ELSMORE
creative marketing

Terms and conditions – Internet services

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2. Terms and conditions

These are the terms on which customers can obtain services from the

Elsmore Creative Marketing (ECM), 12 Rammel Mews Frythe Way Cranbrook, Kent TN17 3BQ.

2.1 DEFINITIONS

Any agreement between ECM and the client for the provision of services (an "Agreement") shall be entered into on the basis of these terms and conditions and also any other terms and conditions set out or referred to in any document or other communication used by ECM in concluding such an agreement.

"Acceptance of terms"	means the policy specified as supplied in writing.
"Application"	means an application for the provision of service submitted by the Client to ECM.
"ECM"	means a trading name of Elsmore Creative Marketing
"Client"	means the person, firm or Company whose application is accepted by ECM.
"Domain Name"	means the domain name requested by the Client on the Application or any alternative domain name offered by ECM.
"Services"	means the services to be provided by ECM to the Client
"Terms and Conditions"	means these terms and conditions including any schedules hereto.
"Domain names"	means Internet addresses, which have been registered with the central registration authorities on the Internet on the clients behalf by ECM;
"Commencement Date"	means the date of ECM's acceptance of the client's order specified by the order date on our invoice
"Contract"	means the contract between the customer and ECM incorporating these terms and conditions;
"Quotation"	means the costs which detail the prices of the services provided by ECM and as may updated from time to time in accordance with Clause 1.5 above.
"Renewal Date"	means the date 12 months after the Commencement Date or any anniversary thereof.
"Hosting"	means making the client's domain name accessible via the Internet;
"Illegal"	means any act or acts, which are capable of breaching the civil or criminal law of England and Wales.
"Megabyte"	means 1,048,576 bytes of information;
"Gigabyte"	means 1,073,741,824 bytes or characters of information;
"Upload"	means the transfer of computer files to the appropriate server computer system for publication on the Internet, WWW;
"Website"	means the area on the appropriate server computer system allocated to the client for the purpose of Hosting;
"WWW"	means World Wide Web service available on the Internet;

Any words in the singular include the plural and vice versa. All definitions, notes, terms and conditions referred to in this contract form part of the contract as if they were expressly set out in it.

2.2 PROVISION OF SERVICE

This Contract covers the provision of services by ECM to the client. All services provided to the client by ECM are subject to these terms together with any previous written or oral representations given or made by ECM or any representatives of ECM. The client should not enter into this contract if you do not accept these terms and conditions

Whilst ECM will try to meet any date which the client or ECM proposes, such date is only an estimate and ECM accepts no liability if it is not met.

Unless ECM receive a notice in writing from the client terminating this contract at any time prior to the renewal date, the client will be deemed to renew the contract at the end of the twelve month period and be subject to the terms and conditions referred to herein.

ECM will send the client a renewal notification one month before the renewal date. The client must respond in writing before the renewal date to indicate whether the client wishes the service to continue.

ECM may alter its terms and conditions (including prices) from time to time. Such changes shall not affect orders, which the client may place prior to the change. Each time the client requires services from ECM, the client should check the terms to see if there have been any alterations - the date at the bottom of the terms will indicate when the last changes were made. If these are not acceptable to the client, they must notify ECM immediately by written.

2.3   TERMS

Any agreement shall commence on the date of acceptance by ECM of the Application submitted by the client and shall be paid on an annual basis as agreed for an initial contract period of 12 months and annually thereafter as agreed, unless and until terminated by either party by providing 30 days written notice with no termination earlier than the end of the initial contract period or annual renewal period subject to termination under conditions 8 and 9.

Failure to pay within 30 days of renewal date will entitle ECM without notice to terminate this contract and to suspend the client's website, making it inaccessible to users of the WWW.

Renewal charges must be paid within the date of a correct invoice. Failure to pay any such sum within that time-scale will entitle ECM without notice to terminate this contract and to suspend the client's website, making it inaccessible to users of the WWW.

Any third party costs ECM may incur due to processing the client's payment for the services will be payable by the client within 7 days of the date of a correct invoice.

The client is entitled under this contract to transfer a maximum of 500 MB of data per month without incurring any additional charges. Any transfer in excess of this figure will result in an excess charge based upon a per 50 Megabytes or part thereof of data transferred per month. Any transfer in excess of this figure will result in a charge of £10 per 50 Megabytes or any part of it of data transferred per month. Failure to pay any excess charge will result in termination of this account

Should ECM have to issue court proceedings pursuant to this contract the customer accepts responsibility for all ECM legal fees and disbursements notwithstanding the value of the claim, on an indemnity basis.

