

# Terms & Conditions of Service for Succinct Solutions Digital Customers

Document Number  
SS-TCS-DC-17 V2

In agreeing to the provision of any and all services from Succinct Solutions, herein known as Succinct, The Client is deemed to have read and understood these terms and conditions.



**Improve**



**Grow**



**Train**



## 1 Provision of Service

- 1.1 The Contract between Succinct and The Client incorporates these Terms and Conditions and covers the provision of service by Succinct to The Client.
- 1.2 Any date proposed either by The Client or Succinct for the provision of services shall be treated as an estimate only and shall be subject to any delay caused by the acts or omissions of any Third Party over which the parties have no control. If either Party becomes aware of the possibility of any delay, they shall immediately inform the other Party and each shall take any reasonable steps as appropriate to prevent such delay.
- 1.3 Succinct reserve the right to alter or amend these Terms and Conditions at any time by giving notification of any amendment. Notification will be deemed to have been given by displaying the amended Terms and Conditions on the Succinct Website and shall take effect from the date of the last amendment as set out at the foot of the Terms and Conditions.

## 2 Definition and application

In these Terms and Conditions:

"Client" - means The Client with whom Succinct makes the Contract including a person reasonably appearing to Succinct to act with that Client's authority.

"Client Material" – means the proprietary material provided by The Client (including, but not limited to, images, artwork, documentation, video footage and audio files) to Succinct in order for Succinct to fulfil its obligations under this Contract.

"CMS" - means the Content Management System application, which is used by The Client to edit, upload and delete material from the Website.

"Confidential Information" - means any and all information of any kind whatsoever disclosed by either Party to the other prior to, or after the date of, this Contract in whatever form including, but not limited to, oral, written, electronic, graphic or electromagnetic form (and including without limitation any notes, information or analyses derived from such information however it is produced) and which may reasonably be considered as confidential information of the Party that discloses it.

"Contract" - means any Contract for the provision of service between The Client and Succinct that expressly or impliedly incorporates these terms and conditions.

"Deliverable" – means a document, report, software, or other tangible work or design asset that forms part of the Services to be provided by Succinct.

"Domain"- means an Internet address, which has been registered with a reputable domain registrar on behalf of The Client.

"Succinct" - means Succinct Solutions whose registered office is 16 Testbourne Road, Totton, Southampton, Hampshire, SO40 8FE United Kingdom.



"Succinct Website" – means the Internet Website of Succinct at <http://www.succinctsolutions.co.uk>.

"Hosting" - means the making available of The Client's Website on the World Wide Web.

"Illegal" - means any act or acts, which are capable of breaching the criminal law of the Jurisdiction.

"Look and Feel" - means the style, navigation, or design characteristics of the Website.

"Production Files" – means the files with the extension .dir, .fla, .png, .edf, .ai, .asp, .aspx, .js, .ppj, .aef, .swt, .eps, .psd, .mdf, .vbp, .dll, .bas, .asa, .cfm, .cfml, .aspx, .cls, .frm, .cab, .bat, .ocx, .sql, .mdb, .ssi, .txt, .frx, .vbw, .max, .p3d, .t3d, .3ds, .as, .cfc, .vsd, .vbproj, .sln, .vb, .resx, .user, .suo, .xml, .xsd and .exe.

"Quote or Quotation" – means the official quotation document provided to The Client for the provision of services by Succinct to The Client.

"Renewal Date" - means the date of renewal of the Contract between The Client and Succinct, as defined per the terms of the Contract.

"Server" – means the Server machine upon which the Website files reside which serves out information to users of the Website.

"Services" – means the services and deliverables that are to be provided by Succinct under this Contract.

"SLA" – means the Service Level Agreement to maintain Server uptime.

"Specifications" – means the specification of the Services as outlined in the Contract.

"Studio Day (Single)" – means one (1) day of Succinct studio time consisting of between one 1 member of the Succinct production team working on the project at any one time.

"Studio Day (Double)" - means one (1) day of Succinct studio time consisting of two (2) members of the Succinct production team working on the project at any one time.

