

**SDSD - GENERAL TERMS & CONDITIONS**  
**With effect 2<sup>nd</sup> March 2023**

**1. DEFINITIONS**

1.1 In this Agreement unless inconsistent with the context or otherwise specified the following definitions will apply:-

<b>“Agreement”</b>	means these general terms and conditions and the Proposal;
<b>“Charges”</b>	means (i) the Equipment price, the installation charges and any other related charges as set out in the Proposal and (ii) any other additional charges not included in the Licence Fee that may be invoiced by SDSD to the Customer in connection with this Agreement (whether by virtue of a specific provision or otherwise) which will be calculated on a time and materials basis in accordance with SDSD’s then current rates (copies of which are available upon request);
<b>“Commencement Date”</b>	means (i) the date on which the Proposal is signed by the Customer, or (ii) the date on which the Licensed Materials is accepted in accordance with clause 4, whichever is earlier.
<b>“Current Release”</b>	means that version of the Product installed on the Equipment at the Commencement Date and any modifications to it or if a new Release is available, that new Release installed on the Equipment and any modifications to it;
<b>“Customer”</b>	means the company with whom the product is installed or service supplied.
<b>“Documentation”</b>	means the operating manuals, dongles, user instructions and other related materials supplied from time to time to the Customer by SDSD (whether physically or by electronic means) for aiding the use of the Product, including any part or copy of them;
<b>“Equipment”</b>	means the computer hardware and configuration as specified in the Proposal or any replacement thereof which is provided under the terms and conditions of this Agreement;
<b>“Licence Fee”</b>	means the fee specified in the Proposal as may be varied from time to time;
<b>“Licensed Materials”</b>	means the Product and the Documentation details of which are set out in the Proposal and installed and used by the customer ;

<b>“Location”</b>	means the location of the Equipment as specified in the Proposal;
<b>“Maintenance Hours”</b>	means the hours during which the Maintenance will be provided and will be dependent upon which level of Maintenance Services the Customer elects as indicated in the Proposal;
<b>“Maintenance Services”</b>	means the various maintenance and technical support services described in clause 8;
<b>“Product(s)”</b>	means the dongles and computer programs in object code form that are supplied to the Customer by SDSD including any copies of them but excluding source code material and all preparatory design material;
<b>“Proposal”</b>	means the Proposal issued by SDSD to the Customer in relation to the provision of the Licensed Materials, the Equipment (if appropriate), the Maintenance Services and/or any other goods or services offered by SDSD and setting out the specific terms of this Agreement; in the event that this License Agreement is agreed to in absence of a proposal, then the agreement is based on the current products, user numbers as per the most recent invoice.
<b>“Release”</b>	means any version of the Product made available to the Customer under the terms of this Agreement;
<b>“SDSD”</b>	means the SDSD group of companies including but not limited to SD Software Developers Limited, UK, SDSD Labs EooD Sofia, SDSD Pte Singapore, SDSD Labs Sdn Bhd, Malaysia, SDSD Prestige Ltd Nigeria
<b>“Use”</b>	means to load into and store, run and display the Product or (where in machine readable form) the Documentation on the Equipment in accordance with the terms of this Agreement.

## 2. GRANT OF LICENCE

- 2.1 Subject to the terms of this Agreement and in consideration of the payment by the Customer of the Licence Fee from time to time and other Charges in accordance with the Proposal and clause 4 hereby, SDSD grants to the Customer a non-exclusive and non-transferable Licence to use the Licensed Materials on the Equipment and at the Location only. To the extent the Licensed Materials is used outside the United Kingdom, the Customer will be responsible at its own expense for complying with all applicable export and import laws and regulations.

- 2.2 The Customer may use the Licensed Materials for processing its own data for its internal business purposes only in accordance with the terms of this Agreement. The Customer shall not use or attempt to use the Licensed Materials, or permit a third party to provide a data processing service to any third party by way of trade or otherwise.
- 2.3 Furthermore, in consideration of the payment by the Customer of the Licence Fee from time to time and other Charges in accordance with the Proposal and clause 3 hereby, SDSD undertakes to the Customer to provide the Maintenance Services upon the terms and conditions of this Agreement.