ECM reserves the right to amend these terms and conditions at any time without notice and that the revised terms and conditions shall form the basis of the agreement.

The fees payable to ECM in respect of the services provided are exclusive of VAT at the prevailing rate. All charges shall be payable in advance. Any failure by the client to pay any fees due under these terms and conditions on the date specified shall be deemed to a "material breach" of these terms and conditions. If the client is overdue with any payments hereunder, then without prejudice to ECM other rights and remedies the client accepts that immediate removal of web content, updating facilities and any other service deemed by ECM to be within the scope of this agreement. Reinstatement shall only occur when all monies owed have been paid to ECM and any such reinstatement shall be at the sole discretion of ECM.

Clients who select to obtain a website that includes, domain name and web hosting, design and build will be charged an agreed all inclusive monthly fee payable over a minimum of 2 years. This fee includes all the work required in the design and image creation etc. Access to the domain name and website is restricted until this period expires.

2.4   CLIENT'S RESPONSIBILITIES

It is the client's obligation to ensure that they do not upload a virus to the web space provided by ECM, which could infect ECM's server. The client must not allow a virus to enter the Internet community by allowing Internet users to download files containing viruses and knowingly or otherwise from their web space which is on a ECM server.

It is the client's obligation to ensure that any material being uploaded to their website is not in breach of copyright and is not contrary to public decency and morality or any applicable laws ECM accepts no responsibility for any actions in either uploading material to your website or in transferring any material to other websites.

ECM reserves the right to inspect the client's website at any time and in the event that any illegal, unauthorised, pornographic, barbaric, tasteless or otherwise inappropriate material has been uploaded to their website, ECM reserves the right to suspend the website, making it inaccessible to users of the WWW, to inform the appropriate authorities and to terminate this contract forthwith.

The client agrees not to 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 England and Wales.

The client agrees to keep secure the login name and password specified on the letter provided and not to pass that information to any unauthorised person. In the event of the login name and password being used by any unauthorised person, then unless such use results from a third party having hacked into the server, ECM accepts no responsibility for such use and the client will be liable for any additional charges arising there from.

The client agrees not to perform any action, which will result in the reduced performance of the appropriate server computer system to the detriment of other users. For example, any mass advertising campaign that the client may launch which is likely to result in very heavy traffic being generated to their website.

The client agrees not to use the appropriate server computer system or any other server to send unsolicited or spam e-mail to other Internet users. Failure to meet this obligation would result in the termination of this Contract without refund.

The client undertakes neither to engage in any activities nor to omit to do anything, the result of which would bring ECM into disrepute.

If the contract is terminated for whatever reason, the client will not be entitled to a refund either pro-rata or at the entire contract price.

The client agrees not to perform any action, which will result in the reduced performance of the server to the detriment of other users. Not to commit any act whereby access is gained by the client to any information or resources of any body corporate or person, individual, partnership, government agency, national institution, charity or recognised organisation without first having obtained authority from those persons or institutions.

Not to do any act or omission, the result of which would have the effect of bringing ECM into disrepute.

2.5   NO WARRANTIES

ECM has devoted significant resources to ensuring continuous reliable services. In the event of service interruption, ECM will refund usage charges on a pro rata basis, except for scheduled downtime. ECM makes no warranties, whether express or implied, including but not limited to, those of merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, non-deliveries, miss-deliveries or service interruption caused by our own negligence, errors and omissions or client's negligence, errors and omissions. Use of any information obtained by ECM network is at client's own risk. ECM specifically disclaims any responsibility for the accuracy, marketability or quality of any of the information obtained and/or services provided under this Agreement.

The client understands and agrees that the use of or connection to the Internet is inherently insecure and that connection to the Internet provides opportunity for unauthorized access by a third party to client's computer systems, networks and any and all information stored therein. All information transmitted and received through the Internet cannot be expected to remain confidential and ECM cannot and will not guarantee the privacy, security, authenticity, and non-corruption of any information so transmitted, or stored in any system connected to the Internet. ECM shall not be responsible for any adverse consequences whatsoever of client's connection to or use of the Internet, and shall not be responsible for any use by client's Internet connection in violation of any law, rule or regulation or any violation of the intellectual property rights of another.

ECM exercises no control whatsoever over the contents of any information passing through the Internet. Representations of the stated bandwidth applies only to the clients under these agreements and there is no guarantee of end-to-end bandwidth on the Internet.

