



## General Terms and Conditions

These General Terms and Conditions which are a part of the Master Services Agreement (“MSA”) between SilverSky Inc. (“SilverSky” and also referred to as “we”, “us”, or “our”) and the customer, on behalf of itself and those of its Affiliates who receive Services (collectively “Customer”, and also collectively referred to as “you” and “your”). These General Terms and Conditions are a part of the associated MSA; for purposes of the MSA and these General Terms and Conditions, “Affiliate” means any entity that a party directly or indirectly controls, is controlled by, or is under common control with, and “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

### 1. Term and Termination.

- 1.1 **MSA Term.** The associated MSA and these General Terms and Conditions will continue in effect for as long as any Statement of Work remains in effect unless earlier terminated as provided below.
- 1.2 **Statement of Work Term.** The term of each Statement of Work (as defined herein) will begin on the date set forth in the Statement of Work and continue for the term set forth in such Statement of Work unless earlier terminated as provided below.
- 1.3 **Order of Precedence.** These General Terms and Conditions, the associated MSA, any Statements of Work, Service Level Agreements, the Term and Pricing Sheet and other associated Appendices and Attachment documents are collectively referred to as (the “Agreement”) and are incorporated by reference and constitute the entire agreement between us and you. The documents listed in this paragraph shall be hereinafter referred to as the “Contract Documents” or “Agreement”. In the event of a conflict between the Contract Documents, the controlling document shall be the Term and Pricing Sheet, the Statement of Work and the Service Level Agreement, then the MSA, then the General Terms and Conditions. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.
- 1.4 **Services.** During the term of this Agreement, we agree to provide professional services and/or managed analytics security services on a subscription basis, referred to hereafter as the “Services” and as further defined in the Statement of Work and associated attachments (the “Services”) and incorporated for reference. All Statements of Work are subject to the terms and conditions of this Agreement and will include the following: (i) the particular Service(s) being purchased; (ii) the term of the Service(s) (confirmation of the term of the Service(s) being purchased); (iii) the compensation and billing method for the Services; and (iv) any other applicable information agreed to by the parties.
- 1.5 **Work on Customer Premises.** If and to the extent that the implementation, performance or delivery of the Services require us to be present at the your premises, then, upon receiving travel approval from you and subject to adherence to our travel reimbursement policy, or other travel reimbursement guidelines set forth in the Statement of Work, you shall reimburse us for all pre-approved, reasonable and actual out-of-pocket travel expenses, including, but not limited to, hotel, airfare and meals, incurred in connection with the implementation, performance or delivery of the Services.
- 1.6 **Termination**
  - A. **For Breach.** Either party may terminate any Statement of Work, in whole or in part, if the other party materially breaches a term of this Agreement, and, if the breach is remediable, the breach continues for 30 days after written notice of the breach. Termination of a single Statement of Work under this Section will not be deemed a termination of any other Statement of Work, unless otherwise specified by us.
  - B. **Termination for Insolvency.** Each party may terminate this Agreement effective immediately upon written notice, should the other party (i) make a general assignment for the benefit of creditors; (ii) institute proceedings, or have proceedings instituted against it, seeking relief or reorganization under any laws relating to bankruptcy or insolvency; or (iii) have a court of competent jurisdiction appoint a receiver, liquidator, or trustee over all or substantially all of such party’s property, or provide for the liquidation of such party’s property or business affairs.
  - C. **Effect of Termination.** If any Statement of Work or any part of this Agreement is terminated or expires, then the following sections of these General Terms and Conditions: Sections 2 (Payment Terms), 3 (Warranties), 4 (Limitation of Liability), 5 (Indemnity), 6 (Confidentiality), 7 (Intellectual Property), 8 (Compliance with Export Control and Anti-Corruption Laws) and 9 (General Provisions), and the obligation to pay any undisputed unpaid fees owed will survive such termination. In addition to the foregoing, any pre-paid but unused fees shall be refunded to Customer and any of Your Data (as defined below) shall be returned to Customer, both within five (5) days of the effective date of termination or expiration of any part of this Agreement.



