

# Equals Success

## Terms and Conditions of Business

All Users of services provided by Equals Success, by use of such services, accept the terms of business set out in the form of service agreement which follows, irrespective of the mode or manner of ordering employed by the User when ordering the services.

The following constitute the terms and conditions under which Equals Success trades and supplies its services and related products. These conditions, in conjunction with the details as shown on the Equals Success quote represent the totality of the agreement and form the Contract between Equals Success and the User.

Design Atom, Secure Text and Magic Blue are all trading names of Equals Success and as such all services provided by these businesses are subject to these Terms and Conditions.

Any agreed variation or alteration to part of these terms and conditions are annexed to this Contract will not Invalidate any remainder or the whole. Equals Success is entitled to suspend services if the User does not adhere to any or several conditions of his Contract.

### 1. DEFINITION

In this Contract unless the context otherwise requires:

- “Service” or “Services” means Graphic Design, Website Design, Website Development, Software Development, E-commerce facilities, domain name registration, Virtual Server hosting, bandwidth provision, email, SMS, Bluetooth and any other service or facility provided by us.
- “Server” means the computer server equipment operated by us, provided by you or any third party in connection with the provision of the Services;
- “Virtual Server” means the area on the Server allocated by us to you for use by you as a site on the Internet;
- “Equals Success” or “we” means Equals Success, Design Atom, Secure Text, Magic Blue or any other trading name of Equals Success.
- “Contract” means the agreement whether written or verbal between Equals Success and the User incorporating these conditions, the Equals Success quote or proposal and Equals Success’ published charges for the provision of its services. References to “Agreement” shall, where the context admits, be read as referring to the Contract.
- “Charges” means the charges as agreed on the Quote or Proposal and Equals Success’ latest published prices for products and services requested or incurred by you.
- “Bandwidth” means the allocated transmission capacity, measured in bits per second, of the network connection as specified in the Contract.
- “Data transfer” means all traffic that passes through a Virtual Server or Server including specifically, but not exclusively web traffic, email, FTP transfers, database information and any telnet session data.
- “Site” means the premises or location at which Service is or is to be provided under the Contract.
- “Internet” means the global data network comprising Internet connected networks using TCP/IP (Transmission Control Protocol/Intermit Protocol) Internet Standards means the protocols and standards defined in the following
- Internet documents: RFC 1009, 1122, 1123 and 1250 and any future such protocols and standards as appropriate.
- “User” means you, the Customer, the Client, or any person who makes use of the services through you or on your behalf.
- “Initial Contract Term” mean’s the initial period of service as specified in the contract.
- “Extension Term” means each extended period of twelve months after the Initial Contract Term.
- “Extras” means any service or additional work provided in addition to the original contract.

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#### **2. VIRTUAL SERVER HOSTING, SERVER HOSTING and EMAIL**

- 2.1. We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss of damage to any data stored on the Server.
- 2.2. You shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.
- 2.3. You represent, undertake and warrant to us that you will use the Virtual Server or Server allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that
  - 2.3.1 You will not use the Virtual Server or Server in any manner, which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.
  - 2.3.2 You will not post, link to transmit:
    - (a) Any material which is unlawful, threatening, abusive, malicious, defamatory, obscene, pornographic, blasphemous, profane or otherwise objectionable in any way.
    - (b) Any material containing a virus or other hostile computer program.
    - (c) 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.
    - (d) Your attention is drawn to the provisions of subclause 6.3 below.
- 2.4. You shall keep secure any identification, passwords and other confidential information relating to your account and shall notify us immediately of any known or suspected unauthorised use of your account or breach of security, including loss, theft or unauthorised disclosure of your password or other security information.
- 2.5. You shall observe the procedures which we may from time to time prescribe and shall make no use of the Virtual Server or Server, which is detrimental to our other customers.
- 2.6. You shall procure that all email is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.
- 2.7. In the case of an individual User, you warrant that you are at least 18 years of age and if the User is a company you warrant that the Services will not be used by anyone under the age of 18 years.
- 2.8. Any access to other networks connected to Equals Success must comply with the rules appropriate for those other networks.
- 2.9. While we will use every reasonable endeavour to ensure the integrity and security of the Server, we do not guarantee that the Server will be free from unauthorised users or hacker or from corruption by virus and we shall be under no liability for non-receipt or misrouting of email or any other failure of email or damage to data or operations.

