This Agreement constitutes a legal agreement between Silk Inc. or Affiliate (“**Silk**”) and the party that has executed a quotation or purchase order that refers to or references this Agreement. This Agreement is an integral part of any such quotation or purchase order. By executing such quotation or purchase order, you agree to all the terms and conditions of this Agreement.

This “**Agreement**” consists of all of (1) the Master Terms and Conditions (the “**Master Terms**”); (2) the Subscriptions Descriptions Exhibit attached as **Exhibit A** (the “**Subscriptions Descriptions Exhibit**”) and (3) the Silk Support Terms and Conditions Agreement attached as **Exhibit B** (the “**Support Terms and Conditions**”).

1. **Services.**
	1. **Silk Solution**. Subject to the terms and conditions of this Agreement, including payment of all amounts due hereunder, Customer may use the Solution provided by Silk as installed on the Servers (as defined in Section 3.1) or on other hardware authorized by Silk and provided by Silk or its authorized resellers and distributors. Customer's use of the Solution shall be subject to any other restrictions and conditions agreed between the parties, including set forth in the applicable Quotation (as defined in Section 2.1), including any restrictions on data consumption and users. To the extent that Silk provides any software, Silk shall provide only executable code and Customer has no right to obtain any source code.
	2. **Restrictions**. The Customer acknowledges and agrees that the Customer may not, and shall not allow any third Person to: (a) install the Solution on any device except the Servers or authorized hardware, (b) disassemble, reverse engineer, attempt to find the underlying code of, or decompile any part of the Solution; (c) modify or make derivative works of Solution; (d) copy, duplicate or reproduce the Solution; (e) remove or obscure any logos, proprietary markings or notices on the Solution; (f) resell, distribute, sublicense or transfer the Solution to any third party, or (g) use the Solution to provide data virtualization services to third parties, such as on a service bureau or timeshare basis.
	3. **Open Source**. The Solution may include certain software licensed under an open source license. For purposes of this Agreement, an open source license is a license that has been certified as such by the Open Source Initiative (see <https://opensource.org/licenses>). To the extent required by such license, the terms and conditions of such license shall apply in lieu of the terms and conditions of the Agreement. Notwithstanding anything to the contrary in the Agreement, Silk makes no warranties in respect of any open source software in excess of the warranties set forth in the applicable open source license itself, and accepts no liability in respect of any open source software in excess of the limitation of liability set forth in the applicable open source license. If any license requires Silk to provide source code, Silk shall make such source code available to Customer upon Customer’s written request according to the terms of the applicable open source license.
	4. **Hardware**. Hardware and associated support services, if any, are purchased by Customer from Silk or from third parties authorized by Silk to provide such hardware and associated support services. This Agreement does not address hardware and associated support services and unless the hardware is purchased directly from Silk, Silk has no responsibility or liability in respect thereof. All claims regarding such hardware and associated support services should be directed to the party from which such hardware and support services were purchased.
2. **Invoicing and Payment**
	1. **Payment Terms.** Customer shall make payment as set forth in a separate document agreed with either Silk or its authorized reseller that sets forth agreed payment amounts and/or payment terms, and which refers to this Agreement (a "**Quotation**"). For clarity, except to the extent expressly set forth otherwise on a Quotation, all payments include only payment in respect of the Solution, and do not include any amounts payable in respect of the Servers or otherwise in respect of any hardware or cloud infrastructure, all of which shall be paid directly by Customer to the applicable cloud provider. Except to the extent set forth otherwise in a Quotation or in Exhibit A, all invoices issued to the Customer pursuant to this Agreement are due and payable within agreed payment terms of such invoice. All payments of amounts due shall be made in U.S. Dollars by wire transfer of immediately available funds to a bank account designated by Silk. Any amounts due contained in an invoice not paid when due and payable shall bear interest at a rate of one and one half percent (1.5%) per month, or the maximum legal rate if less.
	2. **Taxes and Charges**. All amounts due are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges. Should the Customer be required under any law or regulation to withhold or deduct any amounts in respect of government charges, then Customer shall provide Silk an official invoice in respect of such deducted or withheld amounts, and the sum payable to Silk shall be increased by the amount necessary to yield to Silk an amount equal to the sum it would have received had no withholdings or deductions been made.
3. **Installation.**