### 3. **PRODUCT AND SERVICE INVOICING AND PAYMENTS**

- 3.1 All fees shall be paid without prior demand and no payment shall be considered made until it is received by SDSD. All payments shall be made in the manner specified in the Proposal.
- 3.2 SDSD shall be entitled to vary the contract pricing and or license fee annually on renewal by 2% over the UK Retail Price Index (as published by The United Kingdom Office of National Statistics). In the event that RPI falls below zero a standard 2% increase will occur.
- 3.3 Deposits and upfront charges relating to software or project delivery are non-refundable.
- 3.4 Unless otherwise expressly stated in writing all fees are exclusive of VAT which shall be charged where appropriate at the rate prevailing at the relevant tax point.
- 3.5 SDSD reserve the right to charge a one-off late payment fee of 2.5% of the amount outstanding, in the event that invoices are not settled in full within the payment terms as agreed in the client contract. Further delays to payment will incur a 1.5% monthly late payment charge accruing on the total outstanding amount. Failure to pay may result in termination of the license
- 3.6 SDSD reserve the right to suspend user access to the software or services outlined in the Proposal in the event that invoices are not settled in full as set out in clause 3.1
- 3.7 In the event where the overdue account is referred to a collection agency and/or law firm, the Customer will be liable for all collection and legal demand costs.
- 3.8 The customer shall agree to check and validate any data entry completed by SDSD within 90 days of receipt. SDSD reserve the right to charge for any correction or change after the 90 day validation period has expired.
- 3.9 SDSD reserve the right to seek the ruling of qualified arbitration in the event of non-payment of invoices under any circumstances.
- 3.10 SDSD reserve the right to charge a termination fee, in the event that the client decides to withdraw from the contract prior to the project start date.
- 3.11 Where a client has multiple product and/or service agreements, SDSD reserve the right to set off outstanding debt across the multiple contracts.

#### 4. **INSTALLATION AND ACCEPTANCE**

4.1 Unless otherwise agreed in the Proposal, SDSD shall install the Product and other Licensed Materials on the Equipment.

4.2 The Customer shall be deemed to have accepted the Licensed Materials when it shall Use the Licensed Materials for the purposes of its trade or business.

#### 5. **PROPERTY RIGHTS AND CONFIDENTIALITY IN THE LICENSED MATERIALS**

5.1 The Licensed Materials contain SDSD's confidential information and all copyright, trade marks and other intellectual property rights in the Licensed Materials are the exclusive property of SDSD.

5.2 The Customer shall not:

5.2.1 save as provided in clause 7 make back-up copies of the Licensed Materials;

5.2.2 reverse compile, copy or adapt the whole or any part of the Licensed Materials for the purposes of correcting errors in the Licensed Materials;

5.2.3 save solely for the purposes expressly permitted by statute copy adapt or reverse compile the whole or any part of the Licensed Materials;

5.2.4 The Customer shall not translate or adapt the Licensed Materials for any purpose nor arrange or create derivative works based on the Licensed Materials without SDSD's expressed prior written consent in each case

5.2.5 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the Licensed Materials or Use the Licensed Materials on behalf of any third party or make available the same to any third party; or

5.2.6 remove or alter any copyright or other proprietary right notice on any of the Licensed Materials.

5.3 The Customer shall:

5.3.1 keep confidential the Licensed Materials and limit access to the same to those of its employees agents and sub-contractors who either have a need to know or who are engaged in the Use of the Product (including where appropriate the Documentation);

5.3.2 reproduce on any copy (whether in machine readable or human readable form) of the Licensed Materials SDSD's copyright and trade mark notices;

5.3.3 notify SDSD immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Licensed Materials by any third party; and

5.3.4 without prejudice to the foregoing, take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of SDSD in the Licensed Materials.

5.4 The Customer shall inform all relevant employees agents and sub-contractors that the Licensed Materials constitute SDSD's confidential information and that all intellectual property rights therein are SDSD's property and the Customer shall take all such steps as shall be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 5.

5.5 SDSD upon reasonable notice to the Customer enter the Location or any of the Customer's premises for the purpose of verifying the Customer's compliance with the terms of this Agreement.

