

These Terms and Conditions (the “Terms”) apply to the Managed Service offered by Quicksilva Limited under Lots 1 to 3 of the G-Cloud 15. These Terms should be read in conjunction with the document “Quicksilva conneQt® Personal Demographic Service Spine Mini Service - Service Definition”.

1. Definitions and Interpretation

1.1 In these Terms, unless the context otherwise requires, the following words have the following meanings:

Definition	Interpretation
“Call-Off Contract”	means the contract entered into by the Parties for the provision of services in the form contained in the document “Crown Commercial Services G-Cloud 15 Call-Off Contract”;
“Commencement Date”	means the Start Date specified in the Call-Off Contract, Part A – Order Form;
“Customer”	means the Buyer as described in the Call-Off Contract, Part A – Order Form;
"Customer System"	means all the hardware, software and communications links not specifically provided by Quicksilva under these Terms and used or required to be used by the Customer and/or End Users in order to access the Managed Service including but not limited to those listed in Call Off Contract, Part A – Order Form;
"Data"	means data inputted into the Service, downloaded by the NHS Spine or otherwise provided, by the Customer and/or an End User;
“Data Protection Legislation”	means the data Protection Act 2018(UK), the General Data Protection Regulation (EU 2016/679) and/or any national implementing laws regulations and secondary legislation as amended or updated from time to time in the UK.
“Data Controller”	takes the meaning defined in the Data Protection Legislation;
“Data Processor”	takes the meaning defined in the Data Protection Legislation;
“Data Loss Event”	Any event that results or may result in unauthorised access to personal Data held by the Customer under the Agreement;
"Documentation"	means all documents or other materials that may be provided by Quicksilva from time to time under these Terms as part of the Managed Service or Support Services;
"End User"	means the Customer and any associates or clients that are nominated as end users in Call Off Contract, Part A – Order Form and subsequently agreed between the Parties;

"End User Site"	means a site from which End Users are permitted to access the Managed Service as specified in Call Off Contract, Part A – Order Form and subsequently agreed between the Parties;
"Go-Live Date"	means the date on which Quicksilva notifies the Customer that it has completed all work required of it to prepare the Managed Service for use in a live environment or the date two months from the Commencement Date, whichever is the earlier or; or in respect of the second and subsequent End User Sites, the date on which Quicksilva notifies the Customer that the Managed Service is available for use by that End User, or the date two months from the date of the request to add the End User in accordance with Clause 2.5 whichever is the earlier;
"Incident"	means a failure of the Managed Service to comply with its specification published by Quicksilva from time to time or down time or other interruptions of the Services which causes the Managed Service to be inaccessible;
"Incident Report"	means an incident logged in the Web Portal;
"Intellectual Property Rights"	means all patents, trademarks, designs, copyright, database rights, semi-conductor topography rights, inventions, trade secrets and other confidential information, know-how, business names and all other intellectual property rights of a similar nature in any part of the world, whether registered, registrable or not and including all softwares and the right to apply for any of the foregoing rights and the right to sue for past infringements of any of the foregoing rights;
"Internal Business Purposes"	means to use the Managed Service for internal business operations only and not for the purposes of providing services to third parties;
"Managed Service"	means the managed services as defined in Call-Off Contract, Part A – Order Form, utilising the Service provided by Quicksilva and accessed by the Customer under these Terms;
"Out-of-Hours"	means any time outside of the Support Service Hours;
"Party", "Parties"	means Quicksilva Limited and the Customer wishing to purchase services through the G- Cloud Framework Agreement and "Party", "Parties" shall mean either one or both as the context requires;
"Processing"	takes the meaning defined in the Data Protection Legislation;
"Purchase Order"	means an official written offer issued by the Customer to Quicksilva, indicating types, quantities, and agreed prices for Services provided under these Terms.

