

Last updated: 12th July 2022

TERMS & CONDITIONS

Please read these Terms and Conditions, carefully before ordering the Implementation Services and Services set out in the Proposal which are provided by Silktide Limited located at Brunel Parkway, Pride Park, Derby DE24 8HR, a company registered in England under company number: 4242422 and VAT No: 772 5263 20.

By clicking on the accept button in the Proposal relating to these Terms and Conditions, DPA, SLA and Privacy Policy, you the Customer agree to be legally bound by these Terms and Conditions, DPA, SLA and Privacy Policy as they may be modified and posted on our website from time to time. In the event of any inconsistency between the content of the Terms and Conditions, the DPA, SLA and the Privacy Policy, the Terms and Conditions shall prevail followed by the DPA, SLA and then the Privacy Policy.

If you do not wish to be bound by these Terms and Conditions, DPA, SLA and Privacy Policy then you may not purchase our Services.

IT IS AGREED BETWEEN THE PARTIES THAT:

1. Definitions

In this Agreement the following terms shall have the following meanings:

“Agreement” means the Proposal and the Schedules, together;

“Authorised Users” means employees, agents, consultants or independent contractors of the Customer who have been expressly authorised by the Customer to receive a password in order to access the Services online;

“Business Day” means Monday to Friday excluding any national holiday in the UK;

“Business Hours” means 9 am to 5 pm, on each Business Day;

“Client”	means any entities or persons to whom the Customer provides its services;
“Company”	means Silktide Limited;
“Confidential Information”	means any and all information in any form whatsoever relating to the Company or the Customer, or the business, prospective business, finances, technical process, computer software (both source code and object code) and Intellectual Property Rights of the Company or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s possession as a result of this Agreement or provision of the Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;
“Consequential Loss”	means pure economic loss, special loss, losses incurred by any Client or other third party, losses arising from business interruption, loss of business revenue, goodwill or anticipated savings, losses whether or not occurring in the normal course of business, costs of procuring substitute goods or product(s) or wasted management or staff time;
“Customer Data”	means all data imported into the Services by the Customer, Authorised Users or Clients for the purpose of using the Services or facilitating the Customer’s use of the Services;
“Customer”	means the customer named in the Proposal;
“Documentation”	means the training materials and user manuals relating to the use of the Services, as well as any additional documentation that the Company specifically creates for the Customer or otherwise provides to the Customer to assist in the correction of any issue with the Services;

“DPA”	means the data processing agreement, published at https://silktide.com/terms-conditions/data-processing-agreement , as amended from time to time;
“Effective Date”	means the term start date set out in the signatures page of the Proposal;
“Feedback”	means feedback, innovations or suggestions created by Authorised Users or Clients regarding the attributes, performance or features of the Services;
“Fees”	means the fees set out in the Proposal payable by the Customer during the Term of this Agreement, plus any Other Fees added to this Agreement during the Term;
“Force Majeure”	means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage (including where the Company ceases to be entitled to access the Internet for whatever reason) transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency;
“Illegal Content”	means any data or content which is defamatory, or constitutes a breach of the Intellectual Property Rights or legal rights of any third party;
“Implementation Period”	means the implementation period set out in the proposal;
“Implementation Services”	means the implementation services set out in the proposal;
“Initial Term”	means a fixed period of 12 (twelve) months starting from the Effective Date;

**“Intellectual
Property Rights”**

means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;

“Other Fees”

means any additional fees payable by the Customer during the Term of this Agreement set out in any subsequent proposal signed by the parties and added to this Agreement after the Effective Date. The amount of such additional fees shall be calculated on a Time and Materials Basis unless stated otherwise in such proposal;

“Other Services”

means any additional services to be provided to the Customer during the Term of this Agreement set out in any subsequent proposal signed by the parties and added to this Agreement after the Effective Date;

“Privacy Policy”

means the privacy policy of the Company published at <https://silktide.com/privacy>, as amended from time to time;

“Proposal”

means the proposal prepared for the Customer setting out the Services and Implementation Services to be provided to the Customer pursuant to these Terms and Conditions;

“Renewal Term”

means a period of 12 (twelve) months;

“Schedules”

means the Terms and Conditions, DPA and Privacy Policy together;

“Services”

means the Silktide software application described in more detail in the Proposal

“SLA”	Means the service level agreement of the Company published at https://silktide.com/terms-conditions/service-level-agreement/ , as amended from time to time;
“Term and Conditions”	means these terms and conditions;
“Term”	means the Initial Term together with any subsequent Renewal Terms;
“Time and Materials Basis”	means the Company’s standard daily consultancy rates
“Travel Fees”	means all reasonable costs associated with any travel and subsistence expenses incurred by the Company (or its employees, permitted subcontractors or agents) in performing its obligations under this Agreement (including during the Implementation Period).

