

Silversands Terms and Conditions  
for the supply of Professional  
Services and Hardware and  
Packaged Software  
V2.4  
Effective 1st August 2018

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 or services of whatever type

Where THE CLIENT, from time to time engages SILVERSANDS to provide consulting services or hardware 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 be separately executed and when executed 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.

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 Silversand 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 Silversand terms will then continue to apply to all subsequent orders.

In the event that the CLIENT, from time to time during the currency of this PSA, requires SILVERSANDS to provide hardware or packaged software then these will be supplied under the terms of this agreement and, particularly, the conditions set out in Article VII.

### **ARTICLE I - DEFINITIONS**

“Acceptance Criteria” means those tests or other acceptance criteria described in the relevant Schedule A or Silversands Proposal (‘proposal’).

“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 or all Schedules A or Proposals or a 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 on the relevant Schedule A or proposal 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 Schedule A or proposal.

**“Deliverables”** mean those deliverables described in the relevant Schedule A or proposal.

**“Due Completion Date”** means the date specified as such in the relevant Schedule A or proposal.

**“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 Schedule A or proposal. Any additional resources needed to complete the Project by the Due Completion Date will be subject to a 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 and unless otherwise stated in a Proposal or Appendix A is restricted to English working days excluding weekend and Bank Holidays.

**“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 Scope of Work in each Schedule A or proposal.

**“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 central government office in any country including but not limited to customs officials and inspectors employed by a government agency.

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

“**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 or agents or approved sub-contractors of SILVERSANDS at the daily rates and skill levels who carry out the tasks set out in the relevant Schedule A or Proposal.

“**Silversands Materials**” means any materials or data (including methodologies), 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 Schedule (A) or Proposal pursuant to this Agreement 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, Person-Days, are provided by SILVERSANDS on a Time and Materials basis.

“**Type of Engagement**” means the type of fee basis 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 as being the principal place(s) from which the tasks are to be carried out.

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

## **ARTICLE II - SCOPE OF WORK**

**2.1 Scope of Work.** Each relevant Schedule A or Proposal, together with its exhibits (if any), will define the scope of the work for a particular Project.

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 Schedule A.

SILVERSANDS will, and will procure that SILVERSANDS' Personnel will, comply with all other reasonable requirements for the time being applicable to contractors at the relevant Work Place and other CLIENT locations providing the CLIENT provides details of such policies 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 the CLIENT provide details of such policies 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 price, schedule, and other terms and conditions of the Agreement.

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

**2.5 Acceptance.** Acceptance will occur when the relevant Deliverables under the relevant Schedule A or Proposal meet the Acceptance Criteria defined in the said Schedule A or proposal. In the absence of specifically-defined acceptance criteria then the Deliverables will be deemed to have been accepted when they are delivered or when the Silversands Project Manager considers the project completed and closes it.

If the relevant Deliverables do not meet the Acceptance Criteria when offered by SILVERSANDS for THE CLIENT's acceptance, THE CLIENT will give SILVERSANDS detailed written notification of the deficiency or non-conformance within seven (7) calendar days. SILVERSANDS then shall, within twenty-eight (28) calendar days of receipt of such written notification, either correct the deficiency or non-conformance or provide THE CLIENT with a plan acceptable to THE CLIENT for correcting the deficiency or non-conformance. If the deficiency or non-conformance is not corrected or an acceptable plan for correcting the deficiency is not established during such period, then, without prejudice to any of its other rights or remedies, THE CLIENT shall not be liable to pay any further fees for the Project and, upon request by THE CLIENT, SILVERSANDS shall refund to THE CLIENT all fees for the defective non-conforming deliverable.

Notwithstanding the above commitment the CLIENT acknowledges that the consultancy solutions offered by SILVERSANDS are based on third party software technologies and where the Deliverables disclose bugs or performance variations or other anomalies or unexpected outcomes in these software technologies it may not be within SILVERSANDS capacity to correct these issues directly. SILVERSANDS will, in these circumstances, use reasonable commercial endeavours to provide workaround solutions and to work with the third party software vendors to effect long-term solutions. In those circumstances, the obligation to refund set out in the last foregoing paragraph of this clause shall not arise and additional charges to the CLIENT may arise which shall be advised to the CLIENT in advance by SILVERSANDS.

**2.6 Cancellation.** 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 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.

**2.7 Regulatory Compliance.** 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 III - PERSONNEL**

**3.1 Subcontracting and SILVERSANDS's Personnel.** SILVERSANDS may subcontract specific assignments hereunder only with THE CLIENT's prior written permission, not to be unreasonably withheld, provided the appointment by SILVERSANDS of any sub-contractor for all or any part of any relevant Project shall not relieve SILVERSANDS of any liability or obligation under this Agreement. For the avoidance of doubt such prior written permission by THE CLIENT is not required in respect of any part of the relevant Schedule A or Proposal defined to be performed by any of SILVERSANDS' Affiliates.

