

# Web Site Design and Write Agreement

This agreement is dated:

It is made between:

[The Customer Name] of [address] (“the Customer”)

and

**Plan B Digital (Scotland) Ltd** of

Suite 2, 46 Bank Street, Irvine, Ayrshire KA12 0LP (“the Writers”).

## These are the definitions that apply to this agreement:

“Completion Date”	means the date specified as the completion date in the formal quotation.
“Content”	means all of the text, images and other information on all of the pages of the Web Site, so far as this is provided by the Customer.
“Design Proposals”	means single or alternative proposals for the appearance style and effects of the intended finished Web Site created by the Writers.
“Detailed Specification”	means the written specification of all of the software requirements to satisfy the Customer’s functional requirements for the Web Site.
“Excluded Matters”	means commercial arrangements for which the Writers is not responsible and which are pre-requisite to the operation of the Web Site.
“Phase”	means one of the numbered stages in the Timetable.
“Price”	means the price for the Project or a part of the Project as set out in the formal quotation.
“Project”	means all work in connection with the design and writing of the Web Site, until the Web Site is fully operational with every dynamic element and every link fully functional.
“Schedule”	means a schedule to this agreement.
“Search Engine Strategy Specification”	means the specification set out in the formal quotation for the maximisation of beneficial listings in search engines known as Google, MSN and Yahoo! and other large engines.
“Software”	means all or part of any software required to be written or used to complete the project and to enable the Customer to use the Web Site.
“Timetable”	means the timetable specifying the dates for the completion of each of the Phases of the Project as set out in Schedule 1 and subject to alteration in the course of completing the Project
“Web Site”	means the web site of the Customer, to be written under the terms of this contract.
“Web Site Documentation”	means the instruction manuals user guides and other documentation written over the period of this agreement and ultimately recording precisely all aspects of the Web Site on the day of completion.
“Web Site Host”	means a firm or company in the business of hosting web sites, with whom the Customer or the Writers shall have contracted to host the Web Site.

**These are the terms of agreement:**

1. **Summary of agreement**
  - 1.1. For the Price and subject to the terms of this agreement the Writers hereby undertake to complete the Project so as to satisfy the Detailed Specification and the Search Engine Strategy Specification and to write the Web Site Documentation.
2. **Representative liaison**
  - 2.1. With effect from today the Writers and the Customer shall each nominate a representative who shall be authorised to make decisions relating to the Project and who shall be responsible for:
    - 2.1.1. organising regular meetings at which they shall review the progress of the Project;
    - 2.1.2. providing all information and documentation reasonably required by the other of them to enable completion of the Project.
  - 2.2. Each month the Writers' representative shall prepare a progress report on the progress of the Project and shall deliver a copy to the Customer's representative at least 3 days before each meeting.
3. **Design approval procedure**
  - 3.1. The representatives of the parties will together formulate a functional requirements plan for the Web Site, including all dynamic elements and principal features.
  - 3.2. From today, and within the time specified in Schedule 1, the Writers will submit Design Proposals to the Customer for approval.
  - 3.3. Within seven days of having received the first Design Proposals, the Customer may terminate this contract by immediate notice in writing, whereupon payment will be due to the Writers only for that part of the Price applicable to production of the Design Proposals. If not terminated within seven days, the contract shall continue fully effective.
  - 3.4. The Customer shall not terminate this contract under this paragraph after acceptance of the first Design Proposals.
  - 3.5. If the Customer terminates the contract:
    - 3.5.1. The intellectual property rights in all graphical parts of the proposals remains with the Writers and the Customer shall not use any graphical part of the Design Proposals.
    - 3.5.2. All terms of this agreement relating to confidentiality continue to apply.
  - 3.6. The principal Design Proposals shall be submitted to the Customer in up to three versions for choice. Thereafter, three "*sub versions*" of the version chosen will be presented to the Customer for choice. All work additional to this process shall be charged to the Customer at the rate set out in Schedule 3.
  - 3.7. Approval of the Project by the Customer shall be split into parts in accordance with the list set out below. Each part shall be submitted to the Customer for approval. Submission shall be by way of posting to a test site, set up by the Writers for this purpose. Any timescale for the production of any part of the Web Site shall be construed as exclusive of all time during which the Writers await approval of any part by the Customer.
  - 3.8. The Design Proposals shall include:
    - 3.8.1. Graphics, including header, menu, and all images;
    - 3.8.2. Design of the control panel and the reports accessible from it;
    - 3.8.3. Home page, including all matters of logo, style and format so far as applicable;
    - 3.8.4. Any three other pages chosen by the Writers as examples of diversity of function;
    - 3.8.5. Where applicable an example of a secondary page;
    - 3.8.6. An explanation of the functional effect (but not the construction and dynamics) of the principal sub-systems identified by the representatives of both parties.

