

GENERAL TERMS

BACKGROUND

- (A) Ultima has developed and will provide the Services.
- (B) The Customer wishes to use Ultima's Services in its business operations.
- (C) Ultima has agreed to provide, and the Customer has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement.

AGREED TERMS

1. INTERPRETATION

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

Acceptance Criteria: the acceptance criteria as specified in Clause 9.2 or referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Statement of Work, are satisfactory and ready to be invoiced.

Acceptance Tests: the acceptance tests as specified or referred to in the Statement of Work or as agreed between the Parties, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

Agreement: the terms and conditions herein including the documents linked within it along with the Statement of Work(s).

Applicable Data Protection Laws:

- a) To the extent the UK GDPR 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:

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

Background Materials: all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by Ultima which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

Business Systems: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customers or any of its agents or contractors.

Change Request (or CCN): any request to alter the Services pursuant to this Agreement as set out in Clause 14.

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

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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.

Commencement Date: the date of this Agreement unless otherwise specified in the relevant Statement of Work.

Commissioner: the Information Commissioner (see section 114, DPA 2018).

CSP Agreement: the CSP 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 Agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time.

CSP Services: services related to the provision of the Cloud Solution Provider (CSP) or New Commerce Experience (NCE) licences and Managed Cloud (if applicable).

CSP Terms: has the meaning given to it in Clause 3.2(c).

Customer: the name of the customer which purchases the Services from Ultima, as identified in the Account Registration Form.

Customer Data: any information that is provided by the Customer to Ultima as part of the Customer's use of the Services, including any information derived from such information.

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

Customer Site: the locations where the Services are provided as identified in the Statement of Work.

Deliverable: all Documents, products and materials provided by Ultima or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Designated User: any user of the Services named to Ultima as a user by the Customer.

Disaster Recovery Plan: Ultima's Business Continuity Strategy as set out in here: [Business Continuity Strategy | Ultima](#), as amended from time to time

Dispute Resolution Procedure: the procedure described in Clause 28.

End-User: the Customer's end-user of the Services.

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

Fees: the fees payable to Ultima, as described in the Statement of Work as may be varied from time to time pursuant to the terms of this Agreement.

Force Majeure Event: has the meaning given to it in Clause 19.1.

Good Industry Practice: the standards that fall within the upper quartile of a skilled and experienced provider of business-critical services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the Service Level Arrangements (where applicable), the term, the pricing structure and any other relevant factors.

Goods: the goods (which includes third party hardware and third party software (being software computer programs in object code form) to be provided as part of the Services, as set out in the Statement of Work in the relevant section or as otherwise agreed in writing between the Parties.

Intellectual Property Rights or IPR: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other

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intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of Customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

IPR Claim: a claim arising from the infringement of IPR belonging to third parties.

Licence Agreement: all licence agreements that may have to be entered into by Ultima and/or the Customer in respect of Third Party Services used. Such Licence Agreement terms shall be set out or referred to in the relevant Statement of Work.

Losses: costs, fines, damages, losses and liabilities suffered by a Party.

Managed Cloud: Ultima's developed code and vendor tools that may be used as part of the delivery of CSP Service or as a standalone service.

Managed Services: the managed services described in the Statement of Work to be performed by Ultima in accordance with this Agreement (for example, token support, infrastructure support, remote service desk, patch as a service, managed desktop and managed cloud).

Normal Business Hours: 9.00 am to 5.30 pm local UK time on Business Days.

Order: the Customer's order for the supply of Goods and/or Services as set out in the Customer's purchase order, or the Customer's written acceptance of Ultima's Quotation, as the case may be.

Party: a party or parties to this Agreement.

Professional Services: the service described in the Statement of Work to be performed by Ultima (or a subcontractor, as applicable) in accordance with this Agreement.

Purpose: the purposes for which the Customer Personal Data is processed, as set out [here](#).

Quote or Quotation: any quote or proposal made by Ultima for the provision of Services or supply of Goods.

Rates: Ultima's standard hourly or daily fee rates as set out in the applicable Statement of Work or as otherwise agreed between the Parties in writing.

Relief Events: the following events:

- (a) any failure by the Customer to comply with its obligations under this Agreement;
- (b) any error or malfunction in the Business Systems or any other software, hardware or systems for which Ultima is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which Ultima is not responsible; or
- (c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to Ultima which is reasonably required by Ultima for the proper performance of its obligations under this Agreement.

Representative: the person nominated by each Party in accordance with this Agreement.

Retail Prices Index: the Retail Prices Index (all Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree (such agreement not to be unreasonably withheld or delayed), acting reasonably, most closely resembles such index.

Service Levels or Service Level Arrangements or SLA: the service level arrangements set out in the Statement of Work, if applicable.

