

SILVERSANDS TERMS AND CONDITIONS FOR THE SUPPLY OF
PROFESSIONAL SERVICES, HARDWARE AND PACKAGED
SOFTWARE



The parties agree as follows, in this Agreement:

“SILVERSANDS” means Silversands Limited, company registration 2141393, of 3-5 Albany Park, Poole, BH17 7BX and any subsidiary, group member or partner of Silversands Limited.

“CLIENT” means the person or body (of whatever legal nature) contracting with Silversands for the supply by Silversands of goods and/or services of whatever type.

Where THE CLIENT, from time to time engages SILVERSANDS to provide consulting services and/or hardware and/or packaged software then these are supplied on the basis of an agreement either in the form of the pro-forma Schedule A attached, which will define each individual assignment under this Professional Services Agreement (“PSA”), or a Silversands proposal that has been accepted by the Client.

Each Schedule A or accepted proposal shall incorporate by reference the terms and conditions of this PSA as may be varied by the Schedule(s) or proposals. Where there is a conflict between the Schedule or proposal on the one hand and this PSA on the other hand, the Schedule or proposal shall prevail. Each Schedule A or accepted proposal shall constitute a separate contract.

These terms supersede any previously issued terms. SILVERSANDS and the CLIENT agree that all orders accepted and contracts between SILVERSANDS and the CLIENT entered into during the currency of this agreement will be subject to the terms, conditions, warranties and other provisions in this agreement (together referred to as the Silversands terms) and to no other terms, conditions, warranties or contractual provisions save any imposed by statute unless specifically agreed in writing signed by authorised officers of each party in relation to a specific order. Any such future variation will apply only to the specific order to which it relates and the Silversands terms will then continue to apply to all subsequent orders.

No standard terms or conditions referenced or contained in the CLIENT’s purchase order, order acknowledgement or specification shall form part of this contract unless SILVERSANDS specifically agrees otherwise in writing.

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Article 1. DEFINITIONS

“Acceptance Criteria” means those tests or other acceptance criteria described in the relevant Services Engagement

“Affiliate” means any third party used, employed or contracted by SILVERSANDS to perform any part of the work to be effected under this Agreement, the use of whom need not be notified by SILVERSANDS to the CLIENT and for whose work SILVERSANDS shall have responsibility subject to the terms of this Agreement.

“Agreement” means any of this PSA and any Services Engagement or purchase orders for hardware or packaged software.

“Change Control Process” means the procedure set out in Clause 2.4.

“Daily Services Assignment” means a Project under which SILVERSANDS is retained to carry out tasks generally identified in the Services Engagement but in which the personnel

supplied by Silversands shall be managed by the CLIENT and in respect of which the CLIENT shall be charged at the daily rate.

“Commencement Date” means the date specified as such in the relevant Services Engagement

“Deliverables” mean those deliverables described in the relevant Services Engagement

“Due Completion Date” means the date specified as such in the relevant Services Engagement

“Fixed Price Assignment” means a Project where SILVERSANDS will be responsible for the completion of the Project for the Fixed Price and by the Due Completion Date specified in the relevant Services Engagement. Any additional resources needed to complete the Project by the Due Completion Date will be subject to the Change Control Process.

“Hardware” means items of equipment manufactured or assembled by third parties.

“Packaged Software” means software designed and developed by third parties which may be provided to the Client as a software deliverable or licence or Cloud service.

“Person-Day” means one working day of seven hours for one person.

“Product” shall have the meaning ascribed to it in Clause 5.1.

“Project” means each or any of the services or other work to be carried out under and in accordance with this Agreement, as more particularly described under the Services Engagement.

“Project Manager” means the individual assigned by each of the parties as specified in the relevant Schedule A to be the focal point for communications with the other party and who may be substituted from time to time by written notice by one party to the other.

“Public Body” means any local authority or government office or agency.

“Scope of Work” means, in relation to a Project, the work, the services and tasks, referred to in Clause 2.1, as may be varied from time to time in accordance with this Agreement.

“Services Engagement” is an agreement for Silversands to provide services to the Client. This includes, but is not limited to, any statement of work, quotation, proposal or response to tender.

“Silversands Proposal for Services” is the proposal issued to the CLIENT by Silversands setting out the proposed services, outline deliverables and limitations of service.

“Silversands Personnel” means those employees of SILVERSANDS who carry out the tasks set out in the relevant Services Engagement.

“Silversands Materials” means any materials or data (including methodologies, techniques and processes), SILVERSANDS proprietary software (whether written in human or machine-readable format) and any subsequent modifications to the same, owned or created by on behalf of or for the benefit of SILVERSANDS prior to or independently of this Agreement, or outside the engagement under a Services Engagement, which are used to create, are embedded in or are required to operate or maintain the Deliverables (or any part thereof).

“Time And Materials Assignment” means a Project where the resources and Person Days, are provided by SILVERSANDS on a Time and Materials basis.