	1. **Installation**. All installation and activation of the Solution purchased through a third party application marketplace will be performed by the customer, installation and activation of the solution purchased directly through Silk shall be performed by Silk or its authorized agents. The Solution shall only be installed either on private cloud servers owned and controlled by Customer or on Customer's own cloud service account with a public cloud service provider (as applicable, the "**Servers**") or on other hardware authorized by Silk and provided by Silk or its authorized resellers and distributors. To the extent any hardware is required to be transported to a different location, such transportation must be performed by Silk or its authorized agents. Customer shall provide Silk with the credentials and privileges necessary or helpful to install the Solution on the Servers. Customer will be responsible to make available all technology requirements and facilities necessary or helpful for such installation.
	2. **Clarity Connection**. Silk or its authorized agents shall connect the Solution to Silk’s Clarity™ software tool, which shall report certain information including, telemetry about usage, Used Capacity and Number of Active C-nodes, of the Solution to Silk. Customer shall not disconnect the Solution from Clarity.
	3. **Dark Systems.** Silk shall not connect an instance of the Solution to Clarity if Customer prior to installation notifies Silk in writing that such instance should be considered a "Dark System". Silk shall provide the Customer with tools to report the necessary telemetry (the “**Silk Telemetry Tools**”) to Silk regarding the actual usage by such Dark Systems of Used Capacity or Number of Active C-nodes (as defined in an applicable quote) during the Term (the “**Dark Telemetry**”). The Parties acknowledge that the Silk Telemetry Tools will not allow the Customer to provide Silk with information about the performance of such Dark System, and therefore, the ability of Silk to provide support with regard to Dark System will be limited. Customer shall provide Silk with all Dark Telemetry within seven (7) calendar days after the end of each calendar month and shall not perform any action that would interfere with the accurate recording and reporting of the Dark Telemetry.
	4. **Customer Records; Audits**. To the extent any instance of the Solution is a Dark System, Customer shall maintain complete and accurate records concerning all actual usage of Used Capacity or Number of Active C-nodes on Dark Systems, which records shall include sufficient information to permit Silk to confirm: (a) the accuracy of any Used Capacity or Number of Active C-nodes actually used by the Customer (as defined on an applicable quote), during each calendar day of the Term; and (b) any amounts to be charged to the Customer under the Agreement. The Customer shall retain the Customer Records during the Term and for at least three (3) years thereafter. During such period, Silk shall have the right to cause an independent, certified public accountant, selected by Silk in its sole discretion (the “**CPA**”), to inspect Customer records for the sole purpose of verifying the Used Capacity or Number of Active C-nodes (As defined on an applicable quote) of Customer on Dark Systems and any amounts to be charged to Customer (each an “**Audit**”); provided however, that any such Audit shall not occur more than twice during any twelve (12) month period, unless the immediately preceding audit showed material noncompliance with this Agreement. If the audit shows any underpayment, Customer shall make payment of the underpayment within 30 days of the audit. If the audit shows an underpayment exceeding 3% of amounts due, then the Customer shall in addition pay the full cost of the applicable audit. “**Used Capacity**” and “**Number of Active C-nodes**” has the meaning set forth in **Exhibit A**.
4. **Warranty; Support.**
	1. **Limited Warranty**. Silk warrants to the Customer (the “**Limited Warranty**”) that for a period of ninety (90) calendar days following the initial operation of an instance of the Solution, such instance of the Solution when installed and operated in accordance with this Agreement and applicable documentation provided by Silk, shall operate in accordance with the Silk documentation provided to the Customer. Silk’s sole obligation and the Customer’s exclusive remedy for any failure of such instance of the Solution to conform to the applicable Silk documentation is the correction or replacement, at Silk's option, of such instance of the Solution such that it shall conform with the applicable documentation. Silk does not make any warranties in respect of the Servers or any other hardware on which the Solution is installed or in respect of the current or continued compatibility of the Solution with the Servers. Subject to the foregoing, Silk disclaims all implied or statutory warranties in respect of the Solution, including any implied or statutory warranties of fitness for a particular purpose or non-infringement.
	2. **Silk Support**. Silk shall provide support for the Solution as set forth in the Support Terms and Conditions, attached hereto as **Exhibit B**. Notwithstanding anything to the contrary in this Agreement, Silk shall not be required to provide support in respect of Dark Systems, provided however that Silk may in good faith choose to make reasonable commercial efforts to provide such support to Dark Systems.
5. **Indemnification; Limitation of Liability**