#### **3. Equals Success' Service**

- 3.1. Connection to the Equals Success service is via fixed telecommunications link or dial up connection. This Contract, unless specifically stated on the Quote or Invoice, does not include the provision of telecommunications services necessary for connection to the Equals Success service.
- 3.2. Requests relating to the provision of Service are, unless otherwise agreed to be made or confirmed in writing by electronic mail.
- 3.3. Equals Success will use all reasonable endeavours to adhere to any dates proposed by either Equals Success or you for the provision of Service. However any such date is to be treated as an estimate only and Equals Success does not accept liability for failure to meet such dates.
- 3.4. Equals Success will use reasonable endeavours to provide a reliable Service. However, it is not practicable to provide a service free of faults and Equals Success does not undertake to do so. In the event of a fault in the service,

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you must report the fault by telephone or electronic mail to Equals Success at the appropriate numbers or addresses or other such numbers or addresses that Equals Success may from time to time provide. Upon receipt of the fault report, Equals Success will take all proper steps without undue delay to correct the fault. Equals Success shall not, in any event, be liable for interruptions of the service or downtime of a Server.

3.5 Equals Success may:

3.5.1, Temporarily suspend for the purpose of repair, maintenance or improvement, part of any or all service, without notice. Equals Success shall undertake to use reasonable endeavours to restore Service as soon as practicable after such suspension.

3.5.2, Give update instructions regarding the use of Service which in Equals Success' reasonable opinion are necessary in the interests of safety, or to maintain or improve the quality of the service to Equals Success' customers. Any such instructions shall, whilst they are in force, be deemed to form part of this Contract.

3.5.3, Vary the technical specification of any service for operational reasons

3.6 Equals Success will use all reasonable endeavours to provide a services and site functionality that are as accessible to site users as possible. However, it is not practicable to deliver a completely multi browser / cross platform service free of faults and Equals Success does not undertake to do so. Equals Success accepts no liability or responsibility if this is the case now or in the future.

3.7 Internet browser compatibility limitations. Equals Success delivers services that operate on the primary internet browsers which make up majority of the internet browsers used. Equals Success will endeavour to ensure that any developed/designed site or application will function correctly on the server it is initially installed on and that it will function correctly when viewed with the web browsing software Microsoft Internet Explorer and Firefox browsers to an acceptable level for the browser versions that are most common at the time of initial installation. Equals Success can offer no guarantees of correct function with all browser software. Websites are designed and developed to operate with the primary Internet browsers at the time of publishing.

#### **4. COMMENCEMENT AND INITIAL PERIOD OF SERVICE**

4.1 The commencement of services will be agreed in advance and stated in the quote or on the invoice and the period of service will be for the lifetime of the services provided subject to the conditions in clause 9 and 10 of this contract.

#### **5. BANDWIDTH UTILISATION**

If the bandwidth or speed of Service used by you exceeds agreed quotes in a one month minimum period an excess charge will be payable by you at current published prices.

#### **6. CONTENT AND MISUSE**

6.1 You will use all reasonable endeavours to ensure that the Equals Success service is used or includes content that conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring Equals Success into disrepute.

6.2 You must not, nor must any other person, use the service: to send or receive any material which is offensive, abusive, indecent, obscene, pornographic or menacing, or in breach of confidence, copyright, privacy or any other rights, to cause annoyance, inconvenience or needless anxiety, or in breach of any provisions as contained within clauses 2 and 3 of this Contract, or other than in conformance with the acceptable use policies of any connected networks and internet standards.

6.3 Equals Success may discontinue any service immediately if the User is found to have carried out or permitted any illegal or use that is prohibited by these terms. If Equals Success suspends the service for contravention of the above conditions of this clause, we can refuse to restore service until it receives an acceptable assurance from the User that there will be no further contravention.

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### 7. CHARGES AND PAYMENT

- 7.1 All payments must be in UK Pounds Sterling. If your cheque or electronic payment is returned by the bank as unpaid for any reason, you will be liable for a charge of £40.
- 7.2 All charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us on our web site or on our quote and shall be due and payable by no later than the date specified on the invoice. Charges are exclusive of 'Value Added Tax', which shall, if applicable, be paid additionally by you at the rate prescribed by law on submission by us of a proper VAT invoice.
- 7.3 You acknowledge that our Services are provided using facilities supplied to us by third parties. Equals Success shall have the right, subject to 14 days prior written notice to you, to increase our Charges at any time during the Initial Contract Term or any Extension Term, whether to reflect increase costs to us from such third parties or otherwise. However, if such increase exceeds 10% of the Charge in question prior to such notice you shall be entitled to terminate the Contract by written notice to us given by you within 7 days after service of our notice of increase to you. If you do so terminate, you will remain liable for all Charges (at the previous rate up to the date the Contract ends and for all materials and subcontract work which Equals Success has ordered or contracts for and which cannot be cancelled without cost to Equals Success.
- 7.4 Payment for all goods and services shall be made by the client not later than the payment date shown on Equals Success invoice and in the event of any payment not being made by the due date, Equals Success shall, without prejudice be within its rights to recover any monies owing to it, and not be obliged to proceed with nor to delivery to the Client any further service or work. Equals Success reserves the right to, without prior notice, suspend any service or at its discretion, reinstate any goods or services to its prior state. Under this clause Equals Success provides no warranty whatsoever for the suspension of any service, or re-instatement of any service to its prior state. Where it is not possible or practicable to reinstate any goods or services to their prior state we reserve the right to prevent use of those items without liability or warranty to the correct functionality of any associated items whether supplied by us or not.
- 7.5 All services or work carried out by Us remains the property of Equals Success until such times that payment has been received by Us in full. Upon non-receipt of such payment we may request that you immediately cease to use any services or goods supplied. In the event that you thereafter continue to use such services or goods then you will become liable for a weekly, or part thereof, rental or licensing charge equal to 25% of the outstanding sum but no less than £100 per week. This charge shall remain in force for the entire period that you continue to use the service or goods, whilst the full balance remains unpaid, and is in addition to all other fees or charges.
- 7.6 If suspension of service occurs for any reason you will be liable for a reconnection or restart charge of £40.
- 7.7 Equals Success reserves the right to charge a deposit in advance of services provided and interim or staged payments to be arranged during the course of any development work. The time and schedule of payments will be included in the quote or on the invoice.