**4. Contract procedure after design approval**

- 4.1. After approval of the Design Proposals the Writers shall immediately prepare the Detailed Specification and the Customer shall provide to the Writers all information and other documents reasonably requested by the Writers for this purpose.
- 4.2. The Writers shall use all reasonable endeavours to complete the preparation of the Detailed Specification by the date set out in the Timetable or as soon thereafter as is possible and submit it to the Customer.
- 4.3. The Customer shall use all reasonable endeavours to complete the preparation of the Content by the date set out in the Timetable or as soon thereafter as is possible and submit it to the Writers for inclusion in the Web Site.
- 4.4. The Customer shall within seven days of receipt of the Detailed Specification notify the Writers of either: a) approval as drawn or b) his comments and/or requests for amendment as he shall reasonably judge appropriate. If the Customer fails to respond within the said period he shall be deemed to have approved the Detailed Specification.
- 4.5. The Writers shall take account of all reasonable comments and/or requests for amendment received from the Customer and shall incorporate them in a revised version of the Detailed Specification to be prepared and delivered to the Customer as soon as is reasonably possible.
- 4.6. The process described above shall be repeated until the Customer has approved (or is deemed to have approved) the Detailed Specification.
- 4.7. If the Customer requires an amendment to the Detailed Specification to take account of any application function or performance criteria not previously specified then the Writers shall be entitled to make such revision to the Timetable and the Completion Date as he shall in the circumstances reasonably judge necessary.
- 4.8. The Writers and the Customer agree to use all reasonable endeavours to complete the process of approval of the Detailed Specification by the date set out in the Timetable or as soon after as is possible.

**5. Content of Detailed Specification**

- 5.1. The Detailed Specification shall include (among other things)
  - 5.2. a list of browsers with which the web site will be compatible;
  - 5.3. the Customer's functional requirements for the Web Site;
  - 5.4. the Customers quantitative requirements for the Web Site;
  - 5.5. the software languages, applications, and adaptations proposed to be used in the construction of the Web Site;
  - 5.6. the bought software and plug-in sub-systems proposed to be used in the construction of the Web Site together with priced recommendations for sourcing such products;
  - 5.7. any necessary administrator control panel or system;
  - 5.8. a list of password protected files, specifying in each case, the function of the file, the password at start and the method of changing the password;
  - 5.9. any necessary communications systems required with details of how they will operate;
  - 5.10. a specification for systems of backup of the entire Web Site and of the data contained in it respectively and a proposal for its implementation.

**6. Web Site writing and delivery**

- 6.1. The Writers will write the Web Site and the Web Site Documentation upon the basis of and in compliance with the Detailed Specification by the date set out in the Timetable or as soon thereafter as is possible.
- 6.2. The Web Site Documentation shall be updated from time to time so that it provides a precise technical record of all features of the completed Web Site.
- 6.3. The customer will use all reasonable endeavours to complete arrangements in respect of such of the Excluded Matters as are necessary to satisfy the pre-requisite requirements of this contract.
- 6.4. The Writers shall use all reasonable endeavours to complete the Project by the date set out in the Timetable.
- 6.5. Delivery shall be effected for the purpose of this agreement only when the Software is complete and tested and fully operational on the server of the Web Site Host.

