



Code of Practice

Terms and Conditions of Business

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This Agreement is made between AVAN Systems and the party contracting the services (the Client), and becomes effective upon the date that AVAN Systems accepts this signed agreement (be that by email, fax, Royal Mail post, or in person) for the contracting party (the Client) to use the service or services requested. Please note that AVAN Systems reserves the right to refuse services and/or access to its servers to anyone.

1. DEFINITIONS

1.1) "Agreement" means any agreement made subject to these Terms and Conditions, which shall incorporate or be subject to these Terms and Conditions. In this Service Agreement the party who is to receive the Services provided, shall be referred to as the "Client" and the party providing the Services shall be referred to as "AVAN Systems."

1.2) "Services" means web site design and construction, domain name registration, web site hosting and email facilities, web site maintenance, internet training and any other service or facility provided by AVAN Systems to the Client.

1.3) "Server" means any computer server equipment operated by or contracted to AVAN Systems in connection with the provision of the Services. "Web Site" means the area on a Server allocated by AVAN Systems (or any other Hosting Company) to the Client for use by the Client as a site on the World Wide Web or Internet.

1.4) "Web Site Design" means web page design, custom HTML, custom programming and associated construction which may include web page layout, graphics, photographs of materials and/or products that the Client wishes to display on the web site, including the redesign of existing web sites.

1.5) "Web Traffic" means data transferred from a web site.

1.6) "Search Engine Registration" means submission of the Client's URL, or domain name, to Internet Search Engines to assist in the effort of gaining recognition for the Client's web site.

1.7) "Domain Name Registration" means the registration with the appropriate authorities of the desired domain name on behalf of the Client.

1.8) "Web Site Hosting" means providing World Wide Web page hosting on a server with email message facilities.

2. SERVER USE

2.1) Pornography, erotic images or other lewd or obscene content and sex-related merchandising are PROHIBITED on any AVAN Systems server. Illegal material including but not limited to copyrighted works, commercial video, music files and any material in violation of any regulation is PROHIBITED on any AVAN Systems server. Pirated software, ROMS, emulators, phreaking, hacking, password cracking. IP spoofing, etc., and encrypting of any of the above is PROHIBITED on any AVAN Systems server. Also includes any sites which provide "links to" or "how to" information about such material.

2.2) Spamming, or the sending of unsolicited email, from an AVAN Systems server or using an email address that is maintained on an AVAN Systems machine is STRICTLY PROHIBITED. AVAN Systems reserves the right to suspend or cancel a Client's access to any or all services provided by AVAN Systems if AVAN Systems decides that an account has been inappropriately used.

3. SEARCH ENGINE REGISTRATION

All search engine registrations carried out by AVAN Systems are done so to the best of AVAN Systems abilities, but it should be noted that AVAN Systems has no control over search engine registrations. As such AVAN Systems cannot guarantee how or where the search engine will rank the Client's web site, nor how long an individual search engine directory may take to catalogue the information presented. AVAN Systems will provide search engine optimisation, but does not take responsibility for maintaining these optimised submissions.

4. DOMAIN NAME REGISTRATION

4.1) AVAN Systems makes no representation that the domain name the Client wishes to register is capable of being registered by or for the Client, or that it will be registered in the Client's name. The Client should therefore not assume registration of a requested domain name(s) until the Client has been notified that it has, or they have, been registered. Any action taken by the Client before such notification is at the Client's own risk.

4.2) It is solely the client's responsibility to maintain the domain name. The registration and use of the Client's domain name is subject to the terms and conditions of use applied by the relevant naming authority; the Client shall ensure that they are aware of those terms and conditions and that they comply with them.

4.3) The Client shall have no right to bring any claim against AVAN Systems in respect of refusal to register a domain name. Any administration charge paid by the Client to AVAN Systems shall be non-refundable notwithstanding refusal by the naming authority to register the desired name.

4.4) AVAN Systems shall have no liability in respect of the use by the Client of any domain name; any dispute between the Client and any other person must be resolved between the parties concerned in such a dispute. AVAN Systems shall also be entitled to make representations to the relevant naming authority but will not be obliged to take part in any such dispute.

