Web Hosting & Software Development Terms & Conditions

Email: questions@silkstream.net

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Introduction

These Terms & Conditions cover our website hosting and domain name registration services, including any computer software (including websites and database systems) supplied by Silkstream Ltd.

Where the context admits: "The Company", "We", "Us" & "Our" includes Silkstream Ltd of: 7-8, Britannia Business Park, Comet Way, Southend-on-Sea SS2 6GE, United Kingdom or any party acting on Silkstream's (Ltd) implicit instructions.

"The Customer", "You" & "Your" includes the person purchasing the Services or any party acting on the Customer's instructions.

"Customer Data" means any and all data input into and through the Services by the Customer and the Customer's clients.

"Securely Delete" means using any and all means (including shredding or incineration in compliance with the National Institute for Standards and Technology (NIST) 800-88 standard) of deleting all data and information to ensure that the data and information deletion is permanent and cannot be retrieved, in whole or in part, by any data or information retrieval tools or similar means in accordance with the Customer's prior written instructions;

"Agreement" means the Conditions, Service Terms (to the extent applicable to the Services being supplied), and the Domain Terms.

"Auditors" means collectively the internal and external auditors and audit personnel of the Customer.

"Data Centre" means The Company's supplier's premises (ANS Group Limited) who provides the physical location, equipment and bandwidth of the Servers, together comprising the Web Hosting Services.

"The Registrant" includes the person applying for a domain name or any party acting on the Registrant's instructions.

"The Registry" the relevant domain name Registry.

The relationship entered into between You and Us is governed by these following terms, which shall apply during, and where necessary after, the period of the commercial relationship between You and Us.

1. Services

Under this Agreement We provide Internet connectivity services (the "Bandwidth"), the equipment (the "Server"), the availability of space to store and operate such equipment (the "Space") and the licensing of software (the "Software"), together comprising the Web Hosting Services more particularly described ('Web Hosting Services') under this Agreement (together, the "Services").

The Company agrees to provide storage space in accordance with this Agreement on the computer server equipment operated by the Company in connection with the provision of the Web Hosting Agreement the 'Server' and allow storage of information to include data and programs received by the Customer on such Server on a monthly basis subject to the limits

as more particularly described above. Email services such as POP3 or IMAP are not permitted on the Server. Email marketing or emails sent en-mass are not permitted. Email forwarding using SMTP (emails sent using The Software) is permitted. Nothing under this Agreement shall affect the Customer's statutory rights in particular but without limitation those under the Consumer Credit Act 1974 or the Data Protection Act 1998 or GDPR.

By way of evidence that information security is implemented and operated in accordance with the Company's information security policy from time to time, copies of which are provided by request, the Company shall provide the Customer upon written request as soon as reasonably practicable with copies of certifications maintained by the Company's chosen Data Centre and reasonable evidence of operation in accordance with its information security policies.

Upon the Customer's written request with reasonable notice within normal working hours, once per annum the Company will permit a data protection audit in respect of the Company, and its subcontractors, excluding locations at or from which the Services are provided by Auditors. Any audit shall be chargeable by the Company at a rate of £1200 plus VAT per day. In the case where a a visit to the Company's chosen Data Centre is required, such visit shall have to be separately requested by contacting the Company's chosen Data Centre directly.

2. Fees

The Customer agrees to pay to the Company the Fees specified above for the Web Hosting Services ('Web Hosting Fees'). Web Hosting Fees are due upon execution of this Agreement.

3. Taxes

All payments due under this Agreement are net of applicable taxes.

4. Term

This Agreement shall be effective commencing on the date of invoice for a period of one year and thereafter from year to year subject to earlier termination as set out in this clause unless and until either party gives to the other not less than 30 days notice in writing. Either party may terminate this Agreement without notice upon the other party's breach of any term, condition or obligation under this Agreement if such breach is not remedied (if remediable):

(i) within 10 days from the date of written notice with regard of any monetary obligation, and
(ii) within 30 days from the date of written notice with regard to any other breach.

