

Silverlight Studios - Terms and Conditions

1. INTRODUCTION

Where you wish to use and Silverlight Studios wishes to provide services and deliverables, as described in more detail in a Proposal; you and Silverlight Studios agree that such services and deliverables shall be supplied in accordance with the provisions of the relevant Proposal and these Terms and Conditions.

2. DEFINITIONS USED IN THESE TERMS AND CONDITIONS

"Advance Deposit" means 30% of the Fee;

"Client", "you", "your" means the company or individual named in the relevant Proposal, requesting the services of Silverlight Studios

"Client's Customer Data" means any personal data of the Client's customer(s), collected pursuant to the provision of the Services and processed by Silverlight Studios as part of the Services, such as where website hosting is being provided;

"Client Data" means the Client's personal data, processed by Silverlight Studios in the course of business and in line with its privacy policy;

"Client Materials" means any documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to Silverlight Studios by or on behalf of the Client;

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any other directly applicable European Union regulation relating to privacy;

"Fee" means the cost set out in a Proposal, payable by the Client to Silverlight Studios, for the Services that are listed in the Proposal;

"Intellectual Property Rights" means the following rights, wherever in the world enforceable, including all reversions and renewals and all applications for registration: any patents or patent applications, any trade marks (whether or not registered); inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration, copyright or design rights (whether registered or unregistered), database rights, performer's property rights as described in Part II, Chapter X of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world, any goodwill in any trade or service name, trading style or get-up and any and all other intellectual or proprietary rights;

"Proposal" means the document, sent to the Client by Regency Creative, setting out the Client's specifications, the proposed Services to be provided and the proposed Fee and which, once signed by both parties forms a binding agreement, incorporating these Terms and Conditions;

"Silverlight Studios", "we" means Silverlight Studios;

"Silverlight Studios Own Materials" means software (including all programming code in object and source code form), methodology, know-how and processes and materials in relation to which the Intellectual Property Rights are owned by (or licensed to) Silverlight Studios and which are already in existence or created by or for Silverlight Studios outside of a client project and which are intended to be reused across its business;

"Services" means the Services to be supplied by Silverlight Studios under these Terms and Conditions, as set out in the relevant Proposal, and which may include (without limitation) website build, web hosting, domain registration, graphic design, photography, search engine optimisation and e-mail campaigns; and

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

3. APPOINTMENT AND SCOPE OF SERVICES

3.1 Quotes provided by Silverlight Studios are valid for 28 calendar days from the date of issue. Quotes are based upon the specification given by the Client and relate to the proposed Services set out on the quote.

3.2 The Client acknowledges and accepts that changes to their specification and requirements may result in additional charges and a revised quote.

3.3 Silverlight Studios will not be obliged to perform any work on behalf of the Client until (i) an agreed Proposal has been signed by both parties; and (ii) if requested as part of the quote, the Advance Deposit has been received by Silverlight Studios.

3.4 During the Term, Silverlight Studios shall perform the Services in accordance with the signed version of the Proposal. Additional services and an additional fee for these may be agreed from time to time in writing.

4. TERM

4.1 When the Client signs a Proposal, this confirms the Client's acceptance of these Terms and Conditions and this agreement shall commence on the date on which the signed Proposal is received by Silverlight Studios.

4.2 Silverlight Studios may be providing certain assets, such as a website, or may be providing Services over a longer term, such as web hosting.

4.3 Where Silverlight Studios is providing a fixed set of deliverables under this agreement, the term will end when testing is complete and the Client has approved, or is using, the deliverables of the Services. In the case of a website, the term will end at the end of the 28 day 'fix' period, described in Clause 7.3.

4.4 Where a longer-term Service is being provided, Silverlight Studios will specify an initial fixed term on the Proposal. This fixed term will automatically roll over into successive fixed terms, of equal length. The term will end when the Client notifies Silverlight Studios, in writing, at least 30 days before the end of the then current term, that they wish to terminate.

4.5 Any agreement may be terminated sooner in accordance with the terms of clause 15.

5. CLIENT OBLIGATIONS

5.1 The Client will give Silverlight Studios full and clear briefings as to its specifications for the Services.

5.2 The Client shall promptly supply Silverlight Studios with any Client Materials that are required for the provision of the Services.

5.3 The Client warrants and undertakes that:

- (i) it has full power and authority to enter into this agreement and in doing so, it will not be in breach of any obligation to a third party;
- (ii) it has all rights and licences in place to enable use by Silverlight Studios of all Client Materials and that the use of the same will not breach the Intellectual Property Rights of any third party;
- (iii) the Client Materials comply with all applicable laws and regulations and are accurate including, without limitation, in relation to all facts around the Client's products and/or services.