2. Services

2.1. The Customer engages the Company and the Company agrees to provide the Services and Documentation to the Customer in accordance with the terms of this Agreement from the Effective Date for the Term.

2.2. If the Customer wishes to purchase additional Services after the Effective Date, such Services shall be set out in one or more additional proposals, which will be signed by both parties and incorporated into this Agreement.

2.3. The Services shall be provided in accordance with the SLA.

3. Licence to use the Services

3.1. Subject to the Customer’s payment of the Fees, the Customer is granted a non-exclusive, non-transferable licence to permit Authorised Users and Clients to use the Services (including any associated Intellectual Property Rights and Confidential Information of the Company) from the Effective Date for the Term for the Customer’s internal business operations. Such licence permits the Customer to make copies of software or other information necessary for the Customer to receive the Services via the Internet. Where open source software is used as part of the Services, such

software use by the Customer will be subject to the terms of the open source licences. No additional implied rights are granted beyond those specifically mentioned in this clause 3.1.

3.2. Notwithstanding the Customer's statutory rights, no right to modify, adapt, or translate the Services or create derivative works from the Services is granted to the Customer.

3.3. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain source code for the software comprised within the Services. Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within Services is prohibited. To the extent that the Customer is granted the right by law to decompile such software in order to obtain information necessary to render the Services interoperable with other software the Company will provide access to any relevant source code or information provided that the Customer makes a written request identifying the relevant details of the Services with which operability is sought and the nature of the information needed. The Company has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.

3.4. Unless otherwise specified in this Agreement, the Services are provided and may only be used in conjunction with:

3.4.1. The Customer's existing systems and applications in order to facilitate the Customer's transactions with its Clients;

3.4.2. Providing access to Services solely to Clients and Authorised Users; and

3.4.3. Accessing and using the Documentation as necessary to enable use of the Services.

3.5. The Customer may not:

3.5.1. Lease, loan, resell, assign, licence, distribute or otherwise permit access to the Services; or

3.5.2. Use the Services to provide ancillary services related to the Services; or

3.5.3. Permit access to or use of the Services by or on behalf of any third party;

except as permitted in this Agreement;

3.6. The Company reserves the right to electronically monitor the Customer's use of the Services.

4. Intellectual Property Rights

4.1. All Intellectual Property Rights and title to the Services and Documentation (save to the extent these incorporate any Customer Data, Customer Intellectual Property Rights or third party owned item) shall remain with the Company and/or its licensors and subcontractors. No interest or ownership in the Services, Documentation, Intellectual Property Rights or otherwise is transferred to the Customer under this Agreement.

4.2. The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing Intellectual Property Rights and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. The Customer grants the Company a non-exclusive, licence to use Customer Data, Customer Intellectual Property Rights and any third party owned item from the Effective Date for the Term to the extent required for the provision of the Services.

4.3. The Customer is not allowed to remove any proprietary marks or copyright notices from the Services.

4.4. The Customer grants the Company a non-exclusive, non-transferable, revocable licence to display the Customer's name, logo and trademarks, as designated and/or amended by the Customer from time to time and as required in the creation of correspondence, documentation and website front ends in the provision of the Services.

4.5. The Customer assigns all rights, title and interest in any Feedback to the Company. If for any reason such assignment is ineffective, the Customer shall grant the Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and licence to use, reproduce, disclose, sub-licence, distribute, modify and exploit such Feedback without restriction.

4.6. The Company may take and maintain technical precautions to protect the Services from improper or unauthorised use, distribution or copying.

5. Term

5.1. This Agreement shall commence on the Effective Date for the Initial Term. Upon the expiry of the Initial Term, this Agreement shall automatically renew for Renewal Terms and continue until either party terminates the Agreement by giving the other at

least 60 (sixty) days notice in writing prior to the start of a Renewal Term. Neither party may terminate the Agreement without cause during the Initial Term.