5. Customer Responsibilities

5.1 In addition to the obligations of the Customer as otherwise specified in this Agreement, the Customer shall be solely responsible for the following:

5.1.1 the accuracy and content of any information placed by the Customer on the Company's Server;

5.1.2 any files or programs that the Customer receives as a result of the use of the Services, including without limitation, the entire responsibility of any losses of data, programs, breaches of

security, viruses and disabling or harmful devices that the Customer may download or otherwise experience as a result of the Customer's use of the Services; and

5.1.3 The backup of any data held on the Company's Server.

5.2 The Customer agrees to use the Services in a manner consistent with any and all applicable laws and regulations and in particular the Customer will not upload, post, link, or transmit:

5.2.1 any sensitive data about the data subject including racial or ethic origin, their political opinions, religious beliefs, whether a member of a trade union, physical or mental health condition, their sexual life, the commission or alleged commission by him of any offence, any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings, medical records, payment card information, material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way;

5.2.2 any material containing a virus or other hostile computer program; and

5.2.3 any material which constitutes, or encourages the commission of, a criminal offence or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

6. Security

6.1 The Customer is solely responsible for determining the suitability of the Services in light of the nature of any data stored on the Services and for determining what steps are appropriate for maintaining security, protection and back up. The Customer shall inform the Company of brief details of the nature of any Data stored on the Services (and update the Company throughout the Term if the nature of the data changes) and an overview of any encryption methods in place.

6.2 The Company shall ensure appropriate physical security controls are in place at the Data Centre and shall indirectly have responsibility for those aspects assigned to it at the Appendix but has no obligation to provide security or back-ups of data other than as stated in the Agreement.

6.3 The Company is not responsible for:

(a) application security (excluding The Company's supplied Software);

(b) the encryption of any data at rest/in transit other than as set out in the Appendix for relevant services;

(c) issues caused by or in respect of the Customer's code;

(d) the administration / management of access and responsibilities for the Customer's end users and for any layers above the Company's infrastructure

The Company does not run any periodic checks on the integrity of Customer's Data or backup data. The Company shall have no responsibility for or any other matters for which the Company's liability is expressly excluded and agreed in writing between the parties due to the nature of the Customer's solution.

6.4 The Customer is not permitted to perform penetration testing on its environment without seeking prior written approval from the Company.

6.5 Although the company uses all reasonable endeavours to ensure the integrity and security of the Server, the Company does not guarantee the Server will be free from unauthorised users and will have no liability for any loss as a result of such unauthorised use.

7. Limitations of Liability

In no event (death or personal injury excepted) will the Company be liable to the Customer for any indirect, incidental or consequential damages arising out of the Web Hosting Services. The Company's liability to the Customer for actual damages for any cause whatsoever, regardless of the form of the action, will be strictly limited to 100% of the Fees paid for the prior 12 months.

8. Limitations of Service

The Company does not guarantee that the Customer or any third parties will be able to access the Company's Server at any particular time. The Customer acknowledges that the need for routine maintenance may result in down time and that the Company cannot control the time or volume of attempts to access the Company's Server.

9. Confidential Information

Each party shall use the same care and discretion, but in no event less than reasonable care and discretion, to prevent disclosure, publication or dissemination of the other party's Confidential Information (defined below) as it employs with similar information of its own; and shall not use, reproduce, distribute, disclose or otherwise disseminate the Confidential Information except in connection with the performance of its obligations under this Agreement.