5.4 If the Client does not fulfil its obligations under this agreement, to the extent that such failure prevents Silverlight Studios from performing any of its Services, Silverlight Studios shall not be liable to the Client for the same.

5.5 Silverlight Studios reserves the right to refuse to handle any Client Materials that contain any material which:

- (i) is unlawful or inappropriate;
- (ii) contains pornographic content;
- (iii) relates to religious or political organisations;
- (iv) contains a virus or hostile program;
- (v) constitutes harassment, racism, violence, obscenity, harmful intent or spamming; and/or
- (vi) constitutes a criminal offence, infringes privacy or copyright.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Silverlight Studios acknowledges that ownership of Client Materials and ownership of all Intellectual Property Rights in any Client Materials shall remain vested in the Client or its licensors. The Client hereby grants to Silverlight Studios a non-exclusive licence to use the Client Materials for the purposes of providing the Services and the use set out in Clause 6.5.

6.2 Subject to Silverlight Studios receiving payment of the Fee, Silverlight Studios grants to the Client a licence to use (i) the material created pursuant to the Services (including, for the avoidance of doubt, any source code and images created for the Client); and (ii) the Silverlight Studios Own Materials for the purposes set out in the Proposal. For the avoidance of doubt, this means that if the Fee has not been paid, the Client may not use the deliverables of the Services.

6.3 In the event that the Client wishes to use the deliverables provided by Silverlight Studios (including the design files that comprise them) or the Silverlight Studios Own Materials in any way outside of the purpose for which they were created (for example to create internal documents or reports), the Client shall notify Silverlight Studios of the intended use. Silverlight Studios will confirm whether the same are available for the intended use and will advise the Client of the fee for such use. The Client may only use such materials for the additional use once the additional fee has been paid. The Client hereby indemnifies and keeps Silverlight Studios indemnified against any losses suffered by it as a result of the Client or its affiliates breaching any such restrictions.

6.4 Certain images and other materials provided by Silverlight Studios as part of the Services may have been purchased under licence from third parties, such as stock image suppliers. These materials, including images, are generally only licensed for a single use, such as use on a specified website, and may not be used in publicity material. It is the Client's responsibility to ensure that third party materials are only used for the purpose that they are provided. If the Client wishes to use any material that has been provided by Silverlight Studios for other purposes, it should contact Silverlight Studios for confirmation of whether this is permitted or whether an additional fee is payable for the additional use. The Client may only use such materials for the additional use once the additional fee has been paid. The Client hereby indemnifies and keeps Silverlight Studios indemnified against any losses suffered by it as a result of the Client or its affiliates breaching any such restrictions.

6.5 Silverlight Studios shall be entitled, during and after the Term, to use any deliverables from the Services and the Client name and logo in its marketing materials, for the purposes of promoting its work and its business.

6.6 For the avoidance of doubt, Silverlight Studios shall not be liable under or in connection with this agreement for any modifications, adaptations or amendments to any materials and/or deliverables that have been made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the deliverables arises due to the acts or omissions of the Client and/or its associates.

7. DESIGN SPECIFICATIONS AND FUTURE SUPPORT

7.1 Silverlight Studios makes every effort to design pages which display acceptably in the most popular current browsers, but cannot accept responsibility for pages which do not display acceptably in newer versions of browsers that are released after pages have been designed.

7.2 Silverlight Studios is not responsible for the Client's on-going web site promotion. Should the Client require the site to be promoted on an ongoing basis by Silverlight Studios, a separate Proposal must be agreed. The order in which websites are ranked in the natural search results is controlled by the search engines. While Silverlight Studios can optimise the Client's site, it is unable to make any guarantees about the success of any search engine optimisation.

7.3 A website is provided to and accepted by the Client as a fully functioning, completed work. Silverlight Studios warrants that the website will perform substantially in accordance with the Client's specification for a period of 28 calendar days from acceptance of the website by the Client. Therefore, Silverlight Studios will provide 28 calendar days of edits from the date that the Client accepts the website. Any additional support, following this 28-day period, can be provided upon request and for an agreed fee, charged in increments of 1 hour. No guarantee of future support is given unless an ongoing support package is negotiated.

7.4 Silverlight Studios cannot be held responsible for problems that develop on completed sites as a result of illegal activity such as hacks.

