



## SILKROAD TERMS AND CONDITIONS AGREEMENT

This Agreement sets forth the terms under which SilkRoad Technology, Inc. (“**SilkRoad**”) will provide Client with access to and use of certain cloud-based software-as-a-service offering(s) identified in the applicable Order Form (each a “**Hosted Service**” and collectively, the “**Hosted Services**”) and/or Professional Services. Each Hosted Service product will be deemed to include updated versions of same which are made available to Client as part of the Maintenance and Support services. The Order Form will be: (a) used by Client to order such Hosted Service; (b) executed by Client and SilkRoad (or one of its authorized resellers, if any); and (c) subject to this Agreement. The Order Form together with this Agreement forms a binding contract between Client and SilkRoad.

### 1. Definitions

“**Administrator(s)**” means the User(s) designated by Client who are responsible for administering the Hosted Service and who are issued an Administrator login by SilkRoad.

“**Affiliates**” means any entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting equity ownership.

“**Agreement**” means these terms and conditions, together with any and all Order Forms referencing these terms and conditions, the Schedules attached hereto and any other statements of work or exhibits.

“**Client**” means the Client entity that has executed an Order Form with SilkRoad.

“**Client Data**” means all electronic data or information submitted by Client or its Affiliates to and stored by the Hosted Service.

“**Documentation**” means the reference, administrative and user manuals which are published by SilkRoad and provided by SilkRoad to Client with the Hosted Service, which may be updated from time to time, but excluding any sales or marketing materials.

“**Electronic Communications**” means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Hosted Service.

“**Employees**” has the meaning set forth in Section 2.1 below.

“**Event**” has the meaning set forth in Section 2.1 below.

“**Initial Term**” means the initial subscription term specified in the applicable Order Form, excluding any renewals terms.

“**Maintenance and Support**” means the services described on the “Maintenance and Support Guide” attached as Schedule B hereto.

“**Order Form**” means a SilkRoad order form or statement of work for initial purchase, add-on purchase or renewal which is executed by Client and SilkRoad and specifies the Hosted Service and/or Professional Services to be provided by SilkRoad subject to the terms of this Agreement.

“**Professional Services**” means all services performed by SilkRoad pursuant to an Order Form under this Agreement, excluding Hosted Services and Maintenance and Support services.

“**SilkRoad**” means SilkRoad Technology, Inc., a Delaware corporation, or one of its Affiliates if such Affiliate executes an Order Form with Client in its own capacity.

“**Subscription Year**” means, for multi-year subscriptions, each one-year period starting from the commencement of the subscription Term or any annual renewal thereof. If the final period in any subscription Term is less than 12 months, the actual duration of such final period shall be deemed to be a “Subscription Year” for purposes of calculating license usage.

“**Term**” means the Initial Term specified in the applicable Order Form and any renewal terms.

“**Third Party Applications**” means online, Web-based applications or services and offline software products that are provided by third parties and interoperate with the Hosted Service.

“**Users**” means individuals who have been supplied user identifications and passwords by Client to access the Hosted Service.

### 2. General Terms of Access to the Hosted Service

**2.1 License.** Subject to the terms of this Agreement and payment of the applicable fees, SilkRoad grants to Client during the Term a non-exclusive, non-transferable, license to permit Users to use the Hosted Service in accordance with the use parameters, pricing, and payment terms described in this Agreement and the applicable Order Form solely for Client’s own internal business purposes, and in accordance with the terms and conditions of this Agreement. SilkRoad shall be entitled to invoice Client for and Client agrees to pay additional fees calculated at SilkRoad’s then-current rates for any usage of the Hosted Service by Client which exceeds such licensed use parameters.

a. For the purposes of Onboarding Hosted Service only, where the Order Form specifies that Onboarding is licensed on a per User basis, the number of purchased licenses indicated in the Order Form is the number of Onboarding User licenses that the Client may consume during the applicable Subscription Year, and each Onboarding User license is considered to be consumed at the time that the applicable User is launched into an Event within the Onboarding Hosted Service. For such purposes,

- i the operative definition of "User" is limited to the single full time or part time employee or independent contractor to which such Event relates, and the Client is not charged for the other administrative and IT personnel who work on such Event;
- ii subsequent logins by or with regard such User in connection with the same Event do not consume additional User licenses, but if the same User is launched into additional Events relating to his/her employment or contractor engagement during the applicable Subscription Year, a new User license is consumed for each such additional Event.
- iii "Event" means use of the Onboarding Hosted Service for access to a set of tasks and activities associated with a single process with regard to the employment or contract engagement of a single full- or part-time employee or independent contractor (the "Event User"). Examples of Events include, but are not limited to, a) New Hire Onboarding of User; b) Offboarding of User; c) Promotion of User (change in job role), and d) User Leave (FMLA, disability, etc.).

b. Where an Order Form specifies that a subscription for Hosted Service(s) other than Onboarding is for a number of "Users," the "User" count for determining license compliance by Client shall mean the number of individuals that have been provided with a user ID/password to access the Hosted Services at any time during the applicable Subscription Year.

c. Where an Order Form specifies that a Hosted Service(s) subscription is for a number of "Employees," the "Employee" count for determining license compliance by Client shall mean the number of employees and independent contractors that are employed/retained by Client on either a full-time or part-time basis at any time during the applicable Subscription Year (without regard to the number of Users that have user IDs/passwords to access the Hosted Services).

