidiary of a holding company of Ultima, or (d) controlling, controlled by, or under common control with, Ultima or any of the aforementioned holding companies or subsidiaries. For the purposes of this definition the terms "holding company", "subsidiary undertaking", have the meanings given to them in the Companies Act 2006).

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

1.2 Clause, and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 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 A reference to **writing** or **written** includes e-mail.
- 1.9 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses are to the Clauses of this Agreement.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.12 In the event of any conflict or inconsistency between the Set Up Form and the Clauses to this Agreement (including any changes to the schedules or additions or variations to the schedules), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
  - (a) the Set Up Form;
  - (b) the Clauses.

**2. SERVICE PROVISION**

- 2.1 By submitting an order through the Set Up Form, 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 Services in accordance with the terms of this Agreement; and
  - (c) agrees to the terms of this Agreement including the Set Up Form.
- 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 Set Up Form unless terminated in compliance with Clause 11 of the Agreement; 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 this Agreement and the Set Up Form (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 Set Up Form) 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 Services within a reasonable time to enable Ultima to supply the Services in accordance with the terms of the Agreement.
- 2.5 The Set Up Form 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 this Agreement and the Customer Agreement shall come into existence.

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- 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 Set Up Form 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>).

**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. ULTIMA'S OBLIGATIONS**

- 4.1 Ultima will provide the Services with due care, skill and ability, and in accordance with this Agreement and the Set Up Form. This obligation shall not apply to the extent of any non-conformance that is caused by use of the Services contrary to Ultima's or any of its third party's instructions.
- 4.2 Ultima shall use its reasonable endeavours to ensure that:
- (a) the Services are carried out by suitably qualified personnel but it cannot guarantee that specific personnel will carry out the Services for the Customer and Ultima reserves the right in its absolute discretion to change the personnel engaged in providing the Services for the Customer without prior notification to the Customer;
  - (b) each of Ultima's personnel engaged in the provision of the Services possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and the level of performance and Service Levels which they are required to achieve;
  - (c) there is an adequate number of personnel to provide the Services properly; and
  - (d) the tasks are performed in a workmanlike and professional manner.

**5. FEES AND PAYMENT**

- 5.1 Fixed Term Subscriptions:
- (a) Products sold under fixed term Subscriptions are sold for a term as specified in the Set Up Form. The Set Up Form 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.

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- 5.2 For all Consumption Subscriptions, the Customer agrees and acknowledges that:
- (a) Consumption Subscriptions can only be cancelled in accordance with this Agreement (unless otherwise specified in the Set Up Form) 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.
- 5.3 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.
- 5.4 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.
- 5.5 In the event the total Call Volume is below the agreed Call Volume, no credit or rollover is permitted.
- 5.6 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 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 Services and such support may be purchased at an additional fee.
- 5.7 Fees for any additional Services shall be as set out in the applicable Set Up Form.
- 5.8 All the Fees set out in this Clause 5 are subject to change by Microsoft and/or Third Party Distributors and are subject to the provisions of the remainder of this Clause 5 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.
- 5.9 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 5;
  - (b) in relation to the Azure Management Portal as set out in this Clause 5;
  - (c) in relation to the Managed Cloud Services (where applicable), as set out in the Managed Cloud Schedule and this Clause 5; 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.

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- 5.10 If Ultima agrees to grant the Customer a credit account, the Customer must pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within 30 days of the date of invoice unless otherwise agreed in writing by Ultima. If Ultima does not agree to grant a credit account then, at Ultima's discretion, the Customer must either pay by direct debit (in which case the details of the direct debit payments will be sent to the Customer separately) or pay for all Services in advance.
- 5.11 All payments by the Customer under this Agreement will be in United Kingdom pound sterling unless otherwise agreed and shall be paid to Ultima's bank account as advised by Ultima to the Customer in writing.
- 5.12 All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Customer, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.

**6. LICENCE**

- 6.1 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) Set Up Form.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 Ultima is not liable for defects in, or delays related to the Products.
- 6.7 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.

**7. SERVICE LEVELS**

- 7.1 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, in the Managed Cloud Schedule.

**8. RESTRICTIONS**

- 8.1 The Customer shall at all times comply with any specifications for any 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).
- 8.2 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.

**9. CSP LICENCE TERMS**

- 9.1 Where the 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 Set Up Form.
- 9.2 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.
- 9.3 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 this Agreement shall be construed as any such warranty or guarantee.

- 9.4 The Customer shall (unless otherwise specified in the Set Up Form or as otherwise set out in this Agreement):
- (a) where the 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.
- 9.5 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Customer Agreement form part of this Agreement.

**10. DATA PROTECTION**

- 10.1 The Parties shall comply with their obligations set out in Schedule 1 (Data Protection Principles).

