



## **Terms & Conditions**

# Introduction

---

Our Terms & Conditions are written in plain English and protect both you the Client and ourselves by managing your expectations of the project. Please read through them carefully and if there are any aspects, which you do not understand, please contact us:

**By email**      mark@markradforddesign.com

**By phone**     07972 240 929

**In writing**     104 Station Road, Hatfield, Doncaster, South Yorkshire DN7 6QL

You are accepting these Terms & Conditions when you place an order with us, by clicking to Accept Your Proposal, Signing Your Agreement Form, paying the deposit for your Project OR using any “materials” which we have produced in any way whatsoever. These Terms & Conditions will not be varied other than as agreed in writing by us.

Mark Radford Design’s registered office is 104 Station Road, Hatfield, Doncaster, South Yorkshire DN7 6QL.

# Table of Contents

---

<b>Introduction .....</b>	<b>2</b>
<b>Table of Contents .....</b>	<b>3</b>
<b>Definitions.....</b>	<b>5</b>
<b>Projects.....</b>	<b>7</b>
1. Starting Your Project .....	7
2. Timeframes.....	7
3. Communication.....	7
4. Meetings .....	8
<b>Web Design .....</b>	<b>9</b>
1. Bespoke Website Design.....	9
1a. Website Theme Installation .....	9
2. Setting Up Your Website .....	10
3. Support & Training .....	10
4. Adding Content To Your Website .....	11
5. Making Amendments To Your Website.....	12
6. Testing Your Website .....	12
7. Making Your Website Live .....	12
8. Editing & Updating Your Website .....	13
9. Copyright of Your Website.....	13
10. Backup of Your Website .....	14
<b>Web Hosting &amp; Domain Names .....</b>	<b>15</b>
1. Introduction .....	15
2. Duties .....	15
3. IP Addresses .....	15
4. Software License & Rights.....	15
5. Service Levels & Data Backups .....	16
6. Acceptable Use Policy .....	16
7. Alterations & Updates .....	17
8. Domain Name Registration .....	17
9. Scripting .....	18
10. Transfer .....	18
11. Server Usage.....	18
12. Email Newsletter .....	18
13. Webspace Usage .....	19
14. Mail Boxes .....	19
<b>Graphic Design .....</b>	<b>20</b>
1. Corporate Identities .....	20
2. Printing .....	20
<b>Ongoing Success Packages.....</b>	<b>21</b>
1. Engagement .....	21
2. Period of Project.....	21
3. Duties & Responsibilities .....	21
4. Monthly Fees .....	22

<b>Terms of Business .....</b>	<b>23</b>
1. Fees .....	23
2. Charges & Payment Arrangements .....	23
3. Joint Instruction.....	24
4. Term & Termination .....	24
5. Relationship .....	25
6. Limitation of Liabilities.....	26
7. IPR.....	26
8. Privacy .....	26
9. Confidentiality .....	26
10. Notices.....	27
11. Warranties .....	27
12. Client Obligations.....	27
13. Force Majeure .....	28
14. Severability .....	28
15. Indemnity .....	28
16. Assignment.....	29
17. Suppliers .....	29
18. Data Protection .....	29
19. Entire Agreement .....	29
20. Law & Jurisdiction .....	30
21. Waiver .....	30
22. Modification .....	30
23. Contact Details .....	30

# Definitions

---

In these Terms & Conditions the following words and expressions shall have the following meanings:

**"Mark Radford Design" 'us', 'we', 'our' or 'ourselves'** means "Mark Radford Design".

**'Client' 'you' 'your' or 'yours'** means any party who **'is paying for', 'has paid for', 'has commissioned', 'has requested' or 'has received'** any Services or Materials supplied by ourselves.

**"Agreement"** means the agreement between us to provide Services and/or Materials in accordance with these Terms & Conditions and as detailed in the Proposal.

**"Deposit"** means a sum of up to 50% of the fees to be paid as specified in the Proposal.

**"Downtime"** means any service interruption on the availability to Visitors to the Website.

**"IP address"** means the Internet protocol address, which is the numeric address for the server.

**"IPR"** means intellectual property rights and includes any patent, trade marks, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, knowhow, confidential information for processes, any application for any of the above and any other intellectual property right recognised in any part of the world whether or not presently existing.

**"ISP"** means the Internet service provider.

**"Materials"** means any artwork, graphic design, web design, logo design, slogans, Search Engine Optimisation, video, photography, copy, text and content in its entirety or in part, which we have produced or inspired.