4.5) AVAN Systems gives no warranty that the Domain Name requested will not infringe the rights of any third party and the client indemnifies AVAN Systems in respect of any such infringement. AVAN Systems shall not release any domain name to another provider unless full payment for that domain name has been received by AVAN Systems. 4.6) AVAN Systems shall have no liability in respect of the renewal of any domain name(s).

5. DEVELOPER'S CREDIT

Client's web site pages which have been designed and constructed by AVAN Systems shall have a link to AVAN Systems' web sites, appearing in small type at the bottom of each web site page.

6. POST PLACEMENT ALTERATIONS

AVAN Systems cannot accept responsibility for any alterations caused by a third party to the Client's web site pages once placed on a server. Such alterations include, but are not limited to additions, modifications, or deletions.

7. WEB SITE HOSTING AND EMAIL

7.1) AVAN Systems make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server, and AVAN Systems shall have no liability for any loss or damage to any data stored on the Server. The Client shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.

7.2) Under no circumstances shall AVAN Systems be held liable for claims arising from the content of the Client's web site. The Client represents, undertakes and warrants to AVAN Systems that they will use the Web Site allocated to them only for lawful purposes. In particular, the Client represents, warrants and undertakes to AVAN Systems that: the Client

will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will they authorise or permit any other person to do so; the Client will not post, link to or 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.

7.3) The Client shall keep secure any identification, password and other confidential information relating to the Client's account and shall notify AVAN Systems immediately of any known or suspected unauthorised use of the account or breach of security, including loss, theft or unauthorised disclosure of the password or other security information.

7.4) The Client shall observe the procedures, which AVAN Systems may from time to time prescribe and shall make no use of the Server which is detrimental to AVAN Systems' other customers. The Client shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and a secure manner. In the case of an individual, the Client warrants that they are at least 18 years of age and if the Client is a company, the Client warrants that the Services will not be used by anyone under the age of 18 years.

7.5) The Client will keep AVAN Systems informed of any change to the Client's address and other such information as may effect the payment of charges due. While AVAN Systems will use every reasonable endeavour to ensure the integrity and security of the Server, AVAN Systems do not guarantee that the Server will be free from unauthorised users or hackers and AVAN Systems shall be under no liability for non-receipt or misrouting of email or for any other failure of email.

7.6) AVAN Systems reserves the right to make extra charges for additional Web Site traffic or data transfer from the client's web site above the standard levels of 0.5gb per month. High bandwidth usage accounts may create a need to upgrade the network to cope with the traffic in order to maintain a reasonable level of service to all users. AVAN Systems will therefore contact the Client should such usage become apparent. If no arrangement can be reached, AVAN Systems reserves the right to terminate the account giving one week's notice to the Client. All web site hosting accounts are set up on a prepay basis. All pricing is guaranteed for the term of the prepayment. AVAN Systems reserves the right to change prices at any time.

8. SERVICE AVAILABILITY AND PERFORMANCE

8.1) AVAN Systems shall use all reasonable endeavours to make available to the Client at all times the Server and the other Services, but AVAN Systems shall not, in any event, be liable for interruptions of Service or downtime of the Server, or any losses associated with such interruptions. The Client acknowledges and agrees that AVAN Systems cannot guarantee the absence of service interruptions caused virus , spam or other technical difficulties or other circumstances beyond AVAN Systems's control, including, but not limited to, telecommunications problems.

8.2) AVAN Systems shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 days the Client will be notified of the reason. The Client acknowledges that AVAN Systems will not be held responsible for the appearance or operation of any web site pages within any version or type of Web Browser software.

8.3) All web sites designed by AVAN Systems will be optimised for viewing in Microsoft Internet Explorer or Netscape Navigator. The Client accepts that certain features of their site may not work, or may not be visible, or may look different, depending on the functionality of the hardware and software used to view the site.

8.4) The Services provided to the Client hereunder and the Client's account with AVAN Systems cannot be transferred or used by anyone other than the Client.

8.5) No more than one log-in session under any one account may be used at any time by the Client. If the Client has multiple accounts, the Client is limited to one login session per system account at any time; user programs may be run only during log-in sessions.

8.6) If the Client's account is found to have been transferred to another party, or shows other activity in breach of this sub clause, AVAN Systems shall have the right to cancel the account and terminate the Services and/or this Agreement immediately.

