

Hosting & Search Engine Optimisation Terms & Conditions

These Terms and Conditions (Terms) set out the terms under which we, Echo Digital Media Ltd, (registered in England and Wales with company number 07384798 with our registered office at Barrington House, Stockton –on Tees, provide marketing and related services to our clients. Our trading names include 'The Consultancy'. All marketing and related services provided by us shall, unless otherwise agreed by us in writing, be subject to these Terms. By requesting us to provide any services to you, you hereby agree to be bound by these Terms.

Glossary of terms / Interpretation

The definitions and rules of interpretation in this clause apply in Terms as follow:

- a) Us : Echo Digital Media Ltd the developer as described above trading as The Consultancy or any future notifiable company names
- b) You and or: the person, firm or company who purchases Services from us.
- c) Contract: your purchase order for Services and our acceptance of it, or your acceptance of a quotation for Services
- d) Contract Price: the agreed value to be paid for goods and services upon completion of the project
- e) VAT: value added tax chargeable under English law for the and / or any similar additional tax as is required to be applied to the agreed contract price at the time of the placing of the contract
- f) Project Brief / Plan(s) no project shall be commenced without the agreement and signature of both parties to the Project Brief / Plan the Project Brief / Plan shall be agreed in the following manner:
 - (1) You shall provide us with a request for a Project Plan, accompanied by a written brief setting out your requirements and specifications of the Services which you are requesting from us, (The Brief) including a description of what work is to be done, any dates by which it or each stage of the work is requested to be started and finished, Deliverables, Client Materials and such other information as we may request to allow us to prepare a formal draft Brief document which we shall request be signed as accepted by both parties;
 - (2) We shall, as soon as reasonably practicable, provide you with a draft Project Plan; this Plan will comprise as a minimum a copy of the agreed brief further developed as required to include programme dates and additional information as may be required and agreed between the parties.
 - (3) We and you shall jointly discuss and agree the draft Project Plan and when it has been agreed, you shall sign a copy of it and return it by fax/post to us within 30 days and it shall become subject to these Terms. Any subsequent Project Plans to which you agree, will be subject to the then current set of Terms, which are available on our website at www.theconsultancy.co.uk - a further copy of which can be provided on request.
 - (4) Once the Project Plan has been agreed and signed in accordance with clause (f)(3), no amendment shall be made to it.

Website Design and Hosting Services

1.1 Where any of the Services to be provided by us, as specified in the Project Brief / Plan, comprise website design and/or hosting services, the provisions of this paragraph 1 shall apply.

The Consultancy reserve the right to refuse services and or access to its servers.

1.2 If we are to provide website design Services we will design, develop and deliver the Website and, where provided in the Project Brief / Plan, host the Website on a Server.

Where a Website is created we reserve the right to move your data to a different server with no previous notice

1.3 Once we have completed the design and development of the Website (the URL of which is specified in the Project Brief/Plan), we shall run such acceptance tests as we shall reasonably determine to ascertain whether the Website complies in all material respects with the Project Brief / Plan.

1.4 Acceptance of the Website shall occur when the Website has passed the Acceptance Tests.

1.5 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission by you, or by one of your sub-contractors or agents for whom we have no responsibility the Website shall be deemed to have passed the Acceptance Tests, notwithstanding such Non-Supplier Defect.

1.6 We shall provide you with assistance reasonably requested by you in remedying such Non-Supplier Defects by supplying such additional services or products as we see fit in our sole discretion. You shall pay us in full for all such additional services and products at our then current fees and prices.

1.7 Acceptance of the Website shall be deemed to have taken place upon the occurrence of any of the following events:

- (a) you use any part of the Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes;
- (b) the Website can be accessed and/or viewed by the public for more than 5 Business Days;
- (c) you unreasonably delay the start of the relevant Acceptance Tests or any retests for a period of five working days from the date on which we are ready to commence running such Acceptance Tests or retests.

1.8 We warrant that the Website will perform substantially in accordance with the Project Brief / Plan

for a period of twelve months from acceptance. If the Website does not so perform, we shall, for no additional charge, carry out any work necessary in order to ensure that the Website complies substantially in accordance with the Project Brief / Plan, provided such notification is given to us within 30 days of the acceptance of the Website.