**7. Text modifications**

- 7.1. The Writers shall notify the Customer when the Web Site is substantially complete as to the text on the pages (even if the dynamic features are not yet complete) and shall provide open access (uncontrolled by any password or qualification) to the Customer to all of the pages including error message and other secondary pages
- 7.2. The Customer shall provide to the Writers a comprehensive list of text modifications in respect of all the pages
- 7.3. The Writers shall make the modifications requested and shall charge the Customer at the rate set out in Schedule 3 for html and web page construction

**8. Variations**

- 8.1. The Customer shall be entitled at any time prior to completion of the Project to request in writing the Writers to modify the design or functionality of the Web Site or the Software.
- 8.2. The Customer shall provide the Writers with full particulars of any requested modification and such further information as the Writers shall reasonably require.
- 8.3. Within 3 days of receipt of such a request the Writers shall inform the Customer in writing whether such modification is technically feasible and shall inform the Customer of: a) the estimated number of additional hours of work; b) any necessary alteration to the Timetable; c) as are caused by the proposed modification.
- 8.4. If the Customer elects to proceed with the modification within 3 days of receipt of such information then the Timetable shall be amended in the manner indicated by the Writers.
- 8.5. If modification is requested after the Web Site has been substantially constructed the Writers may decline to accept the additional work until after completion of and payment for the Project, such additional work becoming the subject of a separate contract.
- 8.6. If the Writers modify the whole or any part of the Software in accordance with this paragraph they shall make all appropriate related modifications to respectively the Detailed Specification and the Web Site Documentation so that both of these documents accurately reflect the finished version of the Web Site.

**9. Testing and acceptance**

- 9.1. The testing shall take place either on a test site or a site published to the World.
- 9.2. The Writers shall test the Software as a web site.
- 9.3. If any fault or "bug" is found the Writers shall undertake such further work as is necessary until the testing procedure is satisfied as to 100%.
- 9.4. When the test procedure is completed with 100% compliance, the Writers shall inform the Customer and the Customer shall test the Web Site.
- 9.5. Within seven days, the Customer shall inform the Writers of any deficiencies in the operation of the Web Site and in the absence of any such notification, the Customer is deemed to have accepted the Web Site.
- 9.6. The Project is complete after:
  - 9.6.1. the testing procedure has demonstrated 100% efficiency
  - 9.6.2. the Web Site is published on the server of the Web Site Host
  - 9.6.3. updated versions of the Detailed Specification and the Web Site Documentation have been handed to the Customer in soft copy
  - 9.6.4. a set of all files identical to the published set in a proper directory structure has been delivered to the Customer or to where he shall direct to be retained by the Customer as backup.

**10. Price and payment**

- 10.1. When the cost of a Phase has been fixed the Customer shall pay the Price Phase by Phase as each Phase is completed in accordance with the timetable set out in Schedule 3.
- 10.2. The Writers shall during the currency of this agreement maintain accurate and up-to-date records of the time spent by the Staff upon the Project, both in respect of work charged by the hour and work charged against a fixed price. Time shall be recorded in 15 minute units rounding to the nearest unit.
- 10.3. A representative of the Customer shall upon request be entitled at reasonable times to inspect and obtain copies of such records.
- 10.4. Each invoice submitted to the Customer for time charged by the hour shall contain a breakdown in respect of the time spent by the Staff and the materials and equipment used and the amounts attributable to each.
- 10.5. The Writers shall be entitled upon not less than 28 days' notice to the Customer and not more than once in every 12 months during the currency of this agreement to increase the rates for work charged by the hour. Such increase shall be no greater than 6% in any year.
- 10.6. The Writers reserve the right to charge the Customer interest in respect of the late payment of any sums due under this agreement (both before and after judgment) at the rate of 5 per cent above the base rate from the due date until receipt of payment.