## **Indemnification by Silk**. Silk shall defend (or at its option settle), at its expense, any suit, claim or proceeding brought against Customer by a third party to the extent based upon a claim that Solution (but not including any hardware or Servers) infringes or misappropriates any intellectual property right held by a third party and Silk will indemnify Customer against, and hold it harmless from, any cost, loss, damage or liability (including reasonable attorney’s fees) attributable to such suit, claim or proceeding that is finally awarded against Customer (or agreed to in settlement by Silk), provided that Customer: (i) promptly notifies Silk in writing of each such suit, claim or proceeding; (ii) provides all assistance and information reasonably required for the defense and settlement of the suit, claim or proceeding; and, (iii) grants Silk sole control of the defense and all negotiations for settlement of such claim. If the use of the Solution is subject to an infringement claim or Silk reasonably believes it will be subject to such an infringement claim, Silk may, at its sole expense and option: (a) procure for the Customer the right to continue using the Solution as set forth in the Agreement; (b) replace the Solution with a non-infringing product of equivalent function and performance; or (c) modify the Solution to be non-infringing. If Silk elects not to employ any of the options contained in the previous sentence during the Term, Silk may terminate this Agreement and refund to Customer all pre-paid amounts in respect of unused periods. Silk has no liability or obligations hereunder in respect of any Servers or other hardware or cloud infrastructure, or in respect of the use of the Solution not in compliance with this Agreement, or from any claim to the extent resulting from the use of the Solution in combination with third party software, hardware or services, or from any modification to the Solution not made on behalf of Silk.

## **Limitation of Liability**. Notwithstanding anything to the contrary in the agreement, in no event shall Silk, its present and former parents, subsidiaries, affiliates, representatives, insurers, suppliers, distributors or licensors be liable for any punitive, special, incidental, consequential, indirect or exemplary damages, (including, but not limited to, loss of property or equipment, loss of profits, loss of revenues, loss of data, business interruption, damage to business reputation, or loss of use)., The maximum liability of Silk and its present and former parents, subsidiaries, affiliates, representatives, insurers, suppliers, distributors and licensors arising out of the agreement, shall not exceed the actual payments received by Silk from the customer in the period of the prior 12 months, under the agreement. Silk does not provide any Servers or cloud infrastructure, and Silk shall not have any liability in respect of the Servers or cloud infrastructure or in respect of any changes in the compatibility or interoperability of the Servers or cloud infrastructure with the Solution or in respect of any services provided by the third party providing the Servers or cloud infrastructure.