Services: the use of the CSP Services, Goods, Managed Services, Professional Services including consulting, advisory, integration or technical services, Third Party Support Services and any other services performed

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by Ultima under a Statement of Work or otherwise agreed further to the signed written agreement between the Parties.

Services Start Date: the date on which Ultima shall start providing the Services to the Customer.

Statement of Work or SOW: the services specification for CSP Services, Professional Services, Managed Services, Goods, Third Party Support Services and/or any other services as set out under separate cover and agreed between the Parties. For CSP Services, the Statement of Work will be a set up form to be completed by both Parties and for some Services (including Goods) an Order might be used. For some Professional Services the Statement of Work may be referred to as a Proposal or Statement of Engagement.

Term: has the meaning set out in Clause 16.1. For the avoidance of doubt, each Statement of Work will have its own term (as described in clause 16.2).

Third-Party Services: any services, goods, code or software programs written or provided by Third Party Suppliers which are used by the Customer during the provision of the Services.

Third-Party Supplier: any third party that supplies Third Party Services to Ultima and/or the Customer (as the case may be) during the provision of the Services and/or Goods.

Third Party Support Services: third party IT maintenance and/or support services (including breakfix).

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; the Data Protection Act 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., a company incorporated in England and Wales (company number 02521249) and having its registered office at Gainsborough House, Manor Park, Basingstoke Road, Reading RG2 0NA or an Ultima Company.

Ultima Company: Ultima and any company 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).

Ultima Contracting Party: has the meaning given to it in clause 23.1.

Viruses: means viruses, "logic bombs", "Trojan horses" and any other corruption, deterioration, defects, malfunctions or errors.

- 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.
- 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.
- 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.

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- 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 Clauses, the Statement of Work, and the Licence Agreement (including any changes or variations to each of the Clauses, the Statement of Work, and the Licence Agreement), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Statement of Work;
 - (b) the Licence Agreements, to the extent applicable to the Services;
 - (c) the Clauses.

2. QUOTATIONS AND STATEMENTS OF WORK

- 2.1 Any Quote given by Ultima shall not constitute an offer. For Goods and Services (other than Managed Services) procured in British Pounds the Quote will remain open for acceptance for ten (10) Business Days from the date of the Quote, or such shorter period as may be expressly stated in a Quote, after which the Quote shall lapse automatically. Where Ultima purchases Goods and/or Services in a foreign currency (not British Pounds) to fulfil the Quote then that Quote will remain open for a maximum period of two (2) Business Days. Quotes for Managed Services will remain open for acceptance for ninety (90) calendar days or such shorter period as may be expressly stated in the relevant Quote. Quotes related to the CSP Services may be subject to periodic changes by Microsoft in line with the Microsoft's prevailing price list from time to time.
- 2.2 The Customer shall at all times be responsible for ensuring the accuracy of the terms of any Statement of Work and the Service Levels or any other relevant document submitted or accepted by the Customer.
- 2.3 A Statement of Work shall be deemed to be accepted on the earlier of:
- (a) the Parties signing the Statement of Work;
 - (b) the Customer or Ultima issuing a purchase order confirming a Quote (within the applicable timescales as set out in clause 2.1) or such other written acceptance of the Statement of Work; and
 - (c) Ultima commencing the supply of the Services or doing any act consistent with performing the Statement of Work,
- at which point a contract shall come into existence.
- 2.4 Subject to clause 2.5 below, no addition to, variation of or other amendment or purported amendment to this Agreement or any Statement of Work shall be binding on the Parties unless expressly stated as such, made in writing and signed by a duly authorised Representative of both Parties.
- 2.5 As long as there is no material adverse effect on the quality or performance of the Services, Ultima can make any changes (without prior notice unless prohibited by applicable law) to the Statements of Work which are required to conform with any applicable safety, regulatory or other statutory requirement.
- 2.6 The Customer shall be responsible to Ultima for ensuring the accuracy of the terms of any Statement of Work and Service Levels submitted or accepted by the Customer and for giving Ultima any necessary information relating to the Services and/or Products within a reasonable time to enable Ultima to supply the Services and Products in accordance with the terms of this Agreement.
- 2.7 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between Ultima and the Customer in connection with the purchase of the relevant Services; and (iii) prevails over any of the Customer's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.

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3. PROVISION OF SERVICES

3.1 This Agreement sets out the terms and conditions under which Ultima shall provide to the Customer the Services.

3.2 Where the Services include the supply of:

- (a) Goods, the provisions set out [here](#) shall also apply and be incorporated;
- (b) Managed Services, the additional provisions set out [here](#) shall also apply and be incorporated;
- (c) CSP Services, the additional provisions set out [here](#) and [here](#). Dependent on the service purchased, shall also apply and be incorporated ("**CSP Terms**");
- (d) Third Party Support Services, the applicable SOW shall include, or contain a link to, the applicable third party's standard terms for the relevant maintenance and/or support services, or such link shall be made available to the Customer following the processing of the Order. These terms will govern the provision and receipt of the Third Party Support Services.