“Type of Engagement” means the type of fee to be charged by SILVERSANDS for the Project.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations.

“Work Place” means the location(s), as set out in the relevant Schedule A or Proposal, which is the principal place(s) from which the tasks are to be carried out.

“WEEE” means the Waste Electrical and Electronic Equipment regulations.

Article 2. SCOPE OF WORK

2.1 Scope of Work.

Each relevant Services Engagement, together with its exhibits (if any), will define the scope of the work for a particular Project “Scope of Work”.

Additional written and detailed technical specifications for the Scope of Work to be performed may be attached to each Schedule A or proposal as numbered exhibit(s). Each such exhibit, when so attached and signed by the parties, is incorporated by reference and shall become a part of the applicable Schedule A or proposal.

2.2 Work Space and Materials.

THE CLIENT agrees to provide reasonable work space and general office supplies, equipment and other facilities, including telephone and internet access, electricity and water. Any additional or unusual materials needed by SILVERSANDS' Personnel in connection with the performance of services hereunder shall be provided by SILVERSANDS or as otherwise specified in the relevant Services Engagement.

SILVERSANDS will, and will procure that SILVERSANDS' Personnel will, comply with all reasonable requirements applicable to contractors at the relevant Work Place and other CLIENT locations, providing the CLIENT provides details of such requirements in writing to the SILVERSANDS Project Manager in advance.

2.3 Professional Standards.

SILVERSANDS shall procure that SILVERSANDS Personnel carry out each relevant Project using appropriate professional standards. Silversands Personnel will also make reasonable commercial endeavours to maintain full compliance with THE CLIENT's technical standards and procedures providing that the CLIENT provides clear written details of such standards and procedures in writing to the Silversands Project Manager in advance.

2.4 Change Control.

During the course of a Project, THE CLIENT may desire a change in the Scope of Work or SILVERSANDS may identify an appropriate change in the Scope of the Work. Requests for changes will be made in writing and the Project Managers from both parties will review the proposed change and determine the effect (if any) that the implementation of the change will have on the Agreement (for example in relation to price, timescales, and other terms and conditions).

Upon completion of the review, any agreed changes will be documented in writing and signed by the Project Managers on behalf of Silversands and the Client.

2.5 Cancellation.

If in the course of satisfying any CLIENT order, scheduled project activity is cancelled at short notice by the CLIENT, Silversands will endeavour to redeploy the resource elsewhere. If this is not possible and less than two working days' notice has been given by the client, then the cancelled days will be charged to the CLIENT at 100% of the relevant daily rate; if the notice given is three or four working days, the charge will be 50% of the relevant daily rate, and for five to eight days' notice, 25% of the relevant daily rate will be charged.

2.6 Regulatory Compliance.

Silversands does not provide regulatory or compliance advice. This shall remain the responsibility of the CLIENT. The CLIENT should evaluate any recommendations or guidelines provided by Silversands for their effectiveness in the client's regulatory environment. Recommendations from Silversands should not be interpreted as a guarantee of compliance.

Article 3. PERSONNEL

3.1 Subcontracting and SILVERSANDS's Personnel.

SILVERSANDS may subcontract to Affiliates specific assignments hereunder provided the appointment by SILVERSANDS of any Affiliate for all or any part of any relevant Project shall not relieve SILVERSANDS of any liability or obligation under this Agreement.

As between SILVERSANDS and the CLIENT, unless agreed otherwise with the CLIENT in the Services Engagement, SILVERSANDS shall have the sole responsibility for the conduct of its employees or Affiliate employees for controlling, supervising and directing their work in accordance with this Agreement.

SILVERSANDS shall be responsible for all employer obligations towards all of its employees.

3.2 Project Managers.

In relation to any relevant Project, each party appoints its Project Manager to be responsible for representing that party in all matters, including the transfer of the relevant Deliverables, personnel issues, timing and invoicing arrangements and submission, arranging and attending progress review meetings.

3.3 Hiring.

In relation to any employee of SILVERSANDS or its Affiliates who has been engaged on work for the CLIENT under any relevant Services Engagement, the CLIENT shall be precluded from interviewing, offering employment or hiring such SILVERSANDS or Affiliates employee without the prior written permission of SILVERSANDS during the term of the assignment in question and for a period of twelve (12) months thereafter.

3.4 Hiring(2).

In relation to any employee of the CLIENT that has been working with Silversands on a project defined in a relevant Services Engagement, SILVERSANDS shall be precluded from interviewing, offering employment or hiring such CLIENT employee without the prior written permission of the CLIENT during the term of the assignment in question and for a period of twelve (12) months thereafter.

3.5 Independent Contractor.

In carrying out any relevant Project, SILVERSANDS shall be an independent contractor and/or third party service provider and shall not be an employee or agent or co-venturer of the CLIENT or any of its Affiliates. Neither SILVERSANDS nor SILVERSANDS' Personnel are entitled to participate in any employee benefit programme of the CLIENT or any of the CLIENTS' Affiliates.

