

# Terms and Conditions

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Private and Confidential

Prepared by Sequence

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## VERSION CONTROL

To ensure document accuracy and integrity is maintained throughout its life cycle, a version control system is utilised. All changes to the document are to be recorded in the following table structure, with the users incrementing the appropriate version number in the document version control table, front cover and page header/ footer where appropriate.

<b>Versio n</b>	<b>Date</b>	<b>Name</b>	<b>Organisatio n</b>	<b>Notes</b>
1.0	20/3/03	Chris Haresign	Sequence	Preliminary draft from Hugh James Solicitors
1.1	25/2/03	Allie Symonds	Sequence	Modifications to 1 <sup>st</sup> draft
1.2	17/04/03	Allie Symonds	Sequence	Final version
1.3	21/07/04	Allie Symonds	Sequence	Revision of Clause 18.8
1.4	25/05/05	Allie Symonds	Sequence	Further amendments
1.5	20/08/05	Allie Symonds	Sequence	Rebrand

## **1. Terms and Conditions (“Conditions”)**

- 1.1. These Conditions apply to all contracts for the provision of the Services by us
- 1.2. By completing and submitting an Order form you acknowledge that you have read and accepted these Conditions as controlling the provision of the Services by us to you.
- 1.3. Upon receipt by us of a properly completed Order we will either issue an Order acceptance or an Order refusal. No Order shall be deemed accepted unless and until we issue an Order acceptance to you and, where any payment is due prior to the Services being performed, we are in receipt of such payments provided for in clause 4.
- 1.4. We reserve the right to amend and update these Conditions at anytime without notice

## **2. Supply of the Services**

If we accept your Order in accordance with clause 1.3, we shall provide the Services to you subject to these Conditions and the Service policies issued on the Website from time to time.

## **3. Website Development**

Where you Order and we accept the Order for Website Development services:

- 3.1 We shall develop a website based on your requirements provided for in the Order. Where you wish to change any of your requirements following submission of the Order and prior to delivery of the website and we agree to that change we increase the charges to take into account any additional work required by us because of the change.
- 3.2 Following completion of the website we will inform you that the website is available for viewing. You will have 7 days to inform us as to whether we have failed in any respect to comply with your Order. If we have failed to comply with the Order without prior agreement you may either accept the website as delivered or require us to make such amendments as necessary to so comply.
- 3.3 You acknowledge and agree that we do not operate or exercise control over and accept no responsibility for the content of the Website or any your Material received in accordance with the provision of these Services.

## **4 Payment**

- 4.1 Unless agreed otherwise you will pay the Charges for the Services in the manner specified in the Order
- 4.2 All charges are exclusive of VAT
- 4.3 If payment is not made on the due date we shall be entitled, without limitation of any other rights that We may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate from time to time of Barclays Bank plc from the due date until the outstanding amount is paid in full
- 4.4 We reserve the right to suspend the provision of Services to you in the event that any payments are outstanding and we will not be obliged to continue to provide the Services until full payment of any outstanding amounts has been made

## **5. Your Obligations**

- 5.1 You warrant that Your Information is true and correct, and that any future additions or alterations to your details and information will be true and correct, and submitted in a timely manner. We will not be liable to you for any loss arising from any instructions or Order supplied by you which is incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from the late arrival or non arrival of any form or other fault of yourself
- 5.2 You warrant that the Services are provided solely for your use and you must not without our written permission transfer or sell or attempt to transfer or sell your access to or use of the Services or any of your rights or obligations under this Agreement.
- 5.3 You agree that your use of the Services will not
  - (a) be false, inaccurate or misleading (including but not limited to the provision of Your Information)
  - (b) be fraudulent
  - (c) support or maintain businesses that use or support the use of unsolicited commercial e-mail
  - (d) infringe any third party's copyright, patent, trade mark, trade secret or other proprietary rights or rights of publicity or privacy and that you have obtained all necessary consents, approvals and licences for the use of any third party property
  - (e) violate any law, statute, ordinance or regulation or licence applicable to you