**2.2 Client Must Have Internet Access.** DSL, cable, or another high-speed Internet connection is required for proper transmission of the Hosted Service. Client is responsible for procuring and maintaining the network connections and all software and equipment that may be necessary to connect the Client network to the Hosted Service, including, but not limited to, "browser" software that supports protocols utilized by the Hosted Service. SilkRoad assumes no responsibility for the reliability or performance of any computer networks, connections, or systems not owned or operated by SilkRoad.

**2.3 Users: Passwords, Access, and Notification.** Client, through its Administrator, shall authorize access to and assign unique passwords and usernames up to the number of Users purchased by Client on the Order Form. User logins are for designated Users and cannot be shared or used by more than one User. Any User login credentials may be reassigned to another currently employed User as needed during the current annual period (except in the case of the Onboarding Hosted Service where neither a User account nor the associated login credentials may be reassigned). Client shall use commercially reasonable efforts to prevent unauthorized access to or use of the Hosted Service and shall promptly notify SilkRoad of any unauthorized access or use of the Hosted Service and any loss or theft or unauthorized use of any User's password or name and/or Hosted Service account numbers.

**2.4 Client Responsibilities.** Client is responsible for all activities conducted by its Users, its Users' Electronic Communications and for its Users' compliance with this Agreement, including license parameters set forth in the applicable Order Form and the content of all Client Data. Client and its Users will comply with all applicable laws and regulations in connection with its use of the Hosted Service, including without limitation those related to privacy, electronic communications, and anti-spam legislation. Client will not: (a) sell, lease, license or sublicense the Hosted Service; (b) introduce into or transmit through the Hosted Service any virus, worm, trap door, back door, and other harmful or malicious code, files, scripts, agents or programs; (c) transmit or store infringing material in the Hosted Service; (d) send any Electronic Communication from the Hosted Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Hosted Service may be copied, reproduced, distributed, republished, displayed, posted, or transmitted in any form or by any means. Client agrees not to access the Hosted Service by any means other than through the interfaces that are provided by SilkRoad. Client shall not do any "mirroring" or "framing" of any part of the Hosted Service or create Internet links to the Hosted Service which include log-in information, usernames, passwords, and/or secure cookies.

**2.5 Service Level.** SilkRoad's commitment to the availability of the Hosted Service and related matters are specified on the "Service Level Agreement" attached as Schedule A hereto.

**2.6 Maintenance and Support.** As part of the Hosted Service, SilkRoad will provide Client with Documentation and other online resources to assist Client in its use of the Hosted Service. Maintenance and Support services are described in the "Maintenance and Support Guide" attached as Schedule B hereto.

### **2.7 Security and Privacy; GDPR.**

a. Security; Audit Report. SilkRoad shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Client Data. During the Term, SilkRoad shall undergo an audit and receive an annual SSAE 18 SOC 2 Report (or similar third-party audit to an established industry) ("**Audit Report**"). No more than once per year, upon Client's written request, SilkRoad shall provide a copy of its then current Audit Report, subject to any redactions or separate confidentiality agreements required by SilkRoad.

b. GDPR. The Data Processing and GDPR Addendum available at <https://www.silkroad.com/silkroad-customer-data-processing-gdpr-addendum/> is hereby incorporated into and made part of this Agreement and shall apply solely with regard to the processing of the components to Client Data which are personally identifiable information of data subjects who are covered under the General Data Protection Regulation ("**GDPR**") adopted by the European Union or other countries which have adopted the such regulation.

c. Azure Hosted Components. Certain Hosted Services products (or components thereof) and all Client Data that is stored in the database account included as part of same, may (at SilkRoad's option) be hosted in Microsoft Azure CloudServices data centers ("Azure

Hosted Components”). The Azure Hosted Components shall be hosted in the United States (unless Client and SilkRoad have entered into a separate agreement to host the Client’s Hosted Services account in another geographic region, in which case the Azure Hosted Components shall be hosted in such other region; provided, that if such other region is Canada, the Azure Hosted Components will be hosted in the European Union or Canada (if and when Microsoft Azure in Canada supports the hosting and processing infrastructure required for the Azure Hosted Components). The parties hereby agree that solely with regard to the Azure Hosted Components, the privacy and security controls and procedures implemented by SilkRoad shall be superseded by the privacy and security controls and procedures employed by Microsoft with regard to Azure CloudServices (See Microsoft Azure Trust Center at <https://www.microsoft.com/en-us/trustcenter/CloudServices/Azure> ).

**2.8 Transmission of Data.** The Hosted Service allows Client to send Electronic Communications directly to SilkRoad and to third parties. Client understands that the technical processing and transmission of Client’s Electronic Communications is fundamentally necessary to use of the Hosted Service. Client expressly consents to SilkRoad’s receipt and storage of Electronic Communications and/or Client Data, and Client acknowledges and understands that Client’s Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by SilkRoad. Client further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. SilkRoad uses encryption in various locations and methodologies within the Hosted Service and the infrastructure working behind it. Client Data is encrypted while in transit to and from the Hosted Service; however SilkRoad is not responsible for any Electronic Communications and/or Client Data which are delayed, lost, altered, intercepted or stored during the transmission of any data across networks not owned and/or operated by SilkRoad, including but not limited to, the Internet and Client’s local network.