8.7) AVAN Systems works on the widely accepted 'open relay' system. Some ISPs may block email services working on an 'open relay' system in order to reduce SPAM. AVAN Systems is not obliged to provide an email service compatible with such ISPs.

9. PERFORMANCE OF SERVICES AND WORK

AVAN Systems is an independent contractor in regard to all work and services performed and do not perform work on a "work for hire" basis. AVAN Systems reserves the right to sub-contract highly specialised tasks to appropriately qualified specialist programmers or service providers at its sole discretion.

10. PAYMENT

10.1) Charges for all Services shall be paid by the Client to AVAN Systems in advance, unless otherwise agreed by AVAN Systems in a Web Site Design Contract Agreement, or Addendum to such an agreement. All payments must be in UK Pounds Sterling, unless otherwise agreed by AVAN Systems.

10.1) If a payment cheque from the Client is returned by the bank as unpaid for any reason, the Client will be liable for a "returned cheque" charge of £25. All web site hosting and web site maintenance accounts are set up on a prepay basis by standing order unless otherwise agreed by AVAN Systems in writing.

10.2) All pricing is guaranteed for the term of the prepayment. AVAN Systems reserves the right to change prices at any time. Payment is due each anniversary month or period following the date the hosting and/or maintenance account was established.

10.3) If for any reason payment does not arrive on time, the account may be suspended without notice or alternatively AVAN Systems reserves the right to charge penalty interest.

10.4) Any account not brought current within one week of email notification is subject to suspension. The Client is responsible for all money owed on the account from the time it was established to the time AVAN Systems receives a cancellation notice for termination of services.

10.5) All charges payable by the Client for Services shall be in accordance with the scale of charges and rates published from time to time by AVAN Systems on their web sites or by other means. AVAN Systems reserves the right to vary all charges, with one months notice to the Client. All charges are not subject to VAT.

10.6) Without prejudice to AVAN Systems other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, AVAN Systems shall be entitled forthwith to suspend the provision of Services to the Client without notice.

11. RELATIONSHIP OF PARTIES

It is understood by the parties that AVAN Systems is an independent contractor with respect to the Client, and not an employee of the Client, and as such the Client will not provide any employee or fringe benefits, for the benefit of AVAN Systems or AVAN Systems employees.

12. PERMISSIONS AND COPYRIGHT

12.1) The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphics, registered company logos, names and trademarks or any other material supplied to AVAN Systems by the Client for the design and construction of any web pages. Acceptance of this Agreement shall be regarded as a guarantee by the Client that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested.

12.2) No responsibility will be accepted by AVAN Systems for damages to or losses incurred by the Client from the use of material for which the required permission or authority has not been properly obtained. The Client is required to ensure that the content of their web site pages meets all the current UK government legislation regarding publications. The Client shall further indemnify AVAN Systems in respect of any claims, costs or expenses that may arise from any material included in the Client's web site pages.

13. CONFIDENTIALITY

AVAN Systems will not at any time or in any manner, either directly or indirectly, use for the personal benefit of AVAN Systems, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Client. AVAN Systems will act reasonably to protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon request, AVAN Systems will return to the Client all notes, records, documentation or other items belonging to the Client that were used for the Services of this Agreement.

14. WORK PRODUCT OWNERSHIP

14.1) Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively, the "Product") developed in whole or in part by AVAN Systems in connection with the Services shall be the exclusive property of AVAN Systems. Two noted exceptions are

- i. Any and all HTML documents created specifically for the Client are the property of the Client.
- ii. Any and all graphics created specifically for the Client are the property of the Client

14.2) If the Client wishes to obtain exclusive rights to any other such copyrightable property it must be agreed upon in writing by both the Client and AVAN Systems and made an Addendum to this Agreement. In any case, no release of rights or ownership from AVAN Systems to the Client of any works, product or services is granted until full payment for the Services is received in full from the Client.

15. CUSTOMER REVIEW OF WEB SITE DESIGNS

15.1) AVAN Systems will provide the Client with an opportunity to review the design concepts for the web site

before construction of the web site begins. AVAN Systems will also provide the Client with an opportunity to review the appearance and content of the web site once they are scripted and laid out.