"Release"	means any moderate modification of a product for which Quicksilva amends functions or operation of a product and is designated by the first number to the right of the first decimal point in the product version number, e.g., a change from version 2.2 to 2.3;
"Service Definition"	means the document provided on the G-Cloud 15 Digital Marketplace entry for Quicksilva Limited entitled "Quicksilva conneQt® Personal Demographic Service Spine Mini Service - Service Definition";
"Service Levels"	means the availability service levels as specified in the Call-Off Contract, Part A – Order Form.
"Services"	means the Managed Services and/or Support Services and/or any other services provided by Quicksilva to the Customer under these Terms;
"Software"	means the software owned by Quicksilva which is used to provide the Managed Service;
"Support Services"	means the support services set out Call-Off Contract, Part A – Order Form, to be provided by Quicksilva under these Terms in connection with the Managed Service;
"Support Services Hours"	means the hours during which Quicksilva shall provide the Support Services to the Customer as set out in the Call-Off Contract;
"Update"	means any modification of a product for which Quicksilva, at its sole discretion, changes a number to the right of the second decimal point in the product release number, e.g., a change from release 3.1.1 to 3.1.2. The Update number is incremented when minor bugs are fixed;
"Version"	means any major modification of a product for which Quicksilva adds new functions or extensively modifies existing functions of a product and is designated by the number to the left of the first decimal point in the product version number, e.g., a change from version 2.2 to 3.0;
"Web Portal"	means Quicksilva's incident logging system also referred to as the Qure®;

2. Connection to the Managed Service

- 2.1 Quicksilva shall provide the Managed Services using the Software from the Go-Live Date until expiry or termination of the Call Off Contract for any reason.

- 2.2 For the duration of the Call Off Contract , Quicksilva undertakes to provide to the Customer, access to the Managed Service:
- 2.2.1 for its own Internal Business Purposes; and
 - 2.2.2 to provide access the Managed Service to its End Users only for their own Internal Business Purposes;
- provided always that neither the Customer nor the End Users shall be permitted to provide access to the Managed Service to any third parties.
- 2.3 The End Users shall be permitted to access the Managed Service solely through the End User Sites.
- 2.4 The Customer shall notify Quicksilva in writing within 30 days of any End User Site ceasing to use the Managed Service (a “**Terminated End User Site**”). Upon receipt of such notification, the Terminated End User Site shall cease to be an End User Site and if the location from which the Terminated End User Site accessed the Managed Service was solely used by the Terminated End User Site and not by any other End User Site, then the relevant location shall cease to be an End User Site.
- 2.5 If the Customer wishes to add a new End User, a new End User Site and/or module access to the Service, the Customer shall notify Quicksilva by completing a Purchase Order. The Customer shall complete an initial Purchase Order prior to being provided access to any Services. Thereafter, the Customer shall complete a Purchase Order for each order of additional Services. Each Purchase Order shall state:
- 2.5.1 the users and/or services selected by Customer, including any implementation services to be provided by Quicksilva;
 - 2.5.2 the applicable fees; and
 - 2.5.3 any other special terms that may apply to the Services.
- 2.6 Each Purchase Order is subject to the terms and conditions of these Terms.
- 2.7 If the Customer wishes to remove an End User or access module from the Service, the Customer shall notify Quicksilva in writing giving not less than ninety (90) days’ notice.
- 2.8 Quicksilva shall be entitled in its absolute discretion to refuse to permit additional End Users and/or End User Sites to access the Managed Service or to attach such conditions as Quicksilva sees fit to providing access to the Managed Service to additional End Users and/or End User Sites.

3. Support Services

- 3.1 Quicksilva shall provide the Support Services to the Customer in accordance with the Call Off Contract, Part A – Order Form.

4. Quicksilva's Obligations

- 4.1 Quicksilva warrants that the Managed Service when used in conjunction with the Customer System shall comply in all material respects with the specification set out in the approved NHS Digital National Spine External Interface Specification and the Messaging Implementation Manual, if appropriate.
- 4.2 Quicksilva undertakes that the Managed Service and Support Services will be performed with

all reasonable care and skill.