4. ULTIMA'S RESPONSIBILITIES

4.1 Ultima shall:

- (a) provide the Services in accordance with the terms of this Agreement;
- (b) use its commercially reasonable endeavours to complete any Deliverables set out under any Statement of Work;
- (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with the Agreement;
- (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
- (e) take such steps as may be required to fulfil its obligations under this Agreement and any Statement of Work;
- (f) utilise suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
- (g) notify the Customer promptly if Ultima is unable to comply with any of the terms of this Agreement, any of the Licence Agreements or any Statement of Work; and
- (h) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer Sites and which have been communicated to it in writing a week prior to the Services commencing, where Ultima is required to be on such Customer Sites for the provision of the Services.

4.2 Ultima shall co-operate with the Customer in all matters relating to the Services and shall appoint a Representative ("**Ultima Representative**"), as the contact throughout the Services.

4.3 The Customer confirms that Ultima may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, Ultima shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement (excluding, any Third-Party Supplier), whether such obligations are performed by Ultima itself, or any sub-contractor engaged by Ultima and under the supervision of Ultima.

4.4 For the avoidance of doubt, Ultima shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and any sub-contractors it engages directly and shall not be held liable for the actions and or omissions of any other third party including but not limited to Microsoft (whereby the Customer will have a direct contract in place with Microsoft through the CSP Agreement) or other Third Party Suppliers.

4.5 Ultima shall provide reasonable notice to the Customer of any change in its senior personnel engaged as part of the Services. Where relevant, Ultima shall replace any senior personnel who are removed with another appropriately skilled person.

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- 4.6 Ultima has in place a Disaster Recovery Plan and shall ensure that it is able to implement the provisions of the Disaster Recovery Plan in accordance with its terms.
- 4.7 Ultima is not responsible for checking or examining any software delivered to the Customer or for ensuring that the software is free from Viruses, unless it is expressly stated in an applicable SOW that these activities form part of the Services. Where a SOW expressly includes these activities as part of the Services, Ultima will use industry-standard tools to check and examine the software delivered to the Customer by Ultima and will use its reasonable endeavours ensure that such software is free from all known Viruses.
- 4.8 Unless otherwise set out in the Statement of Work (as forming part of a Service) if the Customer accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice, the Customer assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.

5. CUSTOMER RESPONSIBILITIES

- 5.1 To the extent that Ultima requires access to the Customer Site to perform the Services, the Customer shall provide such access during Normal Business Hours (or such other hours as the Parties pre-agree) and provide a suitable work environment to enable Ultima to perform such Services subject to Ultima complying with clause 4.1(h).
- 5.2 The Customer shall co-operate with Ultima in all matters relating to the Services as reasonably requested by Ultima, including providing information and resources available as reasonably requested, and shall appoint a minimum of two Representatives ("**Customer Representatives**"), who shall have authority to commit the Customer on all matters relating to the relevant Service.
- 5.3 Customer shall:
- (a) ensure it has suitable licences in place for any third party software required (which is not issued by Ultima) to allow Ultima and its subcontractors full use in relation to the Services provided;
 - (b) inform Ultima of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - (c) where Managed Services and/or CSP Services are provided, maintain continuous global admin access to the Customer's relevant Microsoft cloud services portals for the duration of the Agreement;
 - (d) where a Microsoft Cloud service is deployed / utilised the Customer shall assign Ultima as the Digital Partner of Record and/or Claiming Partner of Record and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and Admin on Behalf of (AOBO) for that particular Service for a minimum of twelve (12) months from Project completion date;
 - (e) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
 - (f) use all reasonable efforts to follow the reasonable instructions of Ultima support personnel with respect to the resolution of defects;
 - (g) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details;
 - (h) agree that if, in the course of performing the Services, it is reasonably necessary for Ultima's performance of its obligations under a Statement of Work for Ultima to access or use any equipment, software or data of the Customer (or which is in the possession of the Customer) then it shall where it is able to do so grant to Ultima and any of its subcontractors, at no cost to Ultima, a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services;