As between SILVERSANDS and the CLIENT, SILVERSANDS shall have the sole responsibility for the conduct of its employees, Affiliates, Affiliate employees, approved sub-contractors and other agents, for controlling, supervising and directing their work in accordance with this Agreement, for payment of their entire compensation, for withholding of all income and social security taxes, national insurance contributions and for worker's compensation. SILVERSANDS shall be responsible for all employer obligations towards all of its approved employees, sub-contractors and other agents under all applicable laws.

**3.2 Qualifications and Replacement.** SILVERSANDS shall ensure that only duly qualified and experienced persons shall carry out any relevant Project.

SILVERSANDS shall, if required by the CLIENT, deliver to the CLIENT a full resume of individuals and provide THE CLIENT at the CLIENTS expense with the opportunity to interview any of Silversands' Personnel prior to the commencement of work by that individual(s). The CLIENT shall, acting reasonably, be entitled to reject any of SILVERSANDS' Personnel proposed to be supplied to THE CLIENT by SILVERSANDS. SILVERSANDS shall promptly remove and endeavour to replace any of SILVERSANDS' Personnel requested by the CLIENT for any reasonable reason during a Project. While SILVERSANDS will use reasonable commercial endeavours to replace any such personnel without detriment to the project schedules the CLIENT acknowledges that this may not always be possible and that variations in the project schedules may follow such a change of personnel.

- 3.3 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.
- 3.4 Hiring.** In relation to any employee of SILVERSANDS or its Affiliates who has been engaged on work for the CLIENT under any relevant Schedule A or proposal, 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 six (6) months thereafter.
- 3.5 Hiring(2).** In relation to any employee of the CLIENT that has been working with Silversands on a project defined in a relevant Schedule A or proposal, 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 six (6) months thereafter.
- 3.6 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.
- 3.7 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.

## **ARTICLE IV - FEES, INVOICES, PAYMENT**

**4.1 Fees/Compensation.** In relation to each Project, the CLIENT shall pay the fees at the rate and as otherwise specified in the relevant Schedule A or Proposal or Rate Card.

**4.2 Travel and Subsistence Expenses.** The CLIENT shall reimburse SILVERSANDS for reasonable travel, accommodation and subsistence expenses incurred by SILVERSANDS' personnel that are required to perform any orders placed under this Agreement. Such expenses are recharged 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 applicable Schedule A or Proposal. 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 (subject to Clause 4.2)

Payment is to be made in cleared funds strictly no more than 30 days from date of invoice.

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.

**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 Silversands Proposal, Statement of Work or Quotation, 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 Proposal, Statement of Work or Quotation.

## **ARTICLE V - 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 IV above. In default of payment under Article IV 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.

SILVERSANDS shall be entitled to use Residuals as hereafter defined to create work product similar to but not infringing 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, SILVERSANDS grants to the CLIENT a perpetual licence to continue to use such software, macros and other programmable procedures within the CLIENT organisation or its subsidiaries. For the avoidance of doubt, the granting of this licence does not extend to sale or gift to or usage by any third parties.

**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 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, and certify to the disclosing party in writing that all copies of such materials have been destroyed; 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 VI - WARRANTIES**

**6.1 Originality.** SILVERSANDS represents, warrants, and covenants either (i) the originality of any work performed or Product delivered 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.

**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 and/or Deliverables provided under the relevant Schedule (A) 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 Deliverables other than as intended for the purposes of the Project, including combination of the Deliverables with a software or hardware product, programme or data not supplied by SILVERSANDS, (ii) any adaptation or modification of any Deliverables not undertaken by SILVERSANDS, 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 and/or Deliverables under the relevant Work Order 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 attorneys' fees, arising out of any damage to property and 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, judgements, awards, settlements, expenses or losses, including costs of litigation and reasonable attorney's 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 VII - HARDWARE AND PACKAGED SOFTWARE PURCHASE OR LICENSING**

Note that this “Article VII” applies **only** where the Client places an order for hardware or third party licenced software and **not** to the general provision of professional consultancy or support services.

### **7.1 TERMS OF PAYMENT**

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 1% 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 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 require 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 Customer 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 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 LIMITATIONS OF LIABILITY**

While SILVERSANDS makes reasonable endeavours to perform its obligations, 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 and in particular (without limiting the foregoing) shall not save where otherwise required by law or ordered by the court accept any liability for:

a) any act neglect or default due directly or indirectly wholly or partially to any act or thing outside the control of SILVERSANDS.

b) Any inherent or latent defect in any goods or materials which SILVERSANDS could not readily have discovered or rectified.

c) loss or damage due to delay on the part of SILVERSANDS its servants or agents.

d) statements or information supplied in specifications and drawings referred to in the quotation which shall be for guidance only.