SILVERSANDS agrees that the CLIENT is not and shall not become an employer, co-employer or joint employer of SILVERSANDS' Personnel.

3.6 TUPE.

Any proposal or offer of resource or engagement by SILVERSANDS to the Client excludes the costs of satisfying any TUPE obligations that may arise in carrying out the engagement, unless specifically set out in the proposal. Should the Client be, or become, aware that TUPE obligations may arise, then it should advise Silversands promptly. SILVERSANDS reserves the right to charge the client any costs involved in satisfying any TUPE obligations and the client accepts that Silversands' ability to satisfy its performance requirements may be affected where TUPE requirements impact the SILVERSANDS resourcing process.

3.7 AVAILABILITY OF RESOURCE.

SILVERSANDS does not guarantee the availability of resource at all times. Annual holiday, staff changes, availability of resource and sickness are examples of issues that may impact the delivery of a project.

Article 4. FEES, INVOICES, PAYMENT

4.1 Fees/Compensation.

In relation to each Project, the CLIENT shall pay the fees as specified in the relevant Services Engagement.

4.2 Travel and Subsistence Expenses.

The CLIENT shall reimburse SILVERSANDS for reasonable travel, accommodation and subsistence expenses reasonably incurred by SILVERSANDS' personnel in the course of them carrying out work for the CLIENT. Such expenses are claimed at cost and where a vehicle is used, a mileage rate of 45p per mile applies.

4.3 Invoices/Payment.

In relation to each Project or Time and Materials assignment, SILVERSANDS shall invoice the CLIENT monthly in arrears for all work performed in accordance with the details specified in the Services Engagement. All part days shall be rounded to the nearest whole day. SILVERSANDS shall invoice the CLIENT on a monthly basis for travel, accommodation and subsistence expenses. .

Payment is to be made in cleared funds strictly no more than 30 days from date of invoice. Time for payment is of the essence. Where sums due are not paid in full by the due date SILVERSANDS may suspend the or terminate all or any part of the Services.

Payment of all invoices in respect of any Maintenance and Support Contract shall be received by SILVERSANDS in cleared funds before the commencement of the period to which such invoice relates.

SILVERSANDS shall be entitled to charge interest on invoice sums outstanding for more than 30 days from the date of invoice at the rate of 4% above the Bank of England base rate per month from the date of invoice until payment in full has been received by SILVERSANDS in cleared funds.

Unless otherwise specified, prices quoted are exclusive of VAT which shall be charged at the appropriate rate.

4.4 Taxes.

All charges provided under this Agreement are exclusive of VAT and to the extent that VAT is chargeable, then the CLIENT shall, against delivery of a valid VAT invoice, in addition to any amounts due to SILVERSANDS under this Agreement, pay to SILVERSANDS such VAT.

For overseas engagements, unless otherwise stated in a Services Engagement, the costs exclude any withholding or other local or national tax. If such tax is payable, then such charges to the CLIENT will be in addition to the costs set out in the Services Engagement.

Article 5. PROPRIETARY RIGHTS

5.1 Ownership of Work Product.

In respect of all work products created under this Agreement under any specification created by the CLIENT by SILVERSANDS' Personnel, SILVERSANDS hereby assigns, or shall procure the assignment by SILVERSANDS' Personnel, to the CLIENT and grants the CLIENT all rights to possession of, and all right, title, and interest, including all copyright rights and the right to prepare and exploit derivative works, in the work products created under this Agreement, in whatever form or medium captured, and in and to all physical and electronic materials, papers, and documents (including drawings), hereinafter referred to as "Products", and copies, abstracts, and summaries thereof, which may come into their possession in any manner by reason of assignment under this Agreement provided that the property in such goods and things in action shall not pass to the CLIENT until payment has been made in accordance with Article 4 above. In default of payment under Article 4 above, SILVERSANDS may remove all or any of the goods or recover the things in action in any manner it deems fit and the CLIENT shall afford SILVERSANDS all the necessary access and facilities to do so.

Except as otherwise expressly provided in this Agreement, neither party shall receive any right, title or interest in or to the Intellectual Property Rights of the other.

SILVERSANDS shall be entitled to use Residuals as hereafter defined to create work product similar to the Products. "Residuals" means technical information in non-tangible form, which is retained in the unaided memories of the relevant SILVERSANDS employees or agents acquired during the performance of any relevant Schedule A or Proposal including ideas, concepts, know-how or techniques contained therein, and which were not intentionally memorised for the purpose of later recording or use, subject always to its obligations of confidentiality hereunder.