2.6   LIMITATION OF LIABILITY

For the avoidance of doubt ECM has no obligation duty or liability in contract and/or tort for breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care.

In any event and in no circumstance shall ECM be liable for any loss either direct or indirect of profits, business or anticipated savings or any other direct or indirect consequential loss arising out of the provision of the service to the customer.

In no event shall ECM be liable to client for any indirect or consequential damages or lost profits arising out of or related to this Agreement, the performance or breach thereof, except if ECM has been advised of this possibility thereof by the client prior to entering into this Agreement. ECM's liability to client hereunder, if any, shall in no event exceed the total amount that the client paid to the ECM hereunder.

In no circumstance shall ECM be liable for any loss whether direct or indirect arising from the content of any information placed by the client onto the service provider of ECM.

Under no circumstances shall ECM be liable for loss whether direct or indirect of profits, business or anticipated savings or for any direct or indirect consequential loss whatsoever by the failure of, or any problem experienced by the customer in its operation of its web site.

ECM agrees to provide any third party with direct access to a client's website but does not accept liability for any errors, additions or deletions to any content that could effect the website performance. All work necessary to correct any errors will be chargeable.

Each provision of this condition is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable.

ECM undertakes no obligation to moderate or monitor client's transmissions and the parties to this agreement do not intend this provision to be enforceable by or to inure to the benefit of any third parties.

In no event shall ECM be liable to the client for any damages resulting from or related to any failure or delay of ECM in providing access to the internet services under this agreement. In the event of service interruption ECM's sole liability is to refund usage charges on a pro rata basis, except for weekly scheduled downtime.

ECM reserves the right to assist all authorities in prosecuting any and all illegal use of the Internet. If notified of any allegedly infringing, defamatory, damaging, obscene, illegal, or offensive use or activity, ECM may (but shall not be required to) investigate the allegation or refer it to client or a third party for investigation, and ECM reserves the right to remove or request the removal of the applicable content from the Internet or any other text or item linked to the Internet. If client refuses such request, ECM may, at its option, immediately remove the subject material from the Internet or other text or item from the Internet, suspend the services provided hereunder or terminate this Agreement. ECM shall not be liable for any damages incurred by client as a result of such action.

2.7   INDEMNITY

Without prejudice to any other rights or remedies which ECM may have against the client, the client shall indemnify ECM against any loss or expenses sustained by reason of any breach of this contract and any actions, proceedings, claims or demands in any way connected with this contract brought on by or threatened against ECM by a third party which are caused by or arise from any action of ECM carried out pursuant to the instructions of the customer.

The client shall indemnify ECM against any actions, proceedings, claims or demands in any way connected with this contract brought or threatened against ECM by a third party which are caused by or arise from any act or default of ECM carried out pursuant to the instructions of the client.

You agree to defend, indemnify and hold harmless ECM, www.elsmore.co.uk, any of our affiliated sister websites, CORE, ICANN, NOMINET and any applicable domain name registry and the directors, officers, employees and agents of each of them, for any loss, damages or costs, including reasonable solicitors/attorneys fees, resulting from any third party claim, action, or demand related to the client's domain name or the use thereof.
We will delete, without notice, any sites that feature any domain which is brought to our attention that could breach ANY trademark regulation world-wide.

2.8   TERMINATION OF THIS CONTRACT BY ECM

ECM may terminate this contract by notice in writing to the client having immediate effect if the client breaches any of the obligations under this contract and where, remediable, fail to remedy such breach, within 14 days of such notice.

In the event of any breach, ECM shall have the option to terminate this contract as regards all services provided or to be provided or only as regards that service or those services in respect of which the breach is considered by ECM to have been committed.

If the client does not pay any charge when due, ECM can terminate this contract immediately without the requirement of prior notification.

If ECM wishes to terminate this contract, then it shall try to minimise its losses but in the event that, despite such efforts, it is unable to eliminate such losses, it shall in respect of such losses, be entitled to retain such moneys as have been paid by the client and are necessary to cover such losses and where this is inadequate to cover such losses, the client shall remain liable for all charges due for services which the client has ordered to the extent that such charges will cover such losses.

On termination ECM will remove all materials held on ECM's computer and remove all privileges entitled to the customer.

If, after termination, ECM agrees to reconnect the client to the service, any reconnection will be subject to an administration charge of £50 together with immediate payment of any outstanding charges payable prior to the reconnection.