1. **Data Protection and Privacy.** Silk shall generally not have access to any data stored by Customer using the Solution. Silk's Clarity tool shall provide Silk with data concerning the use or access of the Solution by Customer. By analyzing the information received, Silk may compile statistical information across its install base. Such statistical information is anonymous and Silk will not associate such statistical information with specific users without the consent of the applicable user. Silk may use such statistical data to analyze and improve its Solution and other services and technology, and understand trends and customer needs.Silkmay share such anonymous information with its commercial partners.
2. **Intellectual Property and Confidentiality**
	1. **Intellectual Property**. Silk retains sole and exclusive ownership of all intellectual property rights in respect of the Solution and documentation in respect thereof. If Customer provides Silk with comments or suggestions concerning the modification, correction, improvement or enhancement of the Solution, then such comments and suggestions shall not be subject to any non-disclosure or non-use obligations.
	2. **Protection of Confidential Information**. During the Term and for a period of five (5) years thereafter, each Party who receives (the “**Receiving Party**”) Confidential Information of the other Party (a “**Disclosing Party**”) agrees: (a) to hold the Disclosing Party’s Confidential Information in strict confidence, using the same degree of care and protection (but no less than a reasonable degree of care and protection) that it exercises with its own Confidential Information of a similar nature; (b) not to directly or indirectly disclose or otherwise make available any Confidential Information of the Disclosing Party to any third Person (except as explicitly set forth in this Section 7.2); and (c) not to copy or use the Disclosing Party’s Confidential Information for any purpose other than as necessary to fulfill Receiving Party’s obligations or exercise its rights under the Agreement. “**Confidential Information**” means all information and documentation relating to the Disclosing Party’s business of a proprietary and confidential nature, including, but not limited to, information and documentation relating to a Disclosing Party’s products, services, deliverables, intellectual property rights, customers, marketing and strategies. The terms and conditions of this Agreement are the Confidential Information of Silk. Each Party will disclose the other Party’s Confidential Information only to its employees and independent contractors who have a need to know such information in order to fulfill such Party’s obligations under the Agreement and who have executed a confidentiality agreement with the Receiving Party under which the Disclosing Party’s Confidential Information is protected (as provided for herein) or who are bound by a professional code of professional conduct not to disclose the Disclosing Party’s Confidential Information. Notwithstanding the foregoing, the Receiving Party will be allowed to disclose the Confidential Information of the Disclosing Party to the extent that such disclosure is required by law, regulation or court order; provided that the Receiving Party notifies the Disclosing Party in writing of such intended disclosure at least fourteen (14) calendar days prior to such intended disclosure and cooperates with the Disclosing Party, at the Disclosing Party’s reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.
	3. **Exclusions to Confidentiality Obligations**. Information of a Disclosing Party shall not be Confidential Information if such information: (a) is publicly available prior to the time of disclosure or later becomes publicly available, in each case through no fault of the Receiving Party; (b) was, prior to disclosure pursuant to the Agreement, rightfully known to the Receiving Party without confidentiality restriction as evidenced by contemporaneous written documentary evidence; or (c) was independently developed by Representatives of the Receiving Party who had no access to the Disclosing Party’s Confidential Information as evidenced by contemporaneous written documentary evidence
	4. **Return of Confidential Information**. The Receiving Party agrees, upon demand by the Disclosing Party and/or upon termination or expiration of the Agreement, to destroy or return promptly to the Disclosing Party all originals and all copies of any documents, reports, notes or other materials (whether maintained in tangible, documentary form or in computer memory or other electronic format), in the possession or under the control of Receiving Party, containing, incorporating or reflecting, in any way, any Confidential Information of the Disclosing Party.
3. **Term and Termination.**
	1. **Term**. This Agreement shall be in effect until terminated pursuant to the terms hereof (the "**Term**").Each subscription for the use of an instance of Solution shall be in effect for the applicable Subscription Period (as defined in **Exhibit A**). Subscription Periods shall renew according to the applicable Quotation or according to the terms set forth in **Exhibit A**, unless the Customer provides Silk with written notice at least 30 days prior to such renewal that it does not wish to renew the applicable Subscription.
	2. **Termination for Convenience**. Customer can terminate this Agreement for convenience to the extent set forth on the applicable Quotation. Subscriptions may be terminated for convenience as set forth in **Exhibit A**.
	3. **Termination for Breach.** Either party may terminate this Agreement upon written notice if the other party shall materially breach any provision of this Agreement and not cure such breach within 30 days of receipt of written notice thereof. Failure to make timely payment of amounts due, whether to Silk or its authorized reseller, shall be deemed a material breach of this Agreement.