1.9 The warranty set out in paragraph 1.8 shall not apply to the extent that any failure of the Website to perform substantially in accordance with the Project Brief / Plan is caused by you or your Client Materials.

1.10 Websites we produce will be supported in Microsoft Internet Explorer 7+, and Mozilla Firefox 3+. We will provide 'gracefully degrading' support on-request for Microsoft Internet Explorer 6 and Mozilla Firefox 2.

1.11 All Intellectual Property Rights in the Website are owned in accordance with the provisions of clause 14 of these Terms.

1.12 You shall indemnify us against all damages, losses and expenses arising as a result of any claim that the Client Materials infringe the Intellectual Property Rights of a third party.

1.13 Where we have so agreed in the Project Brief / Plan we shall update the Website with Client Materials provided by time to time by you subject to you paying such hourly rate as shall be agreed in the Project Plan.

1.14 Where you gain access to the Server to update the Website other than via any content management system or other technology provided by us, if any problems arise by reason of your actions, we are under no obligation to provide support to you, although we may be prepared to do so, subject to your payment of our standard hourly charges. We endeavor to use best practices to ensure protection of the software by using the best available coding at all times, we cannot however legislate for any third party activity of "hacking" or introduction of "Viruses"- should such activity occur we shall assist where possible to remedy any defective code etc further we reserve the right to charge for the cost of any time undertaken in such activity. Further we shall accept no liability in the way of direct, indirect or consequential costs arising out of any third party interference with the coding of the website.

1.15 You shall ensure that any Client Materials to be included on the Website do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights (Inappropriate Content).

1.16 You acknowledge that we have no control over any content placed on the Website by visitors to the Website and we do not purport to monitor the content of the Website. We reserve the right to remove content from the Website where we reasonably suspect that such content is Inappropriate Content.

1.17 You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.

1.18 We may include the statement 'Designed and built by The Consultancy or words to similar effect on the home page of the Website as a hyperlink to www.theconsultancy.co.uk for a minimum period of twenty four months.

1.19 On expiry or termination of the Contract, other than by us, we shall:

- (a) return to you your Client Materials and shall provide to you an electronic copy of the Website (including all content on the Website); and
- (b) provide such assistance as is reasonably requested by you to transfer the hosting of the Website from us to you or to another service provider, subject to payment of our reasonable expenses.

1.20 Whilst we shall use our best endeavors to ensure that if the Website is hosted by or via us it is available at all times, you acknowledge that such hosting is subject to the right of any third party provider of connectivity of any hosting services to the internet to temporarily suspend such connection, to make any modification, change, addition to, or replacement of that third party's equipment, network or software where this is required to conform with any applicable safety or any other statutory or legal requirements, or at any other time. Any target hosting service level information provided to you is for guidance only.

1.21 You acknowledge that it is impossible to provide any Website hosting services free of faults or uninterrupted and that we do not give any undertaking to do so.

1.22 The period of web hosting, as specified in the Project Brief/ Plan, commences from the first day that the Website is provided for Acceptance Tests.

2. Payment Policy

2.1 All payments are set up on a prepay basis, we reserve the right to changes of prices of accounts or services at any time, all pricing is guaranteed for the period of the pre payment. Payment is due every month or 365 days (dependent upon terms of agreement) following the date of acceptance. You will automatically be charged again at the end of the pre pay period unless closure notification has already been given.

In situation where the you have not paid we will immediately suspend all services on line until such Time as the outstanding charge is successfully processed.

Additionally, we reserve the right to suspend other services until the outstanding debt is cleared Any non-payment of a recurring invoice is subject to a £25 administration charge. You are responsible for all monies owed on the account from the time of establishment until the that you send a written cancellation of the agreement. We reserve the right to terminate/suspend any service if payment

schedules are not being followed.