**2.9. Implementation.** Professional Services for implementation and training ordered by Client as set forth in the applicable Order Form will be performed in accordance with SilkRoad’s customary practices for the level of services purchased. SilkRoad does not provide dedicated project management for Client during implementation unless separately purchased. Implementation is performed remotely unless otherwise specified. SilkRoad is not responsible, and will not be liable, for Client’s configuration decisions or the Hosted Service’s ability to allow Client to comply with all laws and regulations in Client’s unique circumstances, nor for any delays in implementation caused by Client, including but not limited to, Client delays in providing clean and validated data, if needed, or Client delays in making necessary business decisions with respect to the configuration of the Hosted Service.

### **3. Confidentiality**

**3.1 Confidential Information.** For purposes of this Agreement, “**Confidential Information**” shall include the terms of this Agreement, Client Data, each party’s proprietary technology, business processes and technical product information, designs, issues, all communication between the Parties regarding the Hosted Service and any information that is clearly identified in writing at the time of disclosure as confidential. Notwithstanding the foregoing, Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party; (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; (5) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; or (6) is aggregate data regarding use of SilkRoad’s products and services that does not contain any personally identifiable or Client-specific information.

**3.2 Non-Disclosure Obligations.** Each party agrees: (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by the Disclosing Party; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information) and (d) to make Confidential Information available to authorized persons only on a “need to know” basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or a regulation.

### **4. Ownership of Client Data; Hosted Service; Marks**

**4.1 Client Data.** As between SilkRoad and Client, all title and intellectual property rights in and to the Client Data is owned exclusively by Client.

**4.2 Hosted Service.** Client agrees that all intellectual property rights, title and interest in and to the Hosted Service and Documentation (including all updates, enhancements and derivative works thereof and thereto) are owned exclusively by SilkRoad or its licensors. Except as provided in this Agreement, the time-limited access license, in the nature of a subscription, granted to Client does not convey any rights in the Hosted Service, express or implied, or ownership in the Hosted Service or any intellectual property rights thereto. In addition, SilkRoad shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or

incorporate into the Hosted Service any suggestions, enhancement requests, recommendations or other feedback provided by Client, including Users, relating to the operation of the Hosted Service.

#### **4.3 Ownership of Project Deliverables.**

a. Subject to paragraph (b) below, Client will own all intellectual property rights in and to: (i) its proprietary Client materials; and (ii) all original components of the project deliverables created by SilkRoad and delivered to Client pursuant to Professional Services provided under this Agreement ("Project Deliverables") upon payment of all fees due for such Professional Services.

b. Notwithstanding the foregoing, SilkRoad and its licensors will retain exclusive ownership of the following (collectively "SilkRoad Materials"): (i) all pre-existing works, inventions, technology, data and materials incorporated or used in association with the design and development of the Project Deliverable; (ii) any works created by SilkRoad pursuant to its performance of such services, including, but not limited to, any proposed, draft, or preparatory materials, that are not incorporated into the Project Deliverables; (iii) all derivatives, improvements, enhancements or extensions of the SilkRoad Materials, and (iv) all ideas, concepts, know-how, code and techniques, that SilkRoad may use, conceive of or first reduce to practice in connection with such services that are not uniquely applicable to Client or that have general applicability in the art. Upon payment of all fees due for the Hosted Services, SilkRoad will grant to Client a non-exclusive, non-transferable, indefinite, worldwide, royalty-free and paid-up license to use the SilkRoad Materials as incorporated in the Project Deliverable for Client's internal business purposes, provided that Client will have no right to use such SilkRoad Materials apart from the Project Deliverable or in any other manner, and Client's ownership under (ii) above shall be subject to such license of the SilkRoad Materials. Neither the term "Project Deliverable" nor the term "SilkRoad Materials" shall under any circumstances be deemed to include the Hosted Services or any commercial software products of SilkRoad or any subscription to use same as a hosted software-as-a-service.

**4.4 Marks.** Any rights not expressly granted herein are reserved by SilkRoad. SilkRoad service marks and trademarks, logos and product and service names are marks of SilkRoad (the "**SilkRoad Marks**"). Client agrees not to display or use the SilkRoad Marks in any manner without SilkRoad's express prior written permission. The trademarks, logos and service marks of Third-Party Application providers ("**Marks**") are the property of such third parties. Client is not permitted to use these Marks without the prior written consent of such third party who may own the Mark.

### **5. Payment Terms - Taxes**

**5.1** In consideration of the right to use the Hosted Service(s) and any associated professional services, Client will pay the fees specified in the applicable Order Form within 30 days of receipt of invoice ("**Fees**"), unless provided otherwise in the Order Form. All amounts are payable in U.S. dollars unless otherwise specified in the applicable Order Form. Payments which are more than 30 days late will incur interest at the rate of one and one-half percent (1 1/2%) per month or the maximum allowed by law, whichever is less, on such delinquent amount from the due date thereof until the date of payment. To the extent that Client disputes any invoice on the basis of an alleged error in such invoice, Client must raise such dispute specifically in writing to SilkRoad within sixty (60) days of the invoice date, otherwise any such dispute will be waived.