"Upload" - means the transfer of computer files to the Server for publication on the Internet and WWW.

"URL" - means Uniform Resource Locator which is a unique number associated with a name on the WWW, i.e. <http://www.succinctsolutions.co.uk> is the URL for Succinct.

"Website" - means the URL of The Client and/or the accompanying webspace allocation for this URL for The Client on the Succinct Server network.

"WWW" - means World Wide Web service available on the Internet.

## 3 Succinct's Responsibilities

- 3.1 In consideration of and subject to the payment by the Client of all sums due to Succinct, Succinct shall provide the Services on the Terms and Conditions set out in this Contract and in accordance with the specifications laid out therein.



### 3.2 Succinct shall:

- 3.2.1 Apply all necessary skill and expertise in the performance of the Services.
- 3.2.2 Provide the Services in a timely and efficient manner and to a professional standard which is not less, in any respect, to the standards generally observed in the industry for similar services.
- 3.2.3 Comply with The Client's quality and other standards as directed by The Client.
- 3.2.4 Provide the personal computing facilities necessary to complete its obligations under this contract.
- 3.2.5 Where services are charged for on a time basis, maintain an accurate record of periods worked for The Client under this Contract and to provide to The Client, on their request, written reports detailing work provided and the time taken to do so.
- 3.2.6 Notify The Client as far as possible in advance of any periods during which its personnel are or will be unable to provide the Services outlined in this Contract due to holiday, sickness or Third Party commitments. The Client's consent to holiday absences is not required but Succinct will take into account The Client's requirements when approving absences.
- 3.2.7 Succinct's method of working shall be at its own discretion but it will be directed in the overall provision of the Services by The Client and will comply with all reasonable directions given by The Client.

## 4 The Client's Responsibilities

- 4.1 The Client shall deliver to Succinct the Client Material in a timely manner and is responsible at all times for the accuracy and legality of the content of the Client Material and all amendments to it.
- 4.2 The Client shall evaluate the Deliverable that Succinct delivers to The Client to verify that each conforms to the Specifications.
- 4.3 Once The Client has completed its evaluation of the each of the Deliverables, The Client shall notify Succinct as to whether or not it considers the Deliverable to conform to the Specifications and if it does not, of the ways in which it does not conform. If The Client notifies Succinct that it considers that the deliverable conforms to the Specification, then The Client shall have accepted that Deliverable.
- 4.4 If The Client notifies Succinct that it considers that any Deliverable does not conform to the Specifications, then Succinct shall modify that Deliverable so that it does conform to the Specifications and such modifications shall be included in the revised Deliverable to The Client. Succinct shall not be entitled to charge The Client in respect of the reasonable time spent modifying a Deliverable under this subsection or in respect of any reasonable costs or expenses incurred by Succinct in modifying a Deliverable under this subsection.
- 4.5 The Client agrees that its acceptance of a Deliverable shall be final and any further modification required by Succinct post acceptance shall be considered out of scope works and Succinct shall be entitled to charge The Client for reasonable time spent modifying a deliverable or in respect of any reasonable costs or expenses incurred by Succinct in modifying a Deliverable under this subsection.