- 10.7. The cost of work to be paid by the hour shall be invoiced monthly.
- 10.8. The Customer will make payment of money due within 7 days of receipt of each invoice.
11. **Late completion**
- 11.1. Time shall not be of the essence of this contract.
12. **Demonstration and training**
- 12.1. Immediately upon publication of the Web Site, the Writers will provide 4 hours explanation, demonstration and training in the operation of all aspects of the Web Site for such staff as the Customer shall direct and in a format agreed by the Customer.
- 12.2. The Writers shall provide such further training as the Customer may request within 12 months of the date of completion of the Project at the hourly rate set out in Schedule 3. Such training shall be provided by a person fully conversant with the Web Site.
13. **Exclusions from contract**
- 13.1. The Excluded Matters are:
- 13.1.1. Registration of necessary domain names
- 13.1.2. Arrangement of merchant server banking facilities
- 13.1.3. Contracting for web hosting services and the provision of appropriate firewalls.
- 13.1.4. Supply new or change existing Customer e-mail message system
- 13.1.5. Purchase of any necessary computer hardware and software
- 13.1.6. Search engine optimisation beyond that specified in this agreement.
14. **Confidentiality**
- 14.1. The parties are aware that in the course of the Project they will each have access to and be entrusted with information in respect of the business and operation of the other and their dealings, transactions and affairs, all of which information is or may be confidential.
- 14.2. The parties hereby undertake for themselves and every employee or sub-contractor whose services they may use both during and after completion of the Project that they will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information.
- 14.3. For the purposes of the Customer's above undertaking, the information shall be deemed to include all information (written or oral) concerning the Detailed Specification and the Search Engine Strategy Specification.
- 14.4. Both the Writers and the Customer hereby undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with these provisions.
- 14.5. Each of the Writers and the Customer hereby undertakes one to the other that for the period of 12 months following completion of the Project they will not directly or by an agent or otherwise and whether for themselves or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.
- 14.6. The provisions of the last previous sub paragraph shall not apply to one of them if the other becomes subject to bankruptcy, receivership or liquidation proceedings.

15. **Third party software rights**

- 15.1. If the Writers incorporate or embed third party software products in the Project then such products will so far as possible be properly licensed to the Customer, with full and appropriate legal documentary evidence in support and any money payable to a third party shall be paid by the Writers. Any license fees payable by the Customer to any third party for software incorporated in the Web Site but not previously used by the Customer shall be paid by the Writers unless included in the price specification set out in the formal quotation document.
- 15.2. Insofar as the terms of business of a third party seller of software do not permit the arrangement set out in sub-paragraph 1, above, then the Customer shall himself buy the software concerned whereupon the Writer shall have no obligation in respect of the software except to warrant that it functions as a part of the Web Site.
- 15.3. Insofar as it is impractical to follow the procedure set out in sub paragraph 2 above, then the Writers shall be deemed to be the agents of the Customers for the purpose of buying such software. In this event, the Writers will advise the seller by e-mail, with copy to the Customer, that the software have been purchased for use by the Customer. The writer will provide full contact details to the seller. It shall be the responsibility of the customer to retain the copy of the e-mail message by the Writers.

16. **Intellectual property rights**

- 16.1. Software code and graphic images owned by a third party are not affected by this agreement. During and after completion of the contract and unless otherwise specified in this agreement ownership of intellectual property shall be as follows:
- 16.1.1. Web Site concepts belong to the Customer.
- 16.1.2. Web Site designs used in the Web Site belong to the Customer.
- 16.1.3. Web Site designs not used belong to the Writers.
- 16.1.4. Graphic images provided by the Writers belong to the Customer unless the Writers expressly state that ownership is retained by them.
- 16.1.5. Software code written by the Writers prior to the date of this agreement and incorporated in the Web Site belongs to the Writers.
- 16.1.6. Code written specifically for the Web Site belongs to the Writers.
- 16.1.7. Software elements being components previously developed by the Writers belong to them.
- 16.1.8. The Writers now grant an exclusive license to the Customer for all items listed above and owned by them, for use in connection with any web site the Customer might own or use for a period of 99 years. The customer may not assign this licence except by way of sale or transfer of the whole of the Web Site or such other web site of the Customer that contains the relevant item.