**5.2. Taxes.** All Fees payable under the applicable Order Form are exclusive of and do not include taxes or duties of any kind. Client will be responsible for, and will promptly pay, all taxes and duties of any kind, including, but not limited to, any applicable sales tax, use tax, value added tax (VAT) or other similar taxes, if any, associated with this Agreement or Client's receipt or use of the Hosted Service, excluding taxes based on SilkRoad's gross or net income. If Client is a tax-exempt organization and is not obligated to pay taxes arising out of this Agreement, Client will provide SilkRoad with any required documentation to verify its tax-exempt status with the applicable taxing authorities.

### **6. Warranties**

**6.1 Warranty of Functionality.** SilkRoad warrants that (i) the Hosted Service will achieve in all material respects the functionality described in the Documentation applicable to the Hosted Service purchased by Client, and (ii) such functionality of the Hosted Service will not be materially decreased during the Term. Client's sole and exclusive remedy for SilkRoad's breach of such warranty shall be that SilkRoad shall be required to use commercially reasonable efforts to modify the Hosted Service to achieve in all material respects the functionality described in the Documentation and if SilkRoad is unable to restore such functionality, Client shall be entitled to terminate the Agreement and receive a prorated refund of any prepaid subscription fees for the remaining terminated portion of the Term. SilkRoad shall have no obligation with respect to such a warranty claim unless notified of such claim within six months of the first instance of any material functionality problem.

**6.2 Professional Services Warranty.** SilkRoad warrants that all Professional Services provided to Client will be performed in a competent professional manner by individuals who have the requisite education, training, and experience to perform the applicable Professional Services.

**6.3 No Virus Warranty.** SilkRoad warrants that the Hosted Service will utilize an updated version of industry standard anti-virus and malware application to check for and remove viruses, Trojan horses, worms, spyware, or other such malicious code ("**Malicious Code**"), except that SilkRoad shall not be responsible for any Malicious Code contained in Client-uploaded attachments or otherwise originating from Client or its Users.

**6.4. Third Party Web Sites, Products and Hosted Services.** SilkRoad or third-party providers may offer Third Party Applications and related services to Client hereunder. Client acknowledges and understands that the use of such Third-Party Applications or services may be subject to separate terms and conditions as set forth on an Order Form or as otherwise provided to Client. Except as expressly set forth in the Order Form, SilkRoad does not warrant any such Third-Party Applications or services. If Client installs or enables Third Party Applications or services for use with the Hosted Service, Client agrees that SilkRoad may allow such third party providers to access Client Data as required for the interoperation of such Third Party Applications with the Hosted Service, and any exchange of data or other interaction between Client and a third party provider is solely between Client and such third party provider. Finally, the continuing availability of the Third-Party Application is subject to the continued effectiveness and terms of the contract between SilkRoad and the third-party provider.

**6.5 Disclaimer.** *EXCEPT AS STATED IN SECTIONS 2 AND 6 OF THIS AGREEMENT, SILKROAD DOES NOT REPRESENT THAT CLIENT'S USE OF THE HOSTED SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE HOSTED SERVICE WILL MEET ALL OF CLIENT'S REQUIREMENTS OR THAT THE OVERALL SYSTEM OUTSIDE OF SILKROAD'S OWNERSHIP AND/OR CONTROL THAT MAKES THE HOSTED SERVICE AVAILABLE (THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CLIENT'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN THIS SECTION 6 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY SILKROAD. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.*

## **7. Limitations of Liability**

**7.1** *TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COST OF COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).*

**7.2** *EXCEPT WITH REGARD TO AMOUNTS PAYABLE BY CLIENT UNDER THIS AGREEMENT THE MAXIMUM LIABILITY OF EITHER PARTY TO THE OTHER OR ANY THIRD PARTY WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH THIS AGREEMENT, INCLUDING THE USE OR OTHER DEPLOYMENT OF THE HOSTED SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CASE EXCEED THE EQUIVALENT OF 12 MONTHS IN SUBSCRIPTION FEES FOR THE HOSTED SERVICE THAT IS THE SUBJECT OF THE CLAIM.*

## **8. Indemnification**

**8.1 SilkRoad's Infringement Indemnity.** SilkRoad shall, at its own expense and subject to the limitations set forth in this Section 8, defend Client from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Hosted Service, as used in accordance with the terms and conditions of this Agreement, infringes the copyrights, trade secrets, patents or trademarks of such third party and shall hold Client harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim. Excluded from these indemnification obligations are Claims to the extent arising from (a) use of the Hosted Service in violation of this Agreement or applicable law, (b) use of the Hosted Service after SilkRoad notifies Client to discontinue use because of an infringement claim, (c) modifications to the Hosted Service not made by SilkRoad, or (d) use of the Hosted Service in combination with any software, application or service not provided by SilkRoad. If a Claim is brought or threatened, SilkRoad shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure for Client the right to continue using the Hosted Service without cost to Client; (b) to modify or replace all or portions of the Hosted Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and provide to the Client any pro-rata refund of the subscription fees pre-paid under the Agreement for the remaining terminated portion of the Term. The rights and remedies granted to Client under this Section 8.1 state SilkRoad's entire liability, and Client's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of any third party.