15.2) Any request for alterations should be made at this time. Such scripted materials will be deemed to be accepted and approved at the time of presentation, unless the Client notifies AVAN Systems to the contrary. Alterations requested after this time will be charged for as extras, in addition to charges for any work completed up to the date such a request was received by AVAN Systems. Extras will be charged for at the custom design rate in accordance with the scale of charges and rates published from time to time by AVAN Systems.

16. CANCELLATION OF DESIGN SERVICES

16.1) Cancellation of web site design services may be made at or before the first customer review of design concepts, in which instance the Client will pay compensation for any design work completed at a flat-fee of £250, or whatever lower value fee AVAN Systems may at their discretion agree to.

16.2) Cancellation of design Services after the first customer review may, in the first instance, be made by telephone, but must be confirmed in writing from the original signature. The Client agrees to pay, and will be invoiced, for work completed to the date of first notice of cancellation.

17. ERRORS AND LIABILITIES

AVAN Systems will use its best endeavours to ensure the Services are free of errors. AVAN Systems may not be held responsible for any errors that may arise in the course of performing the Services. Such errors include but are not limited to: grammatical or spelling errors on web pages; misplacement of text or graphics on web pages; malfunctioning of interactive elements included in the web site pages. AVAN Systems does not accept any liability for losses or damages arising from errors within the Services.

18. INDEMNITY

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

19. INVALIDITY

If this Service Agreement or any part thereof shall be adjudged for any reason to be void, unenforceable or ineffective, but would be adjudged to be valid effective and enforceable if part of the wording were deleted or a provision were limited in scope, then this Agreement shall continue with such modifications deemed to be written, construed and enforced as so limited, so as to make its provisions (or if such be the case its remaining provisions) valid effective and enforceable.

20. TERMINATION AND SUSPENSION

20.1) This Agreement shall remain in force for a minimum period of 12 months from acceptance by AVAN Systems of the Client's application to use the service or services provided, or until such time as the services required under this agreement or addendum to this agreement are completed by AVAN Systems.

20.2) Termination of this agreement (other than for the cancellation of design services) can be effected by the Client by giving a minimum of 1 month's notice in writing, either by email, fax or Royal Mail post.

20.3) Termination can be effected by AVAN Systems, without in any way limiting AVAN Systems rights under any other sub clause in this agreement, if: the Client fails to pay any sums due to AVAN Systems as they fall due, then AVAN Systems may remove the web site from public viewing, or suspend the Services and/or terminate this Agreement forthwith without notice to the Client; the Client breaks any of these terms and conditions, including violating any licensing agreements, and fails to correct the breach within thirty (30) days following written notice from AVAN Systems specifying the breach, then AVAN Systems may terminate this Agreement forthwith upon written notice; the Client is a company and that company goes into insolvent liquidation or suffers the appointment of an administrator or administrative receiver or enters into a voluntary arrangement with the Client's creditors, then AVAN Systems shall be entitled to terminate this Agreement forthwith without notice to the Client.

20.4) On termination of this Agreement or suspension of the Services by AVAN Systems for breach of this agreement, AVAN Systems shall be entitled immediately to block the Client's Web Site and to remove all data located on it. AVAN Systems shall be entitled to delete all such data but may, at AVAN Systems discretion,

hold such data for such period as AVAN Systems may decide, to allow the Client to collect it at the Client's expense, subject to payment in full of any amounts outstanding and payable to AVAN Systems.

20.5) AVAN Systems shall further be entitled to post such notice in respect of the non-availability of the Client's Web Site as AVAN Systems thinks fit. Services may be suspended, or suspended during peak times, by AVAN Systems without notice and without prejudice to AVAN Systems Rights of Termination. No such suspension shall affect the liability of the Client to pay charges and other amounts due to AVAN Systems. During suspension AVAN Systems reserves the right to refuse to release the Client's Internet Address as issued by AVAN Systems.

21. RIGHTS ON TERMINATION

21.1) Termination of the agreement shall not affect any pre-existing liability of the Client or affect any right of AVAN Systems to recover damages or pursue any other remedy in respect of any breach by the Client of the agreement.

21.2) In the event of termination of the agreement by AVAN Systems on account of any breach of the Terms and Conditions thereof by the Client, AVAN Systems shall be entitled to the balance of all Annual Subscription payments, which would but for such termination, have accrued to the earliest date on which the Agreement could have been terminated by the Client in accordance with the terms hereof.