## 2. Payment Terms.

- 2.1 Pricing.** You agree to pay any undisputed fees for the Services that you order at the prices set forth in the applicable Statement of Work (“Fees”). All Statements of Work are non-cancelable and non-refundable, except for any pro-rata prepaid fees when the other party has an uncured material breach.
- 2.2 Invoicing.** Payment terms are subject to credit approval. All Fees are exclusive of all sales, use, excise, value added, withholding and other taxes, and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the Services which shall be invoiced to and paid by you. You will provide tax exemption certificates or direct-pay letters to us on or before the Statement of Work Effective Date, as applicable. We will invoice you for the Fees in advance, arrears, annually, monthly, or periodically during our performance of the Services according to the Statement of Work. You will pay us undisputed amounts invoiced net 30 days. Undisputed and unpaid balances may accrue interest at the rate of the lesser of one and one-half percent (1½%) per month or the then-highest rate permissible under applicable law. You will make full payment in U.S. dollars (\$), unless a different currency is specified in the Statement of Work. If any amount owing by you for Services is 30 or more days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid Fee obligations so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full. We will give you at least 10 days’ prior notice that your account is overdue, in accordance with Section 9.3, before suspending services to you. Notwithstanding anything herein to the contrary, you shall be permitted to dispute any invoice, or a portion thereof, in good faith, which good faith dispute shall not be deemed a breach of this Agreement or subject you to any penalties hereunder.
- 2.3 Disputed Fees.** You may withhold payment of particular fees that you dispute in good faith (“**Disputed Fees**”) only, if you provide written notification (“**Dispute Notice**”) of such Disputed Fees to us along with payment of any undisputed portion of such fees within 30 days of receipt of the invoice containing the Disputed Fees. The Dispute Notice must set forth the justification for such dispute in sufficient detail to allow us to investigate the Disputed Fees. Upon our receipt of the Dispute Notice, the parties will immediately negotiate in good faith to resolve the issue that is the subject of the Dispute Notice. We will not exercise our rights under Section 2.2 if you are disputing the applicable Fees reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 2.4 Rate Schedule.** All rates, fees, and related pricing for agreed upon Services will be captured in the relevant Service Order Term and Pricing Sheet. Renewal rates and terms will be listed on the Service Order; however, in the absence of such, all Services automatically renew for a period equal to the Initial Term and the corresponding fees and related pricing will be set at the then prevalent rate.

## 3. Warranties.

- 3.1 Our Warranty and Disclaimer.** We warrant to you that we will perform our duties under this Agreement in a diligent and businesslike manner, consistent with industry standards and in compliance with all applicable laws, rules and regulations. In addition, we warrant and covenant that each of our employees and agents assigned to perform work hereunder shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all work will be so performed. **EXCEPT AS MAY BE SET FORTH HEREIN OR IN A STATEMENT OF WORK, WE PROVIDE THE SERVICES “AS IS.” WE DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.**
- 3.2 Third-Party Products.** You acknowledge and agree that unaffiliated third parties may provide certain software, products and services subject to their standard terms and conditions (“**Standard Terms**”) as a part of our Services. To the extent applicable and permissible, we shall pass through to you all available warranties in respect of any third-party software, products and services used in the Services under the Standard Terms of such third parties. We make no representations and warranties with respect to any third-party software, products and services used in the Services.
- 3.3 Remedy.** If notified in writing of a valid warranty claim under Section 3, we will, at our option, but with your input, (i) correct the non-conforming Service so that it materially complies with the specifications; (ii) provide a replacement with substantially equivalent functionality; or (iii) terminate the Agreement and refund a pro-rata portion of the prepaid fee based on the number of months remaining in the Initial Term or Renewal Term as of the date that you provided written notice of the warranty claim under Section 3. This Section states our entire liability and your sole and exclusive remedy for breach of warranty under Section 3.
- 3.4 Your Warranty.** You warrant that where you have disclosed to us electronic data and information submitted by or collected and processed by or for you using the Services (“**Your Data**”) you have obtained the prior consent of all relevant third party individuals for us and our authorized agents, contractors, representatives and vendors to collect, use and disclose Your Data for all purposes relevant to this Agreement and the Services, in accordance with any applicable laws, regulations and/or guidelines. You further warrant that you have and shall maintain all



appropriate consents, permissions and/or licenses (including from all relevant third parties) to enable us to perform the Services.