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- (i) in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution (POE) within 7 days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the 7 days' notice period, Ultima may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in this Agreement.
- 5.4 The Customer shall (unless otherwise specified in the Statement of Work or as otherwise set out in this Agreement):
- (a) use the Services only for lawful purposes and in accordance with this Agreement, and comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (b) carry out all other Customer responsibilities set out in this Agreement and the Statement of Work in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Ultima may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.
- 5.5 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. Ultima is not responsible or liable if the Services do not to comply with the Statement of Works and/or Service Level Arrangements as a direct result of the Customer being in breach of its obligations under this Agreement.
- 5.6 **Cancellation of Professional Services.** The Customer agrees to adhere to the dates scheduled for provision of Professional Services by Ultima as stated in the applicable Statement of Work. If the Customer wishes to reschedule or cancel the dates for the provision of the Professional Services, Ultima will use reasonable endeavours to re-assign allocated resources to other clients. If such re-assignment is not possible and the Customer has not provided at least ten (10) Business Days or more full working days advance notice, then the Customer shall be liable to pay the following cancellation charges in the form of damages ("**Cancellation Charges**") relating to this action, in addition to any specific costs relating to cancelling pre-booked travel arrangements and to unpaid Fees (if any) for any professional Services work that has been performed:
- (a) if dates are changed or cancelled between six (6) days and nine (9) Business Days before the scheduled start date Cancellation Charges equivalent to twenty-five percent (25%) of the Fees for the Services to be provided at that time will be payable;
 - (b) if dates are changed or cancelled between two (2) days and five (5) Business Days before the scheduled start date Cancellation Charges equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
 - (c) if dates are changed or cancelled fewer than two (2) Business Days before the scheduled start date Cancellation Charges equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable,

provided that (i) references to the Fees for the Services in this Clause 5.6 (for the purposes of calculating Cancellation Charges) shall be limited to the Fees for the Services for a maximum period of ten (10) Business Days immediately following the date the Customer cancels or suspends; and (ii) it is acknowledged that certain sub-contractors for Professional Services may have specific cancellation charges applicable to the Services provided, in which case Ultima will inform the Customer of such cancellation charges in the applicable Statement of Work or otherwise in writing from time to time.

6. PROJECT ORGANISATION

- 6.1 If requested by the Customer or specified in the Statement of Work, the Customer Representatives and Ultima Representative will have regular meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 14 (Change Requests) and to discuss the Service Level Arrangements (where applicable).
- 6.2 Before each meeting, the Customer Representatives will notify Ultima Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each meeting the Parties will agree a plan to address any problems. In the event of any problem being unresolved or a

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failure to agree on the plan, the matter will be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

7. PRICE AND PAYMENT

- 7.1 The Customer shall pay the Fees for the Services (including any Third-Party Services) as more fully set out in the relevant Statement of Work.
- 7.2 Clause 7.3 will apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 7 will apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 7.3 Where the Services are provided on a time-and-materials basis:
- (a) Ultima's standard hourly or daily rates are calculated on the basis of Normal Business Hours but, for clarity, are payable on the basis of actual time worked with a minimum price payable calculated as a four hour half day;
 - (b) Ultima is entitled to charge an overtime rate for time worked outside Normal Business Hours on the basis of Ultima's standard rate card rates, or as otherwise set out in the Statement of Work;
 - (c) Ultima shall update the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.
- 7.4 Ultima shall invoice the Fees as follows (unless otherwise expressly set out in the applicable SOW):
- (a) for Goods, on shipment;
 - (b) for third party support, on the date the order for such support is placed;
 - (c) for Managed Services, quarterly or annually in advance as set out in the applicable SOW;
 - (d) for Professional Services, following provision of the Professional Services (which may be weekly) and as a minimum at the end of each month in which the Professional Services have been provided;
 - (e) for CSP Services, as set out in the applicable Set Up Form and/or CSP Terms.
- 7.5 The Fees exclude:
- (a) (unless otherwise agreed and set out in the Statement of Work), the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Ultima or its subcontractors in providing the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Customer for the Services ("**Expenses**"). Travelling time greater than 1.5 hours per day (total elapsed time) may be charged on a pro rata basis at the standard daily fee rate. Ultima will use reasonable endeavours to minimise travel time. Ultima shall obtain the Customer's approval in before invoicing for Expenses; and
 - (b) unless otherwise set out in the Statement of Work, the costs of packaging, insurance and transport of the Goods.
- 7.6 If Ultima agrees to grant the Customer a credit account, the Customer shall 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 such invoice or from the Services Start Date (whichever is earliest) unless otherwise agreed in writing by Ultima or unless otherwise set out in the Statement of Work. If Ultima does not agree to grant a credit account then, at Ultima's discretion, the Customer shall either pay by direct debit (in which case the details of such direct debit payments shall be sent to the Customer separately) or pay for all Services in advance.
- 7.7 All payments by the Customer hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to Ultima's bank accounts as advised by Ultima to the Customer in writing.
- 7.8 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.