	4. **Effect of Termination**.Upon the termination of any Subscription, Customer shall cease all use of the applicable instance of the Solution for which the Subscription was purchased and Silk will cease all support services in respect thereof and may disconnect Customer from the Solution. If Customer continues use of the applicable instance of the Solution following termination, Customer shall make payment pursuant to a Pay-As-You-Go Subscription Model. Upon termination or expiration of the Agreement: (a) except as otherwise set forth herein all rights and obligations of both Parties shall immediately terminate, and the Customer shall cease all use of the Solution; and (b) the Customer shall pay to Silk or its authorized reseller all amounts due and payable pursuant to this Agreement within Thirty (30) calendar days of receipt of an invoice therefore. Notwithstanding the foregoing, Sections 1.2 (Restrictions), 1.3 (Open Source), 2.1 (Payment terms) 3.4 (Customer Records, Audits), 5 (Indemnification; Limitation of Liability), 6 (Data Protection and Privacy), 7 (Intellectual Property & Confidentiality), 8 (Term and Termination), 9 (Miscellaneous) of this Agreement and any accrued and unpaid payment obligations hereunder shall survive any termination or expiration hereof or of any Subscription for any reason.
4. **Miscellaneous**
	1. **Entire Agreement; Amendment; Waiver**. The Agreement and the exhibits hereto constitute the entire agreement between the Parties in respect of the subject matter hereof and supersede all other understandings or agreements relating to the subject matter hereof. The Agreement may only be amended by a writing signed by a duly authorized representative of each Party. In the event of a conflict between the terms of this Agreement and the terms of any Quotation, the terms of this Agreement (including the exhibits hereto) shall govern except to the extent set forth otherwise in writing the applicable Quotation. All waivers must be in writing. A waiver by either Party of any of the obligations to be performed by the other Party or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other obligation. If any provision of the Agreement shall be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render illegal, invalid or unenforceable any other severable provisions of the Agreement.
	2. **Relationship of the Parties**. Nothing contained in the Agreement shall be construed to create a partnership, joint venture or other agency relationship between the Parties. Neither Party has any authority to act on behalf of the other Party or to enter into any contract, incur any liability or impose any legal obligation or to make any representation on behalf of the other Party.
	3. **Force Majeure**. Neither Party will be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, acts of God, epidemic or pandemic, quarantine, war or other violence, or any law, order or requirement of any governmental authority (**“Force Majeure**”). In the event any Force Majeure will continue or reasonably be expected to continue for more than thirty (30) calendar days, the Party not claiming a Force Majeure is entitled to terminate the Agreement by written notice to the other Party.
	4. **Governing Law; Venue**. The Agreement shall be governed by and construed in accordance with the internal laws of the State of Massachusetts (without reference to the conflicts of law provisions of any jurisdiction that would require the application of the law of any other jurisdiction). Any claim, action, suit or other proceeding initiated by any of the Parties arising under or in connection with the Agreement may be asserted, brought, prosecuted and maintained only in a court of competent jurisdiction located in Boston Massachusetts. Notwithstanding the foregoing, either party may seek an interim injunction or other form of interim relief in any court of competent jurisdiction.
	5. **Assignment; Change of Control; Subcontractors**. Neither Party may assign or transfer (whether in the context of a merger, consolidation, securities sale, asset sale or otherwise) the Agreement or its rights or obligations under the Agreement to any third Person without the prior written consent of the other Party; provided that: (a) Silk may assign or transfer the Agreement or its rights or obligations under the Agreement to any of its Affiliates without the prior written consent of the Customer; and (b) a Party may assign or transfer the Agreement or its rights or obligations under the Agreement to any third Person without the prior written consent of the other Party in connection with a change of control of such Party, provided that the assignor shall provide the other party with written notice of such assignment. Assignments in violation of the foregoing shall be void. If Customer assigns this Agreement to a direct competitor of Silk, Silk may terminate this Agreement with written notice within 30 days of receiving notice of such assignment. An “Affiliate” of a party, any entity which, directly or indirectly, controls, is controlled by or is under common control with such party. For the purposes of this definition, “control” shall mean the holding of more than 50% of the voting share capital of the controlled party
	6. **Counterparts**. The Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.
	7. **Interpretation**. The Parties acknowledge and agree that: (a) each Party and its counsel reviewed and negotiated the terms and provisions of the Agreement and have contributed to its revision; (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of the Agreement; and (c) the terms and provisions of the Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of the Agreement. Any capitalized terms used in the exhibits and not defined therein shall have the meaning set forth in the body of this Agreement.