As used in this Agreement the term 'Confidential Information' means any and all data and information relating to the business of the disclosing party:

(i) of which the receiving party becomes aware as a consequence of or through this Agreement,

(ii) which has value to the disclosing party and is not generally known by its competitors,

(iii) which is treated by the disclosing party as confidential; and

(iv) which has been reduced to tangible form and marked clearly and conspicuously with a legend identifying its confidential or proprietary nature, provided, however, that Confidential Information does not include any data or information which is already known to the receiving party, or which:

(1) has become generally known to the public through no wrongful act of the receiving party;

(2) has been rightfully received by the receiving party from a third party, a breach of an obligation of confidentiality running directly or indirectly to the other party;

(3) has been disclosed pursuant to a requirement of a governmental agency or of law without similar restrictions or other protection against public disclosure, or is required to be disclosed by operation of law;

(4) is independently developed by the receiving party without use, directly or indirectly, of the Confidential Information received from the other party; or

(5) is furnished to a third party by the disclosing party under this Agreement without restrictions on the third party's right to disclose the information. Confidential Information may include, but is not limited to, information relating to the products, processes or financial affairs of the disclosing party.

10. Software

10.1. We may use third-party software libraries in the development of your application. These libraries may have their own known issues or vulnerabilities, and Silkstream Ltd cannot guarantee these applications are entirely free from issues.

Your application may not be compatible with all browsers, devices, or operating systems. It is your responsibility to ensure that the application is compatible with the intended environment.

Data security is of major importance and encourage you to take appropriate measures to protect your data. Silkstream Ltd have implemented reasonable security measures in the development of your application, but we cannot guarantee that the application is entirely immune to security breaches.

While care has been taken to prepare your web application updates, including thorough testing, we cannot guarantee that the code is entirely free of errors. Please thoroughly test your application updates and immediately inform us of any bugs you discover.

Ongoing maintenance and updates may be necessary to ensure the continued security and performance of your application. It is your responsibility to arrange this with us as necessary.

10.2. We grant You a non-transferable, non-exclusive license to use the Software, in source code form only, for Your internal needs, solely on the Hardware provided, and in conjunction with the Services.

10.3. You agree that You will not:

10.3.1. Copy the Software;

10.3.2. Sell, lease, license, transfer or sublicense the Software or the documentation;

10.3.3. Write or develop any derivative or other software programs, based, in whole or in part, upon the Software.

10.4. This Agreement transfers to You neither title nor any intellectual property rights to the Software, documentation, or any copyrights, patents or trademarks, embodied or used in connection therewith, except for the limited license to use in Section 10.1.

10.5. Any third party software is supplied to the You on the basis of the relevant third party's license terms with which You agree to comply.

10.6. We will use Our reasonable endeavours to check the Software for the most commonly known viruses prior to delivery to You. However, You are solely responsible for virus scanning the Software and We give no warranty that the Software will be free from viruses.

10.7. You acknowledge that software in general is not error-free, and agree that the existence of such errors will not constitute a breach of this Agreement.

10.8. Where The Company has used its proprietary CMS (Content Management System) Software for use in your website or database system you agree:

10.8.1. FTP / SSH or any other access to our proprietary CMS code is not permitted under any circumstances;

10.8.2. To pay a monthly or annual fee, in accordance with Section 2 of this Agreement;

10.8.3. Any updates requested by The Customer to the CMS or associated Software developed by The Company can only be accessed or updated by The Company.

11. Domain Name Registration

11.1. We make no representation that the domain name You wish to register is capable of being registered by or for You or that it will be registered in You name. You should therefore not assume registration of Your requested domain name(s) until You have been notified that it has or they have been registered. Any action taken by You before such notification is at Your risk.

11.2. The registration and use of You domain name is subject to the terms and conditions of use applied by the relevant Registry; You shall ensure that You are aware of those terms and conditions and that You comply with them.

11.2.1. By registering a .uk domain name, You enter into a contract of registration with Nominet UK on the terms and conditions published at http://www.nominet.org.uk.

11.3. You shall have no right to bring any claim against Us in respect of any refusal to register a domain name by the relevant registration authority.

11.4. Any administration charge paid by You to Us shall be non-refundable notwithstanding refusal by the Registry to register You desired name.