- (f) create a false identity for the purpose of misleading others as to your identity
  - (g) be defamatory, libellous, unlawfully threatening or harassing against us or any third party
  - (h) be obscene or contain pornography
  - (i) contain any viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage detrimentally and interfere with surreptitiously intercept the services or any part thereof
  - (j) create any liability for our company or cause our company to lose in while or in part the services of our ISP or other suppliers
- 5.4 You must inform us immediately of any claim that may be made or alleged against in connection with the use of the Services
- 5.5 You must not allow the serving of any additional and distinct website from an individual virtual server by any means
- 5.6 You warrant that you will:
- (a) keep any user name, password and securing phrase secure
  - (b) take reasonable steps to minimise any risk of security breaches in connection with the services
  - (c) notify us of any securing breaches
  - (d) comply with our security checks

## **6. Our Obligations**

- 6.1 We will ensure that Your Information is treated in accordance with standards that are not less than the standards required by the Data Protection Act 1998.
- 6.2 We will provide the Services with the reasonable skill and care of a competent provider of services over the Internet. We do not guarantee that the provision of the Services will be error-free or fault-free. In the event that you should notice that there is an error with respect to your access to or use of the Services, you should report it to us at once. Once an error or a fault in the provision of the Services is reported to us within a reasonable timeframe of the site going live, we will endeavour to correct it as soon as we reasonably can.
- 6.3 We reserve the right to change the specifications of the Services or suspend the provision of the Services for operational reasons such as repair, maintenance or

improvement or because of an emergency. We will endeavour to restore the Services as soon as we reasonably can after any change or suspension.

- 6.4 We will take reasonable steps to ensure that the Services are free of any viruses, but we recommend that you use your own virus protection software.

## **7. Rights**

- 7.1 You shall have a royalty free licence, coming into effect on the payment of the Charges, to use the Content Management Solution in the UK for the Purpose. Such licence shall be automatically terminated if:
- (a) You do not pay any of the Charges due at any time under this contract in full by the due date; or
  - (b) You attempt to use the Content Management Solution except for the Purposes; or
  - (c) You alter, modify, adapt or translate the whole or any part of the Content Management Solution in any way whatsoever or permit the whole or any part of the Content Management Solution to be combined with or become incorporated in any other computer program or decompile, disassemble or reverse engineer the same or attempt to do any of such things. Except to the extent and in the circumstances expressly required to be permitted by law; or
  - (d) this Agreement comes to an end for whatever reason.
- 7.2 For the avoidance of doubt the Rights in the Content Management Solution (including the source and object codes) and any related documentation shall be and remain vested in us and you agree to effect and maintain adequate security measures to safeguard the Content Management Solution from access or use by any third party.

## **8. Eligibility**

Our Services are available only to Users who can form legally binding contracts under the laws of England and Wales. Without limiting the foregoing, the Services are not available to minors. If you do not qualify, please do not apply to use the Services.

## **9. Privacy Policy and Data Protection Issues**

- 9.1 It is our policy to respect the privacy of our clients. We will not disclose Your Information unless we are specifically required to do so by law, or in response to a

valid, legal request by a law enforcement or governmental authority or as may otherwise be authorised by you.

- 9.2 We shall adhere to the privacy policy referred to in this clause 9 and by agreeing to these Conditions, you also are explicitly consenting to us handling Your Information as provided under this policy.
- 9.3 By accepting these Conditions, you acknowledge that, we (or others acting on our behalf) must store, host, and otherwise process Your Information. You also acknowledge that we may send such data outside of the your national jurisdiction for such processing (including, in the case of Users resident in the European Union, outside of the European Economic Area) by parties acting on our behalf and that as a result you might no longer have any rights under the data protection legislation applicable in your jurisdiction.
- 9.4 This Clause 9 will remain in effect after the termination of this Agreement.