**"Partner Companies"** means any company, through which we choose to promote and sell our services.

**"Project"** means an agreement to provide certain Services and/or Materials within a timescale and in accordance with the fee and details specified in the Proposal.

**"Proposal"** means a written document setting out the Services and/or Materials to be provided by us in connection with a Project including full details of the Services and/or Materials together with timescales and fees payable.

**"Server"** means the computer server equipment operated by or on our behalf in connection with the provision of the Services.

**"Services"** means all or any of the following: - web hosting, domain name registration, email hosting, web design, website theme installing, web development, web programming, branding, promoting, graphic design, logo design, slogan creation, online marketing, offline marketing, training, printing and any other related services or facilities provided by us.

**"Spam"** means sending unsolicited and/or bulk emails.

**"Virus"** means a computer programme that copies itself or is copied to other storage media, including without limitation magnetic tape cassettes, memory chips, electronic cartridges, optical discs and magnetic discs, and destroys, alters or corrupts data, causes damage to the user's files or creates a nuisance or annoyance to the user and includes without limitation computer programs commonly referred to as "worms" or "Trojan horses".

**"Visitor"** means a third party who has accessed the Website.

---

# Projects

---

## 1. Starting Your Project

- 1.1 You accept your most recent Proposal, agree to the scope of the Project as detailed in that Proposal and agree to our Terms & Conditions when you place an order with us, by clicking to Accept Your Proposal, Signing Your Agreement Form, paying the deposit for your Project or using any “materials” which we have produced in any way whatsoever.
- 1.2 Your Project will ‘start’ when the Deposit has been paid, any Fact Finds have been completed in full, all of your content is prepared and sent to us in an appropriate format.
- 1.3 The Deposit is non-refundable and non-transferable.

## 2. Timeframes

The dates and times quoted in the Proposal are approximate and we are not liable for any delay. We shall use reasonable endeavours to meet the dates given; however time shall not be of the essence. Any delays shall not entitle you to discontinue the Project.

## 3. Communication

- 3.1 During the Project we will communicate with you through Basecamp, emails, Skype, phone calls and meetings at our sole discretion.
- 3.2 We may require your input into the Project during this process and it is your responsibility to reply promptly.
- 3.3 Any major delays in your communication during this period could result in the Project being taken from its time slot and given a later completion date, or cancelled completely.
- 3.4 We aim to respond to your communications within 4 working hours.
- 3.5 We may also provide out of hours service to the best of our ability only in any one of these three emergencies:
  - 3.5.1 Your website has stopped working (if we are hosting it)
  - 3.5.2 Something has happened to your website which has made it unusable
  - 3.5.3 Your emails have stopped working (if we are managing them)

- 3.6 If we are unable to contact you via emails, phone calls or in writing, for a period of more than 30 days during a Project, we may cancel the Project, retain all monies already paid and invoice you for any outstanding work or materials.

## 4. Meetings

- 4.1 Any meetings throughout the project will be at our sole discretion and may incur travelling expenses if they are not held at Mark Radford Design Headquarters.
- 4.2 Meetings are to be arranged at a time that is mutually convenient.
- 4.3 Additional meetings outside what we deem appropriate for the Project can be arranged and will be charged at our hourly rate.
-



# Web Design

---

If we are replacing an existing website with a new one, it is your responsibility to save your existing website and we will not retain any aspect of it. We will presume you have done this before paying the Deposit.

## 1. Bespoke Website Design

- 1.1 We will start by producing the initial design for the front page in accordance with the Proposal
- 1.2 Only one design will be produced unless specifically stated in the Proposal.
- 1.3 When the initial design has been produced we will provide up to four hours consultation on changes to reach the final design.
- 1.4 We will then produce the initial designs for the remaining key pages of your web site:
  - Main Page
  - Sub Page
  - Blog Summary Page
  - Blog Post Page
  - Contact Page
  - Legal Pages
- 1.6 Unless otherwise stated in the Proposal, we will provide up to four hours consultation on changes for all of the remaining pages to reach the final design for the whole site.
- 1.7 If more consultation is needed to work on the design, then additional hours will be charged at our hourly rate.
- 1.8 When the final design has been approved by you, any further changes will incur extra costs.