8. COMPLIANCE WITH ECOMMERCE, ACCESSIBILITY AND OTHER REGULATIONS

8.1 Silverlight Studios designs websites in accordance with the Client's specification. It is the Client's responsibility to ensure that the website and its content comply with standing regulations. Silverlight Studios cannot accept responsibility for any failure to comply with regulations including, but not limited to, those related to accessibility, selling online, ICO EU cookie laws, GDPR or those related to a specific business or trade. Silverlight Studios can research these on the Client's behalf, upon request, but in any business where complex compliance issues exist, Silverlight Studios recommends that the Client takes independent legal advice.

9. PROVISION OF WEBSITE HOSTING AND EMAIL

9.1 While Silverlight Studios will use reasonable endeavours to ensure the integrity and security of the server and to make the server and Services available to the Client at all times; they do not guarantee that the server will be uninterrupted, error-free and/or free from vulnerabilities, unauthorised users or hackers.

9.2 Silverlight Studios creates regular backups of the server but the Client should take out and maintain adequate insurance cover in respect of any loss or damage to information stored on the server.

9.3 The Client represents, undertakes and warrants to Silverlight Studios that it will use the website created and/or hosted by Silverlight Studios only for lawful purposes. In particular, the Client represents, warrants and undertakes that it will not use the server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will it authorise or permit any other person to do so.

9.4 The Client will not, either on its website or in its emails, post, link to or transmit:

- (i) any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, blasphemous, profane or otherwise objectionable in any way;
- (ii) any pornographic material and nude images (apart from those for education and health purposes);
- (iii) any material containing a virus or other hostile computer program;

(iv) any material which constitutes, or encourages the commission of, a criminal offence or which infringes any Intellectual Property Rights of any person; and/or

(v) anything that breaches laws of the country in which the website operates.

If such information is found, Silverlight Studios will be entitled to suspend the Client's account immediately.

9.5 The Client will not send bulk email whether opt-in or otherwise from Silverlight Studios' network. Nor will it promote a site hosted on the network using bulk email. Spamming is strictly prohibited. Silverlight Studios reserves the right to block the email address sending any unsolicited email.

9.6 The Client will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory. Silverlight Studios reserves the right to remove any material which it deems inappropriate from the Client's website without notice. Silverlight Studios does not host Warez or illegal media content.

9.7 If the Client exceeds their hosting package allowance, they will automatically be moved onto a hosting package that is more suitable for them on their next renewal date.

9.8 The Client shall keep secure any identification, password and other confidential information relating to their account and shall notify Silverlight Studios immediately of any known or suspected unauthorised use of their account or breach of security, including loss, theft or unauthorised disclosure of passwords or other security information.

9.9 The Client shall observe the procedures which Silverlight Studios may from time to time share with them and shall make no use of the server that is, or can be reasonably assumed will be, detrimental to Silverlight Studios' other customers. The Client shall procure that all mail is sent in accordance with applicable legislation (including Data Protection Legislation) and in a secure manner.

9.10 Silverlight Studios shall not be liable for non-receipt or misrouting of email or for any other failure of email.

10. DOMAIN REGISTRATION SERVICES

10.1 For the avoidance of doubt, this clause applies in addition to any specific instructions in a Proposal regarding domain name registration.

10.2 Silverlight Studios registers the domains using the details that the Client provides.

10.3 Silverlight Studios uses preferred suppliers to register all domain names. The Client should familiarise itself with the terms and conditions of the relevant supplier, which are linked to in the Proposal. It is a term of this agreement that the Client complies with that supplier's terms. Silverlight Studios will not be liable for any loss experienced by the Client as a result of the Client causing a breach of the supplier's terms and conditions.

10.4 Whilst Silverlight Studios can register the Client's domain name(s), the Client should keep a note of key dates in relation to maintaining future registration and renewal payments for their domain name(s). If the Client wishes to cancel a domain name registration, the domain name provider will have specific terms around when this cancellation must be received. It is the Client's responsibility to ensure that it has read and understood the cancellation provisions and to instruct Silverlight Studios to send a cancellation request in the form and at the time prescribed by the relevant domain name provider. Note that if a cancellation request is not received in time, the full registration amount may be charged.

11. PAYMENT

11.1 The Client must pay the Fee in one of the following ways:

(i) Bank Transfer

The Client can find the bank details to make a transfer on their invoice.

(ii) PayPal

In some cases, the Client can pay their invoice via PayPal by using the 'Pay Now' link on their invoice.

11.2 For Services where the Client is committing to a fixed term contract, such as web hosting, the Client may be able to pay monthly, quarterly or annually. If this is an option, it will be set out on the relevant Proposal.

11.3 Payment of the Fee (or any proportion thereof) is due within 14 calendar days of the relevant invoice issue date.

11.4 Where Silverlight Studios have created a website as part of the Services, full publication of the website will only take place only after full payment of the Fee has been received.