- 4.6 Following the provision of a Succinct CMS application, it is The Client's obligation to ensure that neither the Client nor any third party authorised by the client to access the website uploads a virus which could infect a Succinct or Third Party Server. The Client must not knowingly or otherwise allow a virus to enter the Internet community by allowing Internet users to download files containing viruses from their Website, or if the site provides the facility for Internet Users to upload files then the client is liable for any damages resulting from the uploading of these files.
- 4.7 It is The Client's obligation to ensure that any material being uploaded to The Client's Website, either by Succinct or by The Client directly is not in breach of copyright. Succinct accepts no responsibility for The Client's actions in either uploading material to any Succinct authorised webspace, or to any other webspace on any Server on the WWW.
- 4.8 The Client agrees not to upload any material, which would be considered to be contrary to public decency and morality. Succinct reserve the right to randomly inspect Websites and in the event that any unauthorised material has been uploaded to that Website, Succinct reserve the right to inform the authorities and to terminate this Contract forthwith. Uploaded material would expressly include, but not be limited to, pornographic, barbaric and overtly tasteless material.
- 4.9 The Client agrees that it shall not cause or permit or in any way assist in any unauthorised publication, any dissemination of any defamatory material or any material which could be considered to be in breach of the criminal laws of the Jurisdiction.
- 4.10 The Client agrees to keep secure and confidential all login names and passwords provided by Succinct to The Client. In the event of The Client's login name and password being disclosed to an unauthorised person, The Client shall inform Succinct immediately so new login names and password can be issued. Succinct accept no responsibility for any liability arising from the aforementioned disclosure.
- 4.11 The Client agrees not to do any act or omission, the result of which would have the effect of bringing Succinct into disrepute.
- 4.12 The Client shall provide Succinct with the necessary content, materials, sign off and feedback information as appropriate to enable Succinct to perform its obligations within the timeframe laid out in the Contract. Succinct shall not be responsible for any failure or delay in performance of its obligations under the Contract where the provision of the aforementioned material is not forthcoming. Furthermore, in the event of such failure or delay to provide said material, Succinct shall be entitled to invoice for any remaining monies, and/or studio time allocated, due under the terms of the Contract, as studio time is pre-booked in.

## 5 Look and Feel

- 5.1 Succinct shall provide The Client with the number of Look and Feel concepts as detailed in the Contract or Quote following receipt of a design or technical brief



from The Client. Succinct shall modify one Look and Feel as directed by The Client.

- 5.2 Succinct shall be entitled to charge The Client for reasonable time spent developing additional Look and Feel concepts other than those provided for in the Contract or Quote document, subject to written approval by The Client.

## 6 Warranties and Indemnities

- 6.1 Succinct represents warrants and covenants that, and for the avoidance of doubt, subject always to the provisions of Clause 7.
- 6.1.1 Save as regards the use of any materials provided by The Client, the use of the Deliverables in accordance with the terms of the Contract shall not infringe any patent, trade mark, copyright, moral right, official secret, trade secret, or other proprietary intellectual property right of any third party.
- 6.1.2 Save as regards the use of any materials provided by The Client, the Deliverables shall not be libellous, obscene, or blasphemous, and shall not violate any rights of privacy and/or publicity of any third party and the use of the Deliverables in accordance with the terms of the Contract shall not otherwise be unlawful or illegal.
- 6.1.3 The Deliverables shall in all material respects provide the facilities and the functions set out or referred to in the Contract.
- 6.1.4 Any software included in the Deliverables and the Third Party Software (if any) shall: (i) properly record and process data which comprises, includes or is referenced by any date on or after 1 January 2000 (where relevant); and (ii) shall not contain a self-replicating computer program which is designed to cause or which is likely to cause damage to the user's files and/or annoyance to the user.
- 6.1.5 Succinct has the full and exclusive right and power to; (i) enter into and perform Succinct's obligations under the Contract; and (ii) assign to The Client (or such person or persons as Client may on a case by case basis nominate in writing prior to such assignment) the copyright and other intellectual property rights (including any neighbouring rights) in the Deliverables as laid out in this Contract.
- 6.1.6 The licenses in respect of the Third Party Software (if any) shall not limit or restrict the use or exploitation of the Deliverables in accordance with the terms of this Contract.
- 6.1.7 No instruction, advice, or information contained in the Deliverables shall be inaccurate, false, misleading, or otherwise injurious to the end user provided always that Succinct shall not be liable under this Clause 6.1.7 where a breach of this clause arises as a direct result of an inaccuracy in the content provided by The Client.
- 6.1.8 The parties acknowledge that the copyright of any music in the Deliverables (if any) belongs to its owners. Save as regards the use of any music provided by The Client, Succinct warrants that it has obtained the appropriate licenses from the owner of such music allowing inclusion of the music in the Deliverables.
- 6.1.9 Save as regards the use of any materials provided by The Client, with respect to actors, performers, musicians and others, directly rendering services to Succinct in connection with the Deliverables, Succinct has obtained or will obtain all necessary consents under the Copyright Designs and Patents Act 1988 or any statutory modification or re-enactment thereof.
- 6.1.10 Succinct shall indemnify The Client against all claims, demands, costs, liabilities, losses (excluding any loss, either direct or indirect, of profits, business or anticipated savings or any other direct or indirect consequential loss), damages



and expenses (including reasonable legal expenses) arising out of or in connection with any claim which, taking the claimant's allegations to be true, would result in a breach by Succinct of any of the representations, warranties or covenants set out in subsection 6.1 For the avoidance of doubt, the obligations of Succinct under this provision are subject to the provisions of Clause 7.