The CLIENT acknowledges that SILVERSANDS holds Intellectual Property Rights (IPR) in the techniques, processes and methods it has developed to deliver customer solutions and that it also holds IPR in software, macros and other programmable procedures that it may use as part of the delivered solution to the CLIENT (Silversands Materials). Where this occurs, subject to payment of all outstanding invoices, SILVERSANDS grants to the CLIENT a licence to use such software, macros and other programmable procedures within the CLIENT organisation or its subsidiaries solely for the purpose of receiving the benefit of the delivered solution. For the avoidance of doubt, the granting of this licence does not extend to sale or gift to or usage by any third parties.

The CLIENT grants (and shall procure the grant) to SILVERSANDS of a royalty-free, non-exclusive, non-transferable licence during the Term to use the CLIENT's Intellectual Property Rights solely to the extent necessary for performing the Services in accordance with this Agreement.

5.2 Confidentiality Obligations.

The term "Confidential Information" shall mean all information in the broadest sense in whatever form or medium that relates to past, present, or future

research, development, and business activities of the disclosing party, and the disclosing party's procedures, algorithms, and data (including, without limitation, those contained in databases) which are related to these activities, information related to the operations, planning, control, and marketing of the business interests and products of the disclosing party and any other information about its business affairs and which the disclosing party deems to be confidential and/or proprietary, which the receiving party and its employees and agents may acquire possession of or access to by reason of its work with the disclosing party. This term shall also include all information and software belonging to third parties which was provided to the disclosing party in confidence to which the receiving party may have access by reason of its work under this Agreement.

The receiving party acknowledges the confidential nature of the Confidential Information and the disclosing party's valuable proprietary interest in it. The receiving party and its employees and agents shall treat all Confidential Information as confidential and proprietary to the disclosing party and its Affiliates. The receiving party shall limit access to the Confidential Information to its employees and agents working on any relevant Project and to those supervisory personnel with a legitimate need to know such information and shall not use, copy, or remove any Confidential Information except to the extent necessary to carry out any relevant Project, without the prior written consent of the disclosing party.

Upon completion or termination of any relevant Project, at the disclosing party's request, the receiving party and its employees or agents shall return to the disclosing party's relevant Project Manager all documents or other materials in whatever form that contain Confidential Information, destroy all copies thereof, delete all digital copies, and certify to the disclosing party in writing that all copies of such materials have been destroyed or deleted; this commitment shall not extend to data held on computer archive systems but the receiving party shall acknowledge that the duty to preserve the Confidential Information as confidential extends to such archives .

5.3 Confidentiality Exceptions.

Confidential Information shall not include, and these confidentiality obligations shall not operate as a restriction on the receiving party's right to use, disclose, or otherwise deal with information which:

- is or becomes generally available to the public through no wrongful act of the receiving party or its employees or agents;
- was in the receiving party's possession prior to the time it was acquired from the disclosing party and which was not directly or indirectly acquired from the disclosing party or its Affiliates;
- is required to be disclosed by court order or operation of law, provided the other party is notified immediately in order to contest such disclosure and the disclosing party takes reasonable steps to assist in contesting such request;
- is independently made available as a matter of right to the receiving party by a third party without access to the Confidential Information; or
- is independently developed by or for the receiving party by persons not having access or exposure to the disclosing party's Confidential Information.

5.4 Knowledge of Agreement.

Nothing in this agreement shall prevent either party disclosing that SILVERSANDS provides professional services to the CLIENT.

Article 6. WARRANTIES

6.1 Originality.

SILVERSANDS represents, warrants, and covenants either (i) the originality of any work performed under this Agreement or (ii) that it has all such rights, licences and other interests as may be necessary to allow it to perform the work and deliver the Products and so grant the rights agreed to be granted to THE CLIENT under this Agreement and that no portion of the Product completed on behalf of THE CLIENT under this Agreement violates any patent, copyright, trade secret, or other intellectual property or other rights of SILVERSANDS or any third party. For purposes of this Clause, “Product” shall not include materials supplied by THE CLIENT.

The CLIENT represents, warrants, and covenants in relation to the materials supplied by the CLIENT either (i) the originality of any such materials or (ii) that it has all such rights, licences and other interests as may be necessary to allow it to provide such materials to SILVERSANDS or any Affiliate of Silversands.

6.2 Intellectual Property Rights Indemnity

SILVERSANDS shall indemnify THE CLIENT and keep THE CLIENT and its employees and agents indemnified from and against the costs and expenses of defending any Claim and discharging any settlement or judgement (whether determined by court of competent jurisdiction or otherwise). Any such costs and expenses shall include reasonable legal fees, suffered or incurred by THE CLIENT as a result of any Claim.

For the purposes of this Clause 6.2, a ‘Claim’ shall mean any claim by a third party that SILVERSANDS Materials infringe or allegedly infringe the intellectual property rights of that party except to the extent that the Claim arises from (i) the use of the Silversands Materials other than as intended for the purposes of the Project, including combination of the Silversands Materials with a software or hardware product, programme or data not supplied by SILVERSANDS, (ii) any adaptation or modification of any Silversands Materials not undertaken by SILVERSANDS, and provided that THE CLIENT:

- Upon becoming aware of any infringement or allegations of infringement promptly notifies SILVERSANDS of the same;
- Makes no admissions or incurs any avoidable costs without SILVERSANDS’ consent;
- Supplies all assistance and co-operation that SILVERSANDS may reasonably require.