### 1a. Website Theme Installation

- 1.1a We will choose up to 3 Themes for you to choose from
- 1.1a We will correctly install your chosen WordPress Theme

- 1.2a You are then entitled for up to 2 hours of modifications to the theme, to get it to your exact liking. However, there may be certain limitations as to what we can change, depending on the specific design of the theme. If you require any further modifications after that, then it will be chargeable.

## 2. Setting Up Your Website

- 2.1 All WordPress Websites we make LIVE are setup in accordance with our WordPress Specification.
- 2.2 When building websites, we may use third party software and services (such as WordPress, WordPress Themes, WordPress Plugins, Magento, X-Cart, Heart Internet etc.), we are not liable for any failure or problems with such software or services.
- 2.3 We will endeavour to resolve the issue for you. If there is a problem with the code we produce, then we will fix the problem free of charge up to 14 days after the Project has been completed, if notified in writing and provided the code has not been changed.

## 3. Support & Training

- 3.1 Unless otherwise stated in the Proposal, we will, within the first 14 days, provide up to 2 hours online and telephone support & training on your website, PLUS our instruction provided electronically. During these training sessions we will show you how to:
- 3.1.1 Edit and update pages on your website
  - 3.1.2 Create new pages
  - 3.1.3 Edit and update your blog
  - 3.1.4 Add images to your website
  - 3.1.5 Configure featured areas of your website
  - 3.1.6 Optimise your website with keywords, titles and descriptions
  - 3.1.7 Add videos that have already been uploaded to YouTube
  - 3.1.8 Add downloadable PDFs to your website
  - 3.1.9 Use aspects of your website that are specific to the Project.

- 3.2 If you fail to arrange or use your support & training during this 14 day period then you will forfeit your right to any support or training and will be invoiced for the remaining balance of your Project.
- 3.3 Any support & training outside of this allotted timeframe, or in person will be charged at our hourly rate.
- 3.4 Unless otherwise stated in the Proposal, support & training are to take place online and over the phone.
- 3.6 Training sessions are to be arranged at a time that is mutually convenient, within the 14 day time frame.
- 3.7 Personal training will be delivered for up to three people. If you require training to be delivered to a larger group of people, then there may be additional charges.

## 4. Adding Content To Your Website

- 4.1 We will add up to ten pages of content, which must be provided to us in an appropriate digital format.
- 4.2 Unless otherwise stated in the Proposal, you will be responsible for adding the remaining content to your website in terms of text and photos.
- 4.2 You are responsible for securing permission to use any material on your website including photographs, artwork, music, video and copy.
- 4.3 If you require help writing your text or sourcing images, then we can provide this service to you for an additional charge.
- 4.5 You accept sole responsibility for and the backing-up of your website.
- 4.6 You have sole responsibility for the contents of your email messages and your website. You agree not to do anything, which would restrict or inhibit any other user from using the Internet. You further agree not to use our system to send any messages or material that are unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene or otherwise constitute a criminal offence, give rise to civil liability or otherwise objectionable or violates any applicable local, national or international law or regulation. We reserve the right to terminate your account in our sole discretion if we become aware that you are in breach of this requirement.
- 4.7 We add Sample Legal Documents to your website for you. These include Privacy Policy, Website Terms & Conditions, Website Disclaimer & Internet Copyright Notice. PLEASE NOTE that these are only samples and need to be edited and verified by your legal advisor before your website goes LIVE. We do not accept any responsibility for any loss or costs incurred as a result of your use of these Legal Pages.

## 5. Making Amendments To Your Website

- 5.1 When a website is constructed, there are occasionally small errors or problems requiring correction. We ask that you keep a note of these and send us one complete list of amendments when you have finished adding content. We will also compile our own list.
- 5.2 Amendments will cover errors to the website only, and does not include any changes to the design or architecture of the site.
- 5.3 We will combine your list of amendments with our own to produce one final amendment list.
- 5.4 Any additional changes after this final list has been approved will be chargeable.
- 5.5 You will have ten working days from the website being made available to you, to present your list of amendments. The project will then be deemed complete and you will be required to pay the outstanding balance.
- 5.6 If any major changes are required, which fall outside the scope of the Proposal, there will be additional costs.
- 5.7 If there are any disputes relating to your website and the scope of the Proposal, then our decision will be final and binding. Any additional work will be completed at our absolute discretion.
- 5.8 All our websites come with a 14 day warranty. Any errors relating to the website during this period will be fixed free of charge. Any errors or omissions discovered after this time will be chargeable at our hourly rate.