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 but in no other 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 the SILVERSANDS within seven (7) days of the date of supply.

## **7.8 NOTIFICATION OF CLAIMS**

SILVERSANDS shall not accept any liability for any claim whatsoever 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 provided that no such claim shall be made or if made accepted by SILVERSANDS after [*the first anniversary of the date of supply*]. If notice is not given as aforesaid the CLIENT shall be deemed to have accepted the supply and shall pay for the same accordingly.

## **7.9 TIME OF SUPPLY**

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

## **7.10 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 VIII - GENERAL PROVISIONS**

**8.1 General.** If the CLIENT submits an order containing terms inconsistent with or



purporting to vary or override this PSA then SILVERSANDS' acknowledgement or acceptance of the Order shall constitute a counter-offer by SILVERSANDS' to the CLIENT on the terms of this PSA.

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.

**8.2 Term and Termination.** Notwithstanding the date of signature of this PSA, this PSA shall be deemed to have commenced on the date of signature or when the CLIENT may have placed an order with SILVERSANDS and subject to the provisions for earlier termination in this Clause will continue in force until terminated in writing by either party giving 90 days notice in writing. All completed Schedule(s) A or Proposals entered into shall terminate on the termination of this PSA. All Incomplete Schedule(s) A or Proposals shall continue until they are completed or specifically and separately terminated.

Either party shall be entitled to serve written notice on the other to terminate this PSA and all applicable Schedule A's or Proposals 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.

The CLIENT may terminate any Schedule A in its sole discretion on thirty (30) days notice to SILVERSANDS. 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 either the Fixed Price specified in the relevant Schedule A or Proposal.

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

**8.3 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 Schedule A or proposal, 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.

- 8.3.1 Application Software Facilities.** 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.
- 8.3.2 SILVERSANDS bases its estimates and quotations on its expertise 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.
- 8.3.3 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 unless SILVERSANDS has failed properly to undertake the agreed tasks to a professional standard.
- 8.3.4 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 the reasonable request of SILVERSANDS and if it fails to do so resulting in delay or further work by SILVERSANDS it shall pay to SILVERSANDS the additional costs incurred.
- 8.3.5 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.

#### **8.4 Entire Agreement and severability:**

8.4.1 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.

8.4.2 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.

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

**8.5 Changes In Writing, Notices.** This Agreement, including Schedule(s) A and Exhibit(s), 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 personally delivered or five (5) days after proper mailing to the Registered Office of the respondent party.

**8.6 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.

**8.7 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.

**8.8 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.

**8.9 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.

**8.10 Dispute Resolution.** In the event of any dispute between the Parties arising out of this Agreement, the matter shall be referred immediately to the Finance 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.

In the event that no agreement is reached within 21 days, then, upon the election in writing of both Parties, the matter shall be determined by an independent expert (the 'Expert') appointed by agreement between both the Parties or in default of agreement by the President of Law Society of England & Wales.

The Expert shall act as expert and not as arbitrator. The Expert shall give such directions as to conduct of his determination as he thinks fit, including requirements for written or oral submissions by the Parties. The decision of the Expert shall be final and binding on the Parties and the costs of the Expert shall be borne equally unless otherwise agreed or ordered by the Expert.

If no election is made within 60 days the matter shall be determined by the English Courts.

*End.*

*Sample SCHEDULE A*

<b>Project Name</b>	Insert high level project or work-stream title
<b>Project Description</b>	Insert brief description of project or work-stream
<b>Role Description</b>	Insert brief description of role Consultant Personnel is to fulfill
<b>Start Date</b>	
<b>Estimated End Date</b>	
<b>Deliverables</b>	List the Deliverables expected to be achieves
<b>Acceptance Testing/Criteria</b>	If applicable, please enter here or attach and reference as a numbered exhibit to the Schedule A.
<b>Engagement Type</b>	Select one of the following: Time and Materials Assignment: Fixed Price Assignment Daily Services Assignment:
<b>Daily Rate (for Time &amp; Materials) or Fixed Cost (for Fixed Price)</b>	£
<b>THE CLIENT Project Manager</b>	Insert name of the CLIENT manager who will be responsible for this role
<b>SILVERSANDS Project Manager</b>	Insert name of the Silversands Project Manager who will be responsible for this role
<b>THE CLIENT Responsibilities</b>	Insert special requirements as applicable.

IN WITNESS OF WHICH, the parties hereto have caused this Agreement to be executed by their respective authorised representatives to be effective from the day of 2018

**THE CLIENT**

**SILVERSANDS LIMITED**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_