- 6.1.11** The Client shall indemnify Succinct against all claims, demands, costs, liabilities, losses, (excluding any loss, either direct or indirect, of profits, business or anticipated savings or any other direct or indirect consequential loss), damages and expenses (including reasonable legal expenses) arising out any act or omission carried out by Succinct pursuant to and strictly in accordance with the instructions of The Client save in circumstances and to the extent that Succinct is liable to The Client pursuant to Clause 6.1.10.

## 7 Limitation of Liability

- 7.1 Succinct shall not be liable to The Client by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, beyond that of a duty to exercise reasonable skill and care.
- 7.2 In no event and under no circumstance shall Succinct be liable for any indirect, incidental, special, consequential or exemplary damages including but not limited to in relation to all types of damages, loss of profits, goodwill, use, data or intangible losses (even if Succinct has been advised of the possibility of such damages or if such loss is reasonably foreseeable).
- 7.3 The maximum aggregate liability of Succinct to The Client or its employees, agents or contractors for any reason whatsoever whether pursuant to the Contract (including these Terms & Conditions and including for the avoidance of doubt the indemnity contained in Clause 6.1.10) or otherwise, shall be the lower of (i) £10,000 and (ii) the aggregate fees (excluding value added tax) paid by The Client to Succinct during the term of the Contract.
- 7.4 Succinct shall not be liable to The Client in respect of any claim unless written notice of the claim including sufficient details to enable Succinct to identify the nature of the alleged breach of contract or other fault is given to Succinct within 21 days of the relevant matter becoming known to The Client and in any event within 6 months after the termination of the Contract.
- 7.5 Succinct Software, Screensavers, CD-ROMs and all other material, have been checked thoroughly with virus checking programs and duplicated under strict quality controls. To the extent permitted by the law, Succinct, or its respective employees or agents, will not accept any responsibility for any damage caused in whatever way through the use or misuse of the aforementioned material.
- 7.6 None of the exclusions and limitations in this section shall apply in respect of liability in negligence causing personal injury or death or any other liability which cannot by law be excluded or limited.

## 8 Charges

- 8.1 Succinct is entitled to modify the terms and conditions of this agreement and or the prices of its offered services, as well as discontinue or change its offered services. Succinct reserves the right to increase or modify pricing for all products and services with 30 days' notice by email to the account contact.



- 8.2 Succinct reserves the right to increase the cost of support Contracts on an annual basis. Max price rise is 20%
- 8.3 Charges in respect of services provided by Succinct to The Client will be payable as per the invoice terms.
- 8.4 Any additional fees have to be agreed by email, and/or in writing by authorised representatives of the parties before any new charges can be made
- 8.5 Should Succinct have to issue legal proceedings owing to the non-payment of invoices pursuant to the Contract, The Client accepts responsibility for all Succinct legal fees and disbursements notwithstanding the value of the claim, on an indemnity basis, unless the court otherwise directs.
- 8.6 Succinct shall be entitled to charge interest at the rate of 1% per month or part thereof in respect of the balance of any payment that is not made within the time specified on the invoice or within 28 days of the date of the invoice whichever is the later.
- 8.7 Studio Day (Single) book-in rates are currently set at £800 ex VAT (UK Pound Sterling) per day not including expenses. For Succinct Agency pre-booking rates please refer to your Contract or email [info@succinctsolutions.co.uk](mailto:info@succinctsolutions.co.uk).
- 8.8 Studio Day (Double) book-in rates or Out of Hours service rates are currently set at £1600 ex VAT (UK Pound Sterling) per day not including expenses. For Succinct Agency pre-booking rates please refer to your Contract or email [info@succinctsolutions.co.uk](mailto:info@succinctsolutions.co.uk).
- 8.9 Strategic Agency Meeting Support, weekend studio book-ins, and Director level consultancy rates are currently set at £1,000 ex VAT (UK Pound Sterling) per day not including expenses.
- 9.0 Value added Tax, where applicable, will be added at the appropriate rate to the total of all charges shown on The Client's bill.