The CLIENT shall allow SILVERSANDS to conduct the defence of the claim and SILVERSANDS shall consult with and pay due regard to the interest and views of the CLIENT (acting reasonably) in the conduct of such defence, subject always to SILVERSANDS’ rights to conduct the defence in its sole discretion. The CLIENT shall provide all reasonable assistance at SILVERSANDS’ expense in connection with any negotiations and litigation arising from such claims.

Where there is any Claim of infringement or alleged infringement as referred to in this Clause 6.2 and such Claim causes the CLIENT’s use of SILVERSANDS Materials under the relevant Services Engagement to be disrupted or materially impaired, SILVERSANDS shall, at its own expense, following consultation with the CLIENT, but at its own discretion either:

- Procure for the benefit of the CLIENT the right to continue to use the items as referred to in Clause 6.2; or
- Modify or replace the infringing or potentially infringing items as referred to in Clause 6.2 so that there is no infringement or potential infringement provided that such modification or replacement shall not substantially affect the functionality of the items and can be adopted practically by the CLIENT without significant disruption to their business.

If neither of the foregoing alternatives is or would be available on a basis that SILVERSANDS finds commercially reasonable or practically acceptable, SILVERSANDS will remove the infringing items (or relevant part thereof).

6.3 Insurance Coverage.

SILVERSANDS maintains:

- i) Public liability insurance with a limit of £5 million for any one accident or occurrence; ii) Professional indemnity insurance with a limit in aggregate of any claim of £3 million.

6.4 Disclaimer.

Except as expressly stated in this Agreement, neither party provides any warranties to the other, either express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

6.5 Waiver of Consequential Damages.

Neither party shall have liability to the other with respect to their obligations under this Agreement or otherwise for consequential, exemplary, incidental, or punitive damages, including loss of profits, even if they had been advised of the possibility of such damages.

6.6 Property Damage and Personal Injury Indemnity.

Provided that THE CLIENT makes no admission nor incurs any avoidable costs without SILVERSANDS' consent, SILVERSANDS hereby agrees to save, protect, defend, indemnify, and hold THE CLIENT harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, including costs of litigation and reasonable legal fees, arising out of any damage to property or injuries (including death) to any persons, caused by SILVERSANDS, its employees, agents, or permitted sub-contractors.

SILVERSANDS, at its option, may control the defence of any claim subject to the foregoing indemnity, and the CLIENT will cooperate with SILVERSANDS in such defence in all reasonable respects, at no cost to the CLIENT.

Provided that SILVERSANDS makes no admission nor incurs any avoidable costs without the CLIENT's consent, the CLIENT hereby agrees to save, protect, defend, indemnify, and hold SILVERSANDS harmless from and against any and all claims, liabilities, demands, damages, judgments, awards, settlements, expenses or losses, including costs of litigation and reasonable legal fees arising out of any damage to property and injuries (including death) to any person caused by the CLIENT or its employees, subsidiaries, sub-contractors or other associated persons or bodies.

The CLIENT, at its option, may control the defence of any claim subject to the foregoing indemnity, and SILVERSANDS will co-operate with the CLIENT in such defence in all reasonable respects, at no cost to SILVERSANDS.

Article 7. HARDWARE AND PACKAGED SOFTWARE PURCHASE OR LICENSING

7.1 TERMS OF PAYMENT FOR HARDWARE AND PACKAGED SOFTWARE PURCHASE OR LICENSING

SILVERSANDS terms of payment are strictly payment by cleared funds within 30 days of date of invoice.

Any claim or counterclaim or alleged claim or counterclaim shall not entitle the CLIENT to withhold payment.

SILVERSANDS shall be entitled to charge interest on invoice sums outstanding for more than 30 days from the date of invoice at the rate of 4% above the Bank of England base rate per month from the date of invoice until payment in full has been received by the Company in cleared funds.

Unless otherwise specified, prices quoted are ex-works and are exclusive of VAT which shall be charged at the appropriate rate.

If payments received from the CLIENT are not stated to refer to a particular invoice, SILVERSANDS may appropriate such payments to any outstanding invoices.

7.2 FLUCTUATIONS

Where the cost to SILVERSANDS of undertaking the supply has increased for whatever reason since the date of quotation for the supply (or in the absence of a quotation since the date when the price for the supply was agreed) SILVERSANDS shall be entitled by giving notice in writing to the CLIENT to increase its price to cover such increase in cost. In addition (without limiting the foregoing):

- the cost to SILVERSANDS of undertaking the supply shall be deemed expressly to include the cost of labour together with the cost of products;
- if the CLIENT shall requires special testing facilities in the presence of SILVERSANDS or its representatives or on SILVERSANDS' premises, any additional expense shall be borne by the CLIENT;
- SILVERSANDS business includes the supply of goods and materials from outside the United Kingdom and any increase in cost due to devaluation of currencies or increase in any tax levy or impost will be passed on to the CLIENT, SILVERSANDS giving details of such increase in writing.