- 4.3 Quicksilva will co-operate so far as reasonably practicable with the Customer's employees and all independent contractors and third party suppliers in matters directly concerned with the provision of the Services.
- 4.4 Quicksilva shall provide Managed Service during the Managed Service hours and the Support Services during the Support Services hours as set out in Call Off Contract, Part A – Order Form subject to the other provisions of these Terms.
- 4.5 Quicksilva will provide the Customer with a service for routing, management, escalation, logging and resolution of support calls. The scope of this service is detailed in Call Off Contract, Part A – Order Form.
- 4.6 Services shall be performed primarily by telephone and electronic access from Quicksilva's offices or if elected by Quicksilva at its sole discretion, and with the prior consent of the Customer, at the Customer's or End Users' premises.
- 4.7 Quicksilva shall not be obliged to provide any Support Services at the Customer's premises or any premises of the End Users. If the Customer requests any on-site support and where this provision is agreed by Quicksilva, Quicksilva reserves the right to charge for those services at Quicksilva's time and materials rates of charge, such charges to be paid by the Customer in addition to the Support Service charges set out in Call Off Contract, Part A – Order Form.

5. Customer's Obligations

- 5.1 The Customer acknowledges that completion of the NHS Digital ITK Target Operating Model (the "**TOM**") and on-going adherence to it for the purpose of implementing and operating the Managed Service is the sole responsibility of the Customer and information supplied by Quicksilva to assist the Customer with completing the TOM is supplied without representation or warranty as to its accuracy or completeness.
- 5.2 The Customer shall, and shall ensure that End Users shall, comply with all applicable laws, regulations and data centre operating policies provided or otherwise notified to the Customer by Quicksilva from time to time.
- 5.3 The Customer shall:
 - 5.3.1 not make any representations or warranties concerning the Services to the End Users;
 - 5.3.2 not have any authority to act on behalf of or bind Quicksilva in connection with the promotion of the Services and the Customer shall not imply that it has that authority;
 - 5.3.3 carry out any necessary configuration and connection of the Customer System in sufficient time to enable Quicksilva to provide the Services in accordance with these Terms and ensure that the Customer System meets any minimum operating requirements set out in Call Off Contract, Part A – Order Form;
 - 5.3.4 install at the Customer's expense any Release or Update modifications to the Customer System using the Service and provided by Quicksilva to the Customer;
 - 5.3.5 ensure that the Customer Systems is maintained to within one Release or one Updates of the latest release as notified by Quicksilva and carry out any associated testing within 30 days of Quicksilva's notifying the Customer that such Release or Update is available for testing, after which time Quicksilva shall be entitled to assume said testing is successful and complete;

- 5.3.6 maintain the functionality of any necessary connections for the Customer System to enable it to function with the Managed Service and provide all necessary internet connectivity to access the Managed Service;
- 5.3.7 comply with and shall use its reasonable endeavours to ensure that End Users comply with any reasonable directions given by Quicksilva in connection with the use of the Managed Service;
- 5.3.8 take such steps and implement such procedures as are necessary to prevent unauthorised use of the Software or Managed Service ;
- 5.3.9 maintain a written list of current End Users of the Managed Service and the Customer shall provide such list to Quicksilva as may be reasonably requested by Quicksilva from time to time;
- 5.3.10 be responsible for the security and proper use of usernames and passwords used in connection with access to the Managed Service, or Web Portal system, by the Customer and take all necessary steps to ensure that these are kept confidential, used properly and not disclosed to unauthorised people;
- 5.3.11 as soon as reasonably possible notify Quicksilva in writing if there is any reason to believe that a user name or password has or is likely to become known to someone not authorised to use it or is being or is likely to be used in an unauthorised way and Quicksilva may disable such passwords and access to the Managed Service if the Customer or Quicksilva believe that there is or may be any unauthorised use;
- 5.3.12 provide all necessary co-operation with Quicksilva employees, agents and sub-contractors and all independent contractors and third party suppliers in performing the Services and provide any assistance or information as may reasonably be required by Quicksilva;
 - a) report Incidents promptly to Quicksilva;
 - b) keep full back-up copies of all Data; and
 - c) subject to any relevant confidentiality obligations, provide Quicksilva with all relevant information and documentation reasonably necessary in order to provide the Services.
- 5.4 The Customer acknowledges that Quicksilva do not retain any copies of the Data.
- 5.5 The Customer shall not (and shall ensure that its End Users do not) use the Managed Service:
 - 5.5.1 to store, distribute or transmit any material that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
 - 5.5.2 to "spam" or to send or provide unsolicited advertising or promotional material or to knowingly receive responses from "spam" or unsolicited advertising or promotional material sent or provided by the Customer or an End User or any third party acting on behalf of the Customer or an End User (as applicable);
 - 5.5.3 fraudulently or in connection with a criminal offence;
 - 5.5.4 in any way that infringes the Intellectual Property Rights of any third party;