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- 7.9 Should the Customer be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that Ultima receives a sum equal to the amount to be paid under the applicable Statement of Work.
- 7.10 Without prejudice to any other remedy that Ultima may have, if payment of the Fees or any part thereof is overdue then unless the Customer has notified Ultima in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice Ultima may, without prejudice to any other rights or remedies, charge the Customer interest on the overdue amount at the rate of 4% per annum above National Westminster Bank Plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.11 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of 3 months has elapsed from the date of invoice.
- 7.12 Ultima shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) remain unpaid under any Statement of Work, but should Ultima choose to continue to do so, this shall not in any way be construed as a waiver of Ultima's rights or remedies.
- 7.13 Ultima may increase the Fees relating to the provision of Services in the following circumstances:
- (a) as a result of (i) any delay caused by the failure of the Customer to give Ultima adequate information or instructions or (ii) any factor beyond the control of Ultima (including foreign exchange fluctuations, increases in taxes, levies, duties, withholding taxes, and increases in labour, materials and other manufacturing costs);
 - (b) as agreed by the Parties in any Change Notice (including as a result of the Customer increasing the scope of any Services), and any request by the Customer to change the delivery or collection date(s), quantities or types of Goods and/or Services ordered;
 - (c) at any time, Ultima may increase the day rates related to Professional Services, unless a specific rate card has been agreed in which case such rate card shall only be valid until 31 March following its publication;
 - (d) on renewal of a Managed Service or any annually recurring service provided by Ultima, on an annual basis with effect from each anniversary of the Commencement Date, by written notice to the Customer;
 - (e) at any time Ultima may on written notice to the Customer increase any fees related to Third Party Services in line with any increases imposed upon Ultima by the applicable Third Party Supplier(s) and in line with the terms of the Licence Agreement and/or the CSP Agreement; and
 - (f) as set out in the CSP Terms.

8. WARRANTIES

- 8.1 The Customer warrants that:
- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer;
 - (b) it has the authority to grant any rights to be granted to Ultima under this Agreement and it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Ultima and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement;
 - (c) Ultima's use in the provision of the Managed Services or otherwise in connection with this Agreement of any third-party materials supplied by the Customer (including any hardware or software supplied by the Customer to Ultima for such use) shall not cause Ultima to infringe the rights, including any Intellectual Property Rights, of any third party; and

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- (d) it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by Ultima or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by Ultima.

8.2 Ultima warrants that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of Ultima;
- (b) it owns or has obtained valid licences, consents, permissions and rights to enable Ultima to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of the Services, and Ultima shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with all applicable laws in performing its obligations under this Agreement; and
- (d) the Customer's use of any Ultima materials, including any materials supplied by Ultima to the Customer (but excluding any third-party materials), shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party.

8.3 Except for any warranties and service levels expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Customer's use of the Services is at its own risk. Ultima does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

9. ACCEPTANCE OF PROFESSIONAL SERVICES

9.1 The relevant Statement of Work shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

9.2 In relation to any Acceptance Testing:

- (a) the Customer shall have a reasonable period of time, up to five Business Days unless otherwise specified in the Statement of Work, from Ultima's delivery of each Deliverable under the relevant Statement of Work (the "Acceptance Period") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "Acceptance Criteria"). If the Customer determines that a Deliverable does not conform to the Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to Ultima a written issues list of the non-conformities to the Acceptance Criteria for the specific Deliverable;
- (b) the Customer shall use best efforts to ensure correctly and efficiently appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify Ultima within the Acceptance Period (as defined in Clause 9.2 (a)) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Customer has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Conditions such Deliverable, shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverable has been accepted by the Customer and payment has been settled in accordance with Clause 7, the Deliverable shall become the property of the Customer. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to Ultima during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 9.2 (c) below;
- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Customer or Ultima during the Acceptance Period and whereby the Deliverable has not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of Ultima (and not subject to a Change Request (as defined in Clause 14 or attributable to the Customer's acts or omissions including inadequate Acceptance Testing) Ultima shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified; and

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- (d) If any non-conformity cannot be remedied by Ultima due to an error, defect or fault which Ultima is able to demonstrate to the reasonable satisfaction of the Customer to be outside Ultima's control and which has disabled Ultima's ability to remedy such non-conformity, then Ultima reserves the right to terminate work on that specific Deliverable. Ultima agrees not to charge Customer, any amounts paid or payable by Customer to Ultima which specifically relate to the non-conforming Deliverable which cannot be remedied.