6. Provision of Implementation Services

6.1. The Company shall provide the Implementation Services during the Implementation Period in accordance with the proposal.

6.2. The Implementation Period shall be extended by the length of any delay in the implementation process if:

6.2.1. The Customer changes its requirements after the proposal has been agreed; or

6.2.2. The Company's ability to comply with the proposal impaired by any act or omission of the Customer or breach of this Agreement, which shall include but not be limited to the Customer failing to provide timely support and resources or having a lack of bandwidth or other technical requirements; or

6.2.3. The parties agree to extend the Implementation Period; or

6.2.4. A Force Majeure event occurs.

6.3. The Company may increase the fee for the Implementation Services should the Implementation Period be extended for any of the reasons set out in clause 6.2. The price increase shall be in proportion to the extension of time if the fee is payable in advance. If the fee is payable in instalments, then the price increase shall be on a Time and Materials Basis.

6.4. During the Implementation Period the Customer shall test the Services for defects and compliance with the proposal. Such tests shall include testing the material software programme features. Any defects that are discovered shall be notified to the Company in writing.

6.5. The Customer shall provide the Company with all appropriate test data in accordance with the proposal.

7. Third Party Providers

7.1. The Company shall make all reasonable efforts to ensure that any interface or integration to a third party provider or system used by the Customer operates correctly. The Customer acknowledges that the successful operation of any interface

or integration is dependent upon the technical set up of the third party systems, and the Customer agrees that the Company cannot be held liable for any failures in the operation of the interface or integration. Accordingly, the Company shall have no liability or obligation whatsoever to the Customer in relation to the content on, or use of, or connection with any third party website made available via use of the Services.

7.2. If an issue arises with regard to the effective operation of an interface or integration the Company will use all reasonable efforts to resolve the issue at the earliest opportunity.

7.3. The Customer acknowledges that:

7.3.1. It is responsible for ensuring that it has paid and instructed the third party to co-operate with the Company; and

7.3.2. The Company has no liability whatsoever to the Customer for any problems with any interface or integration resulting from acts or omissions of the Customer or the third party.

8. Fees and Invoicing

8.1. The Company shall invoice the Customer the Fees set out in the Proposal. All invoices shall be issued in the currency stated in the Proposal. All Fees exclude any Value Added Tax or any other applicable taxes legally payable on the date of the invoice, which shall be paid by the Customer in addition, where applicable.

8.2. All Fees shall be invoiced as set out in the Proposal.

8.3. Travel Fees, incidental costs and other expenses shall be invoiced in addition to the Fees in arrears, as and when they arise.

8.4. Travel Fees shall be payable in addition.

8.5. Fees remain fixed for the first 12 months of the Term. On expiry of the first 12 months of the Term and on every anniversary thereafter, the Fees will automatically increase by 3% each year during the continuing Term.

9. Payment Terms

9.1. The Customer shall pay the Company the Fees for the provision of the Services under this Agreement as set out in the Proposal.

9.2. Unless stated otherwise in the Proposal, payment of all Fees is due within 30 (thirty) days of the date of invoices. If the Customer believes that any invoice is incorrect, it must notify the Company in writing within 30 (thirty) days of the invoice date.

9.3. If payment of any Fees is overdue, the Company may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Company shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid.

9.4. The Company shall charge interest on any overdue amount at the rate of 2% (two per cent) per annum above Barclay's base rate from time to time, or the statutory applicable rate, whichever is higher. The Company also reserves the right to recover any costs and reasonable legal fees it incurs in recovering overdue payments

10. Confidential Information

10.1. Each party may use the Confidential Information of the other party only for the purposes of this Agreement. Each party must keep confidential all Confidential Information disclosed to it, except where the recipient of any Confidential Information is required to disclose the Confidential Information by law to any regulatory or governmental or other authority with relevant powers to which either party is subject.

10.2. Each party may disclose the Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.

10.3. Both parties agree to return (or destroy) all documents, materials or data containing Confidential Information to the disclosing party without delay upon completion of the Services or termination or expiry of this Agreement.

10.4. The obligations of confidentiality under this Agreement do not extend to information that:

10.4.1. Was in the other party's lawful possession before the negotiations leading to this Agreement; or

10.4.2. Is, or after the day this Agreement is signed, becomes publicly known other than through any act or omission of the receiving party; or

10.4.3. Is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.4.4. Is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.4.5. Is required to be disclosed by law by any court of competent jurisdiction or by any regulatory or administrative body.