17. **Intellectual property rights indemnity by Writers**

- 17.1. The Writers shall indemnify the Customer against any damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action that the normal operation possession or use of the Web Site and Web Site Documentation by the Customer infringes the patent copyright registered design or trade mark rights of that third party provided that the Customer:
- 17.1.1. gives notice to the Writers of any infringement immediately he becomes aware of it;
- 17.1.2. gives the Writers the sole conduct of the defence to any claim and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim except upon the express instructions of the Writers; and
- 17.1.3. acts in accordance with the reasonable instructions of the Writers and gives to the Writers whatever assistance they reasonably require in respect of the conduct of their defence.
- 17.2. The Writers shall reimburse the Customer its reasonable costs incurred in complying with the above provisions.
- 17.3. The Writers shall have no liability to the Customer in respect of an infringement if it results from any alteration modification or adjustment to the Software or Web Site Documentation not previously known by the Writers.
- 17.4. In the event of an infringement the Writers shall immediately make such alterations modifications or adjustments to the Software and Web Site Documentation as shall be necessary to make them non-infringing and shall not charge the Customer for this work.
- 17.5. No limitations of the liability of the Writers to the Customer specified elsewhere in this agreement shall apply to this paragraph.



**18. Intellectual property rights indemnity by Customer**

- 18.1. The Customer hereby agrees to indemnify the Writers against all claims and costs arising:
- 18.1.1. in connection with the Content supplied by the Customer, whether for breach of intellectual property rights defamation or otherwise
  - 18.1.2. out of any failure to comply with any law or statutory instrument.
- 18.2. provided that the Writers:
- 18.2.1. give notice to the Customer of any infringement immediately they become aware of it;
  - 18.2.2. give the Customer the sole conduct of the defence to any claim and do not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the claim except upon the express instructions of the Customer; and
  - 18.2.3. act in accordance with the reasonable instructions of the Customer and give to the Customer whatever assistance he reasonably requires in respect of the conduct of his defence.
- 18.3. The Customer shall reimburse the Writers their reasonable costs incurred in complying with the above provisions.

**19. Warranties by Writers**

- 19.1. The Writers hereby warrant:
- 19.1.1. that the Detailed Specification will contain all the information listed in paragraph 5 above
  - 19.1.2. that the Software will be written in accordance with the Detailed Specification
  - 19.1.3. that the Software will be written in best industry practice
  - 19.1.4. that all dynamic features of the Web Site including all links will function as intended to the quantitative specification contained in the Detailed Specification

**20. Limitation of liability**

The following provisions set out the Writers' entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:

- 20.1. any breach of its contractual obligations arising under this agreement; and
- 20.2. any representation statement or tortuous act or omission including negligence arising under or in connection with this agreement

and the Customer's attention is drawn to these provisions.

- 20.3. Any act or omission on the part of the Writers, falling within this paragraph shall be known as an 'Event of Default'.
- 20.4. The Writers' entire liability in respect of any Event of Default shall be limited to damages of an amount equal to the total Price paid by the Customer for this Project.
- 20.5. The Writers shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Writers had been advised of the possibility of the Customer incurring the same.
- 20.6. If a number of Events of Default give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this agreement.
- 20.7. The Customer hereby agrees to give the Writers not less than 28 days in which to remedy any Event of Default hereunder.
- 20.8. The Writers shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of it on the Writers within one year of the date he became aware of the circumstances giving rise to the Event of Default or the date when he ought reasonably to have become so aware.
- 20.9. Nothing in this paragraph shall confer any right or remedy upon the Customer to which he would not otherwise be legally entitled.
- 20.10. The Writers shall not be liable to the Customer for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.

21. **Termination**

This agreement may be terminated:

- 21.1. immediately by the Writers if the Customer fails to pay any sum due within 35 days of the date of submission of an invoice;
- 21.2. immediately by either party if the other commits any material breach of any term of this agreement and which in the case of a breach capable of being remedied is not remedied within 30 days of a written request to remedy it;
- 21.3. immediately by either party if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).
- 21.4. Any termination of this agreement by this paragraph shall be without prejudice to any other rights or remedies to which a party may be entitled.

22. **Force majeure**

- 22.1. Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including strikes of its own employees.
- 22.2. Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it.
- 22.3. If a default due to force majeure shall continue for more than 6 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

23. **Successors to the agreement**

- 23.1. The benefit and obligations of this agreement shall be binding on any successor in title.
- 23.2. Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

24. **Notices**

Any notice to be served on either of the parties by the other shall be sent by first class post or pre paid recorded delivery or by facsimile and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile to the correct number.