## 9 Termination of the Contract by Succinct

- 9.1 Succinct may terminate this Contract for default following a material breach by The Client of its obligations hereunder, provided that where the default is capable of remedy Succinct shall first give written notice to The Client to a thirty (30) day period for remedial action. If after thirty (30) days, the cause of the default remains uncorrected, Succinct may terminate this agreement by written notice to The Client.
- 9.2 If either party:
- 9.2.1** proposes or enters into any composition or arrangement with his creditors generally or any class of his creditors; or
- 9.2.2** is the subject of any judgment or order made against him which is not complied with within 7 days or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any part of his undertaking, property, assets or revenue; or
- 9.2.3** being a company:
- (a) is the subject of a petition presented or an order made or a resolution passed or analogous proceedings taken for appointing an administrator of or winding up such company; or
- (b) an incumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver or administrative receiver is appointed of the whole or any





- (c) part of the undertaking, property, assets or revenues of such company; or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts within the meaning of the Insolvency Act 1986 Section 123; or
- (d) without the prior consent in writing of the Landlord ceases or threatens to cease to carry on its business in the normal course; or
- 9.2.4** being an individual:
  - (a) is the subject of a bankruptcy petition or bankruptcy order; or
  - (b) is the subject of an application or order or appointment under the Insolvency Act 1986 Section 253 or Section 273 or Section 286; or
  - (c) is unable to pay or has no reasonable prospect of being able to pay his debts within the meaning of the Insolvency Act 1986 Sections 267 and 268;
- 9.2.5** any event occurs or proceedings are taken with respect to the Tenant in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events mentioned in clauses 1 to 3 above; then the other party may terminate this Agreement forthwith by delivering notice in writing to that party.
- 9.3 Termination of the Contract by Succinct for default will result in the retaining by Succinct of all monies received from The Client who will not be entitled to a refund of monies paid.
- 9.4 Upon termination of the Contract by Succinct for default or by virtue of the provisions of clause 9.2, The Client shall pay a sum (by way of agreed compensation for Succinct's loss of revenue by reason of such early termination and not as a penalty) which shall be no less than the remaining charges due or which would have been payable under the Contract.
- 9.5 On termination of the Contract by Succinct, Succinct may remove all materials held on Succinct's computers and remove all privileges entitled to The Client.
- 9.6 In the event that the Contract is terminated owing to the non payment of hosting or domain fees then Succinct reserves the right to display a Deactivation Notice on the World Wide Web, at The Clients URL, i.e. on their Website, or Websites, detailing the reason for terminating the hosting, and/or provision of any other Succinct service.
- 9.7 After termination, if Succinct agrees that The Client's Website may once again be reconnected to the WWW, any reconnection will be subject to an administration charge, together with any outstanding charges payable prior to the reconnection.
- 9.8 In the event of termination by Succinct then Succinct shall return to The Client, upon The Client's request, all Client Material within thirty (30) days.

## 10 Termination of the Contract by the Client

- 10.1 The Client may terminate this Contract for default following a material breach by Succinct of its obligations hereunder, provided that written notice shall offer to Succinct a thirty (30) day period for remedial action. If after thirty (30) days the cause of the default remains uncorrected, The Client may terminate this agreement by written notice to Succinct.
- 10.2 In the event of Termination of the Contract for default by Succinct then Succinct shall deliver all completed works, including production files to The Client, which



have been paid for up until the date of termination.