10.5. If either party is required to disclose any Confidential Information pursuant to clause 10.4.5 such party shall, where lawfully permitted to do so:

10.5.1. Promptly consult with and take into account any comments from the other party prior to making any disclosure; and

10.5.2. Work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.

10.6. The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this clause 10 and without limitation, all information falling within the definition of Confidential Information as set out in clause 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is:

10.6.1. Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or

10.6.2. A trade secret of the disclosing party; and

10.6.3. Information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

11. Data Protection

11.1. Each party undertakes to comply with its obligations under applicable data protection laws, principles and agreements.

11.2. To the extent that personal data is processed when the Customer, Authorised Users or Clients use the Services, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties shall comply

with their respective obligations under applicable data protection law and the terms of the DPA.

11.3. Where the Company collects and processes personal data of the Customer Authorised User or Client as a data controller, when providing the Services to the Customer, such collection and processing shall be in accordance with the Privacy Policy.

11.4. If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

12. Representations and Warranties

12.1. Each party warrants and represents that:

12.1.1. It has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder;

12.1.2. The execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party and is in accordance with any applicable laws; and

12.1.3. It shall respect all applicable laws and regulations, governmental orders and court orders, which relate to this Agreement.

12.2. The Company warrants to the Customer that it has the right to licence the Services.

12.3. The Company warrants and represents that the Implementation Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice.

12.4. The Company warrants to the Customer that the Services will operate to provide in all material respects the facilities and functions implemented by the Company as set out in the proposal. If there is a breach of this warranty, the Company shall use reasonable commercial endeavours, to correct any material defect or to replace the defective Services. Notwithstanding the aforesaid, the Company shall only be obliged to remedy any material defect if:

12.4.1. The Customer notifies the Company in writing immediately upon discovering the defect; and

12.4.2. Following the Company's examination of the Services, it is established that such a defect exists.

12.5. The warranties in clauses 12.2 to 12.4 inclusive shall not cover deficiencies or damages relating to:

12.5.1. Any third party components not provided by the Company; or

12.5.2. Any third party provided connectivity necessary for the provision or use of the Services; or

12.5.3. Compliance with third party software or products, non-Company programmes or data used in combination with the Services except as set out in the proposal; or

12.5.4. A failure of the Services to conform with the proposal or the SLA caused by the use or operation of the Services by the Customer with an application or in an environment other than that set out in the proposal; or

12.5.5. Modifications made to the Services not carried out by the Company.

12.6. No warranty is made regarding the results the Customer can achieve from using the Services and Services or that the Services will operate uninterrupted or error free.

12.7. The Customer warrants that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement.

12.8. The Customer warrants and represents that it and the Authorised Users shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Services granted under this Agreement is limited as set out under this Agreement. In particular the Customer and Authorised Users shall treat any identification, password or username or other security device for use of the Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Company in writing. The Customer shall be liable for any breach of this Agreement by an Authorised User or Client.

12.9. The Customer warrants and represents that it shall ensure that its network and systems comply with the relevant specification provided by the Company from time to time and that it is solely responsible for procuring and maintaining its network connections and telecommunications links from the Customer's systems to the

Company's data centres and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the Internet.

12.10. All third party content or information provided by the Company via the Services, for example prices is provided "as is". The Company provides no warranties in relation to such content or information and shall have no liability whatsoever to the Customer for its use or reliance upon such content or information.

12.11. Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

13. Liability

13.1. Neither party excludes or limits its liability to the other for fraud, death or personal injury caused by their negligent act or omission or wilful misconduct.

13.2. Neither party shall be liable for any Consequential Loss arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, even if the party was advised of the possibility of such damages.

13.3. Neither party shall be liable for any loss of profits (whether categorised as direct or indirect) arising out of or related to this Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, even if a party was advised of the possibility of such damages.

13.4. Subject to clauses 13.1 to 13.3 inclusive the total liability of the Company to the Customer in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under this Agreement or based upon any claim for indemnity or contribution shall be limited to the total Fees (excluding all taxes) paid by the Customer to the Company during the 12 month period prior to the date on which any such claim arose. If the duration of the Agreement has been less than 12 months, such shorter period shall apply.

13.5. The Customer shall be liable for any breaches of this Agreement caused by the acts, omissions or negligence of any Authorised Users or Clients who access the Services as if such acts, omissions or negligence had been committed by the Customer itself.