**EXHIBIT A: SUBSCRIPTIONS DESCRIPTIONS**

**Pay-As-You-Go Subscription**

The terms and conditions of a Pay-As-You-Go Subscription are as follows:

1. A Pay-As-You-Go Subscription is a month-to-month subscription to an instance of the Silk Software which means that the Customer can terminate a Pay-As-You-Go Subscription pursuant to the first sentence at the end of any calendar month during the Term so long as it provides Silk with written notice of such termination (a “**Pay-As-You-Go Only Termination Notice**”) at least fourteen (14) calendar days prior to the end of the month which is the last month of the Pay-As-You-Go Subscription (the “**Final Pay-As-You-Go Only Month**”). Silk or its certified reseller may terminate a Pay-As-You-Go Subscription with 180 days prior written notice.

2. At the end of each month during the Term (each an “**Applicable Month**”), Silk will determine the Customer’s Used Capacity or Number of Active C-nodes on the Applicable Determination Date, and then charge the Customer a fee for the Applicable Month equal to the fee per TiB or per Active C-node as defined on the applicable quote (the “**Pay-As-You-Go** **Only Monthly Fees**”).

**Pre-Paid Subscriptions**

The terms and conditions of each Pre-Paid Subscription is as follows:

1. A Pre-Paid Subscription is a pre-paid subscription for the number of full months of an instance of the Silk Software (the “**Pre-Paid Subscription Period**”) as indicated on the applicable purchase order or Quotation. The Customer cannot terminate the Pre-Paid Subscription during the applicable Pre-Paid Subscription Period unless the Customer terminates the Agreement (and the Term and all active Subscriptions). No fees for a Pre-Paid Subscription are refundable by Silk to the Customer, except in the event Customer terminates the Agreement due to the uncured material breach of Silk, in which event Silk shall refund pre-paid amounts for unused periods. calendar days that have not elapsed during the applicable Pre-Paid Subscription Period).

2. Upon the expiration of the then effective Pre-Paid Subscription Period the Customer shall be deemed to have elected to subscribe to a Pay-As-You-Go Subscription immediately upon the expiration of the then effective Pre-Paid Subscription Period, unless Customer provides Silk with 30 days prior written notice otherwise prior to the expiration of the Pre-Paid Subscription Period.

3. In addition, at the end of each month during the Term (each an “**Applicable Month**”), Silk will: (a) determine the Customer’s Used Capacity or Number of Active C-nodes on the Applicable Determination Date for all of the Customer’s then active Pre-Paid Subscriptions and add them together (the “**Actual Aggregate Monthly Pre-Paid Used Capacity or Active C-nodes**”); (b) determine whether the Customer’s Actual Aggregate Monthly Pre-Paid Used Capacity or Active C-nodes on the Applicable Determination Date exceeds the Monthly Pre-Paid Used Capacity Or Number of Active C-nodes (as defined in the applicable quote ) that the Customer purchased pursuant to all then active Pre-Paid Subscriptions (the “**Aggregate Pre-Paid Monthly Used Capacity or Active C-nodes** ”); and (c) if the Customer’s Actual Aggregate Monthly Pre-Paid Used Capacity or number of C-nodes on the Applicable Determination Date exceeds the Aggregate Pre-Paid Monthly Used Capacity or Active C-nodes, determine such excess Used Capacity Or Active C-nodes (in TiBs or C-nodes) (the “**Overage TiBs or C-nodes**”) and charge the Customer an additional fee for the Applicable Month equal to the number of Overage TiBs or C-nodes multiplied by the dollar amount in the Applicable Month Overage fee (as defined in the applicable quote )

**Definitions**

1. “**Applicable Determination Date**” means the calendar day during each calendar month during the Term that the Customer’s Used Capacity Or number of Active C-nodes is the highest.
2. "**Subscription Period**" means the period for which Customer has purchased a subscription for the applicable instance of the Solution, as set forth on the applicable Quotation. All Subscription Periods commence on the Subscription Start Date
3. “**Subscription Start Date**” means the earlier of either (a) fourteen days from the receipt by Silk or its authorized reseller of a signed purchase order or Quotation from Customer, or (b) the actual date that the applicable instance of the Solution is installed.
4. "**Used Capacity**" means the Customer’s actual usage of net physical storage as measured across all instances of the Solution used by Customer, including all instances on private and public cloud Servers.
5. **“Number of Active C-nodes”** ­ - means all the Customer’s C-nodes as measured across all instances of the Solution used by the Customer, including all instances on private and public cloud Servers.

**EXHIBIT B: SILK SUPPORT TERMS AND CONDITIONS**

Silk shall provide support in respect of Supported Instances pursuant to the terms and conditions of these Silk Support Terms and Conditions (“**Support Services”).**

1. **Problem Correction and Response Times.**
	1. **Problem Correction**. During the Support Term, Silk shall use commercially reasonable efforts to diagnose and correct verifiable and reproducible Problems with the applicable Supported Instance when reported to Silk in accordance with the procedures set by Silk from time to time. The Customer shall use its best efforts in assisting Silk to reproduce the Problem.The Customer agrees to accept, install and use Upgrades provided Dby Silk and Silk shall not have responsibility for Problems caused by the Customer’s failure to install and use Upgrades. The Parties acknowledge the potentially idiosyncratic nature of any Problem in the Supported Instance and Upgrades.
	2. **Means of contact.** During the Term, Silk will provide an entry point for all calls, cases, and case routings related to the data virtualization software Support. All queries with respect to the public cloud services should be referred to the public cloud provider via their normal support channels and based their support agreement with the public cloud provider. Silk will make reasonable commercial efforts to collaborate with the public cloud provider as needed.
	3. **Response Times**. Silk shall provide the Customer with Premium Support remotely 24x7x365 during the Support Term and shall use reasonable commercial efforts to attempt to resolve any Problem within the response times set forth in the table below. The Customer may contact Silk for assistance and Silk will use commercially reasonable efforts to respond pursuant to the table set forth below. A Silk support Representative shall contact the Customer within the target response objective (“**TRO**”) from the time that the Customer first reports the Problem to Silk by telephone or Silk’s customer portal, according to Silk’s TRO guidelines listed in the table below. Multi-vendor support is included with Premium Support. Silk may provide Support Services through third Person subcontractors, provided however, that Silk shall remain responsible for the performance of the services provided by such subcontractors.