11.5 The Client will receive automated reminder emails and in some cases a phone call to remind them of outstanding payments if they are not received when due. If payment is still not received, the Client will be issued with a final reminder.

11.6 Accounts that have not been settled within 14 calendar days of a final reminder will incur a late payment charge of 10% of the amount outstanding. In addition, the Client will also be charged statutory interest at a rate of 8% above the base rate of the Bank of England, calculated from the due date up to the date of payment.

11.7 Any content on a Client's website may be removed if payment is not received when due. Once payment has been made, Silverlight Studios may charge a restoration fee to have the site restored.

12. PRIVACY POLICY

12.1 In providing the Services to the Client, Silverlight Studios will comply with its Privacy Policy that is available on its website at www.silverlightstudios.co.uk/privacy.

13. DATA PROTECTION

13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation in performing their duties or exercising their rights under this agreement.

13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, in respect of Client Data and Client's Customer Data, the Client is the controller and Silverlight Studios is the processor of such data. Silverlight Studios will process Client's Customer Data only for as long as it required to provide the relevant Services. Following expiry of these Services, Silverlight Studios will not retain this data and will either return or delete it.

13.3 The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client's Customer Data to Silverlight Studios for the duration and purposes of this agreement.

13.4 Silverlight Studios shall, in relation to any Client Data and/or Client's Customer Data processed in connection with the performance of its obligations under this agreement:

- (i) process that personal data only on the written instructions of the Client unless otherwise required by law (in which case Silverlight Studios shall promptly notify the Client);
- (ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss;
- (iii) only transfer any personal data outside the European Economic Area if it has secured appropriate safeguards in relation to the transfer;
- (iv) assist the Client, at the Client's cost, in responding to any request from a data subject (as defined in the GDPR);
- (v) notify the Client without undue delay on becoming aware of a personal data breach that relates to the Client;
- (vi) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination or expiry of the agreement unless required by law to store the personal data; and
- (vii) maintain complete and accurate records and information to demonstrate its compliance with this clause.

13.5 Where Silverlight Studios appoints a third party to support it to fulfil the provision of Services, the Client hereby consents to Silverlight Studios appointing that company as a third-party processor of personal data under this agreement. Silverlight Studios confirms that it has entered or (as the case may be) will enter into a written agreement with the third-party processor. As between the Client and Silverlight Studios, Silverlight Studios shall remain liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause, in so far as they relate to GDPR.

13.6 Where, in accordance with the provisions of Article 82 of the GDPR, both parties are responsible for the act, or omission to act, resulting in the payment of

losses by a party, or both parties, then a party shall only be liable for that part of such losses which is in proportion to its respective responsibility.

14. LIABILITY

14.1 Subject to clause 14.2, Silverlight Studios' maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed 150% of the Fee.

14.2 Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.

14.3 Subject to clause 14.2, in no event will either party be liable under or in connection with this agreement for:

- (i) loss of actual or anticipated income or profits;
- (ii) loss of goodwill or reputation;
- (iii) loss of anticipated savings; or
- (iv) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

15. TERMINATION OF SERVICE

15.1 Silverlight Studios has the right to suspend any Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 days you will be notified of the reason.

15.2 Silverlight Studios may terminate this agreement:

- (i) with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this agreement on the due date for payment and remains in default 14 calendar days after being sent a final reminder; and

(ii) on 60 days written notice, for any reason.

15.3 Either party may terminate this agreement with immediate effect by giving written notice to the other if the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 calendar days after being notified in writing to do so.

15.4 The Client may request to cancel the production of a website, or part thereof, in writing. Silverlight Studios will take all reasonable steps to comply with any such request provided that Silverlight Studios is able to do so within its contractual obligations to any suppliers and/or other third parties. In the event of any such cancellation the Client will reimburse Silverlight Studios for all Fees up to the date of cancellation, together with any third-party charges or other expenses or costs incurred by Silverlight Studios or to which Silverlight Studios is committed.

16. GENERAL TERMS

16.1 Each party shall protect the confidential information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.2 Both parties shall comply with the Bribery Act 2010 and any guidance issued by any governmental department relating to such legislation.

16.3 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.4 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

16.5 This agreement does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

16.6 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

16.7 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.8 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.9 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.10 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16.11 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

16.12 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

16.13 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

16.14 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

Silverlight Studios reserves the right to change or modify any of these terms or conditions at any time. Should clarification of any of the above be required please contact Silverlight Studios.

www.silverlightstudios.co.uk