## 6. Testing Your Website

- 6.1 Your website will be tested to the best of our ability across all the major website browsers including Internet Explorer 7, 8 & 9 and the latest versions of Firefox, Google Chrome and Safari.
- 6.2 We make no guarantee or allowances for the appearance of website on any Browser or mobile device which is not specified in the Proposal.

## 7. Making Your Website Live

- 7.1 To make your website LIVE you must be up to date with your payment terms.

- 7.2 We recommend that all websites are made LIVE at a weekend or when there will be fewer visitors.
- 7.3 We attempt to make this transition as smooth as possible and any problems that arise will be dealt with as quickly as we are able.
- 7.4 There can be a disruption to your email service and/or web service for up to 48 hours. Various servers around the world can take up to 48 hours to acknowledge any changes we may have made in the implementation of your website.
- 7.5 The final payment is required in accordance with your payment terms, regardless of whether you have managed to add all of your content or not.

## 8. Editing & Updating Your Website

- 8.1 You will be given editorial rights relating to the day-to-day running of your website. You will be able to:
  - 8.1.1 Add and delete pages
  - 8.1.2 Edit pages
  - 8.1.3 Manage your blog
  - 8.1.4 Upload Media such as images and PDFs
  - 8.1.5 Optimise your website for keywords, page descriptions and titles.
  - 8.1.6 Edit key areas of your website such as phone number and email addresses.
- 8.2 Full administration rights are reserved to us, but may be passed over to you, should you request them. However, this will negate us from any problems that may arise with the website.

## 9. Copyright of Your Website

- 9.1 We retain all IPR in any web design that we produce in part or in full.
- 9.2 If we have installed a WordPress Theme then we may need to credit its original designer with the Copyright for that design on your website
- 9.3 We reserve the right to use your website, marketing materials and any artwork we produce for you, to promote our business through whatever means we feel is appropriate. This will be within our own marketing materials and those of our Partner Companies.
- 9.4 We grant you an exclusive licence to use your website design and/or artwork to exclusively promote your business indefinitely.

- 9.5 If you are a franchisee, the exclusive licence is granted to your specific franchise only. This licence does not extend to other franchisees, master franchisee or the franchisor.
- 9.6 The copyright of the text and images (excluding icons) on your website, is yours entirely.
- 9.7 All IPR in the design and functionality of the website is ours and we will be credited accordingly at the bottom of each webpage with a discreet hyperlink e.g. Powered by Mark Radford Design >>
- 9.8 IPR in the code is retained by us and/or the owners of the appropriate code unless otherwise specified.

## 10. Backup of Your Website

- 10.1 You are responsible for keeping a copy of your most current web site files as backup on a remote system.
- 10.2 We have no responsibility for any lost files, information, or data. However, if any loss of data occurs due to our error, we will use all reasonable efforts to recover the data.
- 10.3 If your website needs restoring or repairing and you don't have an Ongoing Service agreement in place with us which covers this, then you will be charged for it's restoration or repair, which could include the full cost for the website to be built again. The worse case scenario is that your website is hacked and completely wiped. You will be charged in full for it to be rebuilt. On top of this you will have to provide the content again and this includes all text, pictures, video links, pages and blog articles you've already created and you will be charged for us to add it for you as we will not save any of this information in anyway whatsoever.
- 10.4 Our monthly SafeGuard Package is provided to us by a third party supplier and is designed to keep your website protected and to restore your website in full should anything happen to it. In this event, we will use all reasonable efforts to recover your website and it's content but ultimately accept no liability or responsibility for any lost files, information, or data. In the recovering of your website, our time and effort will be limited to 3 hours. Any extra time required to restore your site will be chargeable.

# Web Hosting & Domain Names

---

## 1. Introduction

- 1.1 You wish to provide us with data to be hosted on our servers and made accessible via the Internet.
- 1.2 We will provide web-hosting services to you on the following Terms & Conditions.

## 2. Duties

- 2.1 We shall provide the Services specified in the Proposal.
- 2.2 You shall deliver to us the website and the software used in the website ("the Customer Software") in a format specified by us.

## 3. IP Addresses

- 3.1 We shall retain control and ownership of the IP address assigned to you as part of the Services and we reserve the right in our sole discretion to change or remove any or all IP addresses.
- 3.2 If we change or remove any IP address we shall use our reasonable endeavours to avoid any disruption to you.