**8.2 SilkRoad Disclosure of Client Data Indemnity.** SilkRoad shall, at its own expense and subject to the limitations set forth in this Section 8, defend Client from and against any Claims that arise out of or result directly from SilkRoad's gross negligence or willful misconduct in failing to prevent unauthorized access to confidential Client Data (including any components consisting of personally identifiable information) and shall hold Client harmless from and against liability for any Losses to the extent based upon such Claims. When SilkRoad is at fault in failing to prevent unauthorized access to confidential Client Data (including any components consisting of personally identifiable information), but such fault does not rise to the level of gross negligence or willful misconduct, SilkRoad shall, at its own expense and subject to the limitations set forth in this Section 8 and for up to an aggregate amount equal to thirty-six months of then-current subscription fees payable by Client for the Hosted Service hereunder, defend and hold Client harmless from and against any Claims and liability for any Losses from such unauthorized access to confidential Client Data. Provided that SilkRoad complies with this Section 8.2, Client shall be entitled as its sole and exclusive remedy for Claims under this Section 8.2, to receive any

indemnification rights and to terminate the Agreement and receive any pro-rata refund of the subscription fees pre-paid under the Agreement for the remaining terminated portion of the Term.

**8.3 Client's Indemnity.** Client shall, at its own expense and subject to the limitations set forth in this Section 8, defend SilkRoad from and against any and all Claims alleging that the Client Data or any trademarks or service marks other than SilkRoad Marks, or any use thereof, infringes the intellectual property rights or other rights of a third party and shall hold SilkRoad harmless from and against liability for any Losses to the extent based upon such Claims.

**8.4 Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section 8, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 8 are expressly conditioned upon the indemnified party's compliance with this Section 8.4. The indemnification obligations contained in this Section 8 shall survive termination of this Agreement for the later of the conclusion of a Claim or one year.

## 9. Termination

**9.1 Termination for Cause, Expiration.** Either party may immediately terminate this Agreement and any applicable Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement that is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed material breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("**Notice**"). Upon termination or expiration of this Agreement for any reason, Client shall have no rights to continue use of the Hosted Service. If this Agreement is terminated as a result of Client's material breach of the Agreement, then SilkRoad shall be entitled to all of the Fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of SilkRoad's material breach of this Agreement, then Client shall be entitled to a refund of the pro rata portion of any prepaid subscription fees paid by Client to SilkRoad under this Agreement for the remaining terminated portion of the Term.

## 10. Return of Client Data

**10.1** Client can extract the Client Data at any time during the Term via the use of the SilkRoad open API and available reporting abilities provided as part of the Hosted Service. Upon request, SilkRoad can offer assistance in extracting Client Data, subject to a mutually agreed-upon Statement of Work, provided that Client has paid in full all amounts owed to SilkRoad which are not subject to a good faith dispute. Client agrees that following the termination or expiration of this Agreement, SilkRoad may immediately deactivate Client's account and access to the Hosted Service and that following a reasonable period of time (but not less than ninety (90) days) shall be entitled to delete Client's account and data from SilkRoad's servers. Client further agrees that SilkRoad shall not be liable to Client nor to any third party for deletion of Client Data, provided that SilkRoad is in compliance with the terms of this Section.

## 11. Suspension of the Hosted Service

**11.1 Suspension for Delinquent Account.** SilkRoad reserves the right to suspend Client's and any Client Affiliates' access to and/or use of the Hosted Service for any accounts for which any payment is due but unpaid but only after SilkRoad has provided Client at least two (2) delinquency notices, and at least forty-five (45) days have passed since the transmission of the first such notice. Client agrees that SilkRoad shall not be liable to Client or to any Client Affiliate or other third party for any suspension of the Hosted Service pursuant to this Section.

**11.2 Suspension for Ongoing Harm.** Client agrees that SilkRoad may with reasonably contemporaneous telephonic or electronic notice to Client suspend access to the Hosted Service if SilkRoad reasonably concludes that Client's use of the Hosted Service: (i) is being used to engage in denial of service attacks, spamming, or illegal activity; or (ii) is causing immediate, material and ongoing harm to SilkRoad or others. In the extraordinary event that SilkRoad suspends Client's access to the Hosted Service, SilkRoad will use commercially reasonable efforts to limit the suspension to the offending portion of the Hosted Service and resolve the issues causing the suspension of Hosted Service. Client further agrees that SilkRoad shall not be liable to Client nor to any third party for any suspension of the Hosted Service under such circumstances as described in this Section.

## 12. General Provisions

**12.1 Notices.** Notices between the parties will be by personal delivery, overnight delivery, or certified or registered mail, return receipt requested, and will be deemed given upon receipt at the address of the recipient party or ten (10) days after deposit in the mail, or via email with confirmation of receipt. Addresses used will be the ones set forth above or such other address as a party hereto will notify the other in writing.

**12.2 Severability.** In the event of any invalidity of any provision of this Agreement, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement, and further agree to substitute for the invalid provision a mutually agreeable valid provision that most closely approximates the intent of the invalid provision.