- 3.5** We may provide you with access and use of our customer proprietary portal (the “**Portal**”), as necessary for you to receive the Services and the applicable written directions and/or policies relating to the Services, which may be in paper or electronic format (the “**Documentation**”), and our provided Equipment or a combination thereof, as necessary for you to receive the Services and access the Portal. We grant You a limited, nontransferable, royalty-free and nonexclusive license to access and use, during the term of the Services only, the Services delivered to You, subject to the restrictions set forth below.
- 3.6** You, when applicable, will: (i) use the Services for your internal security purposes, (ii) be responsible for designating/authorizing customer users and (iii) will not, for itself, or any third party: (a) sell, rent, license, assign, distribute, or transfer any of the Services (other than to an Affiliate); (b) decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of the software utilized by the Services; (c) copy any Software or Documentation, except that you may make a reasonable number of copies of the Documentation for your internal use (provided Customer reproduces on such copies all proprietary notices); or (d) remove from any software, Documentation or Equipment any language or designation indicating the confidential nature thereof or the proprietary rights of ours or your suppliers. In addition, you will not, and will not permit unaffiliated third parties to, (I) use the Services on a time-sharing, outsourcing, service bureau, hosting, application service provider or managed service provider basis; (II) alter any aspect of any Services or Equipment; or (III) assign, transfer, distribute, or otherwise provide access to any of the Services to any unaffiliated third party or otherwise use any Services with or for the benefit of any unaffiliated third party.

#### **4. Limitation of Liability.**

- 4.1** EXCEPT FOR AMOUNTS RELATED TO EACH PARTY’S INDEMNIFICATION OBLIGATIONS HEREUNDER, ARISING OR RESULTING FROM, AND ONLY TO THE EXTENT OF A VIOLATION OF HIPAA, THE HITECH ACT OR HIPAA REGULATIONS BY THE BAA OR ITS EMPLOYEES OR AGENTS (WHEN APPLICABLE), NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LIABILITIES, (INCLUDING LOST PROFITS, LOSS OF REVENUE, GOODWILL, REPUTATION OR SAVINGS, LOSS OR UNAVAILABILITY OF DATA) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER CLAIMED AS BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT FOR AMOUNTS RELATED TO EACH PARTY’S INDEMNIFICATION OBLIGATIONS HEREUNDER, EACH PARTY’S LIABILITY TO THE OTHER FOR ANY LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT HOWSOEVER CAUSED OR ARISING WHETHER AS BREACH, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE IS IN EACH CASE LIMITED, IN RESPECT OF ANY ONE INCIDENT OR SERIES OF INCIDENTS ARISING OUT OF ONE CAUSE, TO 100% OF ALL FEES PAID UNDER THIS AGREEMENT IN THE LAST 12 MONTHS. THE LIMITATIONS AND EXCLUSIONS CONTAINED HEREIN WILL APPLY ONLY TO THE MAXIMUM EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AND NOTHING HEREIN PURPORTS TO LIMIT EITHER PARTY’S LIABILITY IN A MANNER THAT WOULD BE UNENFORCEABLE OR VOID AS AGAINST PUBLIC POLICY IN THE APPLICABLE JURISDICTION.

#### **5. Indemnity.**

- 5.1 Your Indemnification.** You will defend us against any claim, demand, suit or proceeding made or brought against us by a third party alleging that Your Data or your use of any Service in breach of this Agreement, infringes or misappropriates such third party’s intellectual property rights or violates applicable law (a “**Claim Against Us**”) and will indemnify us from any damages, attorney fees and costs finally awarded against us as a result of, or for any amounts paid by us under a court-approved settlement of a Claim Against Us.
- 5.2 Our Indemnification.** We will defend you against any claim, demand, suit or proceeding made or brought against you by a third party alleging that your use of any Service provided under this Agreement infringes or misappropriates such third party’s intellectual property rights (a “**Claim Against You**”) and will indemnify you from any damages, attorney fees and costs finally awarded against you as a result of, or for any amounts paid by you under a court-approved settlement of a Claim Against You. We will have no indemnification obligation with respect to any action to the extent arising out of: (i) the use of any Services or any part thereof, in combination with software or other products not supplied by us; (ii) any modification of the Services not performed or expressly authorized by us; or (iii) the use of any of the Services other than in accordance with this Agreement. If any Service is held to infringe and its use is enjoined, we will, at our option and expense, (i) obtain the right to continue providing that Service consistent with the terms of this Agreement and the applicable Statement of Work, (ii) replace or modify that Service so that it no longer infringes, or (iii) grant you a credit for the Service that you have not received.
- 5.3 Indemnification Conditions.** In each case, as a condition to the right to receive indemnification for a claim, the indemnified party will (i) give the indemnifying party prompt notice of the claim; (ii) cooperate with the indemnifying party, at the indemnifying party’s expense, in the defense of the claim; and (iii) give the indemnifying party the right to control the defense and settlement of the claim. This Section 5 is the sole remedy against claims of infringement.