2.2 We reserve the right to cancel the service at any time in this event you will be entitled to a refund based upon the remaining period of the service/agreement except in the case where you contravene the terms of this agreement

All hosting is subject to a 12 month contract, if you do not cancel before the end of the current year

Then you shall be liable for another twelve months of charges. Should we fail to receive your confirmation of renewal we shall remove all services on line with immediate effect on the date of the termination of the annual agreement

3. Trade Mark and Domain Name Services

3.1 Where any of the Services to be provided by us, as specified in the Project Brief / Plan, comprise advice and services in relation to trade mark registration or domain name registration, the provisions of this paragraph 3 shall apply.

3.2 Where explicitly stated and agreed in the Project Plan we shall use our best endeavors to obtain registration of any domain name(s) or trade mark(s) requested by you.

3.3 You warrant that you are the owner, or duly authorised licensee, of all Intellectual Property Rights and other rights for any trade mark or domain name for which you request we assist you to obtain registration.

3.4 You acknowledge that we cannot guarantee that any name or design requested by you will be available or approved for use and/or registration. You are required to carry out your own enquiries in this respect, although we may assist you at your request and your cost.

3.5 We reserve the right to require you to select a replacement domain name or trade mark and we may suspend the provision of the Services if, in our opinion, there are reasonable grounds for us to believe that your choice of name is, or is likely to be, in breach of the provisions of this paragraph 3.

3.6 We do not represent warrant or guarantee that any domain name or trade mark applied for by you or on your behalf will be registered in your name or is capable of being registered by you, or that use of such trade mark or domain name by you will not infringe any Intellectual Property Rights or other rights of any third party. Accordingly, we will not be liable for any action taken by you in respect of any requested domain name or trade mark prior to registration. Any fees payable to us for the Services are not conditional upon obtaining any such registrations.

3.7 The registration of any domain name or trade mark and its ongoing use is subject to the relevant naming authority's or trade mark registration body's terms and conditions, as appropriate, and you undertake to comply with such terms and conditions.

3.8 You acknowledge that your contact details, including details which may constitute Personal Data (such as name, address, telephone numbers and email address) will be passed to the relevant domain naming authority. You acknowledge that it may be a condition for registration with such a naming authority for such information to appear on that naming authority's publicly-accessible 'WHOIS' database and you hereby consent to your Personal Data being used in such a manner. We reserve the right, however, to register any domain name under our name.

3.9 You hereby irrevocably waive any claims against us in respect of any decision by any trade mark registration body or domain naming authority to refuse to register any trade mark or domain name and, without limitation, you acknowledge that any application or other administration fee payable is non-refundable in any event.

3.10 We accept no responsibility for the use of any domain name or trade mark by you and we shall take no part in any dispute between you and any third party in respect thereof. We reserve the right, on becoming aware of a dispute concerning a domain name, at our sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name, and/or to make such representations to the relevant naming authority as we deem appropriate.

4. Graphic and Other Design Services

4.1 Where any of the Services to be provided by us, as specified in the Project Brief / Plan, comprise graphic and other design services, the provisions of this paragraph 3 shall apply.

4.2 Within 20 Business Days of approval of the Project Brief / Plan in accordance with the provisions of clause 3 or at such other time as agreed by you and by us in the Project Brief / Plan, we shall provide you with a draft of our suggested designs, whether in storyboard, graphic, report or electronic format (Design Concepts).

4.3 Within 10 Business Days of your receipt of the draft Design Concepts, or at such other time as agreed by both parties in the Project Brief / Plan, you shall notify us in writing either:

(a) of your approval of one of the draft Design Concepts, in which case the selected draft Design Concept shall become the final Design Concept;

(b) of suggested changes which you require to the draft Design Concepts, in which case we shall, within a further 10 (approximately) Business Days provide you with a further draft of the Design Concepts incorporating the suggested changes.

4.4 You acknowledge that any changes to the Design Concepts arising in respect of paragraph 4.3(b) may incur additional charges if the time or number of changes engaged by us in

carrying out such changes exceeds the total time or number of changes allocated for Design Concept reviews as set out in the Project Brief / Plan.

4.5 If you reasonably believe that the further draft of the Design Concepts provided in accordance with paragraph 3.3(b) is not satisfactory, you may at your own cost revise the draft Design Concepts and present them to us within five Business Days of the receipt of the revised draft. Upon such receipt we will notify you in writing within a further five Business Days whether such suggested alterations to the draft Design Concepts are feasible in whole or in part and the additional cost implications, if any, of the changes proposed by you.