25. **Headings**

The headings in this document are for reference only.

26. **Dispute Resolution**

In the event of a dispute arising out of or in connection with this Contract and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by the Customer and the Writers then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

27. **Waiver**

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

28. **Jurisdiction**

This Contract shall be construed according to the Laws of Scotland.

Signed by [name]: \_\_\_\_\_ Signature: \_\_\_\_\_

Duly authorised by the Customer:

Signed by [name]: \_\_\_\_\_ Signature: \_\_\_\_\_

Duly authorised by the Writers:

Terms and Conditions



## Web Site Associated work

These terms and conditions regulate the business relationship between you and us. By using Our Web Site in any way, or by buying from us, you agree to be bound by them. If you do not accept this, please leave our web site now.

No person under the age of 18 years may purchase goods and services

We are: **Plan B Digital (Scotland) Ltd**

VAT Registration number: **838 9289 63**

Our address is: **Suite 2  
46 Bank Street  
Irvine  
KA12 0LP**

Our e-mail address is: **info@planbonline.co.uk**

You are: **Anyone who pays us for our services.**

## The Terms and Conditions

### 1. Basis of Contract

- 1.1. You warrant that you buy our services as a business and not as a consumer.
- 1.2. Subject to the terms set out in this document we agree to provide to you some or all of the products and services described on our Web site (together referred to as "the Services") at the prices we charge from time to time, such prices also being stated on our Web site. We now refer to the prices of the Services we sell to you as the "Price" and the contract between us as "the Contract".
- 1.3. You acknowledge that we may charge you at hourly rates (the "Hourly Rates") and you will pay us, for all work not included in the main contract. The rates may vary between categories or work. The Hourly Rates will be those published from time to time on our web site.
- 1.4. A conditional contract between us comes into existence when we receive payment from you into our bank account for a product or service described on our Web site, or at such later date as we agree the terms of our service. The condition is our acceptance of the contract.
- 1.5. If within 7 days of our receipt of your payment, we do not notify you by e-mail or post that we have not accepted your contact, then the Contract becomes absolute.

**2. Identification of the Services**

You acknowledge that:

- 2.1. you understand exactly what is included in the Services;
- 2.2. you are satisfied that the Services are suitable and satisfactory for your requirements;
- 2.3. in entering into the Contract you have not relied on any representation or information from any source except the definition and explanation of the Price and the Services given on our Web site.

**3. Timing arrangements**

- 3.1. Except where specified otherwise, time shall not be of the essence of this contract. Time periods specified are to be those within which we and you will use our best endeavours to comply.
- 3.2. Where you fail to act within a specified time period, we may interpret your silence as acceptance.
- 3.3. Any estimate of timing given to you by us either in these terms or by other means is based on our calculation of time to be spent by us alone and does not include any time spent by you.

**4. Design approval procedure**

- 4.1. You will present to us a draft detailed specification (the "Detailed Specification") of the user requirements and functional requirements for your proposed web site ("Web Site"). The following items or explanations will be included where applicable:
  - 4.1.1. explanation of purpose of the Web Site;
  - 4.1.2. your functional requirements for the Web Site;
  - 4.1.3. your quantitative requirements for the Web Site;
  - 4.1.4. a specification of your preferred site design and style;
  - 4.1.5. alternative routes a visitor may take through the web site;
  - 4.1.6. an outline of the navigation you require;
  - 4.1.7. a list of principal pages, that is, pages a visitor might choose to visit;
  - 4.1.8. your chosen keywords for each main page;
  - 4.1.9. textual content of each main page;
  - 4.1.10. whether password protection is required and if so, to which pages;
  - 4.1.11. a content specification for any database, including fields, qualifications and reports;
  - 4.1.12. specification for any control panel required;
  - 4.1.13. a list of browsers with which the web site will be compatible;
  - 4.1.14. the name of a web site host (the "Web Site Host"), with whom you have made arrangements to host the Web Site;
- 4.2. Within seven days, we will respond with questions and advice.
- 4.3. Within seven days of your reply we will present to you an updated Detailed Specification together with preliminary design concepts for your consideration.
- 4.4. Within seven days of your receipt of the Detailed Specification, you may terminate this contract by immediate notice in writing, whereupon payment will be due us at the rates set out in our web site for work to that point. Time is of the essence of this provision.
- 4.5. If not terminated within seven days, the contract shall continue fully effective.
- 4.6. If you terminate the contract:
  - 4.6.1. the intellectual property rights in all work done by us remain our property and you may not use any part of our work.
  - 4.6.2. All terms of this agreement relating to confidentiality continue to apply to both of us.