11.5. We shall have no liability in respect of the use by You of any domain name; any dispute between You and any other person must be resolved between the parties concerned in such dispute. If any such dispute arises, We shall be entitled, at our discretion and without giving any reason, to withhold, suspend or cancel the domain name. We shall also be entitled to make representations to the relevant Registry but will not be obliged to take part in any such dispute.

11.6.We shall not release any domain to another provider unless full payment for that domain has been received by Us.

12. Data Protection

12.1 In this Clause, the following terms shall have the following meanings:

(a) "**controller**", "**processor**", "**data subject**", "**personal data**" and "**processing**" (and "**process**") shall have the meanings given in Applicable Data Protection Law;

(b) "**Applicable Data Protection Law**" shall mean: (i) prior to 25 May 2018, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and (ii) on and after 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

(c) "**Data**" means the Personal Data of the Customer and its customers, where such Personal Data is processed by either party under this Agreement.

12.2 The Customer (the controller) appoints the Company as a processor to process the Data.

12.3 The Company shall process the Data as a processor as necessary to perform its obligations under the Agreement and in accordance with the documented instructions of the Customer (the "**Permitted Purpose**"), except where otherwise required by any EU (or any EU Member State) law applicable to the Customer. In no event shall the Company process the Data for its own purposes or those of any third party.

12.4 The Company shall not transfer the Data (nor permit the Data to be transferred) outside of the European Economic Area ("**EEA**") unless (i) it has first obtained the Customer's prior written consent; and (ii) it takes such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law.

12.5 The Company shall ensure that any person that it authorises to process the Data (including its staff, agents, subcontractors and suppliers) (an "**Authorised Person**") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty), and shall not permit any person to process the Data who is not under such a duty of confidentiality. The Company shall ensure that all Authorised Persons process the Data only as necessary for the Permitted Purpose.

12.6 The Company shall, having regard to the nature of the Services and as more particularly set out in the Agreement, implement appropriate technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "**Security Incident**").

12.7 Upon written request The Company shall provide details of agents, subcontractors or suppliers who process Customer Data on behalf of The Company. If the Customer refuses to consent to the Company's appointment of a third party subcontractor, agent or supplier on reasonable grounds relating to the protection of the Data, then the Company will not appoint the supplier.

12.8 The Company shall so far as technically practicable provide all reasonable and timely assistance to the Customer (at the Customer's expense) to enable the Customer to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to the Company, the Company shall inform the Customer as soon as reasonably practicable providing reasonable details of the same.

12.9 If the Company believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Customer as soon as reasonably practicable and provide the Customer with all such reasonable assistance at the Customer's cost as the Customer may reasonably require in order to conduct a data protection impact assessment.

12.10 Upon becoming aware of a Security Incident, the Company shall inform the Customer without undue delay and shall provide all such timely information and cooperation as the Customer may reasonably require in order for the Customer to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. The Company shall further take all such measures and actions as are technically practicable given the nature of the Services and within its control to remedy or mitigate the effects of the Security Incident and shall keep the Customer up-to-date about all developments in connection with the Security Incident.

12.11 The Company shall notify the Customer as soon as reasonably practical of any legally binding request it receives from law enforcement unless such disclosure is prohibited.

12.12 Upon termination or expiry of this Agreement, the Company shall (at the Customer's election) destroy or return (in accordance with clause 3.11 or 3.10 (as the case may be)) to the Customer all Data (including all copies of the Data) in its possession or control (including any Data subcontracted to a third party for processing). This requirement shall not apply to the extent that the Company is required by any EU (or any EU Member State) law or by virtue of any other lawful grounds to retain some or all of the Data, in which event the Company shall isolate and protect the Data from any further processing except to the extent required by such law.

12.13 The Company shall not be in breach of this Clause 12 if it acts on the instructions of the Customer.

12.14 The Company acknowledges and agrees that the Customer retains all right, title and interest in and to the Personal Data absolutely, including but not limited to any database rights and copyright.