## 6. **USE ON NON-DESIGNED EQUIPMENT AND RELOCATION OF THE EQUIPMENT**

6.1 The Customer shall use the Product on the Equipment at the Location only. The Customer shall not be entitled to replace the Equipment or permanently transfer the Licensed Materials from the Equipment on different machine(s) or at a different location without SDSD's prior written consent (which consent will not be unreasonably withheld or delayed).

6.2 If any of the Equipment becomes for any reason temporarily inoperable the Customer shall be entitled without extra charge, at the Customer's risks and expenses, to use the Product upon such alternative machine/machines under the control of the Customer as SDSD shall approve (such approval not to be unreasonably withheld or delayed) until such time as the Equipment once more becomes operable which fact shall be promptly notified to SDSD.

6.3 If the Customer shall move the Equipment from the Location to a new location then without prejudice to the provisions of clause 3.1 SDSD be entitled to make such reasonable increase to the Licence Fee as shall be necessary to take account of any increased costs that it shall incur in providing the Maintenance Services at the new location.

## 7. **EXTENT OF PERMITTED REPRODUCTION**

7.1 The Customer is permitted to make one back-up copy of each of the Product(s) in so far as the making of that copy is necessary for the use of the Product(s) in accordance with the terms of this Agreement. Any such copy shall in all respects be subject to the terms and conditions of this agreement and shall be deemed to form part of the Licensed Materials.

7.2 The Customer shall not make or permit others to make any copies of the Documentation without SDSD's prior written consent.

7.3 The Customer shall effect and maintain adequate security measures to safeguard the Licensed Materials from unauthorised access use or copying.

7.3.1 The Customer shall keep accurate and up-to-date written records on the Customer's use, copying and disclosure of the Product and their location in accordance with good data processing standard and SDSD from time to time reasonably require to inspect and take copies of such records in accordance with clause 5.5.

## 8. **MAINTENANCE SERVICES**

8.1 With effect from the Commencement Date, for the duration of this Agreement and subject to payment of the Licence Fee by the Customer, SDSD provide in respect of each of the Product such level of Maintenance Services as shall be indicated in the Proposal.

8.2 The Maintenance Services will be provided during the Maintenance Hours. All time spent in providing any Maintenance Services outside the Maintenance Hours will incur additional Charges which will be invoiced to the Customer in the manner set out in clause 8.11.

- 8.3 SDSD use its reasonable endeavours to provide the Maintenance Services promptly having regard to the availability of personnel, necessary supplies and facilities and commitments to other customers but any dates quoted for commencement or completion of any part of the Maintenance Services are estimates only and time will not be of the essence of this Agreement.
- 8.4 Maintenance Services shall comprise any or all of the following:
- 8.4.1 advice by telephone or email on the Use of the Product;
  - 8.4.2 information and advice by telephone or email on forthcoming new Releases of the Product;
  - 8.4.3 upon request by the Customer the diagnosis of faults in the Product and the rectification of such faults (remotely or by attendance at the Location as determined by SDSD) by the issue of fixes in respect of the Product [and the making of all necessary consequential amendments (if any) to the Documentation];
  - 8.4.4 the creation and despatch to the Customer from time to time at the SDSD's sole discretion of fixes in respect of the Product;
  - 8.4.5 the creation and despatch to the Customer from time to time at SDSD's sole discretion of a new Release of the Product or a new version of the Documentation.
- 8.5 Any corrected or modified versions of the Product or Documentation or new Releases of the Product supplied to the Customer pursuant to the Maintenance Services will be deemed to form part of the Licensed Materials and be subject to this Agreement.
- 8.6 The Customer shall:-
- 8.6.1 use only the Current Release;
  - 8.6.2 not alter, adapt or modify the Product in any way nor permit the Product to be combined with any other programs;
  - 8.6.3 reasonably co-operate with SDSD's personnel in the diagnosis, investigation and correction of any fault in the Product;
  - 8.6.4 provide SDSD with dedicated 24-hour remote diagnostic access to the Equipment. The type of access and line speed provided by the Customer for this purpose shall be approved by SDSD. Any costs and charges incurred shall be borne solely by the Customer;
  - 8.6.5 make available to SDSD free of charge all information, facilities and services reasonably required by SDSD to enable SDSD to perform the Maintenance Services;
  - 8.6.6 promptly notify SDSD and supply to SDSD a detailed description of any fault requiring Maintenance Services and the circumstances in which it arose forthwith upon becoming aware of the same.
- 8.7 Maintenance Services shall not include the diagnosis and rectification of any fault resulting from:
- 8.7.1 the improper use operation or neglect of either the Licensed Materials or the Equipment;