7.3 SILVERSANDS' RIGHTS

SILVERSANDS shall be entitled:

- to employ the services of any sub-contractor for the purpose of undertaking the supply
- to assign the benefit of any order with the CLIENT to any servant agent or sub-contractor;
- to withdraw or cancel any quotation at any time without penalty or liability before an order is accepted by SILVERSANDS.

7.4 DRAWINGS AND LITERATURE

The property and copyright in all documents, drawings, plans, photographs, designs, specifications, illustrations and other printed matter prepared and submitted to the CLIENT will remain with SILVERSANDS. SILVERSANDS shall not suffer liability for any errors or omissions and reserves the right to change drawings and/or specifications without notice.

7.5 STORAGE AND OWNERSHIP OF THE GOODS

- a) Legal and beneficial ownership of the goods shall remain with SILVERSANDS until payment has been made in full and in the meantime, the CLIENT shall hold such goods in a fiduciary relationship as bailee of SILVERSANDS.
- b) Until ownership of the goods has passed to the CLIENT:
- the goods shall be stored separately from any goods belonging to the CLIENT or any third party, and shall be clearly marked and identifiable as being SILVERSANDS property. SILVERSANDS shall be entitled to enter the CLIENT'S premises upon reasonable notice to verify the CLIENT'S compliance with this clause;
 - On default of payment in accordance with this PSA, SILVERSANDS may at any time require the CLIENT to return the goods to SILVERSANDS in default of which SILVERSANDS shall have an irrevocable licence to enter the CLIENT'S premises to recover the goods and sever the goods from anything to which they are attached without being responsible for any damage caused. Such return or recovery shall be without prejudice to the obligation of the CLIENT to purchase the goods and to make payment therefore;
 - the CLIENT shall keep the goods safe and insured against usual commercial risks and free from any charge lien or other encumbrance.
- c) If the CLIENT shall fail to take delivery of the goods within 28 days of notification that the goods are ready for despatch, then SILVERSANDS shall have the right to payment for the goods notwithstanding the other rights herein conferred upon the CLIENT.
- d) If the CLIENT shall fail to give SILVERSANDS instructions for delivery within 7 days of notification that the goods are ready for delivery, SILVERSANDS shall be entitled to arrange to store the goods at the CLIENT'S expense.
- e) The risk in the goods shall pass to the CLIENT upon the goods leaving SILVERSANDS premises and the CLIENT shall if requested by SILVERSANDS produce the original of any certificate or policy of insurance covering the goods.
- f) Any recommendations and advice given by SILVERSANDS or the manufacturer or software vendor to the CLIENT with regard to the goods supplied shall be strictly followed.

7.6 SILVERSANDS' LIEN

- a) SILVERSANDS shall have a general as well as a particular lien on all goods, materials or any other property of the CLIENT which shall be in the possession of SILVERSANDS in respect of any unpaid account of the CLIENT (whether or not in relation to the goods materials or other property of the CLIENT) and such lien shall extend to such goods, materials or property in the possession of any agent or sub-contractor of SILVERSANDS or directly or indirectly under the control or disposition of SILVERSANDS its agents or subcontractors.
- b) SILVERSANDS shall have the right to sell in the United Kingdom or abroad any of such goods, materials or property by public auction or otherwise to pay or retain the costs and expenses of maintaining and exercising such lien given to SILVERSANDS hereunder. SILVERSANDS shall not owe a duty of care to the CLIENT in respect of such sale.

7.7 NOTIFICATION OF CLAIMS

SILVERSANDS shall not accept liability for any claim unless within 7 days of the supply or in the case of any defect not reasonably discoverable at the date of the supply, within 7 days after the date of discovery of the defect by the CLIENT, the CLIENT gives SILVERSANDS notice in writing of the matter or thing in respect of which the claim is made. If notice is not given as aforesaid, the CLIENT shall be deemed to have accepted the supply and shall pay for the same accordingly.

7.8 TIME OF SUPPLY

The time for delivery or the performance of the supply by SILVERSANDS shall not be of the essence.

7.9 WEEE

Silversands is not a Producer or Distributor of electrical goods as defined in the WEEE regulations. No offer for supply of hardware, including electrical equipment of any kind, should be implied to include offering any services regarding the removal and/or disposal of the CLIENT'S existing equipment under WEEE regulations, unless this service has been explicitly specified and offered in a written proposal to the CLIENT. Where SILVERSANDS is required by the CLIENT or by law to provide or assist in recycling or asset disposal, then SILVERSANDS will charge to the CLIENT reasonable costs incurred in performing such services or duties.