### 8. DEFAULT

- 8.1 If you do not pay the charges in accordance with the provisions of clause 7 of this Contract, or break this Contract in any other way, or are subject to bankruptcy or insolvency proceedings Equals Success can (without prejudice, losing or reducing any other right or remedy) suspend any service, wholly or partially, without notice (but the User remains liable during the suspension to pay charges for the service), or terminate this Contract by immediate notice, without prejudice to Equals Success's pre-existing rights.
- 8.2 Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress diligence or seizure: or if the User is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.
- 8.3 You continue to be liable to pay all charges, which are due for all services supplied, during any period in which you do not comply with this Contract.
- 8.4 On termination of this Agreement or suspension of the Services we shall be entitled immediately to block your Server and to remove all data located on it. We shall be entitled to delete all such data but we may at our discretion hold

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such data for such period as we may decide, to allow you to collect it at your expense, subject to payment in full of any amounts withstanding and payable to us. We shall further be entitled to post such notice in respect of the non-availability of your Service as we think fit.

- 8.5 For so long as any sum due to Equals Success hereunder is unpaid or any other amount is due to properly claimed by Equals Success from you for services or goods supplied or for any other reason, whether pursuant to these terms or otherwise, Equals Success shall be entitled to retain any property owned by you or lawfully in your custody or possession and which is held by Equals Success or by its agents until such time as all amounts due to Equals Success are paid and/or any issue between you and Equals Success is determined.
- 8.6 If Equals Success waives a breach of Contract by you, that waiver is limited to the particular breach. Any delay by Equals Success in acting upon a breach is not to be regarded in itself as a waiver.

#### **9. TERMINATION OF SERVICE**

- 9.1 The service may be terminated by either party on giving at least 30 days notice to the other expiring on the last day of the Initial Contract Term or at any time thereafter. If Equals Success gives notice you shall pay all charges up to the expiry of the notice. If you give notice, you shall pay all charges as provided in sub clause 9.5.
- 9.2 Equals Success reserves the right during the Initial Contract Term and at any time thereafter to terminate this Contract by giving to you not less than 30 days prior written notice of termination. This termination will be only applied as a result of breach of contract.
- 9.3 After the expiry of the Initial Contract Term you may terminate the Service by giving not less than 30 days prior written notice of termination, but subject to sub clause 9.4.
- 9.4 Your notice does not avoid any other liability for the service already provided.
- 9.5 If the Contract is a fixed term contract or if you continue the service beyond your Initial Contract Term you will be liable to pay for the remainder of the then current term.

#### **10. NOTICES**

Any notice to be given by either party to the other may be sent by either email or recorded delivery to the address of the other party as appearing in this Agreement or the quote, invoice or proposal, or any other address as such party may from time to time have communicated to the other in writing. If sent by email any notice shall, unless the contrary is proved to be deemed, to be received on the day it was sent, or if sent by recorded delivery shall be deemed to be served two working days following the date of posting.

#### **11. MATTERS BEYOND EQUALS SUCCESS REASONABLE CONTROL**

Equals Success is not liable for any breach of this Contract or liable for any delay or failure in performance of any part of these conditions and its commitments when caused as a result of Force Majeure, war, civil disorder, industrial disputes, inclement weather, acts of local or central government or other competent authorities, and failure by other service providers.