- 5.5.5 in any way which may adversely affect Quicksilva's reputation or goodwill or business;
 - 5.5.6 to attempt to obtain or assist others in obtaining access to the Managed Service other than as provided in these Terms; or
 - 5.5.7 in an unlawful manner or in contravention of any legislation, laws, codes of practice, licence conditions, third party rights, or any reasonable instructions of Quicksilva from time to time regarding use of the Managed Service.
- 5.6 Quicksilva may audit compliance by the Customer of its obligations under these Terms. The Customer shall provide (and shall use its reasonable endeavours to ensure that End Users provide) reasonable cooperation to Quicksilva in respect of such audit.
- 5.7 If the Customer, or End User breaches any of the provisions of Clause 5.3 or if Quicksilva reasonably suspects the Customer of such a breach Quicksilva may:
 - 5.7.1 immediately remove any offensive, unlawful or infringing material from the Managed Service; and/or
 - 5.7.2 immediately suspend access to the Managed Service by that End User until Quicksilva is reasonably satisfied (on the production of any necessary evidence) that any breach has been sufficiently remedied; and/or
 - 5.7.3 if the Customer fails to remedy any breach of Clause 5.3 within 28 days of being notified by Quicksilva of that breach, terminate these Terms immediately by giving written notice to that effect.
- 5.8 The Customer shall ensure that at all times during Support Services Hours at least one of its employees is available with the authority to make decisions concerning the provision of the Services (which shall include such person who can authorise Quicksilva to access Patient Identifiable Data to the extent that is necessary for the delivery of the Services) together with such number of suitably qualified and experienced persons as may be necessary in the reasonable opinion of Quicksilva to assist in the provision of the Services.
- 5.9 The Customer shall be responsible for managing and maintaining the Customer System and for the costs of operating the same (for example, line rental and call charges) and shall ensure that the use of the Customer System by Quicksilva in accordance with these Terms shall not infringe the Intellectual Property Rights of any third party.

6. Service Availability and Service Levels

- 6.1 The Support Services Hours and Managed Service hours covered by these Terms are set out in the Service Definition.
- 6.2 Quicksilva shall use reasonable efforts to respond to service requests in accordance with Call-off Contract.
- 6.3 From time to time Quicksilva may undertake planned maintenance of any part of the Managed Service that may require interruption to the access to the Managed Service although Quicksilva shall use its reasonable endeavours to undertake that planned maintenance within the hours provided for in the Service Definition. Any interruption to the access to the Managed Service for planned maintenance shall not give rise to service credits, abatement of Service Charges or other financial consequences as described in the Service Definition.
- 6.4 Quicksilva may interrupt the access to the Managed Service to perform emergency maintenance. Quicksilva will use reasonable endeavours to keep any interruptions to a minimum and to notify the Customer of any such interruptions as they arise. If Quicksilva

interrupts the access to the Managed Service for emergency maintenance outside the hours provided for planned maintenance in the Service Definition, subject to the other provisions of these Terms, this shall give rise to service credits as required by the Service Definition.