**12.3 Headings.** The headings in this Agreement are for convenience of reference only and have no legal effect.

**12.4 No Third-Party Beneficiaries.** This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

**12.5 Assignment.** Neither party may assign, transfer, or delegate any of its rights and obligations under this Agreement without the prior written consent of an authorized representative of the other party except a party may assign or transfer all or any portion of its rights or responsibilities under this Agreement by operation of law or otherwise to any other party in connection with a merger, acquisition, reorganization, or a sale of substantially all of its assets without prior notice to the other party. Any assignment in violation of this Agreement will be void and of no force and effect. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

**12.6 Relationship.** Each party hereto is an independent contractor, and neither party is, nor will claim to be, a legal representative, partner, franchisee, agent, or employee of the other. This Agreement sets forth the Parties' entire liability and exclusive remedies relating to this Agreement and the Hosted Service provided to Client under this Agreement.

**12.7 Publicity.** Client agrees that SilkRoad may use Client's name, logo or trademarks to identify Client as a customer of SilkRoad in SilkRoad's marketing materials and issue public announcements and press releases regarding this Agreement.

**12.8 Non-Solicitation.** During the term of this Agreement and for twelve (12) months afterward, Client shall not hire any employee of SilkRoad or its Affiliates who has performed Professional Services work for Client hereunder or solicit any such employee to terminate his/her employment with SilkRoad or its Affiliates.

**12.9 Force Majeure.** Neither party will be liable to the other for a failure or delay in its performance of any of its obligations under this Agreement (except for the payment of amounts due hereunder) to the extent that such failure or delay is caused by circumstances beyond its reasonable control or by events such as fire, riot, flood, labor disputes, natural disaster, regulatory action, internet or telecommunications failures, terrorist acts, or other causes beyond such party's reasonable control, provided that the non-performing party gives notice of such condition and continues or resumes its performance of such affected obligation to the maximum extent and as soon as reasonably possible.

**12.10 Counterparts and Electronic Signatures.** This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. A signature transmitted via facsimile, scanned original or third-party e-signature system will be deemed an enforceable signature for the purpose of demonstrating the signing party's assent to the Agreement.

**12.11 Entire Agreement.** This Agreement (including the Schedules hereto) constitutes the entire understanding and agreement between the parties with respect to the subject matter addressed herein and supersedes any and all prior or contemporaneous oral or written communications with respect to the subject matter hereof, all of which are merged herein. In the event of a conflict between the foregoing terms and conditions and any Schedules to this Agreement, the foregoing terms and conditions will control. The parties agree that in the event Client utilizes a purchase order, any term therein which purports to modify or supplement the terms of this Agreement will be void with no force or effect. Any provisions necessary to interpret the respective rights and obligations of the parties hereunder will survive any termination or expiration of this Agreement, regardless of the cause of such termination or expiration.

**12.12 The Applicable Terms.** If SilkRoad makes a material change to any applicable contract terms contained in a URL, then SilkRoad will notify Client by either sending an email to the notification email address or posting a notice in the Administrator's view of Client's account. If the change has a material adverse impact on Client and Client does not agree to the change, Client must so notify SilkRoad within thirty days after receiving notice of the change. If Client notifies SilkRoad as required, then Client will remain governed by the URL terms in effect immediately prior to the change until the end of the then current Term for the affected Hosted Service. If the affected Hosted Service is renewed, it will be renewed under SilkRoad's then current URL terms and conditions.

**12.13 Governing Law.** This Agreement will be governed by the laws of the State of Illinois, excluding its rules regarding conflicts of law. Venue for any dispute hereunder will be a court of competent jurisdiction located in Cook County, Illinois, and the parties irrevocably submit to the exclusive jurisdiction of such courts. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**12.14. Dispute Resolution.** Each party agrees that before it or any employee, agent or representative of the party files a claim or suit with a federal or state agency or court or other public forum, it shall provide thirty (30) days prior written notice to the other and that, within such thirty (30) day period (or longer, if extended by mutual desire of the parties), authorized representatives of the parties shall meet (or confer by telephone) at least once in a good faith attempt to resolve the perceived dispute.



## Schedule A - Service Level Agreement

This Service Level Agreement (“SLA”) is a Schedule to the SilkRoad Terms and Conditions between SilkRoad Technology, Inc. and Client, which is hereby incorporated by reference. This SLA applies to the Hosted Service during the Term as set forth in the applicable Order Form. The Hosted Service shall be operated on the SilkRoad Network (as defined below) in a U.S. location unless the parties specifically provide for another location on the Order Form.

### 1. Availability

a. Formula. The Hosted Service will, subject to the exceptions listed below, be available 99% of the time during each calendar month from the time that the Hosted Service is being used in Client’s production environment following completion of implementation services (referred to herein as the “**Availability Commitment**”). The availability of the Hosted Service for a given month will be calculated according to the following formula (referred to herein as the “**Availability**”):

Where: Total minutes in the month = TMM  
Total minutes in the month the Hosted Service is unavailable = TMU

And: **((TMM-TMU) X 100)/TMM**

b. For purposes of this calculation, the Hosted Service will be deemed to be unavailable (referred to herein as “**Unavailable**”) only (i) if the Hosted Service does not respond to HTTP requests issued by SilkRoad’s monitoring software, or (ii) for the duration of a Severity-1 Error as defined in the Maintenance and Support Guide attached as a Schedule to the Agreement. Further, the Hosted Service will not be deemed Unavailable for any downtime or outages that result from the exceptions set forth in Section 2 of this SLA. Client acknowledges that SilkRoad’s system logs, records and data will provide the basis for SLA calculations and determinations.