21.3) AVAN Systems shall not be required to release the Client's Domain Name or Internet address and may refuse to do so until this Agreement has been lawfully brought to an end and all sums due hereunder have been received by AVAN Systems, and the Client has complied with all its obligations hereunder.

22. LIMITATION OF LIABILITY

22.1) Nothing in these terms and conditions shall exclude AVAN Systems liability for death or personal injury resulting from AVAN Systems's negligence in providing these services.

22.2) The Client acknowledges and agrees that AVAN Systems's total aggregate liability to the Client 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 the Client in respect of the Services which are the subject of any such claim.

22.3) In any event no claim shall be brought unless the Client has notified AVAN Systems of the claim within one year of it arising. In no event shall AVAN Systems be liable to the Client for any loss of business, contracts, profits or anticipated savings, or for any other indirect or consequential or economic loss whatsoever.

22.4) AVAN Systems will not be held liable for any service that it provides which is totally reliant upon a third party over which AVAN Systems has no administrative control.

23. NOTICES

Any notice (including but not limited to Suspension notices) to be given by either party to the other must be in writing and may be sent by either email, fax or Royal Mail post to the address of the other party as appearing in this Agreement, or to such other address as such party may from time to time have communicated to the other in writing; and if sent by email shall unless the contrary is proved, be deemed to be received on the day it was sent; or if sent by fax shall be deemed to be served on receipt of an error free transmission report; or if sent by Royal Mail post shall be deemed to be served two days following the date of posting. In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such communication was properly addressed and posted as a prepaid first class letter.

24. CHANGES TO THE SERVICES

If any Network Operator shall discontinue the provision of telecommunications services to AVAN Systems or shall alter by modification, expansion, improvement, maintenance or repair of the telecommunications services or any part thereof provided to AVAN Systems, then AVAN Systems shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

25. HEADINGS

Headings are included in this Agreement for ease of reference only and shall not affect the validity or interpretation of this Agreement.

26. VARIATION

AVAN Systems reserves the right to vary these Terms and Conditions as a result of changes required by its insurers, operation or administration problems, new legislation, statutory instruments, Government regulations or licences.

27. ENFORCEMENT EXPENSES

The Client shall pay to AVAN Systems all reasonable costs and expenses incurred by AVAN Systems in enforcing any of these Conditions, or exercising any of its other rights and remedies under the agreement, including (without prejudice to the generality) all costs incurred in tracing the Client in the event that legal processes cannot be enforced at the address last notified to AVAN Systems.

28. NON-WAIVER

28.1) The allowance of time to pay or any other indulgence by AVAN Systems in respect of payments due to it shall in no manner affect or prejudice its right to payment together with interest provided under these Conditions.

28.2) The failure of either party to enforce any provision of this agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this agreement.

29. LAW

This Agreement shall be governed by and construed in accordance with English law and the client hereby submits to the non-exclusive jurisdiction of the English courts, and any alteration to part of the agreement shall not invalidate the remainder.

30. ENTIRE AGREEMENT

These Terms and Conditions together with any documents expressly referred to in them (including, but not limited to, Web Site Design Contract Agreements), contain the entire Agreement between AVAN Systems and the Client relating to the subject matter covered and supersede any previous Agreements, arrangements, undertakings or proposals, written or oral, between AVAN Systems and the Client in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these Terms and Conditions.

Declaration

I / We:..... hereby agree for AVAN Systems to develop and host the website described in this 16 page document and to carry out further amendments and developments where necessary. I / We also agree for AVAN Systems to carry out domain registration duties on our behalf when necessary and agree to abide by AVAN Systems Terms and Conditions as outlined in this 14 page document.

Signature:..... Date:.....
(On behalf of Esstee Mortgages)

Signature:..... Date:.....
(On behalf of Esstee Mortgages)

AVAN Systems hereby agree to develop and host the site described in this 14 page document and to carry out further amendments and developments where necessary. AVAN Systems also agree to carry out domain registration duties on behalf of Esstee Mortgages as outlined in this 16 page document.

Name:.....

Signature:..... Date:.....
(On behalf of AVAN Systems)