5. **Contract procedure after design approval**

- 5.1. Within seven days of receipt of the Detailed Specification you will notify us of either:
- 5.1.1. your approval as drawn or
  - 5.1.2. your comments and/or requests for amendment.

If you fail to respond within that period he shall be deemed to have approved the Detailed Specification.

- 5.2. We will take account of all reasonable comments and/or requests for amendment received from you and shall incorporate them in a revised version of the Detailed Specification to be prepared and delivered to you as soon as is reasonably possible.
- 5.3. You will pay us at the Hourly Rates for all amendments immediately we send you an invoice by post or e-mail.
- 5.4. If you require an amendment to the Detailed Specification to take account of any application function or performance criteria not previously specified then we will be entitled to make such revision to the timetable and the completion date as he shall in the circumstances reasonably judge necessary.

6. **Web Site writing and delivery**

- 6.1. We will write the Web Site upon the basis of and in compliance with the Detailed Specification within the time period specified in our web site.
- 6.2. You will complete arrangements in respect of such of the Excluded Matters as may be necessary to satisfy the requirements of the Contract.

7. **Text modifications**

- 7.1. We will notify you when the Web Site is substantially complete as to the text on the pages (even if the dynamic features are not yet complete) and shall provide open access (uncontrolled by any password or qualification) to you to all of the pages including error message and other secondary pages
- 7.2. You will provide to us a comprehensive list of text, style and other modifications in respect of all the pages.
- 7.3. We will make the modifications requested and will charge you at the Hourly Rates.

8. **Testing and acceptance**

- 8.1. The testing shall take place either on a test site or a site published to the World.
- 8.2. We will test the Software as a web site.
- 8.3. If any fault or "bug" is found we will undertake such further work as is necessary until the testing procedure is satisfied as to 100%.
- 8.4. When the test procedure is completed with 100% compliance, we will inform you and you may test the Web Site.
- 8.5. Within seven days, you will inform us of any deficiencies in the operation of the Web Site and in the absence of any such notification; you are deemed to have accepted the Web Site.
- 8.6. The Contract is complete after:
- 8.6.1. the testing procedure has demonstrated 100% efficiency
  - 8.6.2. the Web Site is published on the server of the Web Site Host.

9. **Hourly Rates**

- 9.1. We will during the currency of this agreement maintain accurate and up-to-date records of the time spent by our staff upon the Contract, both in respect of work charged by the hour and work charged against a fixed price. Time shall be recorded in 15 minute units rounding to the nearest unit.
- 9.2. Each invoice submitted to you for time charged at Hourly Rates shall contain a breakdown in respect of the time spent by our staff and the materials and equipment used and the amounts attributable to each.
- 9.3. We reserve the right to charge you interest in respect of the late payment of any sums due under this agreement (both before and after judgment) at the rate of 5 per cent above the base rate from time to time of the Bank of England from the due date until receipt of payment.
- 9.4. When you order work to be paid at Hourly Rates, we will provide an estimate of the cost of such work. You agree to pay us the estimated sum immediately. We do not have to continue with any work on the Contract until we have received the estimated sum into our bank account.
- 9.5. If we choose to give you credit, you agree to pay our invoice for work done within seven days.

**10. Exclusions from contract**

- 10.1. The Excluded Matters are:
- 10.1.1. Registration of necessary domain names
  - 10.1.2. Arrangement of merchant server banking facilities
  - 10.1.3. Contracting for web hosting services and the provision of appropriate firewalls.
  - 10.1.4. Supply new or change existing Customer e-mail message system
  - 10.1.5. Purchase of any necessary computer hardware and software
  - 10.1.6. Search engine optimisation.