12.15 In acting as the Data controller, the Customer shall:

12.15.1 make due notification to any relevant regulator and shall comply at all times with the Applicable Data Protection Law;

12.15.2 ensure it is not subject to any prohibition or restriction which would:
(a) prevent or restrict it from disclosing or transferring the Personal Data to the Company, as required under this Agreement;

(b) prevent or restrict it from granting the Company access to the Personal Data, as required under this Agreement; or

(c) prevent or restrict the Company from Processing the Customer Data as envisaged under this Agreement;

(d) ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable both parties to Process the Personal Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement in accordance with the Data Protection Laws.

12.16 The Customer acknowledges and agrees that telephone calls to or from the Company to it may be recorded for business purposes, such as for quality control and training.

12.17 The Company and the Customer record their intention that the Company shall not access in any way Customer Data and that the Customer controls the security of the application environment within which the Customer Data is stored.

12.18 The Company may collect, hold, control, use and transmit data obtained from and about the Customer and visitors to the Server in the course of providing the Web Hosting Services. The Customer agrees to such data being so used and further agrees that it may be transmitted to others in accordance with the Company's registration under the Data Protection Act 1998.

13. Force Majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond reasonable control of that party. If such circumstances continue for a continuous period of more than 6 months, either party may terminate this Agreement by written notice to the other party.

14. General

14.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14.2 In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees.

14.3 All notices under this Agreement shall be in writing and shall be deemed given when personally delivered, when sent by confirmed fax, or 3 days after being sent by prepaid first class post to the address as such party last provided to the other by written notice.

14.4 Neither party shall have any right or ability to assign, transfer, or sublicense any obligations or benefit under this Agreement without the written consent of the other (and any such attempt shall be void), except that a party may assign and transfer this Agreement and its rights and obligations under this Agreement to any third party who succeeds to substantially all its business assets.

14.5 If any portion of this Agreement is illegal or unenforceable, such portion(s) shall be excluded from this Agreement to the minimum extent required and the balance of this Agreement shall remain in force and effect and enforceable.

14.6 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement and can only be modified or waived by a subsequent written agreement signed by both parties. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

14.7 The parties confirm their intent not to confer any rights by third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

14.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties accept the nonexclusive jurisdiction of the English courts over any claim or matter arising under or in connection with this Agreement.

Appendix

Data Processor and Data Controller responsibilities:

	Silkstream Ltd (Data Processor)	Customer (Data Controller)
OS Patching	No: Schedule of window OS patches agreed with Customer on launch and set up by Silkstream Ltd. Customer's responsibility to monitor and patch on an ongoing basis.	Yes: Customers can request or implement custom changes to OS patching policies as per their individual requirements
Application Patching/ Overall solution patching	No: On request only for Silkstream Ltd installed application(s) or service(s) does not cover third party software	Yes
Encryption – data at rest	No	Yes: Encryption methods for data at rest are the responsibility of the customer. Customer shall advise Silkstream Ltd of encryption being in place as this can affect data recovery options and Silkstream's ability to comply with its Services. Silkstream Ltd are not responsible for any decryption methods required to access data at rest.
Encryption – data in transit	No: Although Silkstream Ltd can provide a public key cryptography certificate as an additional service if required	Yes
Physical security	Yes	No
Network & Systems passwords (excluding where the Customer creates their own passwords)	Yes	No

Anti-Virus – installation and updates	Yes: Silkstream Ltd provided Anti-Virus only (McAfee VSE)	No
Penetration Testing	No: The Data Centre penetration tests its own networks	Yes: Application penetration testing for Customer
Password refreshing	No	Yes
Third-party Application security/ authentication	No	Yes
Monitoring for security breaches	Yes: For customers selecting as a paid for option only.	Yes
Report security breaches	Yes: Silkstream Ltd would make a report to a customer on becoming aware	Yes: Customer responsibility to report to the Information Commissioners office & relevant regulators
Data Breach response plan	Yes	Yes