

SEQUENCESHIFT SERVICES AGREEMENT

This Agreement is made between SequenceShift Operations Pty Ltd ("SequenceShift") and you, or, if you represent an entity or other organization, that entity or organization (in either case "Client").

Background

- 1) SequenceShift provides the Payline solution as a service ("Service"), enabling Merchants to accept credit card payments from their customers for MOTO transactions by entering card details through their telephone pad and other secure capture points, enabling the reduction of PCI DSS compliance obligations for the merchants.
- 2) The Client wishes to engage SequenceShift to provide the Payline solution as a service and SequenceShift agrees to provide Services in accordance with this Agreement.

1. Interpretation

In this Agreement, unless a contrary intention appears:

- 1) words denoting the singular number include the plural and vice versa;
- 2) words denoting any gender include every other gender;
- 3) a reference to any legislation including any code includes all regulations and other instruments under the legislation and all amendments, replacements, consolidations and re-enactments of such legislation, regulations, and instruments;
- 4) headings are for convenience only and do not affect the interpretation of this Agreement;
- 5) a reference to clauses, schedules, an agreement or other instrument is a reference to the clause, schedule, agreement or instrument as varied or replaced from time to time;
- 6) a reference to a person includes that person's successors and permitted assigns;
- 7) "including" and similar expressions are not words of limitation;
- 9) an example does not limit the general words to which it relates; and
- 10) if any term is legally unenforceable, it is to be deleted or read down, but so as to maintain (so far as possible) all other terms;

2. Defined Terms

MOTO: Mail Order/Telephone Order

PCI DSS: the Payment Card Industry Data Security Standard

Business Day: a day that is not a public holiday or Saturday or Sunday in Australia, NSW.

QSAC: Qualified Security Assessor Company

SequenceShift System: Object code of the services, that enable Merchants to access online software, including Payline and IVR, as varied from time to time

3. Basis of Agreement

3.1 Exclusion of other terms

The Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

4. Supply of Services

4.1 Term

This Agreement commences once the Client subscribes to SequenceShift services via AWS Marketplace website and continues from annualised basis until terminated in accordance with clause "Termination".

4.2. Supply of Services

SequenceShift must:

- 1) Provide the Payline solution as a service, enabling Merchants to accept credit card payments from their customers for "Mail Order/Telephone Order" (MOTO) transactions by entering card details through their telephone pad and other secure capture points.
- 2) Provide the Payline solution to every point of presence of Client, subject to any applicable law and SequenceShift's ability to find a suitable hosting infrastructure.

4.3 Service Support

- 1) SequenceShift will provide second level telephone and email support to the Client between the hours of 9.00 am and 5.30 pm AEST/ADST (Business Hours) on Business Days.
- 2) SequenceShift will use its best endeavours to respond to support requests within 60 minutes depending on the complexity of the issue. SequenceShift will use its best endeavours to resolve support requests, depending on severity.
- 3) Critical severity requests where service is unavailable will be responded to within 15 minutes on a 24hr 7 days a week basis and promptly actioned until resolved.
- 4) On becoming aware (or being notified in accordance with this section) of a fault in the operation of the Service, SequenceShift will use all reasonable commercial efforts to restore the Service.

4.4. Additional Services

Any requests and services falling outside those listed in "Supply of Services" and "Service Support" must have a separate agreement and would be invoiced separately.

4.5. Maintenance

4.5.1. Scheduled Maintenance

SequenceShift carries out scheduled maintenance from time to time to ensure the correct operation of the systems. SequenceShift must provide the Client with 10 (ten) business days advance notice of any scheduled maintenance or changes to the configuration that affect Service availability. The duration of scheduled maintenance shall not exceed 8 hours at a time. The time SequenceShift's systems are not available due to scheduled maintenance does not count towards system availability for the purpose of the SLA.

4.5.2. Emergency Maintenance

SequenceShift might be required to conduct emergency maintenance of the systems due to malfunction or other urgent and material issues that require immediate rectification. SequenceShift must provide the Client with at least 2 hours advance notice of any emergency maintenance or changes to the configuration that affect Service availability. The duration of emergency maintenance shall not exceed 1 hour at a time. The time SequenceShift's systems are not available due to emergency maintenance does not count towards system availability for the purpose of the SLA. SequenceShift is not liable for any damage incurred or caused due to emergency maintenance pursuant to clause 4.5.2.

4.6. Payment Card Industry Data Security Requirements

SequenceShift must be PCI DSS Level 1 compliant. SequenceShift must apply and acquire a PCI DSS Attestation of Compliance, at its own expense, before supplying the Services. SequenceShift must maintain a current PCI DSS Attestation of Compliance throughout the Term. SequenceShift must implement

and enforce internal procedures that ensure the SequenceShift's PCI DSS Attestation of Compliance will not be cancelled or suspended. SequenceShift must from time to time, as requested by the Client, provide evidence of its compliance with PCI-DSS, including a copy of its current Attestation of Compliance.

SequenceShift must notify the Client immediately if:

- it becomes aware of any breach of security pertaining to any scheme card data or any breach of PCI DSS
- it becomes aware of any fact that would cause its Attestation of Compliance to be cancelled or suspended

The Client may terminate this agreement immediately on written notice to SequenceShift if SequenceShift's Certificate is cancelled or suspended. The Client is responsible for managing the privacy of its customers data and SequenceShift is not liable for damage caused by any privacy breach caused directly or indirectly by the Client.

4.7. Intellectual Property

4.7.1. No Transfer of Ownership

Apart from the service(s) provided to the Client pursuant to clause 4.2:

- (a) SequenceShift does not transfer, assign or otherwise dispose of, in favour of the Client or any Customer of the Client any of its title, ownership, right or interest in the SequenceShift System, any part thereof, or any Intellectual Property subsisting therein; and
- (b) SequenceShift retains all its title, ownership, right or interest in the SequenceShift System, any part thereof, or any Intellectual Property subsisting therein and any enhancements to the Intellectual Property.