## 4. Software License & Rights

- 4.1 If you require use of any software owned by or licensed to us ("Software") in order to use the Services, we hereby grant to you and your employees, agents and third party consultants and contractors, a royalty-free, world-wide, non-transferable, non-exclusive licence to use the Software in object code form only, in accordance with the terms of these Terms & Conditions. For the avoidance of doubt, these Terms & Conditions do not transfer or grant to you any right, title, interest or IPR in the Software.
- 4.2 You grant to us a royalty-free, world-wide, non-exclusive licence to use the Customer Software and all text, graphics, logos, photographs, images, moving

images, sound, illustrations and other material and related documentation featured, displayed or used in or in relation to your website ("**Content**").

- 4.3 You undertake that you will not yourself or through any third party, sell, lease, license or sublicense the Software.
- 4.4 We may make such copies of the Content as necessary to perform our obligations under these Terms & Conditions, including backup copies. Upon termination or expiration of the Services, we shall destroy all copies of the Content provided by you as and when required by you.

## 5. Service Levels & Data Backups

- 5.1 We shall use our reasonable endeavours to make the server and the Services available to you at all times. The Services are provided by means of third party computer and telecommunications systems, and therefore we give no warranties or representations that the Service will be uninterrupted or error-free and we shall not be liable for any interruptions of Service or downtime of the server.
- 5.2 We carry out data backups for use by ourselves in the event of systems failure. We do not provide data restoration facilities for you. Every effort is made to ensure data is backed up correctly, however we accept no responsibility or liability for data loss or corruption.

## 6. Acceptable Use Policy

- 6.1 The website and the Services must be used for lawful purposes only and you may not submit, or display any content breaching any law or regulation.
- 6.2 In particular you agree not to:
  - 6.2.1 use the Services or the website to send unsolicited commercial email or "spam", or any similar abuse of the Services;
  - 6.2.2 send emails or any type of electronic message with the intention or result of affecting the performance of any computer facilities;
  - 6.2.3 post, distribute or disseminate defamatory, obscene, indecent or other unlawful material, or any material which infringes any IPR (for the avoidance of doubt this includes licensed software distributed as Warez), via the Services or on the website;
  - 6.2.4 threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;



- 6.2.5 engage in illegal or unlawful activities through the Services or via the Website;
  - 6.2.6 make available or upload files to the website or to the Services that contain a Virus; or
  - 6.2.7 obtain or attempt to obtain access, through whatever means, to areas of our network or Services, which are identified as restricted or confidential. This includes leaving your home directory whilst using SSH access to servers.
  - 6.2.8 operate or attempt to operate IRC bots or other permanent server processes.
- 6.3 You have full responsibility for the content of your website. For the avoidance of doubt, we are not obliged to monitor, and have no liability for, the content of any communications transmitted by virtue of the Services.
- 6.4 If you fail to comply with this clause we shall be entitled to withdraw the Services and terminate your account immediately.

## 7. Alterations & Updates

You shall make all alterations and updates to the website using the online account management facility, FTP access or SSH access where available. You will be issued with a user name and password in order to access the account. You must take all steps necessary to maintain the confidentiality of this user name and password. If you believe this information has become known to any unauthorised person, you must inform us immediately.

## 8. Domain Name Registration

- 8.1 Domain names are not deemed to be successfully registered until they appear in the relevant who is database of the top-level domain name registrar. In the event that a domain name is unavailable when we attempt to register it we will provide a full refund for that domain name.
- 8.2 It is your responsibility to renew your domain names when they are due for renewal.
- 8.3 Although there are systems in place to remind you when your domain names are due for renewal, we do not accept any responsibility for lost or non-renewed domain names.

- 8.4 We do not accept any responsibility for any domain names lost whilst transferring over to HEARTINTERNET, for any reason whatsoever.
- 8.5 Please refer to the main Terms & Conditions area of our website, to view Terms & Conditions for individual domain name registrars.

## 9. Scripting

We are not responsible for your programming issues other than ensuring that programming languages such as Perl, PHP and ASP are installed and functioning on the web hosting system.

## 10. Transfer

- 10.1 Web hosting accounts provide a fixed amount of data transfer, if you exceed this amount in any one-month your account will be deactivated until you have upgraded to an account that has sufficient data transfer capability.
- 10.2 Web hosting accounts are prohibited from hosting file distribution websites (including but not limited to music, video and software), adult content orientated websites, hosting banners, graphics or cgi scripts for other websites, storing pages, files or data as a repository for other websites or personal computers, giving away web space under a domain, sub domain or directory.