2.9   TERMINATION OF THE CONTRACT BY THE CLIENT

The client can terminate this contract at any time in writing to ECM. The client can either continue with the contract until the expiration of the contract period or alternatively the client may request the immediate termination of the contract. In either case, the client will not be entitled to a refund of any monies paid.

All outstanding unpaid invoices with the client are to be paid in full.

Time incurred to manage the domain name transfers and or configurations required by the client will be charged for, ECM reserve the right to deduct out of pocket expenses from any refund due to the client.

2.10   GENERAL

The rights and obligations under this contract are personal to the client and undertake that the client shall not, without the prior written consent of ECM, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.

ECM reserves the right to sub-contract any of the work required to fulfill its obligations.

ECM give the client the right to use the database programme prepared in order to enable the client to present their website onto the www and reserves the right to use the database programme for use on any other web site.

Website support as specified in a contract implies that any updates or changes agreed are to the signed off website's overall structure and appearance only. Additional changes to the original website are chargeable.

ECM reserves the right to present a copyright statement on the site at all times.

Any notice may be delivered by hand or sent by pre-paid registered letter or recorded delivery to the addresses last notified by each party. Such notice shall be deemed to have been received when it is delivered or, if posted, 48 hours after it is put into the post correctly addressed and pre-paid.

Neither party shall be liable for any loss suffered by the other party or be deemed to be in breach of its obligations for any delays or failures (other than in relation to payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority.

Any delay or forbearance by either party in enforcing any provisions of this contract or any of its rights shall not waive the provision or right or the party's entitlement to enforce it.

Clause headings have been included in this contract for convenience only and shall not be considered part of, or be used in interpreting, this contract.

This contract shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the Courts of England and Wales.

ECM reserves the right to alter these terms of conditions at anytime and without notice.

2.11 FORCE MAJEURE

ECM is not liable for any breach of this contract if the breach was caused by an act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts of omissions of government, highway authority or other competent authority, ECM compliance with any statutory obligation, industrial disputes of any kind (whether or not involving ECM employees), fire, lightening, explosion, flood, subsidence, weather of exceptional severity, acts of omission of persons whom ECM is not responsible (including in particular other telecommunication service providers), or any other cause whether similar or dissimilar outside ECM reasonable control.

2.12 LIMITATION ON ASSIGNMENT

The client must not assign the benefit of this contract in whole or in part.

ECM reserve the right to assign the benefit of this contract by giving prior written notice of any assignment to the client.

Except with the prior written consent of ECM, the service shall not be used by or on behalf of any person other than the customer or a third party specified on the application form.

ECM reserve the right to terminate any accounts, at any time, as deemed by ECM, where the user has made inappropriate or unreasonable use of any of the ECM.

ECM take no responsibility for any information loaded to our client's accounts or servers. We do not have the time or inclination to police the client's data. If it is brought to our attention, by the proper authorities we will suspend service on accounts or servers, until any illegal data is removed.

ECM is not responsible for any interruption of service, and accepts no liability for any loss of services, sales or any other form of loss.

We reserve the right to refuse to serve the materials of any existing user making inappropriate or unreasonable use of ECM services or an applicant whose planned web presence activities are deemed to have the potential of creating negative impact on ECM abilities to serve its client.

Inappropriate or unreasonable includes providing copyrighted, materials without authorization, providing obscene or offensive, materials (e.g. pornographic materials), providing materials, whose nature and/or volume compromises the ability of ECM servers to serve other users' web presence (instances including but not limited to unreasonable consumption of disk space, Internet link bandwidth, CPU, and memory usage, as determined by ECM), materials that violate the commonly accepted etiquette of the Internet or providing materials that are deemed by the government authorities as inappropriate or illegal. Any such government determinations will be binding on the user, not ECM.

The client will fully indemnify ECM against liability (of any nature), which may befall ECM as a result of the customers legal of illegal use of the services. ECM do not provide refunds. The client will only be allowed one login, unless specified otherwise.

2.13 REGISTRATION OF DOMAIN NAME

In consideration of payment by the client of the appropriate fee specified in the contract, ECM shall apply for registration of the domain name requested by the client on the application.

The client agrees and acknowledges that ECM shall not be liable in any way for acts, omissions, or errors of the naming authority or registering agent in relation to the registration (or non-registration, as the case may be) of the domain name. Whilst ECM will use all reasonable endeavours to obtain the domain name for the client, the client acknowledges that ECM shall not be liable for such registration where the domain name is or becomes unavailable for any reason whatsoever.