- 10.3 The Client may only terminate the Contract in other circumstances by giving written notice to Succinct after the client has paid all outstanding invoices and complied with all its obligations under the Contract.
- 10.4 Termination of the Contract by The Client will result in the client being fully liable for the work or services completed to date, to be reasonably calculated by Succinct. If the Client has paid money in advance the Client may request to be refunded a due proportion equivalent to the uncompleted work to be calculated by Succinct.
- 10.5 Termination of the Contract for whatever reason will not affect either:
  - 10.5.1 the accrued rights and liabilities of the parties arising in any way out of the Contract as at the date of termination and in particular the right to recover damages, or
  - 10.5.2 any provision expressed to survive the Contract which shall remain in full force and effect.

## 11 Copyright and Ownership

- 11.1 Any service, concept, idea, design, programming, and/or "look and feel" remains the property of Succinct, until settlement of any, and all, outstanding accounts with regard to that service, concept, idea, design, programming, and/or "look and feel".
- 11.2 The copyright licence for use of any of Succinct services, concepts, ideas, designs, programming, and/or "look and feels", once all accounts have been settled, is available for use on any form of media.
- 11.3 All production files remain the copyright and ownership of Succinct at all times, unless otherwise specifically agreed in writing by the acting Managing Director of Succinct.
- 11.4 All source code and production files for SuccinctWeb remain the copyright and ownership of Succinct at all times. For terms and conditions for Succinct, please refer to the relevant SuccinctWeb licence agreement.
- 11.5 All source code and production files for Succinct CMS applications remain the copyright and ownership of Succinct at all times. For terms and conditions for Succinct CMS applications, please refer to the relevant Succinct CMS licence agreement.

## 12 Confidential Information

Each Party will at all times keep Confidential Information, except for information which it may be bound to disclose under compulsion of law or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the proper performance of its business.



## 13 Credit and Header Code

- 13.1 All material produced, designed and maintained by Succinct, for any medium, is to feature Succinct and credit at all times at Succinct's discretion. For Websites, this credit is generally located in the bottom right hand corner of the Website and links to <http://www.succinctsolutions.co.uk> or relevant address.
- 13.2 The wording of the credit is to be "Site by Succinct", "Technology by Succinct", "Developed by Succinct" or "Powered by SuccinctWeb" of any phase of a similar length that may vary from time to time.
- 13.3 Succinct reserves the right to insert a Succinct Copyright header in the source code of every web page produced, designed or maintained by Succinct.
- 13.4 Upon completion of the project, Succinct reserves the right to add The Client's company logo and an http link to the Website project in the Portfolio section of <http://www.succinctsolutions.co.uk>.

## 14 Shared Server Hosting (if applicable)

- 14.1 Hosting fees generally bundled with software licence and platform support.
- 14.2 Website Platform Updates
  - 14.2.1 From time to time Succinct will perform upgrades to the Software the site is built upon. Updates will increase performance, improve security, solve bugs and introduce new features. It is possible updates may introduce errors on sites particularly those that have bespoke elements or are of an older design.
  - 14.2.2 Errors introduced by platform updates are covered by our shared hosting support and will be resolved at no additional cost. However we do not monitor every site for errors introduced, therefore the client is responsible for alerting us to these issues if they should arise.
  - 14.2.3 Succinct will inform clients by email when an update has been made to give them the opportunity to review their site.
- 14.3 Helpdesk
  - 14.3.1 Issues can be raised by emailing [support@succinctsolutions.co.uk](mailto:support@succinctsolutions.co.uk) or calling 0844 800 65 82.
  - 14.3.2 During working hours (Monday to Friday – 9am – 5.30pm excluding UK bank holidays) we aim to respond within 6 working hours. If a resolution is not possible within this timeframe the client will be provided with an estimate.
  - 14.3.3 For priority issues such as a site not responding we will work towards an immediate resolution, our team will prioritise solving the problem over informing clients of progress.
- 14.4 Service Levels
  - 14.4.1 Succinct shall use reasonable endeavours to ensure an Uptime rate of 99.5% measured monthly.
  - 14.4.2 Succinct shall implement such organisational, technological and other measures as are reasonably required to ensure the Uptime rate set out in sub-Clause 14.4.1.
  - 14.4.3 For the purposes of this Agreement, Downtime refers to one or more whole periods of 5 minutes.