4.6 Within two Business Days of your receipt of our comments under paragraph 3.3 above you shall either:

(a) approve the suggestions and the amended draft Design Concept selected by you shall be the final Design Concept; or

(b) suggest further amendments to the draft Design Concepts in accordance with the provisions of paragraph 3.5 and that procedure shall continue until such time as the final Design Concept has been approved in accordance with the provisions of this paragraph 3.6.

4.7 You are required to print the final artwork comprising the final Design Concept and fax such artwork back to us, by way of acceptance of it. In the event that you have not so responded within 10 Business Days indicating your acceptance or rejection, you will be deemed to have accepted the final Design Concept on the 11th Business Day following receipt. Should we fail to receive your approval of Artwork in accordance with the noted or any subsequently agreed timescale we shall consider your project suspended and cease all further works until such time as your approval or further instructions are received. Should your failure to approve artwork result in a termination of the contract we shall invoice for all costs incurred up to and including the date of such termination.

4.8 All Intellectual Property Rights in the final Design Concept shall be transferred to you following payment of all sums due from you to us. Following any such assignment, you hereby grant to us a non-exclusive licence of such Intellectual Property Rights in the final Design Concept for the purposes of providing any future or outstanding Services in accordance with the terms of the relevant Project Plan. We retain the ownership of all Intellectual Property Rights in all Design Concepts other than the final Design Concept, and you acknowledge that we can use the retained Design Concepts for any purpose or other client.

4.9 You shall be responsible for notifying us prior to the preparation of the Project Brief / Plan of any specific advertising requirements or restrictions relevant to the particular profession, trade or industry in which you operate insofar as they affect the Services we are to provide. We shall have no obligation to investigate or verify any such advertising requirements or restrictions and we shall have no liability to you in the event that any information provided by you to us in this respect proves to be inaccurate.

5. Other Services

5.1 Where the Services to be provided (whether by us or as Third Party Products) comprise such marketing campaign aspects as pay-per-click advertising, search engine optimisation or assisting you with your product placement or marketing strategy, you acknowledge that we cannot guarantee or quantify the results of any such campaign and you use such Services at your own risk.

5.2 Where the Services result in the creation of any additional Intellectual Property Rights (such as, but not limited to, Intellectual Property Rights in software or interactive applications) not referred to in these Terms or the Project Plan, such Intellectual Property Rights shall, unless we agree in writing, vest automatically in us. Any licence of such Intellectual Property Rights shall be on such terms as you and we shall agree.

6. Third Party Products

6.1 Where we agree as part of the Services to provide Third Party Products, these shall be supplied in accordance with the relevant licensor's or third party's standard terms and conditions. You acknowledge, for example, that the Website Software incorporates certain open source binaries that are licensed for use and are subject to restrictions pursuant to, and under separate agreements. By using these open source binaries you agree to be bound by and comply with the terms of those additional agreements. We give no warranty in relation to and have no liability in connection with your use of these open source binaries.

6.2 Where you use such Third Party Products, you do so on the basis that we appoint the relevant supplier of the Third Party Products as your agent, with a direct contractual relationship arising between you and the relevant supplier. Whilst we shall all reasonable endeavors to ensure that any Third Party Products are supplied to your satisfaction, we accept no liability in this respect and you are responsible for checking compliance with your requirements and seeking any legal redress against the supplier in the event that any problems arise.

5.3 The estimated costs of any such Third Party Products included in the Project Brief / Plan are for guidance purposes only and you shall be liable to indemnify us for our full costs in this respect.

5.4 Where the Third Party Products include photography, illustration, painting or digital

animation, your use of such photography, illustration, painting or digital animation will usually be on a copyright licence basis only, unless otherwise agreed by us in writing.

5.5 Where the Third Party Products include printing, you acknowledge that such services are prone to errors and you shall be responsible for approving any mock-ups or 'PDF' documents provided to you.

5.6 Where the Third Party Products include the provision of direct mailing services, you are responsible for complying with the terms and conditions of the data supplier as regards the use and any subsequent use of mailing lists obtained