4.7.2. Enhancements

SequenceShift owns all enhancements created by SequenceShift, this includes but is not limited to improvements and additions ("Enhancements") to the SequenceShift System, Documentation and/or Intellectual Property subsisting therein (including if such Enhancements) are created in the course of SequenceShift providing Services pursuant to this Agreement. Such Enhancements immediately and automatically vest in SequenceShift immediately on their creation, development or discovery.

4.7.3. No Infringement of SequenceShift's Intellectual Property

The Client must not do anything, or permit anything to be done, that causes, or is likely to cause, any infringement of SequenceShift's Intellectual Property subsisting in the SequenceShift System, and/or the Documentation. The Client must not reverse assemble, compile or engineer, or directly or indirectly allow or cause a third party (including Customers) to do any of those things, the whole or any part of the SequenceShift System.

5. Non-Solicitation

5.1. Non-solicitation

During the term of this Agreement and for a period of 6 months following its termination, the Client agrees and undertakes that it will not employ or engage (including as a direct contractor) any of the Personnel or any other employee, consultant or subcontractor of SequenceShift performing Services in connection with this Agreement (restricted persons), nor will the Client advise or encourage (directly or indirectly) any of the restricted persons to accept employment or an engagement with a customer or contractor of the Client.

6. Liability

6.1. Exclusion of Liability

Notwithstanding any other provision of this Agreement, SequenceShift shall not be liable to the Client or any other person, for any loss of revenue, loss of profit, loss of use, loss of data, loss of anticipated savings, loss of business opportunity, damage to reputation, loss of goodwill (in each case, whether arising directly or indirectly), or for any indirect or consequential loss or damage howsoever described or claimed.

6.2. Limitation of Liability

Subject to clause "Exclusion of Liability" and to the maximum extent permitted by law, SequenceShift total aggregate liability to the Client for any loss or damage of any kind suffered or incurred by Client (whether arising in contract, tort (including negligence) or otherwise) arising under or in connection with this Agreement is limited to an amount which is equal to the Fees paid by the Client for the Services in the 3 month period immediately preceding the event to which the liability relates.

6.3. Exclusion of Warranty

Any representation, warranty, guarantee, condition or undertaking that would be implied in this Agreement (or otherwise applied) by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. The parties agree that the Australian Consumer Law does not apply to the provision of services pursuant to this Agreement.

7. Confidentiality

7.1. Obligation of Confidence

A Receiving Party must keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party may only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and must ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction or any information which is in or becomes part of the public domain otherwise than through a breach of this clause 8. This clause 8 will survive termination of the Agreement for a period of 5 years after expiry or termination of this Agreement.

8. Termination

8.1. For Convenience

The client may terminate this Agreement at any time by unsubscribing from SequenceShift service via AWS Marketplace website. If the Client terminates the Agreement under this clause "Termination - For Convenience", the Client will pay SequenceShift for all Services provided up until the date of termination.

8.2. For Cause

Either party may immediately terminate this Agreement by providing the other party with written notice of termination if the other party:

- commits a material breach of this Agreement and such breach cannot be remedied;
- commits a material breach of this Agreement and fails to remedy such breach within 30 days of receiving the notice requiring it to do so;

- enters or threatens to enter into bankruptcy, liquidation or any other form of insolvency, administration, management or receivership.

8.3. Consequences of Termination and Expiry

On termination of this Agreement for any reason each party will return or destroy (at the other party's direction) any Documentation or other materials or confidential information belonging to the other party.

8.4. Accrued Rights and Remedies

The termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.

8.5. Survival

The obligations which by their nature survive, or which are expressed to survive, the termination or expiry of this Agreement will survive.

9. General

9.1. Governing Law

This Agreement is governed by the laws in force in New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

9.2. Variation

This Agreement may only be varied in writing by the parties to it.

9.3. Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations and communications.

9.4. Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

9.5. No Partnership

Nothing in this Agreement creates a partnership, joint venture, relationship of employment, agency or similar relationship between the parties.

9.6. Assignment and Subcontracting

SequenceShift may at any time assign, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

9.7. Notices

Any notice or other communication under this Agreement must be given in writing and may be delivered by hand or sent by pre-paid post, facsimile or email to the authorised representative of the other party. SequenceShift's email address for delivery of notices is info@SequenceShift.com.au.

9.8. Construction

A reference to:

- 1) "a party" means the Client or SequenceShift, as the context requires, and a reference to "the parties" means both of them;
- 2) a person includes a partnership, a joint venture, an unincorporated association, a corporation and a government or statutory body or authority;
- 3) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

Appendix A - Service Level Agreement

SequenceShift aims to maintain 99.99% availability of its services. If the service availability for the full month is below 99.99%, SequenceShift will, at its own discretion, issue a service level credit to the Client, provided that the lack of availability is not a result of a breakdown in telecommunication services or any issues arising outside the scope of the SequenceShift's environment. This includes, but not limited to:

- any unavailability caused by circumstances beyond our reasonable control, including failure or delay of Client's Internet connection, misconfiguration

by Client, Partner or any third party, issues on Client's network, or telecommunications services contracted by or for Client, or

- unavailability as a result of the actions of Amazon Web Servers ("AWS"), including (a) any maintenance or planned downtime of the AWS services, (b) any fault or failure of the AWS services; or
- AWS either terminating the AWS Customer Agreement or suspending SequenceShift's or Client's or Customer's use of AWS services; or
- conditions imposed by AWS on SequenceShift which the Client herein acknowledges and agrees to AWS's standard term of services.