Article 8. GENERAL PROVISIONS

8.1 LIMITATIONS OF LIABILITY

- a) Subject to clause e) below, while SILVERSANDS makes reasonable endeavours to perform its obligations under this agreement, SILVERSANDS shall not, save where otherwise required by law or ordered by the court, accept any liability for:
- i Any act, negligence or default due directly or indirectly, wholly or partially, to any act or thing outside the control of SILVERSANDS;
 - ii Any inherent or latent defect in any services, goods or materials which SILVERSANDS could not readily have discovered or rectified;
 - iii Loss or damage due to delay on the part of SILVERSANDS or its servants or agents; or
 - iv Statements or information supplied in specifications and drawings referred to in any Silversands proposal which shall be for guidance only.
- b) SILVERSANDS shall not be liable in contract, tort or under any head of legal liability for any damages, costs, claims, expenses or interest arising out of the performance or alleged non-performance of any contract entered into by SILVERSANDS for the supply of hardware or Packaged Software. Save as aforesaid and save as required by law, all conditions warranties or other terms, whether express or implied, statutory or otherwise, are hereby expressly excluded. Notwithstanding the foregoing, SILVERSANDS accepts liability in the following circumstances:
- SILVERSANDS will replace or repair at its discretion any of the goods or parts of the goods proved to be defective after fair and proper use, provided that the goods shall at the expense of the CLIENT be returned to SILVERSANDS within seven (7) days of the date of supply.

- c) In the event of a dispute, the 'Dispute Resolution' procedure in clause 8.10 of this Agreement will be followed.
- d) CLIENT acknowledges and agrees that, except as expressly provided in this agreement, CLIENT assumes sole responsibility for:
 - i ensuring that the Deliverables meet the CLIENT's business, legal, regulatory and security requirements;
 - ii results obtained from the use of any software or work product by the CLIENT, and for conclusions drawn from such use; and
 - iii 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 CLIENT'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;
 - iv loss or damage arising from or relating to any CLIENT acts or omissions.
- e) Neither party excludes or limits liability to the other party for:
 - i fraud or fraudulent misrepresentation;
 - ii death or personal injury caused by negligence;
 - iii a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - iv any matter for which it would be unlawful for the parties to exclude liability.
- f) Subject to clause e) above neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - i any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - ii loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - iii any loss or liability (whether direct or indirect) under or in relation to any other contract.
- g) Subject to clause e), SILVERSAND'S total annual aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), 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 lower of £500,000 or:
 - i in the case of Services, 100% of the amount of the Charges paid for such services that are subject to the claim in the preceding 12 months; or
 - ii in the case of hardware or Packaged Software, 100% of the charges paid for such hardware or Packaged Software.

8.2 General.

If the CLIENT submits an order containing terms inconsistent with or purporting to vary or override this PSA, this PSA shall take precedence and the terms of such order shall not take effect.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by SILVERSANDS shall be subject to correction without liability on the part of SILVERSANDS.

8.3 Term and Termination.

Notwithstanding the date of signature of this PSA, this PSA shall be deemed to have commenced on the date when the CLIENT placed the initial order for a Services Engagement with SILVERSANDS and will continue in force unless terminated by either party.

Either party may terminate the PSA by giving 90 days' notice in writing, unless a shorter period is agreed in writing by the parties. Written notice includes notice by e-mail to the Project Manager. All Service Engagements entered into shall terminate on the termination of this PSA

Either party shall be entitled to serve written notice on the other to terminate this PSA with immediate effect in the event that a liquidator (other than for the purpose of amalgamation or reconstruction), administrative receiver, administrator or receiver is appointed in respect of the whole or a material part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or if it becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or analogous provision in any other jurisdiction, or other circumstances arise which would entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the other party.

In the event that the CLIENT terminates a Fixed Price Assignment pursuant to this Clause, SILVERSANDS shall be entitled to fair compensation for time and materials at a price to be negotiated in good faith by the parties, but in no event to exceed the Fixed Price specified in the relevant Services Engagement. In the case of time and materials engagement, Silversands shall be entitled to submit a final invoice for time and materials to the date of termination and the CLIENT shall pay such final invoice in full within 30 days of receipt of such invoice.

In the event of any termination of any Services Engagement hereunder, THE CLIENT shall be entitled to the possession and use of any and all work in process after payment of the relevant invoices.

8.4 Assignment.

SILVERSANDS may not assign this Agreement without THE CLIENT's prior written consent, which shall not be unreasonably withheld. THE CLIENT may assign its rights or obligations hereunder only to an Affiliate or successor in business, or to any joint venture or entity in which THE CLIENT or any of THE CLIENT's Affiliate has or will have an ownership or equity interest and which agrees in writing signed by a responsible officer to be bound by all terms and conditions of this Agreement.