- 8.7.2 the modification of any of the Products or their merger (in whole or in part) with any other programs or software;
- 8.7.3 the Use of the Products on equipment other than the Equipment;
- 8.7.4 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by SDSD;
- 8.7.5 any repair adjustment alteration or modification of the Products by any person other than SDSD without SDSD's prior written consent;
- 8.7.6 any breach by the Customer of any of its obligations under any maintenance agreement in respect of the Equipment;
- 8.7.7 the Customer's failure to install and Use upon the Equipment in substitution for the previous Release any new Release of the Product within 30 days of receipt of the same; or
- 8.7.8 the use of the Product(s) for a purpose for which they were not designed.
- 8.8 Subject to clause 8.9, SDSD shall upon request by the Customer provide the Maintenance Services notwithstanding that the fault results from any of the circumstances described in clause 8.7. SDSD shall in such circumstances be entitled to levy additional Charges in the manner set out in clause 8.11.
- 8.9 SDSD may withdraw the provision of the Maintenance Services in relation to a previous Release of the Product upon giving to the Customer no less than 90 days' prior written notice, and the Customer shall cease using such previous Release and all related Licensed Materials upon expiry of such notice and use the new Release. In the event that a Customer cannot run a new Release by virtue of their hardware/operating system being incompatible with the Release then this Agreement shall automatically terminate at the time when the Licence Fee would otherwise be payable. Upon termination the provisions of clause 14 shall apply.
- 8.10 To the extent reasonably required by SDSD after the Customer's installation and acceptance of a new Release in accordance with clause 4.2, the Customer will either return the previous Release and related Documentation, including all copies to SDSD or destroy the same and certify such destruction in writing to SDSD.
- 8.11 Additional Charges shall be levied by SDSD monthly in arrears and shall be paid by the Customer within 30 days following the date of SDSD's invoice.

## 9. **WARRANTY**

- 9.1 SDSD warrants that:-
  - 9.1.1 its title and property in the Licensed Materials is free and unencumbered and that it has the right power and authority to license the same upon the terms and conditions of this Agreement;
  - 9.1.2 for a period of 90 days from the Commencement Date, the Product will perform substantially as described in the Documentation;
  - 9.1.3 for a period of 90 days from the Commencement Date, the media upon which the Licensed Materials are stored will be free from defects in materials and workmanship; and

- 9.1.4 it will perform the Maintenance Services with reasonable care and skill, using appropriately trained and qualified personnel.
- 9.2 The Customer shall give notice to SDSD as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 9.3 Subject to clause 9.4, SDSD's obligation and the Customer's exclusive remedy under the warranty given in Clauses 9.1.2 and 9.1.3 above is limited to any one of the following remedies. SDSD shall at its sole discretion and free of Charge to the Customer:-
- 9.3.1 rectify any non-conformance with the warranty by repair (by way of a patch, work around, correction or otherwise) or;
- 9.3.2 replace the Product or defective media in whole or in part; or
- 9.3.3 refund the Customer pro-rata for the Licence Fee paid if in SDSD's reasonable opinion it is unable to rectify such non-conformance within a reasonable time or at an economic cost, whereupon the Licence shall terminate.
- 9.4 SDSD shall have no liability to remedy a breach of warranty where such breach arises as a result of any of the circumstances described in clause 8.7.
- 9.5 Without prejudice to the foregoing SDSD does not warrant that the Use of the Product will meet the Customer's individual requirements and that the operation of the Product will be uninterrupted or error-free.
- 9.6 The Customer agrees that the express obligations and warranties made by SDSD in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise, relating to any products or services supplied under or in connection with this Agreement including (without limitation) any warranty as to the condition, quality, performance, merchantability or fitness for purpose of the Licensed Materials and the Maintenance Services or any part of them.