## 11. Server Usage

If your account uses more than 5% of the servers processing power, this may have a detrimental effect on other Clients, and we will discuss with you alternative solutions for your hosting requirements.

## 12. Email Newsletter

We communicate with our Clients via email and you hereby agree to receive our regular newsletter, which includes changes to our Terms & Conditions, notification of major outages, updates to our products, features and special offers.

## **13. Webspace Usage**

Unlimited web space is available for genuine web site content; content must be linked into web pages. You are prohibited from using the server as a file/backup repository. You are expected to employ good housekeeping when maintaining your account.

## **14. Mail Boxes**

Mailboxes not accessed for 100 days or more will be deleted from the system.

# Graphic Design

---

## 1. Corporate Identities

- 1.1 Although we design every logo, corporate identity and slogan and aim to make it unique, it is impossible for us to warrant total uniqueness. It is your responsibility to consult with an IP professional to ensure that the logo, corporate identity and/or slogan that we have created are unique and available to be registered.
- 1.2 We do not accept any responsibility for any loss or costs incurred as a result of any IPR infringement arising from any materials supplied to you by us.
- 1.3 We own and retain full IPR over all corporate identities, logos and slogans, which, we have created or inspired.

## 2. Printing

- 2.1 It is entirely your responsibility to ensure the accuracy of any artwork we supply to you or send to the printers on your behalf.
- 2.2 We do not accept any responsibility for any loss or costs incurred as a result of the artwork we supply, for any reason whatsoever.
- 2.3 All printing must be paid in full before the artwork is sent to print. This payment is non-refundable and any issues relating to the printing must be dealt with directly between yourself and the printer.

# Ongoing Success Packages

---

## 1. Engagement

We will undertake the work described in the Proposal ("Work") only when the Proposal has been accepted and first payment made.

## 2. Period of Project

The Work shall commence on the start date outlined in the Proposal and shall continue indefinitely unless terminated as provided in these Terms & Conditions or by yourselves. There is no charge to terminate your Ongoing Success contract, we just ask that you give us 30 days notice of your intent.

## 3. Duties & Responsibilities

- 3.1 We shall provide the Work specified in the Proposal and give all reasonable advice and assistance on any matters related to the Work.
- 3.2 If the Work requires co-ordination with third parties engaged by you, we shall make ourselves available during normal business hours.
- 3.3 We may agree to additional services required by you, and all additional services must be agreed in writing and signed by both of us.
- 3.4 We shall be entitled to procure the services of any third parties with suitable skills and experience as necessary to complete the Work.
- 3.5 When we update your version of WordPress and its Plugins, it may cause problems with your website. This is outside of our control and while we will make every effort to correct any problem that occurs, the time we give to solving this will be at our discretion. Any additional time required to correct these problems may be chargeable for which you will be notified prior to us carrying out any work.

## 4. Monthly Fees

- 4.1 You will pay us the agreed fee stated in the Proposal, every month in advance for the Services, payment must be rendered via Online Recurring Payments, Standing Order or cheque. Payment must reach our bank account on or before the due date.
- 4.2 We shall submit invoices to you on a monthly basis for our fees.
- 4.3 We must be reimbursed in full by you for all expenses properly incurred in connection with the Work, subject to the production of receipts.
- 4.4 We will provide a report at the end of each month outlining the key areas of Work which have been carried out.

# Terms of Business

---

## 1. Fees

- 1.1 We provide an estimate of our fees in the Proposal.
- 1.2 The fee quoted is based on our assessment of the work required, to deliver the agreed Materials and/or Services.
- 1.3 We may vary the fee quoted if on sight of the work required there is a difference between what is specified in the Proposal and the Materials and Services actually required. The fee quoted may also be varied to reflect unforeseen difficulties in providing the Materials and/or Services specified in the Proposal.
- 1.4 Where additional work is required this will be assessed and agreed in writing either at a further fixed fee or an agreed hourly rate. The hourly rate is set out below.

**Hourly rate: £75 (charged in one hour blocks)**

- 1.5 If for any reason you withdraw your instruction or we cease to continue working for you before the Project is complete, we will be entitled to charge you for Services carried out and Materials purchased to date.