- 14.4.4** On request Succinct shall issue a discount of 50% of the monthly Fees payable for each month where the uptime rate in 14.4.1 is not met. Such discounts shall be applied to the Fee payment due immediately following the downtime discount request.
- 14.4.5** In the event that the Hosting Services are unavailable for a period exceeding 10 hours per month for 2 consecutive months the Client shall have the right to terminate this Agreement in accordance with sub-Clause 10.
- 14.4.6** Sub-Clauses 14.4.4 and 14.4.5 shall not apply to any Downtime which results from any of the following:

**14.4.6.1** Scheduled Service Downtime;

**14.4.6.2** Failure of the Client's own computer systems, network or software including 3rd party DNS;

**14.4.6.3** Failure by the Client, its employees, subcontractors, agents or other similar third parties to comply with any reasonable instructions issued by Succinct;

**14.4.6.4** Breach by the Client of any terms or restrictions of the Hosting Package including, but not limited to, exceeding data storage or transfer limitations;

**14.4.6.5** Problems which are beyond the reasonable control of the Succinct including, but not limited to, internet service provider failure and other matters arising under Clause 19

**14.4.7** Scheduled Service Downtime

**14.4.7.1** Succinct may, from time to time, require Scheduled Service Downtime in order to perform maintenance and upgrades on its computer systems, network and infrastructure.

**14.4.7.2** Succinct shall use reasonable endeavours to ensure that any period of Scheduled Service Downtime causes minimal disruption to the Hosting Services and is as brief as is reasonably possible. Nothing in this sub-Clause 14.4.7.2 shall constitute a guarantee of the same.

**14.4.7.3** Succinct shall notify the Client by Email of Scheduled Service Downtime no later than 12 hours prior to the start of the same. Such notice shall include an outline summary of the work to be performed during, and the estimated duration of, the Scheduled Service Downtime.

**14.4.7.4** Whenever possible, Succinct shall use reasonable endeavours to perform maintenance and upgrades without incurring any Scheduled Service Downtime.

**14.4.8** Service and Performance Monitoring

**14.4.8.1** Succinct shall appoint the Performance Monitor to ensure that the Hosting Services are provided in accordance with the Service Levels and the terms and conditions of this agreement and in particular deal with and respond accordingly to any and all Support Tickets informing Succinct of the non-availability of the Hosting Services.

**14.4.8.2** Succinct will not monitor every clients' website but will monitor a representative number of websites on each server.

**14.4.8.3** If the client requires active monitoring of their individual site this is available at an additional charge.

**14.4.8.4** In the event that the Service Levels fall below the requirements set out



in Clause 14.4, the provisions of sub-Clauses 14.4.4 and 14.4.5 shall apply.

- 14.5 Succinct agrees to provide Shared Server Hosting from the date agreed by the parties for the Website under a Services Levels stated in 14.4 in these terms and conditions and in consideration of the payments due to Succinct by the Client for the service.
- 14.6 Shared Server clients are hosted on Succinct's 10 Mb burstable bandwidth allocations. Should the Website exceed its usage of this allocation further reasonable bandwidth charges will be applied (for each additional 128kbps block required per month or part thereof). Charges will be payable as per the relevant invoice terms.
- 14.7 Succinct may from time to time recommend an upgrade from a Shared Server solution to a dedicated Server solution. Such recommendation shall be presented to The Client in writing and accompanied by qualifying data, appropriate and reasonable implementation schedule, and costs. Any failure to adopt a dedicated Server Solution following said recommendation within the reasonable implementation schedule specified shall render the applicable Service Levels stated in 14.4 null and void for the purposes of the Shared Server Contract.
- 14.8 Unless Succinct receive not less than 28 days prior notice in writing from The Client terminating the Shared Server Contract at any time prior to the renewal date, The Client will be deemed to renew the Contract at the end of the twelve (12) month period and be subject to the terms and conditions referred to herein.
- 14.9 The Client agrees not to perform any action, which will result in the reduced performance of the Shared Server to the detriment of other Shared Server clients.
- 14.10 The Client agrees not to use Succinct's Servers to send unsolicited or spam e-mail to other Internet users. Failure to satisfy this condition will result in the termination of the Contract.
- 14.11 Applicable charges for Shared Server Hosting shall be payable in advance.
- 14.12 Succinct reserves the right to increase the price for any reason including but not limited to exchange rate, cost of hardware or Internet connection fees.