## 10. **LIMITATION OF LIABILITY**

- 10.1 The following provisions set out SDSD's entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of:
- 10.1.1 any breach of its contractual obligations arising under this Agreement; and
- 10.1.2 any representation statement or tortuous act or omission including negligence arising under or in connection with this Agreement.
- 10.2 Any act or omission on the part of SDSD or its employees agents or sub-contractors falling within clause 10.1 shall for the purposes of this clause 10 be known as an "Event of Default".
- 10.3 SDSD's liability to the Customer for death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence shall not be limited.
- 10.4 Subject to the limits set out in clause 10.5.1 SDSD shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from any Event of Default.



- 10.5 Subject to the provisions of clause 10.3 SDSD's entire liability in respect of any Event of Default shall be limited to damages of an amount equal to:
- 10.5.1 £1 million in the case of an Event of Default falling within clause 10.4
- 10.5.2 in the case of any other Event of Default, the aggregate of the Licence Fee paid by the Customer in the immediately preceding period of 12 months.
- 10.6 Subject to clause 10.3 SDSD shall not be liable to the Customer in respect of any Event of Default for increased production costs, loss of profits, loss of contracts or loss of goodwill even if such loss was reasonably foreseeable or SDSD had been advised of the possibility of the Customer incurring the same, or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of any action brought by a third party).
- 10.7 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 10.8 Except in the case of an Event of Default arising under clause 10.3 SDSD shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon SDSD within two years of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
- 10.9 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 11. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**
- 11.1 SDSD will indemnify the Customer against any damages (including reasonable costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation, possession or use of the Licensed Materials by the Customer in accordance with the terms of this Agreement infringes the intellectual property rights (including without limitation any patent copyright database right registered design or trade mark rights) of the said third party, provided that the Customer:
- 11.1.1 gives notice to SDSD of any infringement forthwith upon becoming aware of the same;
- 11.1.2 gives SDSD the sole conduct of the defence to any claim or action and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of SDSD; and
- 11.1.3 acts in accordance with SDSD's reasonable instructions and gives to SDSD such assistance as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 11.2 SDSD shall reimburse the Customer its reasonable costs incurred in complying with the provisions of clause 11.1.
- 11.3 SDSD shall have no liability to the Customer in respect of an infringement if it results from any breach of the Customer's obligations under this Agreement.

- 11.4 In the event of an infringement SDSD shall be entitled at its own expense and option either to:
- 11.4.1 procure the right for the Customer to continue using the Licensed Materials; or
  - 11.4.2 make such alterations, modifications or adjustments to the Licensed Materials so that they become non-infringing without incurring a material diminution in performance or function; or
  - 11.4.3 replace the Licensed Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.
- 11.5 If SDSD in its reasonable judgment is not able to exercise any of the operations set out at clauses 11.4.1, 11.4.2 or 11.4.3 within 30 days of the date it received notice of the infringement then the Customer without prejudice to any other rights or remedies it may have hereunder or at law shall be entitled to terminate this Agreement by 30 days' notice upon SDSD. Upon any such termination the provisions of clause 14 shall apply.
- 11.6 This clause 11 states the entire liability of SDSD with respect to the infringement or alleged infringement of any third party rights of any kind whatever by the Licensed Materials.
- 11.7 The client is responsible for obtaining authorization from the owner of any items that are subject to intellectual property rights (IPR) or licensing, prior to entering such items in the SDSD software. The client will indemnify SDSD against any cost incurred as a result of the client not holding the correct authorization from the IPR owner.

## 12. **CONFIDENTIALITY**

- 12.1 Each party shall keep and procure to be kept secret and confidential all secret or confidential information belonging to the other party disclosed as a result of the relationship of the parties hereunder and shall not use nor disclose the same save as envisaged in this Agreement or as required by law. Where disclosure is made to any employee, agent or sub-contractor it shall be done subject to obligations equivalent to those set out in this clause 12 and each party shall be responsible to the other in respect of any disclosure or use of such secret or confidential information by a person to whom disclosure is made.
- 12.2 The obligations of confidentiality in this clause 12 shall not extend to any matter which is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in this Agreement or which either party can show was in its written records prior to the date of disclosure of the same by the other party under this Agreement or which it receives from a third party independently entitled to disclose it.
- 12.3 The provisions of clause 12 shall remain in full force and effect notwithstanding termination of this licence for any reason.