10. DATA PROTECTION

- 10.1 The Customer will ensure that full backups and security copies of data and programmes are made at all appropriate intervals. Ultima will only monitor the Customer's backup systems if, and to the extent that, such monitoring is expressly included as part of the Services in the applicable SOW, in which case Ultima will monitor the Customer's backup systems in accordance with the SOW. Notwithstanding any other provision in the Agreement, Ultima excludes all liability in respect of any backups that subsequently fail where they are due to environmental conditions, human input or other factors outside of the control of Ultima, its subcontractors, Third Party Suppliers or as otherwise set out in this Agreement.
- 10.2 For the purposes of this clause 10, 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.
- 10.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 10.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws, Ultima shall process the personal data set out [here](#) as a processor on behalf of the Customer.
- 10.5 Without prejudice to the generality of clause 10.2 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.
- 10.6 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 [here](#).
- 10.7 Without prejudice to the generality of clause 10.2 and clause 10.3 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 Laws to otherwise process that Customer Personal Data. Where Ultima is relying on Applicable Laws as the basis for processing Customer Processor Data, Ultima shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable 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;

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- (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 Law to continue to process that Customer Personal Data. For the purposes of this clause 10.7(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 clause 10 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 clause 10 or can demonstrate that it requires copies of applicable documentation 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.

10.8 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 clause 10;
 - (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).

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Subject to Clause 11.2 below, where Ultima agrees in the applicable Statement of Work that it will create bespoke materials or code pursuant to the Services ("**Bespoke IPR**") the Intellectual Property Rights in the Bespoke IPR will vest automatically in the Customer once Ultima has received payment in full. Ultima agrees to assign to the Customer its present and future rights and full title and interest in the Bespoke IPR. The Customer now provides an irrevocable, worldwide, royalty-free licence to Ultima for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 11.2 Notwithstanding Clause 11.1 above, Ultima and its respective licensors retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by Ultima during the performance of the Services that are of general application and that are not based on or derived from the Customer's business or Confidential Information ("**General IP**", together with the Background Materials, the "**Ultima Intellectual Property**"). Ultima grants to the Customer a

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non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use Ultima Intellectual Property.

- 11.3 The Customer shall pay and indemnify Ultima from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Ultima, arising by reason of claims that (1) Ultima's possession of or use of the Customer's Intellectual Property or any Customer materials (whether used, owned or licensed to the Customer) in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its customers, modify, alter, replace combine with any other data, code, documents or other software, which alters Ultima's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.4 Ultima shall pay and indemnify Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Customer, arising by reason of claims that (1) Customer's possession of or use of Ultima's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) Ultima, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Customer's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.5 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 11, the Indemnified Party will:
- (a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 11.3 or Clause 11.4 (as applicable);
 - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
 - (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 11.6 If an IPR Claim is brought or in the reasonable opinion of Ultima is likely to be made or brought, Ultima may at its own expense ensure that the Customer is still able to use the Deliverables by either:
- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
 - (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.
- 11.7 Except to the extent that Ultima should reasonably have known or advised the Customer about the provisions of Clause 11.6, Ultima will have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:
- (a) any use by or on behalf of the Customer of the combination with any item not supplied or recommended by Ultima where such use of the Deliverables directly gives rise to the claim, demand or action; or

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- (b) any modification carried out on behalf of the Customer to any item supplied by Ultima under this Agreement if such modification is not authorised by Ultima in writing where such modification directly gives rise to a claim, demands or action.
- 11.8 The maximum aggregated liability for such indemnification outlined in this Clause 11 for either Party shall be equal to and not more than one million pounds (£1,000,000.00).

12. LICENCES

- 12.1 Where the Parties agree that Ultima will procure any Third-Party Services required by the Customer for the provision of the Services, full details of those Third-Party Services (and the basis of their procurement by Ultima) will be set out in the Statement of Work.
- 12.2 Except as expressly set out in the relevant Licence Agreement, Ultima expressly excludes any warranty to the Customer that the Third-Party Services supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Customer shall remain liable for any and all payments owed to Ultima throughout this Agreement and until the end of the respective licence terms for such Third-Party Services (the "**Licence Fees**").
- 12.3 It is a condition of this Agreement that the Customer enters into such direct Licence Agreements issued by the Third-Party Supplier where the Customer must directly contract with that Third-Party Supplier as so prescribed by the relevant software owners of each Third-Party Service identified within this Agreement and/or in the applicable Statement of Work. In the event the Customer does not accept the terms of such Licence Agreements (whether directly contracted with Ultima or the relevant Third Party), Ultima reserves the right to suspend the provision of the Services until such time as the Customer enters into such Licence Agreement.
- 12.4 The Customer acknowledges that it is responsible for ensuring that the Customer's Hardware, and operating software for such Hardware, is compatible with the Third-Party Services and Ultima gives no warranty in relation to that unless agreed otherwise in writing between the Parties in the Statement of Work.