|  |  |  |
| --- | --- | --- |
| **Case Severity** | **Definition** | **Target Response Objective** |
| Severity 1 – Critical | Supported Instance is not serving data. In a severity 1 case, both Silk’s representatives and the Customer representatives must be committed to work on the issue in full cooperation and around the clock until a solution or an acceptable workaround is in place | Within 30 min |
| Severity 2 - High | Supported Instance is serving data with meaningful impact on business operations. | Within 2 hours |
| Severity 3 – Medium | Supported Instance is experiencing an anomaly, or unexpected behavior which leads to an inconvenience, but has little or no impact on the customer business operations. | Within 12 hours |
| Severity 4 - Low | Information/technical question | With one Business Day |

1. **Customer’s Responsibilities.** Silk’s provision of the Silk Support Services is subject to the Customer’s compliance with the terms and conditions of this Agreement, including the following:
	1. **Contacts**. The Customer will designate up to four (4) authorized employees to serve as the Customer’s primary points of contact for the Supported Instance and any related support issues, which list of authorized employees may be updated by the Customer upon written notice to Silk. Silk may presume that all such contacts are authorized to submit service requests.
	2. **Cooperation**. The Customer will cooperate with Silk, including, without limitation, by providing as much information as available about any Problems, and taking all commercially reasonable measures requested by Silk in order to detect and provide further information with respect to each Problem. The Customer must provide remote access to the Servers or hardware on which the Supported Instance is installed as requested by Silk.
	3. **Remote Access.** The Customer will provide remote access to the Supported Instance to Silk support representatives (including passwords necessary to allow such access) so that such Silk support Representatives can perform the Silk Support Services.
	4. **Data and Recovery**. The Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Silk and its representatives will not be responsible or held liable for the Customer’s internal processes, procedures or requirements to ensure the protection, loss, confidentiality, or security of the Customer’s data or information.
	5. **Upgrades**. Silk shall not have support responsibilities or liability in respect of versions of the Solution that are more than 12 months old. Customer must have Upgrades installed from time to time in order to ensure the Solution is up-to-date.
	6. **Cloud Infrastructure**. Customer must implement all required services provided by the cloud infrastructure provider, including but not limited to ,set up maintain and monitor an account with the cloud infrastructure provider, backup services, a valid support agreement with the cloud infrastructure provider, security or system monitoring, secure privileges to Silk to run the service, set up required network access. Customer acknowledges that and agrees that he is responsible to all operations and activities under the cloud account. In any event Silk is not responsible for any unauthorized access to the customer’s public cloud account. Silk will make reasonable commercial efforts, at Customer's sole expense, to assist Customer in migrating the Supported Instance to another cloud service provider.
	7. **Cloud Requirements; Acceptable Use Policies**. The Customer is responsible for ensuring that the use of the Solution and the Supported Instance will comply with the terms of the applicable cloud service provider, including any acceptable use policies of the cloud service provider (link provided) ([Google Cloud Platform Acceptable Use Policy](https://cloud.google.com/terms/aup) / [AWS Acceptable Use Policy](AWS%20Acceptable%20Use%20Policy) / [Microsoft Azure Legal Information](https://azure.microsoft.com/en-us/support/legal/) ) , and any applicable laws and regulations.
2. **Data Resiliency.** Silk offers varying levels of data resiliency, as will be comunicated to the customer from time to time. All mechanisms of data resiliency provided by Silk depend on underlying services provided by the Servers or the cloud infrastructure or other hardware. Silk shall not be responsible for any failure of data resiliency obligations to the extent resulting from the failure of the Servers or cloud infrastructure or other hardware, the lack of the required features in the Servers or the cloud infrastructure or other hardware, or the failure to properly implement the requiored mechanisms in the Servers or the cloud infrastructure or other hardware.
3. **Certification and Inspection.**
	1. In the event that the Customer changes the configuration or location of a Supported Silk Product without such change being performed by a Person certified by Silk, then Silk reserves the right to conduct an onsite or remote inspection prior to the provision of any further Silk Support Services to the Supported Instance installed in such Supported Silk Product to determine whether: (a) the Supported Silk Product in which the Supported Instance is installed is in good operating condition and within Silk’s documented specifications; and (b) the environment is suitable for the operation of the Supported Instance. Silk will, within ten (10) Business Days subsequent to such inspection, confirm whether it shall continue to provide Silk Support Services to the Supported Instance installed in such Supported Silk Product, which determination shall be in Silk’s sole discretion. The Customer acknowledges and agrees that any change in the configuration or location of any Supported Silk Product may change the availability of the Silk Service.
	2. The Customer will provide Silk with thirty (30) calendar days' advance, written notice, of any change in the configuration or location of a Supported Silk Products in which Supported Instance is installed. In the event the Customer fails to inform Silk as required, Silk shall not be obligated to provide Silk Support Services for the Supported Instance installed in the Supported Silk Product in question.
4. **Support Reinstatement.** In the event that the Customer allows the Support Term to expire and subsequently wishes to re-subscribe to the Silk Support Services, Silk reserves the right to:
	1. charge the Customer fees in respect of the period during which Customer did not make payment to receive the Silk Support Services, including subscription fees and support fees; and
	2. conduct an onsite inspection prior to providing Silk Support Services to determine whether: (a) the Supported Silk Products in which the Supported Instance is installed is in good operating condition and within Silk’s documented specifications; and (b) whether the environment is suitable for the operation of the Supported Instance. Silk will, within ten (10) Business Days subsequent to such inspection, confirm whether it shall allow the Customer to re-subscribe to the Silk Support Services, which determination shall be in Silk’s sole discretion. The Customer acknowledges and agrees that any change in the configuration or location of any Supported Silk Product may change the availability of the Silk Service.
5. **Limitations**. Silk shall not have any obligation to provide the Silk Support Services with regard to:

(a) any Problems resulting from the Servers or any other hardware issues;

(b) any Supported Instance, to the extent such Supported Instance: (i) has been used other than in accordance with this Agreement or applicable documentations, or other Silk instructions; (ii) has been modified, repaired, serviced, maintained or altered by any person or entity not certified by Silk to do so; (iv) has been installed or de-installed by any person or entity not certified by Silk to do so; (v) has been damaged by causes beyond the control of Silk; (vi) has been damaged as a result of any power surge or power failure; (vii) has been damaged by the deinstallation or reconfiguration of the Supported Instance; (viii) has been damaged as a result of the Customer’s failure to provide a proper environment for the Supported Instance.

1. **Suspension**. Silk may , by providing at least thirty (30) calendar days prior written notice suspend any Silk Support Services provided hereunder (a) during any period that Customer is delinquent in making payments hereunder or (b) if the Used Capacity for a Silk Product under Subscription does not equal at least five (5) TIB for at least three (3) consecutive calendar months during the Support Term or (c) The Number of Active C-nodes does not equal at least two (2) C-nodes, unless defined otherwise in an applicable quote.
2. **Definitions**.
	1. “**Problem**” means a bona-fide functional and technical problem in a Supported Instance which can be reproduced by Silk.
	2. “**Support Term**” means the period during which Customer is eligible to receive Support Services pursuant to this **Exhibit B** and the applicable Quotation including by having made payment of all amounts due hereunder and the applicable Quotation.
	3. “**Supported Instances**” means instances of the Solution: (i) which have been installed on the public cloud or other authorized hardware pursuant to this Agreement; (ii) which have been registered with, and are connected to, Clarity. For clarity, Supported Solutions do not include instances of the Solution which have been installed at Dark Sites.
	4. “**Upgrade**” means new versions of the Solution made generally available by Silk to all existing customers of the Solution, which may contain bug fixes and/or enhancements or improvements. For avoidance of doubt, Upgrades shall not include any release, option, plug-in, component, module or product that Silk generally licenses separately from the applicable Solution.
	5. “**Public** **Cloud Provider”** includingMicrosoft Azure ,Amazon Web Services and/or Google Cloud Platform.