ECM shall not be liable for any delay in activating the domain name on the Server nor for any cost incurred by the client as a result of such delay and the client's obligation to pay the fees set out shall not be affected by any such delay.

The client warrants that the domain name does not infringe any intellectual property rights of any third party, including but not limited to trade marks registered or otherwise used by any third party and the client shall indemnify and keep ECM indemnified in respect of any loss, damages, costs, or other expenses arising out of or in connection with any breach by the client of this clause.

2.14 DOMAIN REGISTRATION

ECM use various registrars at our discretion and require that the client understands the terms and conditions of each before proceeding with an order with us. .com , .net and .org names. The ICANN Dispute Policy: http://www.icann.org/udrp/udrp.htm. The Exhibit A of the Open SRS Reseller Agreement. Open SRS Terms and Conditions. Terms for registration of .co.uk/.org.uk/.ltd.uk/.plc.uk names.
When the domain name is registered on the client's behalf, the client will also be subject to the terms and conditions of Nominet UK which are available for inspection at http://www.nic.uk/terms.html

2.15 TRANSFER OF DOMAIN NAME

On the client's request, ECM shall host an existing domain name owned by the client provided that the client shall be solely responsible for the transfer of the existing domain name to the relevant server on or after the commencement of any agreement and for any fees payable to any third party in relation to such transfer. On termination of this agreement, the client may transfer the domain name or any existing domain name to any third party server subject to completion by the client of a transfer form and payment by the client of any applicable transfer fee and provided that the initial contract period of 12 months has not yet expired unless the client pays all outstanding fees for the full period.

2.16 RENEWAL OF REGISTRATION

ECM will automatically renew the client's contract each year after the initial 12 month agreement unless the client notifies ECM at least 30 days prior to the end of the agreement. ECM will use its reasonable endeavours to ensure that the domain name or the existing domain name be automatically renewed after expiry of the initial 12 month registration period provided always that this agreement remains in force up to the date of expiry of such period. In consideration for renewal of the domain name or the existing domain name by ECM and prior to the renewal date, the client shall pay to ECM the renewal fee set out in the Price List.

ECM will use all reasonable endeavours to ensure that the domain name or the existing domain name is renewed at the relevant renewal date, the client acknowledges that it is not possible for ECM to guarantee such renewal and that ECM shall not be liable for any failure to renew the domain name or the existing domain name.

2.17 DESIGN AND HOSTING

ECM will provide the client with a Website designed and tailored to meet their requirements. Such design shall be made following discussions with the client and the client agrees to provide ECM with such artwork, text and graphics that will facilitate the production of the Website.
Such design and technology used in the website shall feature commonly available scripts and services such that the website shall function in the manner described during discussions with the client. Reasonable care will be taken to provide a secure environment for those pages in the website that require such security and for the website as a whole however the client agrees that such security can never be wholly guaranteed.

All material submitted for inclusion on the Website must be owned by the client and agrees to keep ECM indemnified in respect of any loss, damages, costs, or other expenses arising out of or in connection with the use of the website or any breach by the client of these Terms and Conditions.

Whilst ECM shall use all reasonable endeavours to ensure that the website can be accessed by users of the Internet at all times, the client acknowledges that it is technically impossible to provide such access free of fault at all times and ECM does not undertake to do so. ECM expressly reserves the right to suspend availability of the website for the purpose of necessary or scheduled maintenance. Access to the website may also be adversely affected by conditions and performance outside ECM control, including without limitation, the breakdown of transmission and telecommunication links.

2.18   DATA BACKUP

Whilst ECM shall use its reasonable endeavours to ensure that backup copies of the website and all client data contained in the website are made at reasonable intervals, the client shall be solely responsible for the backup of such data and ECM shall not be liable for any damages, loss, costs or other expenses arising out of or in connection with any loss of data by the client which are due to the failure of the client or ECM to backup such data.

2.19   DATA PROTECTION ACT

Each party shall for the duration of any agreement governed by these terms and conditions comply with the provisions of the Data Protection Act 1998, (including the data protection principles set out in that Act) and any similar or analogous laws, regulatory requirements or codes of practice governing the use, storage or transmission of personal data and shall not permit anything to be done which might cause or otherwise result in a breach by either party of the same.

Valid from 1 May 2008

Nothing herein shall affect the statutory rights of a customer dealing as a consumer

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