## 2. Charges & Payment Arrangements

- 2.1 We will accept all of the following payment methods:-
  - 2.1.2 Credit cards (including MasterCard and Visa)
  - 2.1.3 Debit cards (including Switch/Maestro)
  - 2.1.4 Bank transfers
  - 2.1.5 Cheques
  - 2.1.6 Cash
- 2.2 Fees are exclusive of VAT which (if any) is payable by you.
- 2.3 Payment is due on delivery of an invoice and must be received by us on or before the due date.
- 2.4 We shall be entitled to charge interest on late payment of any sum due which shall accrue from the date when payment became due from day to day until the date of

payment, at a rate of 8% per annum above the base rate of the Bank of England from time to time in force.

- 2.5 We do not provide credit facilities.
- 2.6 We may make enquiries on our Clients, their proprietors or directors with credit reference agencies. These agencies may record that a search has been made and share this information with other businesses.
- 2.7 Pro-rata refunds will not be issued for monthly services that are cancelled before the end of the month.
- 2.8 Should your chosen payment method fail we will attempt to settle your invoice using any other payment facilities available on your account and you will incur a £45 administration charge.
- 2.9 We reserve the right to take your website offline, or remove your access to it if payment is not made when due, and will charge you a reconnection fee of £250.
- 2.10 All ongoing services will renew automatically until cancelled by you in writing. THE Mark Radford Design emails it's Clients primary email address prior to renewal of Services, it is the Client's responsibility to cancel services prior to renewal, and no refund can be made when a renewal has occurred. Clients must notify us in writing at least 72 hours before a Service is renewed if they wish to cancel that service.

### 3. Joint Instruction

If a Client comprises more than one person we shall be entitled to act for you jointly upon instruction from any one of such persons and Clients will each be jointly and severally liable for your obligations in connection with this Agreement.

### 4. Term & Termination

- 4.1 These Terms & Conditions will become effective on the date the Services are ordered by you and shall continue until the Agreement is terminated.
- 4.2 We shall have the right to terminate this Agreement with immediate effect by notice in writing to you, if you fail to make any payment when it becomes due.
- 4.3 Either party may terminate this Agreement forthwith by notice in writing to the other if:
  - 4.3.1 the other party commits a material breach of this Agreement and, if the breach can be remedied, fails to remedy it within a reasonable time of written notice from the other party to do so; or



- 4.3.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances; or
  - 4.3.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or
  - 4.3.4 the other party ceases to carry on its business or substantially the whole of its business; or
  - 4.3.5 the other party is declared bankrupt or insolvent, or makes any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 4.4 We shall have the right to terminate this Agreement, at any time in our absolute discretion, with immediate effect by notice in writing to you.
- 4.5 Upon termination of this Agreement we shall:
- 4.5.1 retain sufficient monies from the sums paid by you to cover the Services and Materials provided to date and invoice you for any outstanding Services and Materials.
  - 4.5.2 require immediate payment of all monthly instalments payable, as payable to the end of the fixed term.
  - 4.5.3 delete all data held on your client account
  - 4.5.4 invoice you for any extra costs incurred
  - 4.5.5 on payment of all invoices, supply you by email with all files created for your Project. If you require a DVD of your files, there may be an extra charge.
- 4.6 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.

## 5. Relationship

Nothing contained in these Terms & Conditions shall be construed as creating any agency, legal representations, partnership, or other form of joint enterprise between the parties. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

## 6. Limitation of Liabilities

- 6.1 Nothing in these Terms and Conditions shall exclude or limit our liability for death or personal injury resulting from our negligence or that of our employees, agents or sub-contractors.
- 6.2 Our entire liability to you in respect of any claim or breach of an Agreement, whether or not arising out of negligence, shall be limited to the charges paid under the Agreement in respect of which the breach has arisen.
- 6.3 In no event shall we be liable to you for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or we had been made aware of the possibility of your incurring such a loss.
- 6.4 This clause shall survive the termination of this Agreement for whatever reason.

## 7. IPR

- 7.1 Upon termination of this Agreement we shall retain ownership of all IPR in the Services. Materials we have provided and we grant you a full licence in respect of all IPR in the Services and Materials for its remaining life and on terms that:
  - 7.1.1 such licence shall be non-exclusive, non-transferable, irrevocable, royalty free and worldwide;
  - 7.1.2 if you wish to sub-licence the IPR to another person you may do so, with our written consent, which shall not be unreasonably withheld or delayed;
- 7.2 This clause shall survive the termination of this Agreement for whatever reason.