## 13. **NON-SOLICITATION**

The Customer will not for the duration of this Agreement and for a period of 6 months following termination of this Agreement, without SDSD's prior written consent directly or indirectly solicit or offer employment or engagement to any employees of SDSD who was directly involved in the provision of the Maintenance Services.

## 14. TERMINATION

THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CLAUSE 14

- 14.1 This Agreement may be terminated:-
- 14.2 by the customer giving no less than **90 days'** written notice **prior** to the date of expiration of the current license period.
- 14.2.1 forthwith by either party if the other commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
- 14.2.2 forthwith by either party if the other is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 14.3 Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 14.4 On termination for any reason:
- 14.4.1 all rights granted to the Customer under this Agreement shall cease;
- 14.4.2 the Customer shall immediately pay to SDSD any sums due to SDSD under this Agreement; and
- 14.4.3 the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so.
- 14.5 Within 30 days of the termination of this Agreement (howsoever and by whomsoever occasioned) the Customer shall at SDSD's sole option either return all copies of the Licensed Materials in its possession or control or shall destroy all copies of the Licensed Materials in its possession or control and a duly authorised officer of the Customer shall certify in writing to SDSD that the Customer has complied with its obligations as aforesaid.
- 14.6 The contract period runs annually (unless otherwise agreed) and is automatically renewed unless termination notification is received as described in this clause 14..
- 14.7 REDUCTION OF USERS, MODULES, SERVICES AND OTHER CONTRACTED ITEMS - Customers must advise SDSD of their annual reduced user numbers, modules, services or other contracted items by giving no less than 90 day's written notice prior to the date of expiration of the current license period. No pro-rata refund will be applied in the event that user numbers are reduced mid-contract period.
- 14.8 SDSD employees and contractors have a right to work and carry out their duties in an environment free from violence, threatening or abusive behaviour. Any such

behaviour by a client or third party will trigger appropriate action, up to and including withdrawal of support services, service suspension or termination.

## 15. **FORCE MAJEURE**

Neither party will be liable for any delay in performing or failure to perform any of its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable.

## 16. **ASSIGNMENT**

16.1 The Licence is personal to the Customer and the Customer may not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of SDSD.

16.2 SDSD may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this Agreement, provided it gives written notice to the Customer of any sub-licence, assignment, charge or other transfer.

## 17. **NOTICES**

17.1 All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient set out in the Proposal or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission or email and will be deemed to have been received:-

17.1.1 by hand delivery - at the time of delivery;

17.1.2 by first class post - 7 days after the date of mailing;

17.1.3 by facsimile transmission - immediately upon transmission provided a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next business day;

17.1.4 by email - immediately at the time of receipt by the recipient.

17.2 Request notices relating to changes in the frequency of the Licence Fee payments from yearly to quarterly payments must be given in writing at least 120 days prior to the Licence Fee payment due date.

## 18. **DISPLAY OF PROMOTIONAL MATERIALS**

SDSD reserve the right to display promotional materials including but not limited to adverts, upgrade and service enhancement information, and other service related news within the user interfaces of all licensed software platforms. Such materials will be placed without impact to the usability and will not disrupt layout or design.

## 19. **SEVERABILITY**

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.

20. **WAIVER**

No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

21. **THIRD PARTY RIGHTS**

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

22. **ENTIRE AGREEMENT**

22.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. The Customer acknowledges that no reliance is placed on any representation made but not embodied in this Agreement. The printed terms and conditions of any purchase order or other correspondence and documents of the Customer issued in connection with this Agreement will not apply unless expressly accepted in writing by SDSD.

22.2 Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.

23. **GOVERNING LAW AND DISPUTES**

This Agreement is governed by the laws of England and Wales.

Should any dispute or difference arise between the Parties, it shall be referred to a sole arbitrator in England in accordance with the prevailing terms of the London Maritime Arbitrators' Association. Where the amount claimed by the Claimants is less than GBP £75,000 excluding interest the reference shall be conducted in accordance with the LMAA Small Claims Procedure (SCP). In either case, the SCP procedure for appointment of the arbitrator shall apply.