## 6. Confidentiality.

- 6.1 Confidential Information.** “Confidential Information” means non-public information that is disclosed by either party, or to which either party has access, that the receiving party knows or should reasonably be expected to know is confidential information of the other party.
- 6.2 Recipient Obligations.** A party receiving Confidential Information will (i) restrict the use of the Confidential Information to those purposes necessary for the performance of the receiving party's obligations and the exercise of the receiving party's rights under this Agreement, and (ii) during the term of this Agreement and thereafter, safeguard against disclosure of the Confidential Information to third parties using the same degree of care to prevent disclosure as it uses to protect its own information of like importance, but at least reasonable care. All proprietary and copyright notices in the original must be affixed to copies or partial copies of Confidential Information made by a receiving party. Each party must provide the other with notice of any governmental, judicial or administrative order or proceeding to compel the disclosure of Confidential Information received under this Agreement, as promptly as the circumstances of such order or proceeding reasonably permit. Nothing herein shall preclude either party from disclosing Confidential Information to any of its directors, employees, consultants, professional advisers or subcontractors to the extent that such disclosure is reasonably necessary for the purposes of this Agreement or the performance of the Services.
- 6.3 Safeguards.** In order to protect Your Data, we have in place and agree to maintain commercially reasonable administrative, physical and technical safeguards which are designed to protect (i) against anticipated threats to the security of such information, and (ii) against unauthorized access to or use of such information.
- 6.4 Notification.** We will notify you promptly (as soon as practical) of any third-party unauthorized access to Your Data. Such notice will include information about the extent and scope of the unauthorized access to the extent such information is reasonably available to us.
- 6.5 Annual Data Security Assessments.** Customer acknowledges that SilverSky goes through third party audits to appraise and validate the effectiveness of their security programs on an annual basis. Third party reports are used as the primary means to address any audit or inspection requests from the Customer. SilverSky will make available third party audit reports to the Customer when requested in writing from the Administrative Contact representing the Customer. In the event that the Customer needs additional information outside of what the third party audit reports provide, or may need SilverSky to interface directly with the Customer's third party auditors this will be performed as an additional deliverable within this contract however, it will be outside of the financial scope of this contract. The Customer will be quoted as to the cost of this request prior to SilverSky engaging with the Customer's auditors or people representing this request.
- 6.6 Exceptions.** Neither party will be obligated to maintain any information in confidence or refrain from use if (i) the information was in the receiving party's possession or was known to it prior to its receipt from the disclosing party, (ii) the information is independently developed by the receiving party without the utilization of Confidential Information of the disclosing party, (iii) the information is or becomes public knowledge without fault of the receiving party or (iv) it is required by applicable law. Nothing contained in this Agreement will require the alteration, deletion or destruction of back-up media made in the ordinary course of business, *provided however*; that in each instance each party will maintain the confidentiality of Confidential Information in accordance with the terms of this Agreement.

## 7. Intellectual Property.

- 7.1 Ownership of Intellectual Property in the Services and Deliverables; Reservation of Rights.** All right, title and interest in and to all copyrights, trademarks, trade secrets, patents, mask works, deliverables, and all other intellectual property embodied in the Services and any documentation produced by us in connection with the Services, including but not limited to written reports, user manuals, training materials and any improvements thereto or goodwill associated therewith (“Deliverables”) are retained by us or our licensors. Subject to this Agreement and for the duration of its term, we grant you a non-exclusive, nontransferable, right and license to (i) use and access the Services for internal business purposes and (ii) use, display and reproduce the Deliverables for your internal business purposes. Your Data and any work product generated as part of use of the Services shall be exclusively owned by You and shall be deemed works “made for hire.” This does not apply to the Services themselves.
- 7.2 License to Host Your Data.** You grant us a limited-term license to host, copy, transmit and display Your Data as necessary for us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, we acquire no right, title or interest from you or your licensors under this Agreement in or to Your Data.
- 7.3 Restrictions.** You will not (and will not allow any third party to): (i) except to the extent applicable law expressly gives you permission to do so, reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Services (except to the limited extent that applicable law prohibits reverse engineering restrictions); (ii) provide, lease, lend, disclose, use for timesharing or service bureau purposes, or



otherwise use or allow others to use for the benefit of any third party, any Services (except as expressly and specifically authorized by us in each instance) or (iii) use the Services, including any documentation provided by us, in connection with the development of products or services that compete with the Services.



**7.4 Customer Reports.** You shall own right, title and interest in and to any written summaries, reports, analyses, and findings or other information or documentation prepared uniquely and exclusively for Customer in connection with the Services and as specified in the Service Statement of Work (the “Customer Reports”).