#### **12. LIABILITY**

- 12.1 You acknowledge that Equals Success has no control over the information transmitted via the service and that Equals Success does not examine the use to which you put the service or the nature of the information you are sending or receiving. Equals Success hereby excludes all liability of any kind for the transmission or reception of information of whatever nature.
- 12.2 Equals Success undertakes no liability whatsoever for the acts or omissions of other providers of any telecommunication service or for the faults in or failures of their apparatus.
- 12.3 Equals Success is not in any way liable in contract or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

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- 12.4 Equals Success makes no warranty as regards to its Services or equipment and will not be responsible for any damage allegedly suffered or claimed by you for any reason including but not limited to loss of data, wrong or non deliveries and service interruptions.
- 12.5 All conditions, terms, representations and warranties relating to the services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including without limitation the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject to sub clause 12.6.
- 12.6 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 12.7 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the services shall be limited to the charges paid by you in respect of the services which are the subject of any such claim.

#### **13. INDEMNITY**

You shall indemnify us and keep us indemnified and hold us harmless from and against any breach by you of these terms of business and any claim brought against us by a third party resulting from the provision of services by us to you and your use of the services and Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by us in consequences of your breach of non-observance of this Agreement.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 You shall obtain any and all necessary consents and clearances to enable you lawfully to make uses of all and any intellectual property rights through the services, including without limitation, clearance and/or consents in respect of your proposed domain name and any images, video or written copy or any other media.
- 14.2 The copyright in any design, together with any other intellectual property rights arising out of any work executed by Equals Success, shall vest in Equals Success. Where specified in the proposal or contract, and upon full payment being made, all intellectual property rights shall be assigned to the Client by Equals Success and the client shall be free to register any such rights at its own cost with the exception of any product or service supplied under licence.
- 14.3 Equals Success website and websites developed by Equals Success rely on technology developed by Equals Success. By contracting with Equals Success you are in effect buying a licence to this software and to the plug-in features that you have chosen to purchase. The intellectual property off all the 'server side code' remains that of Equals Success. However Equals Success grants to you a non-exclusive licence to access such software and related code on a single domain or from the Equals Success website for your internal use, to administrator the content of one internet domain, subject to the terms and conditions of this Agreement. If you have purchased a licence for more than one Internet domain (i.e. for three domains), you may use the Software for the number of domains licensed.
- 14.4 You are permitted to adapt and modify those portions of the Software that are provided to you in source code format , but your are not permitted to rent, lease or sell such software whether in its entirety or as part of a package. You must not distribute any supplied code or part thereof, including the posting of such software on blogs or notice boards, without the specific written consent of Equals Success. You are not permitted to reuse any part of this code in any other application not forming part of the initial contract nor supply any part of the code to any third party other than for purpose of maintaining or modifying the services or goods originally supplied.
- 14.5 All work carried out by Equals Success on those parts of the website, server side code or any other aspect of design, or any other form of media must be credited to Equals Success on the client website with a link back to the Equals Success website.
- 14.6 Any attempt to circumvent access controls of any Equals Success supplied system is deemed supporting a material breach of this Agreement, resulting in automatic termination of your right to use this software.
- 14.7 Should Equals Success release any updates, upgrades or new version's of the Software or supplemental code or supporting materials for the Software (\*Additional Software Release\*), all such Additional Software releases shall be considered part of the Software and subject to the terms and conditions of this Agreement and any additional terms and conditions that accompany the Additional Software Releases.

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14.8 You are not permitted, and may not: translate, reverse engineer or disassemble the Software or any part of the Software which is provided to you, or modify, or adapt, or create derivative works based on the Software or any part of the Software (except where specifically permitted under any "Licence" provision), or merge the Software or any part of the Software with any other software program; or separate the components parts of the Software for use in more than one computer or server. You may not provide the source code for the Software or any Improvements to any party (including your customers).

#### **15. ASSIGNMENT**

You may assign all or part of this Contract to any other party only with prior written agreement of Equals Success. Such written agreement will not unreasonably be withheld. Equals Success reserves the right to assign all or part of this Contract at any time to any subsidiary or associate company of Equals Success.

#### **16. LAW**

This agreement shall be governed by and construed in accordance with English law and you hereby submit to the non-executive jurisdiction of the English courts

#### **17. HEADINGS**

Headings are included in this Assignment for convenience only and shall not affect the construction or interpretation of the Agreement

#### **18. ENTIRE AGREEMENT**

18.1 These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral" between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation, which has not been made expressly in Agreement.

#### **19. UPDATES**

19.1 These terms and conditions may be updated at regular intervals and posted on our website. By continuing to use our services and goods you agree to accept any such modifications to these terms and conditions. Unless expressly stated herein all such modifications shall be effective immediately upon the new document being posted and it is your responsibility to check for the latest copy which can be found at <http://www.designatom.com/company/terms.pdf>.

19.2 These terms and conditions were last updated on 6<sup>th</sup> July 2009 to incorporate the Magic Blue trading name.