### 2. Exceptions

a. The Hosted Service will not be considered to be Unavailable (and minutes will not accrue as TMU) for any downtime or outages that result from any maintenance performed by SilkRoad: (i) during the standard SilkRoad implementation period; (ii) during SilkRoad’s Information Technology standard maintenance window (Saturdays between 6 a.m. and 8 a.m. [06:00 – 08:00] Eastern Standard Time [UTC - 5]) and during product upgrade maintenance activities (collectively referred to herein as “**Scheduled Maintenance**”); or (iii) during a maintenance period performed at Client’s request outside of the normally scheduled maintenance window.

b. The SilkRoad network extends to, includes, and terminates at the data center located router that provides the outside interface of each of SilkRoad’s WAN connections to its backbone network providers (referred to herein as the “**SilkRoad Network**”). The Hosted Service will not be considered Unavailable (and minutes will not accrue as TMU) for any downtime or outages that result from: (i) Client’s information content or application programming, acts or omissions of Client or its agents; (ii) delays or failures due to circumstances beyond SilkRoad’s reasonable control that could not be avoided by its exercise of due care (including Force Majeure events as set forth in the Agreement); or (iii) failures of the Internet backbone itself and the network by which Client connects to the Internet backbone or any other network unavailability outside of the SilkRoad Network.

**3. Remedies** Subject to the exceptions provided for in this SLA, Client will have the rights set forth below:

a. If the total Availability (as calculated above) for a given month is less than the Availability Commitment, Client will receive one (1) Service Credit. In addition, for each 100-minute increment by which the allowable Unavailability is exceeded, Client will receive one (1) additional Service Credit.

b. For purposes of this SLA, a Service Credit will be deemed to be an amount equal to the pro-rata fees for one (1) day of the subscription to the affected Hosted Service (herein referred to as a “**Service Credit**”). The total Service Credits for a given month will, in no event, exceed an amount equal to fifty percent (50%) of the then-current pro-rata monthly fees for the Subscription to use the affected Hosted Service. Service Credits will be applied as a credit to extend the Term of the applicable subscription term for the affected Hosted Service.

c. If the applicable Hosted Service fails to achieve the Availability Commitment, then Client will be entitled as its sole and exclusive remedy, to Service Credits for the applicable Hosted Service in accordance with the terms set forth in this Section 3.



d. Remedies will not accrue if Client is not current on its payment obligations (i.e., no Service Credits will be issued, and an outage will not be considered Unavailable for purposes of this SLA).

e. Upon written request from Client, SilkRoad will promptly provide a report specifying the level of Unavailability and Service Credits due (if any) for the requested month. To receive Service Credits, Client must submit such request within ninety (90) days after the end of the month to which the request pertains.

f. Client shall also have the additional remedy of termination of this Agreement upon written notice if SilkRoad fails to meet Availability of at least 95% in two consecutive months or any three months in a six-month period.



## Schedule B – Maintenance and Support Guide

### TECHNICAL SUPPORT FOR SILKROAD HOSTED SERVICE

This Maintenance and Support Guide is a Schedule to the SilkRoad Terms and Conditions between SilkRoad Technology, Inc. and Client. This Schedule sets forth the terms, conditions, and procedures under which maintenance and technical support ("**Support**") is offered for the current and one prior version of the Hosted Service during the Term as set forth in the applicable Order Form.

#### 1. General

Scope. Support consists of: (a) telephone and email support; (b) correction of errors to keep the Hosted Service in conformance with the user Documentation included in the Hosted Service; and (c) updated versions of the Hosted Service provided by SilkRoad to its general Client base of subscribers at no additional charge. Support does not include: (i) set-up, installation, training or configuration of hardware and software required for the Client to access the Hosted Service; or (ii) consultation, error correction, or research with respect to Client-created documents and information.

Representative. The representative(s) designated by Client in the applicable Order Form will be SilkRoad's contact for communicating concerning Support as described herein ("**Representative**"). Client may change the Representative(s) upon written notice to SilkRoad. Should Client designate more than two Representatives per SilkRoad Hosted Service, SilkRoad reserves the right to charge Client \$1,000 per year per additional Representative. Users who are not Representatives, including job applicants and other third parties, are not entitled to Support.

#### 2. Client Support

Technical Support. Client will have access to SilkRoad's Global Product technical support help desk ("**Technical Support**") twenty-four (24) hours a day, seven (7) days a week.

#### Technical Support Contact:

**Phone:** US Toll Free: 866-803-9663; Direct: +1-904-438-2557; International Toll-Free numbers can be found on our website

**Email:** [support@silkroad.com](mailto:support@silkroad.com)

**Web Support:** <https://engagementcenter.silkroad.com>;

Communications with Technical Support may be via telephone or e-mail (and may be recorded for quality assurance purposes). SilkRoad provides a single-entry point of contact that routes requests/problems to the appropriate Technical Support resource.