13. EXCLUSIONS & LIMITATIONS 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 and subcontractors, and of Ultima Companies) in respect of any breach of this Agreement and 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 Nothing in this Agreement excludes or limits:
 - (a) 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; or
 - (b) the Customer's liability pursuant to Clause 17.1 (TUPE).
- 13.3 Any breach of the Party's responsibilities under Clause 10 (Data Protection) shall be limited to £1,000,000 in the aggregate, which shall count towards the cap set out in Clause 13.4.
- 13.4 Subject to Clauses 11.8, 13.2 and 13.3, the Parties' total aggregate liability 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 the applicable Services in the relevant SOW shall be limited to the Fees paid for the Services under the applicable SOW to which the claim relates during the twelve (12) months preceding the date on which the claim arose.
- 13.5 Except as expressly and specifically provided in this Agreement neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

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- (a) indirect, consequential losses or special damage even if the other Party was aware of the circumstances in which such indirect, consequential losses or special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity;
 - (e) loss of goodwill and reputation;
 - (f) loss or corruption of data.
- 13.6 Except as expressly and specifically provided in this Agreement all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 13.7 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.
- 13.8 The Customer acknowledges and agrees that, except as expressly provided in this Agreement or unless it is a Service under a relevant Statement of Work, the Customer assumes sole responsibility for:
- (a) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - (b) loss or damage arising from or relating to any Relief Event.
- 13.9 Ultima shall maintain in force the following insurance policies:
- (a) Public and Product Liability Insurance Policy - limit £5 million per claim;
 - (b) Professional Indemnity Insurance Policy - limit £5 million per claim;
 - (c) Employers Liability Policy – limit £10 million per claim.

14. CHANGE REQUESTS

- 14.1 Either Party may request changes to any Services (in each case a **"Change Request"**). Any Change Request shall be made in writing and sent to the Customer Representatives or Ultima representative (as appropriate). The Change Request shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of the proposed change, an example of which may be obtained on request.
- 14.2 Where either Party proposes a Change Request Ultima shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement (a **"Contract Change Proposal"**). The Customer shall notify Ultima whether it accepts or reasonably rejects Ultima's Contract Change Proposal within five working days of its receipt of the written estimate.
- 14.3 Until such time as a Change Request has been agreed by both Parties, the Parties shall continue to perform their respective obligations under the Statement of Work without taking into account the Change Request. Once duly agreed by both Parties, the Contract Change Proposal shall be deemed incorporated into the Agreement and Statement of Work and Ultima shall commence performance of the Change Request accordingly.

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14.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

14.5 Unless otherwise agreed in writing, Ultima shall be entitled to charge the Customer at Ultima's then current Rates for investigating, reporting on any Change Request and, if appropriate, implementing any Change Request requested by the Customer.

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 the relevant Statement of Work.

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 Clause 15.1.

15.3 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.

16. TERM AND TERMINATION

16.1 This Agreement (excluding any Statement of Work) shall commence on the Commencement Date and shall remain in full force unless and until terminated in accordance with this Agreement (the "**Term**").

16.2 The term of each Statement of Work shall commence on the date specified in the applicable Statement of Work and shall remain in full force for the term set out in the applicable Statement of Work (the "**SOW Term**") unless otherwise agreed by the Parties or earlier terminated in accordance with the terms of this Agreement.

16.3 Unless expressly agreed otherwise in each Statement of Work:

- (a) for Managed Services, at the end of each SOW Term the applicable Statement of Work shall automatically renew for an additional period of twelve months, unless a Party gives written notice to terminate the SOW the other Party not later than one hundred (100) days before the end of the SOW Term or renewal term;
- (b) for CSP Services, the provisions of clause 10.3 of the CSP Terms apply in respect of renewal of the applicable SOW;
- (c) for all other Services, the applicable Statement of Work or Third Party Support Services terms will set out the basis of renewal (if any) of each SOW at the end of the applicable SOW Term.

16.4 Without prejudice to any rights that the Customer has accrued under this Agreement or any of its respective remedies, obligations or liabilities, the Customer may terminate this Agreement with immediate effect by giving notice to Ultima if:

- (a) Ultima commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so; or
- (b) Ultima breaches any of the terms of Clause 20 (Anti-Bribery).

16.5 Without prejudice to any rights that Ultima has accrued under this Agreement or any of its respective remedies, obligations or liabilities, Ultima may terminate this Agreement with immediate effect by giving notice to the Customer if:

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- (a) the Customer (or an End-User) violates any acceptable use policy notified to the Customer by Ultima and as amended from time to time;
 - (b) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than thirty (30) after being notified in writing to make such payment;
 - (c) the Customer commits a material breach of any other material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
 - (d) the Customer breaches any of the terms of Clause 20 (Anti-Bribery); or
 - (e) the Customer takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed in this Clause 16.5 (e), or suspends or ceases, or threatens to suspend or cease, carrying on business.
- 16.6 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 16.7 On termination of this Agreement or a Statement of Work for any reason:
- (a) Ultima shall immediately cease provision of the Services (or the applicable part);
 - (b) the Customer shall pay any and all invoices and sums due and payable up to and including the date of termination including (1) all remaining amounts owing up to the end of the Term (including amounts owed under each Statement of Work); (2) any Licence Fees as set out under Clause 12.1; and (3) any termination fees that Ultima incurs from any of its Third Parties as a consequence of such early termination including any in the CSP Terms. Ultima shall use reasonable endeavours to mitigate any loss but the Customer acknowledges and agrees that any Third-Party fees may not be mitigated by Ultima and the Customer shall not hold Ultima responsible if it incurs full termination fees; and
 - (c) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.
- 16.8 Save as provided in Clause 16 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure event, neither Party shall be entitled to terminate a Statement of Work. Termination of a Statement of Work shall not, by default, terminate other Statements of Work nor this Agreement.
- 16.9 Termination of any Statement of Work shall be without prejudice to any other rights which any party may have under any other Statement of Work.
- 16.10 Upon termination of this Agreement or a specific Statement of Work for any reason Ultima may agree to provide to the Customer and / or to any new supplier selected by the Customer (the "**Successor Service Provider**") such assistance as reasonably requested by the Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to the Customer or to Successor Service Provider (such assistance shall be known as the "**Termination Assistance Services**") during any period of notice of termination (the "**Termination Assistance Period**"). Any services required by the Customer, and which Ultima agrees to provide, for the transition of Services during the Termination Assistance Period shall be provided by Ultima at its then-current time and materials fee rate for such period of time as shall be mutually agreed. Such Termination Assistance Services may include:
- (a) developing a plan for the orderly transition of the terminated Services from Ultima to the Customer or the Successor Service Provider; and
 - (b) such other activities upon which the Parties may agree including any non proprietary documents to enable a Successor Service Provider to continue to provide services.

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16.11 Upon a termination of the Agreement or a specific Statement of Work (as applicable), Ultima shall only retain the Customer Data for a maximum period of 3 months from the date of termination and may delete all such copies of its Customer Data after the 3 months period has ended.

16.12 The provisions of Clauses 7 (Price & Payment), 8 (Warranties), 10 (Data Protection), 11 (IPRs), 12 (Licences) 13 (Exclusions & Limitations of Liability), 15 (Confidentiality), 16 (Term & Termination) 17 (Staff Transfer & Non-Solicitation), 18 (Relief Events) and 20 (Anti-Bribery) shall survive termination of any Statement of Work or this Agreement.

17. STAFF TRANSFER AND NON-SOLICITATION

17.1 It is not intended that any staff be transferred from Ultima to the Customer or from the Customer to Ultima pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**). In the event that the Parties agree that TUPE does apply at either entry and/or exit then the provisions set out [here](#) shall take priority over this Clause 17.1.

17.2 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 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.

17.3 In the event that either Party is in breach of Clause 17.2 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.

17.4 The Parties hereby acknowledge and agree that the formula specified in Clause 17.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

18. RELIEF EVENTS

18.1 Subject to Clause 13.2, and notwithstanding any other provision of this Agreement, Ultima shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

19. FORCE MAJEURE

19.1 Ultima shall have no liability to the Customer under this Agreement and the Customer shall have no obligation to pay the Fees 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.

20. ANTI-BRIBERY

20.1 Ultima shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("**Relevant Requirements**");

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- (b) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by Ultima in connection with the performance of this Agreement.
- 20.2 Ultima shall procure that any person associated with Ultima, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on Ultima in this Clause 20 ("**Relevant Terms**"). Ultima shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 20.3 For the purpose of this Clause 20, 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 20 a person associated with Ultima includes any subcontractor of Ultima.

21. WAIVER

- 21.1 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.

22. SEVERANCE

- 22.1 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.
- 22.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

23. ULTIMA GROUP COMPANIES

- 23.1 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.

24. ENTIRE AGREEMENT AND AMENDMENT

- 24.1 This Agreement (and its references to website address to further documentation, the Licence Agreements, the Statement of Works and the Customer Agreement constitutes the entire Agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and Agreements between them relating to its subject matter.
- 24.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 24.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 24.4 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.

25. ASSIGNMENT

- 25.1 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.

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26. NO PARTNERSHIP OR AGENCY

26.1 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.

27. THIRD-PARTY RIGHTS

27.1 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 CSP Agreement, where CSP Services are supplied pursuant to this Agreement) and is not intended to benefit or be enforceable by anyone else.

28. NOTICES

28.1 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.

28.2 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.

28.3 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 include e-mail.

29. DISPUTE RESOLUTION

29.1 If a dispute arises under this Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").

29.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five Business Days thereafter):

(a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("**Designated Representative**"); and

(b) notify the other Party in writing of the name and contact information of such Designated Representative.

29.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.

29.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

30. GOVERNING LAW AND JURISDICTION

30.1 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.

30.2 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).