THE CLIENT may also assign or novate all or any part of this Agreement and any Services Engagement, and SILVERSANDS agrees to join in any such novation, to any third party contracted to provide outsourced services to THE CLIENT or any of its Affiliates providing such novation shall maintain entirely the same terms of agreement and prompt payment schedule to SILVERSANDS.

8.5 Application Software Facilities and Testing.

8.5.1 Where, during the provision of the services, the CLIENT and/or SILVERSANDS makes use of web or other remote-enabled application software facilities, whether provided by SILVERSANDS or a third party, then the CLIENT acknowledges that these facilities are provided on a reasonable endeavour basis and the CLIENT must make its own assessment as to fitness for purpose, the consequences of changes to the service or software or infrastructure that the Vendor of the web service might make and levels of security. SILVERSANDS gives no warranties, expressed or implied, as to fitness for purpose, nor any guarantees regarding ongoing availability of such systems or services, security or freedom from corruption or virus.

8.5.2 SILVERSANDS bases its estimates and quotations on its experience in working in certain technology areas and on the information provided by and requirements of the CLIENT. However, where additional work is necessary resulting from defects, bugs or unexpected behaviour in third-party software, or inter-operability problems between third party software and the CLIENT'S or SILVERSANDS' software, or the failure of third parties to perform tasks set out in project schedules, then SILVERSANDS reserves the right to make additional charges for the additional work required to investigate or remedy or provide work-arounds to resolve such problems.

8.5.3 The CLIENT accepts and acknowledges that the development of software carries with it the likelihood of problems arising over the life of the product and that liability for such problems shall not lie with SILVERSANDS.

8.5.4 The CLIENT accepts and acknowledges that the CLIENT has duties under this Agreement and undertakes to meet all its obligations, including all testing and acceptance obligations and if it fails to do so, resulting in delay or further work by SILVERSANDS, it shall pay to SILVERSANDS the additional costs incurred.

8.5.5 Packaged Software shall be deemed accepted on delivery to the CLIENT. For all other software, the CLIENT shall be deemed to have accepted that any software has met its respective Acceptance Criteria on the earliest of:

- a) the CLIENT'S written agreement to that effect;
- b) the expiry of [two] working days after the completion of the relevant Acceptance Tests, unless the CLIENT has given written notice to SILVERSANDS that the relevant software does not meet the respective Acceptance Criteria, specifying the relevant result and details of the nature of the failure, in each case;
- c) the expiry of [two] working days after SILVERSANDS informs the CLIENT that the sprint backlog items are ready for the relevant Acceptance Tests, if those Acceptance Tests have not been completed; or
- d) the live use of the software by the CLIENT or any of its employees, agents or contractors other than in an Acceptance Testing capacity.

8.5.6 SILVERSANDS shall not be liable for any delay or expense caused by any third party failing to deliver goods or services on time or delivering in any fashion goods and services that are defective, not fit for the purpose required or which in any way adversely affect the goods or services supplied under this Agreement. This includes third parties that are engaged by, or under the control of, the CLIENT.

8.6 Entire Agreement and severability:

8.6.1 The making, execution, and delivery of this Agreement by SILVERSANDS and THE CLIENT have been induced by no representations, statements, warranties, or agreements other than those herein expressed.

8.6.2 This Agreement embodies the entire understanding of the parties relating to SILVERSANDS' services regarding the subject matter hereof and supersedes any previous agreements or understandings, written or oral, in effect between the parties relating thereto.

8.6.3 If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law having jurisdiction over this Agreement, the validity of the remaining portion or portions shall not be affected thereby.

8.7 Changes In Writing, Notices

This Agreement, and any Services Engagement, may be amended or modified only by an instrument of equal formality signed by duly authorized representatives of the respective parties. All notices, requests, demands, or other communications hereunder, other than day-to-day communications within the duties of the Project Managers, shall be in writing and shall be deemed given if sent to and received by the Project Manager by email.

8.8 Waiver of Breach

The waiver of a breach of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement.

8.9 Choice of Law and Jurisdiction

This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of England & Wales and the parties submit to the exclusive jurisdiction of the English & Welsh courts in respect of any disputes arising in relation to this Agreement.

8.10 Force Majeure

Neither party shall be responsible for any failure to perform or delay in performing any of its obligations under this Agreement where and to the extent that such failure or delay results from causes outside the reasonable control of the party. Such causes shall include, without limitation, Acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes, civil commotions, labour disputes or strikes or the like. Notwithstanding the above, strikes and labour disputes within either SILVERSANDS or the CLIENT shall not constitute an excusable delay for the relevant party under this Agreement

8.11 Headings Not Controlling

Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement.

8.12 Dispute Resolution

In the event of any dispute between the Parties arising out of this Agreement, the matter shall be referred immediately to a Director (or other person of equivalent seniority) of the CLIENT and the Managing Director of SILVERSANDS, together with all relevant information, with a view to early resolution.