**3. Severity Levels.** Technical Support will prioritize problems/requests according to the severity levels set forth below. SilkRoad will use commercially reasonable efforts to respond according to the response specifications set forth below with respect to the Severity Level assigned to the problem:

##### **Severity 1 – Critical**

The Hosted Service suffers an error or issue in a production down situation that cannot be reasonably circumvented and which so substantially impairs the performance of the Hosted Service or any components of the Hosted Service, which are critical to the Client's business, as to effectively render the Hosted Service unusable. SilkRoad will acknowledge any such reported error or issue within thirty (30) minutes,\* and SilkRoad will work twenty-four (24) hours a day, seven (7) days a week to address and resolve the error and provide an applicable workaround or fix.

##### **Severity 2 – Serious**

The Hosted Service suffers an error or issue, which cannot be reasonably circumvented, and which substantially impairs the use of one or more portions or features of the Hosted Service required by Client to perform necessary business functions but does not effectively render the Hosted Service unusable as a whole. SilkRoad will acknowledge any such reported error or issue within two (2) hours,\* and SilkRoad will continually work within normal business hours† to address and resolve the error and provide an applicable workaround or fix.

##### **Severity 3 – Moderate**

The Hosted Service suffers a low impact error or issue (which is not of Severity 1 or Severity 2) that impairs the use of the features of the Hosted Service, but the reported error or issue can be reasonably circumvented. SilkRoad will acknowledge any such reported error or issue within eight (8) hours,\* and SilkRoad will work within normal business hours† to address and resolve the error and provide an applicable workaround or fix.

#### **Severity 4 – Minor**

The Hosted Service does not incur an error and allows Client to function normal business operations; however, Client inquiries about existing Documentation, training, standard use of the Hosted Service or other general matters. SilkRoad will acknowledge any such inquiry within twenty-four (24) hours,\* and SilkRoad will work within normal business hours† to address and resolve the error and provide an applicable workaround or fix.

\* Response times are measured from the time Client has spoken with or left a voicemail or email for a SilkRoad Client support contact specifying the nature of the Client's problem.

† Normal business hours are Monday through Friday, 8:00 am until 8:00 pm (08:00 – 20:00) Eastern Standard Time (UTC - 5), excluding national or statutory holidays.

**4. Response.** The Severity Level of the problems reported by Client will be reasonably determined by SilkRoad. SilkRoad will resolve each reported error or issue with the Hosted Service by using commercially reasonable efforts to provide: (i) a patch or fix as necessary; or (ii) a reasonable workaround for the error or issue; or, if either (i) or (ii) are not reasonably practicable, a specific action plan regarding how SilkRoad intends to address the reported error or issue and an estimate on how long it may take to correct or workaround the error or issue. Client agrees to use commercially reasonable efforts to assist and provide information to SilkRoad as required for resolving errors or issues with the Hosted Service reported by Client. In the event SilkRoad fails to meet its obligations under this Section, SilkRoad will provide a root cause analysis including definition, corrections and process improvement plan. If a permanent repair cannot be made, a temporary resolution (bypass and recovery) will be implemented to the extent possible.

**5. Scope.** Support covers any issue or problem that is the result of a verifiable, replicable error in the Hosted Service. SilkRoad will use commercially reasonable efforts to verify and replicate the issue or problem reported by Client. If Technical Support reasonably determines that the Client's issue or problem is not caused by SilkRoad or its systems, equipment, or software, nor constitutes a material failure by the Hosted Service to function in accordance with the Documentation, SilkRoad is not obligated to provide support under this Agreement. Nevertheless, SilkRoad will, if possible, offer suggestions as to how Client can remedy the problem and SilkRoad may offer to provide out of scope Professional Services as described in Section 6 below.

**6. Additional Support.** Technical Support may also determine that Client's request is a request for "**Additional Support.**" Additional Support is any assistance not covered in Section 5 above. Examples of Additional Support include substantive questions regarding data or results, requests for Hosted Service configuration, specialized training regarding use of the Hosted Service, custom documentation, and consulting. If SilkRoad believes that it can appropriately and effectively provide the requested Additional Support, it will offer to do so at the current rate for Professional Services pursuant to a written agreement between the parties.

**7. Client's Responsibilities.** Client's Representative will initiate all requests for Support. The Representative must be trained, qualified, and authorized to communicate all necessary information, perform diagnostic testing under the direction of the SilkRoad service representative and be available during the performance of any Support if required.

#### **8. Submitting a Request**

At the time of Client's initial call or e-mail, please be prepared to provide:

1. Representative's name, company name and the Hosted Service Client is using;
2. The type of browser (with release version) and hardware Client is using;
3. Telephone number and alternate method of contact (i.e. a mobile number or email address);
4. A concise description of Client's problem or question;
5. The time the error or problem occurred;
6. The circumstances under which the problem does or does not occur; and
7. Specific error messages, error numbers, log files and program numbers.

For new cases, Technical Support will use the following process to assist Client with a new issue:

1. Document the supplied information;
2. Document Client's questions or issues (symptom and function in which it occurs);
3. Answer Client's questions or have Client run tests to further identify and isolate the problem; and
4. Research the problem and provide resolution according to the aforementioned guidelines.