## **8. Compliance with Export Control and Anti-Corruption Laws.**

**8.1 Export Control Laws.** You acknowledge and agree that Services may be subject to restrictions and controls imposed by the United States Export Administration Act, the regulations thereunder and similar laws in other jurisdictions. You agree to comply with all applicable export and re-export control laws and regulations, including the Export Administration Regulations (“**EAR**”) maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department’s Office of Foreign Assets Control, and the International Traffic in Arms Regulations (“**ITAR**”) maintained by the Department of State. Specifically, you covenant that you shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Services or technology (including products derived from or based on such technology) received from us to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. You further agree to not transfer to or through the Services any data, materials or other items controlled for export under ITAR, EAR or other applicable regulations (collectively, “**Controlled Data**”) unless you have prior written authorization to do so from competent government authorities to transfer such Controlled Data to us and have provided such authorization and signed an amendment to this Agreement authorizing the transfer of Controlled Data to us.

**8.2 Anticorruption Laws.** Each party acknowledges that it is familiar with and understands the provisions of the U.S. Foreign Corrupt Practices Act (“the **FCPA**”) and agrees to comply with their terms as well as any provisions of local law related thereto. Each party further understands the provisions relating to the FCPA prohibitions regarding the payment or giving of anything of value, including but not limited to payments, gifts, travel, entertainment and meals, either directly or indirectly, to an official of a foreign government or political party for the purpose of influencing an act or decision in his or her official capacity or inducing the official to use his or her party’s influence with that government, to obtain or retain business involving the Services. Each party agrees to not violate or knowingly let anyone violate the FCPA, and each party agrees that no payment it makes will constitute a bribe, influence payment, kickback, rebate, or other payment that violates the FCPA or any other applicable anticorruption or anti- bribery law.

## **9. General.**

**9.1 Arbitration.** All controversies and claims arising out of or relating to this contract, or the breach thereof, will be settled by arbitration in Delaware administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration will be conducted in the English language. Judgment on any award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**9.2 Governing Law.** This Agreement will be governed in all respects by the laws of the State of Delaware exclusive of any choice of law principle that would require application of a law of a different jurisdiction, and the laws of the United States of America. The parties exclude the application of the UN Convention on the International Sale of Goods.

**9.3 Notices.** All notices hereunder will be given to the appropriate party and department at the address specified in the cover page of the associated MSA or at such other address as the party will specify in writing under the terms herein. Notice will be deemed given: upon personal delivery; if sent by email or fax, upon confirmation of receipt; or if sent by certified U.S. mail, postage prepaid, three (3) days after the date of mailing.

**9.4 Assignment.** Except for an assignment to an Affiliate, neither party may assign this Agreement or any rights or obligations thereunder, in whole or in part, without prior written consent of the other party, which will not be unreasonably withheld and any such assignment or transfer shall be null and void. This Agreement and each Statement of Work shall be binding on and inure to the benefit of the parties’ respective successors and permitted assigns.

**9.5 Force Majeure.** Each party acknowledges that the provision of Services might be affected by factors outside of a party’s control. Neither party will be liable for any breach of this Agreement, for any delay or failure of performance resulting from any cause beyond its reasonable control, including but not limited to the weather, civil disturbances, acts of civil or military authorities, change of law or regulation, acts or omissions of vendors or suppliers, equipment failures, transportation difficulties, or acts of God. If any force majeure event shall continue for more than 60 days from the date of notice of the force majeure event to the other party, then the other party shall be entitled to serve notice to terminate this Agreement without any further liability hereunder.



- 9.6 Entire Agreement.** This Agreement, including any Statements of Work, sets forth the entire understanding and fully integrated agreement between you and us with respect to the subject matter contained therein, and supersedes all prior agreements between us with respect to the subject matter herein, including but not limited to any non-disclosure agreement.
- 9.7 Counterparts.** This Agreement and each Statement of Work may be executed in multiple counterparts, each of which will be deemed to be an original. A facsimile or electronic signature will have the same force and effect as the original signature counterpart. Only a writing signed by both parties may change the terms of this Agreement or any Statement of Work.
- 9.8 Severance.** If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 9.9 Waiver.** The waiver of a breach of any provision of this Agreement or any Statement of Work will not operate or be interpreted as a waiver of any continuing or subsequent breach.
- 9.10 References and Publicity.** Neither party shall use the name, or logo of the other party in any marketing materials without the other party's prior written consent.