**11. TERM & TERMINATION**

- 11.1 The provision of the Services shall commence on the date set out in the Set Up Form.
- 11.2 The Customer's perpetual licences and licences granted on a Subscription basis will continue for the duration of the Subscription period(s), subject to this Agreement. Unless otherwise specified in the applicable Set Up Form, the Customer shall remain liable for any and all payments due in respect of the licences until the end of the respective Subscription period.
- 11.3 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.
- 11.4 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.
- 11.5 Termination of the licences will not affect any other Services provided under the Agreement.
- 11.6 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.
- 11.7 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 Services and/or Products. Ultima is not responsible or liable if the 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 this Agreement.
- 11.8 Ultima may terminate the Subscription Services immediately on giving written notice to the Customer:
- (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.
- 11.9 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;

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- (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.

**12. CANCELLATION**

- 12.1 Subject to Clause 12.2, 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.
- 12.2 The Customer acknowledges and accepts that any cancellation pursuant to Clause 12.1 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.
- 12.3 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.

**13. LIMITATION OF LIABILITY**

- 13.1 This Clause 13 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents, subcontractors and of Ultima Companies) in respect of (a) any breach of this Agreement and (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2 Except as expressly and specifically provided in this Agreement all warranties, conditions, terms and liabilities express or implied, statutory or otherwise, on the part of Ultima, in respect of compliance with descriptions, the quality or the fitness for purpose of the Services are excluded from this Agreement to the fullest extent permitted by law.
- 13.3 Nothing in this Agreement excludes or limits either Party's liability for (a) death or personal injury caused by negligence, (b) fraud or fraudulent misrepresentation, or (c) any other liability which cannot lawfully be excluded or limited.
- 13.4 Subject to Clauses 13.3 and 13.7 neither Party shall have liability to the other, however caused in each case, in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profit, revenue, production, business, contracts, opportunities, anticipated savings, data, goodwill, reputation, use or costs of wasted management or staff time, or for any indirect or consequential loss or damage, or loss or damage suffered as a result of a claim brought by a third party.
- 13.5 Subject to Clauses 13.3 and 13.7, 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 this Agreement shall be limited to the Fees paid for the Services during the twelve (12) months preceding the date on which the claim arose.
- 13.6 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.
- 13.7 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.

**14. CHANGE CONTROL**

- 14.1 If either Party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.



**15. CONFIDENTIALITY**

- 15.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not: without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by this Agreement.
- 15.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in this Clause 15.
- 15.3 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.
- 15.4 The obligations of confidentiality set out in this Clause 15 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information. by or for the receiving Party independently of the information disclosed by the disclosing Party.

**16. NON-SOLICITATION**

- 16.1 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the provision, performance or administration of the Services or this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
- 16.2 In the event that either Party is in breach of Clause 16.1 above then the Party in breach shall pay to the other a one-off recruitment fee of 20% of the individual's basic annual salary, or in the case of a temporary engagement 25% of the contract fees payable to the individual so employed or engaged. Such fee is intended to enable the non-breaching Party to recruit a replacement for this individual and as such the non-breaching Party reserves the right to amend the fees if appropriate and will provide documentary evidence to back up such fee amendment. This provision shall be without prejudice to either Party's ability to seek injunctive relief.
- 16.3 The Parties hereby acknowledge and agree that the formula specified in Clause 16.2 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

**17. ANTI-BRIBERY**

- 17.1 Each Party shall comply with all Applicable Laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010; and promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by that Party in connection with the performance of this Agreement.
- 17.2 For the purpose of this Clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 17 a person associated with Ultima includes any subcontractor of Ultima.

**18. GENERAL**

**WAIVER**

- 18.1 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**SEVERANCE**

- 18.2 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

**ENTIRE AGREEMENT AND AMENDMENT**

Ultima Business Solutions Limited  
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18.3 This Agreement, the CSP Essentials Schedule and Managed Cloud Schedule (where applicable) and the terms of the Set Up Form constitute the entire Agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and Agreements between them relating to its subject matter.

18.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

**ASSIGNMENT**

18.5 The Customer shall not without the prior written consent of Ultima (such consent not to be unreasonably withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

**NO PARTNERSHIP OR AGENCY**

18.6 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

**ULTIMA GROUP COMPANIES**

18.7 The Customer confirms that the Services may be provided by an Ultima Company without seeking the prior consent of the Customer. Notwithstanding this, Ultima will at all times be responsible for, and liable in respect of, the performance of all obligations under this Agreement, whether such obligations are performed by Ultima itself or an Ultima Company.