13.6. The Customer shall not raise any claim under this Agreement more than 1 year after:

13.6.1. The discovery of the circumstances giving rise to a claim; or

13.6.2. The effective date of termination or expiry of this Agreement.

13.7. The parties acknowledge and agree that in entering into this Agreement, each had recourse to its own skill and judgement and have not relied on any representation made by the other, their employees or agents.

14. Indemnities

14.1. The Company shall at its own expense, defend or at its own option settle any claim brought against the Customer by a third party on the basis of an infringement of any Intellectual Property Rights by the Services excluding any claim deriving from any Customer provided item) and pay any final judgment entered against the Customer on such issue or any settlement thereof, provided that:

14.1.1. The Customer notifies the Company promptly of each such claim;

14.1.2. The Company is given sole control of the defence and/or settlement; and

14.1.3. The Customer fully co-operates and provides all reasonable assistance to the Company in the defence or settlement.

14.2. If all or part of the Services becomes, or in the opinion of the Company may become, the subject of a claim or suit of infringement, the Company shall at its own expense and sole discretion:

14.2.1. Procure for the Customer the right to continue to use the Services or the affected part thereof;

14.2.2. Replace the Services or affected part with another suitable non-infringing service or software;

14.2.3. Modify the Services or affected part to make the same non-infringing.

14.3. The Company shall have no obligations under clauses 14.1 and 14.2 above to the extent that a claim is based on:

14.3.1. A modification of the Services by anyone other than the Company;

14.3.2. The combination, operation or use of the Services with other services or software not provided by the Company if such infringement would have been avoided in the absence of such combination, operation or use; or

14.3.3. The use of the Services in any manner inconsistent with this Agreement; or

14.3.4. The negligence or wilful misconduct of the Customer.

14.4. Clauses 14.1 to 14.3 state the Customer's sole and exclusive rights and remedies and the Company's entire obligations and liability for any claims made under these clauses.

14.5. The Customer shall defend, indemnify and hold the Company and its employees, sub-contractors or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly or indirectly from:

14.5.1. Any claimed infringement or violation by the Customer, an Authorised User or a Client of any Intellectual Property Rights with respect to use of the Services outside of the scope of this Agreement; or

14.5.2. Use by the Company of any Customer Data or Customer or Client provided item, in particular storage or publication on the Internet of any Illegal Content; or

14.5.3. Any access to or use of the Services by an Authorised User, a Client or a third party;

14.5.4. Breaches of data protection law or regulations or the terms of the DPA by the Customer, an Authorised User or a Client; and

14.5.5. Any breach of the terms of this Agreement by an Authorised User or a Client;

and the Company shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet or breaches of third party rights from continuing.

14.6. Subject to clauses 14.1 to 14.5 inclusive, each party ("**the first party**") indemnifies and undertakes to keep indemnified the other party, its officers, servants and agents ("**the second party**") against any costs or expenses (including the cost of any settlement) arising out of any claim, action, proceedings or demand that may be brought, made or prosecuted against the second party under any indemnity contained in clause 14. Such indemnity extends to and includes all costs, damages

and expenses (including legal fees and expenses) reasonably incurred by the second party in defending any such action, proceeding claim or demands.

15. Security

15.1. The Company shall permit the Customer to specify which Authorised Users or Clients may access the Services through its standard application security options.

15.2. The Customer, Authorised Users and Clients must ensure that each password is only used by the user to which it has been assigned. The Customer is responsible for any and all activities that occur under the Customer's account and via the Customer's passwords. The Customer will immediately notify the Company if the Customer becomes aware of any unauthorised use of the Customer's account, the Customer's passwords or breach of security known to the Customer. The Company shall have no liability for any loss or damage arising from the Customer's failure to comply with these requirements.

15.3. The Company may suspend access to the Services, or portion thereof, at any time, if in the Company's sole reasonable discretion, the integrity or security of the Services is in danger of being compromised by acts of the Customer, Authorised Users or Clients. Where possible, the Company shall give the Customer 24 hours prior written notice, before suspending access to the Services, giving specific details of its reasons.