## 8. Privacy

To protect your privacy we will not distribute your details to third parties, unless required to do so by law.

## 9. Confidentiality

- 9.1 We shall at all times keep confidential all information relating to you, your business, finances and affairs or that of any of your subsidiaries. We shall not (except as authorised by you or required by law) use or disclose to any person any information, which we acquire from you in connection with the Services.

- 9.2 We shall, on demand at any time and without demand on the termination of this Agreement, forthwith deliver up to you all records, reports, documents, drawings and other papers and all copies and extracts of them acquired by us in the course of providing the Services.

## 10. Notices

Any notice to be given by either party to the other may be sent by either fax or recorded delivery to the address of the other party as appearing in the Proposal or such other address as may from time to time be communicated to the other in writing, and if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.

## 11. Warranties

- 11.1 We shall use reasonable care and skill in performing the Services to the standard generally accepted within the industry.
- 11.2 You warrant and represent to us that our use of the content or the Customer Software in accordance with this Agreement will not infringe the IPR of any third party and that you have the authority to license the content and Customer Software to us.
- 11.3 All conditions, and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise are hereby excluded. In particular, and without prejudice to that generality, we shall not be liable to you as a result of any Viruses introduced or passed on to you.
- 11.4 You hereby warrant that to the best of your knowledge, information and belief all information supplied to us during this Agreement will be accurate and not in anyway contrary to English Law.

## 12. Client Obligations

- 12.1 You hereby agree to fulfil the following obligations and cover any expenses incurred in connection with the same:
- 12.1.1 to provide us with all information, materials and documentation in the form specified by us to enable us to supply the Services. Failure

to comply with this obligation within 7 days of a written request will be regarded as a material breach.

- 12.1.2 provide the appropriate resources and facilities reasonably requested by us to supply the Services.
- 12.1.3 to ensure that your staff, contractors and other suppliers which you employ co-operate fully with us and no delay is experienced as a result of their acts or omissions.
- 12.1.4 to respond promptly to any request for information made by us.
- 12.1.5 to take full responsibility for the health and safety of any of our employees who are working on business premises under your control.

## 13. Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, an act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## 14. Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## 15. Indemnity

- 15.1 You agree to indemnify us against any claims, losses, penalties, causes of action, damages, liability, costs, expenses or claims resulting directly or indirectly from your use of our Services without limitation or exception, including your violation of any third-party's rights, (including, without limitation, infringement of any IPR or

any other third party right), or by reason of any breach of any of your obligations in respect of this Agreement.

15.2 The terms of this Clause shall survive the termination of this Agreement.

## **16. Assignment**

16.1 We may sub contract, assign or otherwise transfer this Agreement or any part of it at any time.

16.2 You may not assign or otherwise transfer this Agreement or any part of it without our prior written consent.

## **17. Suppliers**

17.1 Our contracts with the suppliers for the Services we provide shall be made in accordance with the standard or individual conditions of such suppliers. The rights and liabilities between us shall correspond to those between ourselves and the various suppliers under such conditions, including in particular any rights of amendment, omission and cancellation. We shall supply you with the relevant terms and conditions on written request.

17.2 We shall use reasonable care and skill in the selection and appointment of suppliers and the agreement of the terms of such appointments.

## **18. Data Protection**

You shall ensure that any mailing list or customer database supplied complies with the requirements of all legislation in force from time to time including without limitation the Data Protection Act 1998.

## **19. Entire Agreement**

These Terms & Conditions together with the Proposal contain the entire Agreement between the parties relating to the subject matter and supersede any previous agreements, arrangements, undertakings or proposals, oral or written.

## 20. Law & Jurisdiction

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

## 21. Waiver

Our failure to enforce a provision of the Agreement shall not be construed as a waiver or limitation of our right to subsequently enforce strict compliance with every provision of this Agreement.

## 22. Modification

We reserve the right to modify the Terms & Conditions at any time without advance notice. Changes are effective upon making the modified provisions available on our website. It is your responsibility to regularly review our website. Continued use of our Services after any change, constitutes your consent to such change. We do not assume any obligation to notify you of any changes to these Terms & Conditions.

## 23. Contact Details

<b>By email</b>	mark@markradforddesign.com
<b>By phone</b>	0797 224 0929
<b>In writing</b>	104 Station Road, Hatfield, Doncaster, South Yorkshire DN7 6QL