**11. Confidentiality**

- 11.1. We are both aware that in the course of the Contract we will each have access to and be entrusted with information in respect of the business and operation of the other and our dealings, transactions and affairs, all of which information is or may be confidential.
- 11.2. Both you and we hereby undertake for ourselves and every employee or sub-contractor whose services we may use both during and after completion of the Contract that we will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information of the other of us.
- 11.3. For the purposes of your above undertaking, the information shall be deemed to include all information (written or oral) concerning the Detailed Specification.
- 11.4. Both we and you hereby undertake to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by its employees agents and sub-contractors with these provisions.

**12. Third party software rights**

- 12.1. If we incorporate or embed third party software products in the Web Site then such products will so far as possible be properly licensed to you or to us in accordance with the conditions of sale of the seller of them. We give no warranty in respect of any such products beyond the warranty given to us and subject to the seller's conditions.

**13. Intellectual property rights**

- 13.1. Software code and graphic images owned by a third party are not affected by this agreement. During and after completion of the contract and unless otherwise specified in this agreement ownership of intellectual property shall be as follows:
- 13.2. Web Site concepts contained in your first draft Detailed Specification belong to you.
  - 13.3. Web Site concepts and designs and images introduced by us, belong to us.
  - 13.4. Original work done to your specific order belongs to you.
  - 13.5. Software code and components written by us prior to the date of this agreement and incorporated in the Web Site belong to us.
  - 13.6. Code written specifically for the Web Site belongs to you.
  - 13.6.1. We now grant an exclusive license to you for all items listed above and owned by us, for use in connection with any web site you might own or use for a period of 99 years. You may not assign this licence except by way of sale or transfer of the whole of the Web Site or such other web site of you that contains the relevant item.

**14. Intellectual property rights indemnity by Customer**

- 14.1. You hereby agrees to indemnify us against all claims and costs arising:
- 14.1.1. in connection with the Content supplied by you, whether for breach of intellectual property rights defamation or otherwise
  - 14.1.2. out of your failure to comply with any law or statutory instrument.

**15. Limitation of liability**

- 15.1. The following provisions set out our entire liability (including any liability for the acts and omissions of our employees) to you in respect of:
- 15.1.1. any breach of its contractual obligations arising under this agreement; and
  - 15.1.2. any representation statement or tortuous act or omission including negligence arising under or in connection with this agreement.
- 15.2. Our liability is limited to a sum equal to the value of the Contract, including all work charged at the Hourly Rates.
- 15.3. We will not be liable to you in respect of any loss of profits, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by you as a result of an action brought by a third party) even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same.
- 15.4. We will have no liability to you in respect of any event unless you have served notice of it on us within one year of the date you became aware of the circumstances giving rise to it or the date when you ought reasonably to have become so aware.
- 15.5. Nothing in this paragraph shall confer any right or remedy upon you to which he would not otherwise be legally entitled.
- 15.6. We will not be liable to you for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.

**16. Termination**

- 16.1. This agreement may be terminated immediately by us if you fail to pay any sum due within 7 days of the date of submission of an invoice.

**17. Force majeure**

- 17.1. Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including strikes of its own employees.
- 17.2. Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure such notice to contain details of the circumstances giving rise to it.
- 17.3. If a default due to force majeure shall continue for more than 6 weeks then the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

**18. Successors to the agreement**

- 18.1. The benefit and obligations of this agreement shall be binding on any successor in title.
- 18.2. Neither party shall be entitled to assign this agreement nor all or any of their rights and obligations hereunder without the prior written consent of the other.

**19. Notices**

- 19.1. Any notice to be served on either of the parties by the other shall be sent by first class post or pre paid recorded delivery or by e-mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by e-mail to the correct address.

**20. Headings**

- 20.1. The headings in this document are for reference only.

**21. Dispute Resolution**

- 21.1. In the event of a dispute arising out of or in connection with this Contract and which has not been resolved following discussions and negotiations between a person or persons appointed or authorised by you and us then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

**22. Waiver**

- 22.1. The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

**23. Jurisdiction**

- 23.1. This Contract shall be interpreted according to the laws of Scotland.