## 15 Dedicated Server Hosting (if applicable)

- 15.1 All clauses as section 14 unless otherwise stated below.
- 15.2 Succinct shall use reasonable endeavors to ensure an Uptime rate of 99.9% measured monthly.
- 15.3 Any Server hardware, software or licenses provided by Succinct in order to fulfil the Dedicated Server Contract shall remain the property of Succinct at all times.
- 15.4 Unless Succinct receive not less than 28 days prior notice in writing from The Client terminating the Dedicated Server Hosting Contract at any time prior to the renewal date, The Client will be deemed to renew the Contract at the end of the twelve (12) month period and be subject to the terms and conditions referred to herein.
- 15.5 The Client agrees that they will not have administrative access to the Dedicated Server to perform functions, which could jeopardize the uptime of the Dedicated Server and not allow Succinct to fulfil its obligations under the stated SLA.



- 15.6 Succinct may from time to time recommend an upgrade to the Dedicated Server. The nature of said upgrade shall be presented to The Client in writing and accompanied by qualifying data, appropriate and reasonable implementation schedule, and costs. Any failure to adopt said upgrade within the reasonable implementation schedule specified shall render the applicable SLA null and void for the purposes of the Dedicated Server Contract.
- 15.7 The Client agrees not to use the Dedicated Server to send unsolicited or spam e-mail to other Internet users. Failure to satisfy this condition will result in the termination of the Contract.
- 15.8 Applicable charges for Dedicated Server Hosting shall be payable in advance.
- 15.9 Succinct reserves the right to increase the Price for any reason including but not limited to exchange rate, cost of hardware or Internet connection fees.

## 16 Assignment

Either Party may assign the benefit of this contract following receipt of written agreement from the other Party. Such agreement not to be unreasonably withheld.

## 17 Entire Agreement

This Contract forms the complete and exclusive agreement between the Parties in relation to the Services. All previous agreements, correspondence and understandings relating to the subject of this Contract are superseded by this Contract (except that neither Party excludes liability for any fraudulent pre-contractual misrepresentations on which the other can be shown to have relied). In the event and only to the extent of any conflict between the Contract and these terms and conditions or any referenced or attached document, the Contract will take precedence.

## 18 Partnership

No provision of this Agreement creates a partnership between the parties or makes a Party the agent of the other Party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

## 19 Force Majeure

- 19.1 Neither Party will be liable for any breach of its obligations under this Contract to the extent that it is prevented from performing them due to circumstances beyond its reasonable control.
- 19.2 The party relying on the provisions of clause 19.1 shall promptly notify the other party of the nature and extent of the circumstances giving rise to the event of force majeure



## 20 Jurisdiction

The validity, construction and enforceability of this Agreement shall be governed in all respects by English Law and subject to the exclusive jurisdiction of the English Courts.

## 21 Severability

If one or more of these terms and conditions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

## 22 Notice

Any notice required to be given under this Contract shall be deemed received upon personal delivery or three (3) days after mailing if sent by registered or certified mail to the addresses of the parties set forth above, or to such other address as either of the parties shall have provided to the other in writing.

## 23 Value Added Tax

All sums referred to in these terms and conditions are exclusive of Value Added Tax which, where applicable, shall be paid by the Client at the appropriate rate.

## 24 Third Parties

A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 25 Waiver

- 25.1 The waiver by either Party of any breach or default of any of the provisions of this Contract by the other Party shall not prevent the subsequent enforcement of the relevant term, and shall not be deemed a waiver of any subsequent breach.
- 25.2 A waiver of any term or provision or condition of this Contract shall only be effective if given in writing and then only in the instance and for the purpose for which it is given