16. Termination

16.1. The Company may terminate this Agreement or the provision of any Services with immediate effect if:

16.1.1. The Customer has used or permitted use of the Services in breach of the terms of this Agreement; or

16.1.2. The Company is prohibited under applicable law, or otherwise from providing the Services.

16.2. Either party may terminate this Agreement immediately, with cause, if the other party:

16.2.1. Ceases or threatens to cease or carry on business; or

16.2.2. Is unable to pay its debts or enters into compulsory insolvency or voluntary liquidation; or

16.2.3. Convenes a meeting of its creditors or has a receiver, manager or similar official appointed in respect of its assets; or

16.2.4. Has an administrator, receiver, manager or similar official appointed; or

16.2.5. Is affected by a similar event under the law of any other jurisdiction; or

16.2.6. A Force Majeure event lasts for more than 28 (twenty eight) days.

16.3. Either party may terminate this Agreement for material breach of any term by giving the breaching party written notice. However, where the breach is capable of remedy, provided that the breach is specified and remedy of the breach is requested, the notice shall only be effective if the breaching party fails to remedy the breach within 10 (ten) days of receipt of the notice.

16.4. Upon termination of this Agreement:

16.4.1. The Customer shall promptly pay the Company all unpaid Fees and all licences granted under the Agreement shall terminate on the effective date of termination;

16.4.2. The Company shall Cease providing the Services to the Customer;

16.4.3. At the option of the Customer, the Company shall delete (in accordance with the terms of the DPA) or return all Customer Data stored in the Company's database in its then current format, free of charge. If the Customer requires any Customer Data to be returned in a different format the Company reserves the right to charge for this additional service on a Time and Materials Basis; Notwithstanding the aforesaid, the Company shall delete all Customer Data 6 (six) months after the expiry or termination of this Agreement without giving the Customer any prior notice of such deletion;

16.4.4. Provided that this Agreement has not been terminated due to the Customer's breach, the Company will provide reasonable assistance and information to enable Customer Data to be transitioned to a new platform. Such assistance will be charged for on a Time and Materials basis; and

16.4.5. No Fees already paid shall be refunded, unless the Customer terminates due to the Company's material breach. No service credits shall be refunded to the Customer on termination.

16.5. Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties. All clauses which by their nature should continue after termination shall, for the avoidance of doubt, survive the expiration or sooner termination of this Agreement and shall remain in force and effect.

17. Assignment

17.1. No party may assign, transfer or subcontract its rights under this Agreement without the prior written consent of the other party, such consent shall not be unreasonably withheld, however the Company shall be entitled to assign the Agreement to:

17.1.2. Any company in the Company's group of companies; or

17.1.3. Any entity that purchases the shares or assets of the Company as the result of a merger, takeover or similar event.

18. Relationship between the Parties

18.1. The Company and the Customer are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.

19. Contacts

19.1. The Customer shall provide a designated application support contact who will be responsible for and have sufficient information to respond to support questions.

19.2. The Customer shall provide a designated billing contact with all relevant contact information to respond to billing and payment questions regarding the Services.

20. Miscellaneous

20.1. Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

20.2. This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.

20.3. Amendments to, or notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post to a party at the address given for that party in this Agreement. Notwithstanding the aforesaid, the Company may change or modify the terms of this Agreement in order to comply with a change in applicable law, upon giving the Customer 30 (thirty) days notice via email. All changes shall be deemed to have been accepted by the Customer unless the Customer terminates the Agreement prior to the expiry of such 30 (thirty) day period.

20.4. Except with respect to the Customer's obligation to pay the Fees, if a party is wholly or partially unable to comply with its obligations under this Agreement due to Force Majeure, then that party's obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.

20.5. Neither party shall make any public statement, press release or other announcement relating to the terms or existence of this Agreement, or the business relationship of the parties, without the prior written consent of the other party. Notwithstanding the aforesaid the Company may use the Customer's name and trade marks (logo only) to list the Customer as a client of the Company on its website and in other marketing materials and information.

20.6. Nothing contained in this Agreement is intended to be enforceable by a third party under the Contracts (Rights of Third Parties) Act 1999, or any similar legislation in any applicable jurisdiction.

21. Dispute Resolution

21.1. The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.

21.2. If any such dispute cannot be settled amicably through ordinary negotiations of the sales directors of each party, the dispute shall be escalated in writing to the chief technology officer of the Company and the chief financial officer of the Customer who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 (fourteen) days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 22 below.

22. Governing Law and Jurisdiction

22.1. This Agreement shall be governed by the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.