- 6.5 The Service Definition provides the Customer's sole and exclusive remedies (and Quicksilva's only liability) for any Service and Managed Service interruptions, deficiencies or failures of any kind (including without limitation failure to meet any Service Level).
- 6.6 Quicksilva shall not be obliged to provide the Services in Call Off Contract, Part A – Order Form and any remedies (including, but not limited to, service credits) available under Call Off Contract, Part A – Order Form will not apply:
- 6.6.1 if the Customer has failed to comply with Quicksilva's reasonable instructions in relation to use of the Services;
 - 6.6.2 if an Incident has not been reported by the Customer in accordance with these Terms;
 - 6.6.3 if any of the undisputed charges set out in Call Off Contract, Part A – Order Form are due and have not been paid by the Customer;
 - 6.6.4 following the failure or malfunction of equipment, software or systems not owned or controlled by Quicksilva which causes a failure of or interruption to the Services;
 - 6.6.5 during any period of scheduled maintenance or any suspension of Services pursuant to these Terms;
 - 6.6.6 during the unavailability of required Customer personnel, including as a result of a failure to provide Quicksilva with accurate, current contact information; or
 - 6.6.7 following any material breach of the Customer's obligations under these Terms, that prevent Quicksilva from carrying out its obligations.
- 6.7 Quicksilva shall make an additional charge in accordance with its standard scale of charges for the time being in force for any services provided by Quicksilva at the request of the Customer which do not fall within the Services by virtue of any of the exclusions referred to in Clause 9 or otherwise.

7. Incident Report Process

- 7.1 The Customer shall report Incidents to Quicksilva in accordance with the Incident Report procedure set out in the Service Definition.
- 7.2 Incident Reports shall only be accepted from individuals nominated in the Call-Off Contract, Part A – Order Form.
- 7.3 Quicksilva shall provide a set of user accounts to the Customer prior to the Go-Live Date to allow the authorised contacts listed in the Call-Off Contract, Part A – Order Form to access the Web Portal for the purpose of logging Incidents.
- 7.4 Incidents that are not reported to Quicksilva in accordance with the Incident Report procedure in the Service Definition shall be verified before the Incident Report process begins.

8. Maintenance of the Managed Service

- 8.1 Quicksilva may at undetermined periods, amend the Service, to maintain compliance with the current NHS Digital Spine requirements, if appropriate. Such amendments may require changes, at the Customer's expense, to the Customer System and/or End Users software.

- 8.2 The Services shall not include the following which shall be deemed to be additional services for which Quicksilva shall be entitled to charge at its then prevailing rates:
- 8.2.1 the release and maintenance of new Versions, which may be provided by Quicksilva subject to payment of reasonable additional fees;
 - 8.2.2 any error correction required to the Service as a result of any changes made to any other software or hardware platforms used by the Customer or a third party;
 - 8.2.3 any error correction required as a result of the Customer's breach of its obligations in these Terms.