**THIRD-PARTY RIGHTS**

18.8 This Agreement is made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

**NOTICES**

18.9 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

18.10 Notices are to be sent to: The Legal Team, [Legal@Ultima.com](mailto:Legal@Ultima.com), or by post to: Gainsborough House, Manor Farm Road, Reading, England, RG2 0NA.

18.11 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

18.12 This Clause 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. For the purposes of this Clause, "writing" shall not include e-mail.

**FORCE MAJEURE**

18.13 Ultima shall have no liability to the Customer under this Agreement if Ultima is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control except to the extent that Ultima could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, computer viruses and malware, pandemics, epidemics, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of Ultima), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **Force Majeure Event**), provided that the Customer is notified of such an event and its expected duration and Ultima uses reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned. If the period of delay or non-performance continues for eight (8) weeks or more, this Agreement may be terminated on fourteen (14) days' written notice solely in respect of the Services element provided by Ultima (or on its behalf). Customers licences to the Products will still continue and any termination of this Agreement for Force Majeure shall, for the avoidance of doubt, remain subject to clause 11.2.

**GOVERNING LAW AND JURISDICTION**

Ultima Business Solutions Limited  
CSP Agreement (Essentials only) - standalone

- 18.14 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the law of England.
- 18.15 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1- DATA PROTECTION PRINCIPLES**

- 1.1 For the purposes of this Schedule 1, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK Data Protection Legislation.
- 1.2 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Schedule 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 1.3 The Parties have determined that, for the purposes of Applicable Data Protection Laws, Ultima shall process the personal data set out in Annex 1 as a processor on behalf of the Customer.
- 1.4 Without prejudice to the generality of clause 1.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Ultima for the duration and purposes of this Agreement.
- 1.5 In relation to the Customer Personal Data 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 are set out in Annex 1.
- 1.6 Without prejudice to the generality of clauses 1.1 and 1.2 Ultima shall, in relation to Customer Personal Data:
  - (a) process that Customer Personal Data only on the documented instructions of the Customer, unless Ultima is required by Applicable Data Protection Laws to otherwise process that Customer Personal Data. Where Ultima is relying on Applicable Data Protection Laws as the basis for processing Customer Personal Data, Ultima shall notify the Customer of this before performing the processing required by the Applicable Data Protection Laws unless those Applicable Data Protection Laws prohibit Ultima from so notifying the Customer on important grounds of public interest. Ultima shall inform the Customer if, in the opinion of Ultima, the instructions of the Customer infringe Applicable Data Protection Laws;
  - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (c) ensure that any personnel engaged and authorised by Ultima to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
  - (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Ultima), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
  - (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless Ultima is required by Applicable Data Protection Law to continue to process that Customer Personal Data. For the purposes of this clause 1.6(f) Customer Personal Data shall be considered deleted where it is put beyond further use by Ultima; and
  - (g) maintain records to demonstrate its compliance with this Schedule 1 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice (at least 4 weeks) and in accordance with Ultima's Information Security Management System. Audits of compliance with data protection obligations are limited to once per year unless the Customer has a genuine reason to believe that Ultima is in material breach of this Schedule 1 or can demonstrate that it requires copies of applicable documentation in order to comply with Applicable Data Protection Laws or the requirements of the Commissioner or other applicable regulatory authority. In such case the Customer shall act reasonably in relation to any audit request, and in a manner which results in the minimum of inconvenience to Ultima.
- 1.7 The Customer hereby provides its prior, general authorisation for Ultima to:
  - (a) appoint processors to process the Customer Personal Data, provided that Ultima:
    - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Ultima in this Schedule 1;

- (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Ultima; and
  - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Ultima's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify Ultima for any losses, damages, costs (including legal fees) and expenses suffered by Ultima in accommodating the objection;
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that Ultima shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Ultima, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK Data Protection Legislation applies to the transfer).

**ANNEX 1 TO DATA PROTECTION PRINCIPLES: DATA PROCESSING**

This Annex 1 to Schedule 1 contains specific terms relating to the Processing Personal Data and Data Subjects and forms part of the Agreement.

**1.1 Processing by Ultima and its sub processors**

(a) Scope, nature and purpose of processing:

As necessary to perform Ultima's obligations under the Contracts including the Services to the Customer.

(b) Duration of the processing:

For the duration of each Contract unless otherwise instructed by the Customer.

(c) List of sub-processors

The following list of sub-contractors are used in order to deliver the Services:

Ultima Companies

Other sub processors as identified [here](#)

Ultima reserves the right to amend and update this section (c) subject to Ultima notifying the Customer in writing in accordance with clause 1.7 of Schedule 1 above.

**1.2 Types of Personal Data**

Business contact details including name, postal address, email address, telephone number (landline and mobile), and job title.

**1.3 Categories of Data Subject**

(a) Customer's employees and representatives.

(b) End-User's employees and representatives.