## **10. Termination**

- 10.1 Without limiting other remedies, We may immediately issue a warning to you, or terminate your licence to access or use of the Services:
- (a) if You breach any terms of this Agreement or of the documents it incorporates by reference;
  - (b) if We are unable to verify or authenticate any of Your Information in any circumstances where you have provided Your Information; or
  - (c) if We believe that your actions may cause legal liability for You, our users or us.
  - (d) you are subject to a resolution for winding up or a petition for bankruptcy or liquidation or you propose to enter into any arrangement or composition with assignment with or for creditors or a receiver or a liquidator or trustee in bankruptcy is appointed over any of your assets.

## **11. Effect of Termination**

- 11.1 On termination of this Agreement
- (a) we will immediately terminate your licence giving you access to the Services
  - (b) any payment due under these condition will remain due and if already paid, will be non refundable

## **12. Warranties**

- 12.1 We warrant to you that the Services shall be provided using reasonable care and skill as would be expected of a provider of these Services
- 12.2 We do not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise for any part of the Services being provided by a third party but where possible We will assign to you the benefit of any warranty, guarantee or indemnity given by a third party to you for that part of the Service

## **13. Limitation of Liability**

- 13.1 We accept liability for death or personal injury resulting from our negligence and nothing in this Agreement shall apply to limit or exclude such liability.
- 13.2 We are not liable to you, either in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings, or for any indirect or consequential loss or damage or for any destruction of data, however such loss may be suffered.
- 13.3 Our liability to you in contract, tort (including negligence) or otherwise in relation to or arising out of this Agreement is limited to the Charges paid in the following 12 months for any one incident or series of related incidents.
- 13.4 You agree and acknowledge that you are in a better position than us to foresee and evaluate any potential damage or loss that you may suffer in connection with the provision of the Services. Therefore we cannot adequately insure in respect of any such liabilities.
- 13.5 If we are unable to perform any obligation under these Conditions because of a matter beyond our reasonable control such as lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving our employees), or acts of local or central Government or other competent authorities, or other events beyond the reasonable control of our suppliers, we will have no liability for that failure to perform.
- 13.6 Each provision of these Conditions excluding or limiting liability operates separately. If any provision or part of a provision is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

## **14. Indemnity**

You agree to indemnify and hold us and our subsidiaries, affiliates, officers, directors, agents, and employees, harmless from any claim or demand, including reasonable lawyers' fees, made by any third party due to or arising out of your breach of any terms of these Conditions or of the documents it incorporates by reference, or your violation of any law or the rights of a third party.

## **15. Notices**

Any notice to be served on us by You shall be sent by prepaid recorded delivery or registered post or by telex or by electronic mail and shall be deemed to have been received by us within 72 hours of posting or 24 hours if sent by telex or by electronic mail to the correct telex number or our registered office address. We will send all notices to your current address according to Your Information unless you indicate otherwise to us in writing

## **16. Law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales, and each of the parties submits to the exclusive jurisdiction of the courts of England and Wales.

## **17. General**

If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck out and the remaining provisions shall remain enforceable. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. This Agreement sets forth the entire understanding and agreement between us concerning its subject matter.

## **18. Definitions**

- 18.1 "Content Management Solution" means the code being used by you to update and manage your Website
- 18.2 "Rights" means any and all patents, rights in trade mark, rights in domain names, rights in designs, copyrights and database rights or other intellectual property rights, for the full term of those rights, world wide

- 18.3 “Services” means the services of domain name registration, website hosting and development that we may provide to you under this Agreement in accordance with the relevant product specifications for each specific service
- 18.4 “Charges” means the charges shown in our charges document or other published literature relating to the Services from time to time
- 18.5 “Website” means the Internet Web Pages to be constructed , maintained and transmitted by us under the website hosting and development services
- 18.6 "We/us" means Sequence Collective Limited of Fitzalan House, Fitzalan Road, Cardiff, CF24 0EL
- 18.7 “Order” means the request form you complete for the Services.
- 18.8 “Purpose” means managing and updating one copy of your Website on no more than one physical server and for one processor only, at any time.
- 18.9 "You/your" means the user of the Services that we make this Agreement with, and includes anyone reasonably appearing to us to be acting with that User's authority or permission.
- 18.10 “Your Information” means the information you provide us on registration and any other information disclosed by you in any secure area of the Site.