9. Exceptions to Availability Calculation

- 9.1 When calculating the service Availability for the purpose of Service Reporting, any outage caused by the following external systems and events will not constitute a breach of the Service Levels nor a breach of the Call-Off Contract by Quicksilva and no Service Credits will accrue:
- 9.1.1 NHS Spine Systems - The Managed Service is dependent on a number of external systems. Under certain conditions, an outage of these external supporting systems can result in the Managed Service not being able to process a request. The following is a list of external systems which could result in what appears to be an Outage of the Managed Service:
 - a) Spine Security Broker (SSB);
 - b) Spine Directory Service (SDS);
 - c) Transactional Messaging Service (TMS);
 - d) Personal Demographic Service (PDS).
 - 9.1.2 Networks - The Managed Service is dependent on a number of Third Party networks. Under certain conditions, an outage of these externally provided networks can result in the Managed Service not being able to process a request. The following is a list of networks which could result in what appears to be an Outage of the Managed Service:
 - a) HSCN/N3 network;
 - b) Networks constituting the Customer System.
 - 9.1.3 Planned Maintenance Periods - Planned Maintenance Periods will be excluded from the Availability calculation and will not incur Service Credits.
 - 9.1.4 Application Programming Interface (API) availability - The inability of the Managed Service to process a specific message type does not indicate that the Managed Service is unavailable for service. The inability of the Managed Service to process messages from a specific End User does not indicate that Managed Service is unavailable for service.
 - 9.1.5 Other Exceptions:
 - a) All application related failures attributed to specific applications operated by the Customer and/or 3rd parties that are not maintained and operated by Quicksilva that negatively impact Quicksilva's ability to provide the service;
 - b) Network or service availability issues related to behaviour malicious or otherwise perpetrated by the Customer, or its employees, End Users,

customers, clients, associates, etc., that use the Managed Service that negatively impacts the availability of the service;

- c) Issues where the Customer fails to provide all such assistance as Quicksilva reasonably requires to enable it to comply with its obligation.
- d) Issues where the Customer fails to report an Incident in accordance with the reporting procedures set out in the Agreement;
- e) Issues shown to be the result of changes to the Customer System made by the Customer, the Customer's hosting provider or other third party without the prior written agreement to the change of Quicksilva;
- f) Issues that could have been avoided by installing an Update or Patch to the Software as previously provided by Quicksilva to the Customer;
- g) If the issue is caused by a failure to comply with Quicksilva's reasonable written instructions for use of the Software or Managed Service.
- h) Other unforeseeable circumstances that are outside of Quicksilva's control, as covered by Force Majeure.

10. Intellectual Property Rights

- 10.1 The parties agree that all Intellectual Property Rights in the Software, Managed Service, Support Services and associated materials including but not limited to Quicksilva's .NET and/or Java Library supplied to the Customer in the course of connection to the Managed Service shall (as between the parties) belong to Quicksilva. The Customer shall use the Software and the Documentation only for the purposes of receiving the benefit of the Services strictly in accordance with these Terms.
- 10.2 The Customer warrants and undertakes that use of the Customer System and any related Intellectual Property Rights by Quicksilva for the purpose of performing Quicksilva's obligations under these Terms shall not infringe the Intellectual Property Rights of any third party.
- 10.3 Quicksilva warrants that use of the Service by the Customer for the purposes of receiving the Services in accordance with these Terms shall not infringe the Intellectual Property Rights of any third party, provided that Quicksilva shall not have any liability to the Customer in respect of any intellectual property claim to the extent that such claim arises out of, or any costs, expenses, losses, damages or other liabilities of the Customer were caused or contributed to by one or more of the following:
 - 11.3.1 the incorporation by Quicksilva into the Software or the Data of a specific design or modification produced or requested by the Customer; or
 - 11.3.2 any breach of these Terms by the Customer and/or any negligence or wilful misconduct by the Customer or any of its employees, agents, or subcontractors.

11. Data

- 11.1 The Data (but for the avoidance of doubt, excluding the methodologies or structure of any database forming part of the Software) shall be owned by the Customer and/or the End User.
- 11.2 Subject to its obligations under 4 above, Quicksilva has no responsibility whatsoever regarding the accuracy or integrity of the Data and the Customer undertakes to Quicksilva to indemnify

fully and keep indemnified Quicksilva against all losses, damages, costs, actions, awards, proceedings, claims, demands, liabilities and expenses (including, without limitation, legal and other professional fees and expenses) which Quicksilva may suffer, sustain, incur, pay, or be put to by reason or on account of or arising from any third party claims related to the use of the Data.

- 11.3 The Customer acknowledges and agrees that, unless expressly agreed in writing to the contrary, Quicksilva has not agreed to provide a full disaster recovery or business continuity service with off-site contingency and detailed invocation procedures.
- 11.4 The Customer accepts that Quicksilva has no liability to the Customer in the event of any loss of or corruption to the Data.
- 11.5 Quicksilva shall have no responsibility for the security or integrity of Data during its transmission via public telecommunications facilities, the Internet or similar.
- 11.6 The Customer and Quicksilva shall at all times use commercially reasonable endeavours to comply with the then current Information Governance guidance issued by NHS Digital and any other user or security guidance issued by or on behalf of the NHS.
- 11.7 The Customer agrees (and shall procure that End Users agree) that Quicksilva may use the Data for the purposes of these Terms.

12. Data Protection Legislation

- 12.1 Each Party undertakes to comply with any relevant obligations imposed on it under Data Protection Legislation.
- 12.2 The Parties agree that the Customer is the Data Controller and Quicksilva is the Data Processor.
- 12.3 The Customer authorises Quicksilva to carry out all Processing necessary to fulfil its obligations under these Terms unless the Law requires otherwise, in which case Quicksilva shall promptly notify the Customer of any additional Processing if permitted by Law.
- 12.4 Each Party shall notify the other immediately if it receives any communication from a third party relating to the Parties' obligations under Data Protection Legislation or it becomes aware of a Data Loss Event and will provide the other Party with reasonable ongoing assistance in relation to each Parties obligations under Data Protection Legislation within a reasonable timescale.
- 12.5 Customer requests for Quicksilva assistance required to facilitate an audit of the Customer by the Information Commissioner in accordance with Data Protection Legislation shall be at the cost of the Customer and shall be charged at Quicksilva's current day rate tariff on a time and materials basis.

13. Terms and Termination

- 13.1 Quicksilva may terminate these Terms immediately by serving written notice to the Customer if at any time one or more of the following events occurs:
 - 13.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or

- 13.1.2 a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the Customer; or
 - 13.1.3 anything analogous to any of the foregoing occurs to the Customer under the law of any jurisdiction; or
 - 13.1.4 the Customer ceases, or threatens to cease, to carry on business; or
 - 13.1.5 the Customer commits any material breach of any of the provisions of these Terms and in the case of a breach capable of remedy, fails to remedy the same within 45 days after receipt of a written notice of the breach and requiring it to be remedied.
- 13.2 Quicksilva may suspend or terminate these Terms:
- 13.2.1 immediately in the event that Quicksilva becomes aware that the Customer has allowed the use of the Services by persons other than End Users, Quicksilva notifies the Customer of the same and the Customer allows the use of the Services by persons other than End Users to persist for a period of 5 days from such notification;
 - 13.2.2 (in respect of the Agreement as a whole) upon ninety (90) days' written notice to that effect on the Customer if there is a Change of Control of the Customer, where Quicksilva believe that said Change of Control would be detrimental to Quicksilva's existing commercial relationships;
 - 13.2.3 where it is required to do so by law; or
 - 13.2.4 if Quicksilva loses any licence which Quicksilva requires to provide the Services or if Quicksilva is unable (having used all reasonable endeavours) to obtain or maintain the supply of hosting services necessary to provide the Services.

14. Non-Solicitation

The Customer shall not, for the duration of these Terms and for a period of 12 months following termination, directly or indirectly induce or attempt to induce any employee of Quicksilva who has been engaged in the provision, review, or management of the Services or otherwise in connection with these Terms to leave the employment of Quicksilva.

15. Publicity

Both parties shall make all reasonable efforts to have any marketing communication involving the other party ("**Approving Party**"), including customer lists, advertisements, direct mail, or press releases, approved in advance by the Approving Party. The Approving Party shall not unreasonably deny or delay such approval. Any such materials will be reviewed by the Approving Party within 21 days of receipt. If the Approving Party does not respond to a request for approval within 21 days of receipt, the Approving Party will be deemed to have approved the relevant materials.