



DEVELOPMENT AGREEMENT

1. INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

1.1. Definitions:

Acceptance: the acceptance or deemed acceptance of the Milestone by the Client pursuant to clause 4.

Business Day: a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business.

Charges: the charges in respect of the Services set out in the Commercial Terms.

Commercial Terms: the principal commercial terms of the Agreement as set out in the table above.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties).

Deliverable: either the website at [URL] [to be hosted by WePixel pursuant to this agreement] or the application, as agreed between the parties.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials: the content provided to WePixel by the Client from time to time for incorporation in the Deliverable.

Milestone: in relation to the Project, one of the key phases of work identified in the Commercial Terms.

Project: the provision by WePixel of the Services as set out in this agreement.

Server: a computer server administered by WePixel

Services: the design and development services to be provided pursuant to this agreement as set out in the Commercial Terms

Software: the software for the Deliverable commissioned by the Client as specified in in the Commercial Terms.

Specification: the specification for the Deliverable set out in the Commercial Terms.

Third Party Products: those third party software products set out in the Commercial Terms.

- 1.2. Clause and Schedule headings do not affect the interpretation of this agreement.
- 1.3. References to clauses and Schedules are (unless otherwise provided) references to the clauses and Schedules of this agreement.
- 1.4. In the event and to the extent only of any conflict between the clauses and the Schedules, the clauses shall prevail.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.7. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.8. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9. References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a Deliverable.
- 1.10. **Writing** or **written** includes fax and email.

2. SCOPE OF THE PROJECT

WePixel shall:

- (a) assess the Client's needs and develop a solution to address these needs;
- (b) design the look and feel of the Deliverable;
- (c) design, develop and deliver the Deliverable in accordance with the Milestones; and

- (d) provide the Services.

3. CLIENT RESPONSIBILITIES

3.1. The Client acknowledges that WePixel's ability to provide the Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of any information and data the Client provides to WePixel. Accordingly, the Client shall:

- (a) provide WePixel with access to, and use of, all information, data and documentation reasonably required by WePixel for the performance by WePixel of its obligations under this agreement.

3.2. The Client shall be responsible for the accuracy and completeness of the Materials on the Deliverable in accordance with clause 10.

4. DEVELOPMENT AND ACCEPTANCE OF SITE

4.1. Once WePixel has completed a Milestone, WePixel shall invite the Client to a presentation (either in person or remotely) to demonstrate the Milestone. The procedure set out in this clause 4 shall be repeated in respect of each Milestone and any further development works agreed by the parties from time to time.

4.2. The presentation shall provide the Client with the opportunity of reviewing the Milestone and providing comments, if any.

4.3. Acceptance of the Milestone shall occur when the client verbally signs off the Milestone at the presentation (or at a later presentation should the client's comments necessitate further development work by WePixel).

4.4. If any failure to sign-off results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom WePixel has no responsibility (**Non-WePixel Defect**), the Milestone shall be deemed to have passed notwithstanding such Non-WePixel Defect. WePixel shall provide assistance reasonably requested by the Client in remedying any Non-WePixel Defect by supplying additional services or products. The Client shall pay WePixel in full for all such additional services and products at WePixel's then current fees and prices.

4.5. Acceptance of the Milestone shall be deemed to have taken place upon the occurrence of any of the following events:

- (a) the Client uses any part of the Deliverable for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or

- (b) the Client unreasonably delays (for the avoidance of doubt unreasonable delay to sign off shall be deemed to be more than 5 Working Days after the presentation).

5. THIRD PARTY PRODUCTS

- 5.1. The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Charges payable under clause 6.1.
- 5.2. The Client hereby indemnifies WePixel in respect of any loss (of any kind) which the Supplier may suffer as a result of the breach by the Client of a licence granted under or pursuant to Clause 5.1.

6. CHARGES AND PAYMENT

- 6.1. WePixel shall issue a VAT invoice within a reasonable timeframe after sign off of the relevant Milestone and the Client shall pay to WePixel the Charges set out in such WePixel's invoice within 14 days of the date of WePixel's invoice.
- 6.2. All Charges are exclusive of VAT.
- 6.3. Without prejudice to any of its other rights, if the Client fails to make any payment when due WePixel shall be entitled to:
 - (a) suspend its obligations under this Agreement for so long as any payment due hereunder remains outstanding; and/or
 - (b) charge interest on the overdue amount at the rate of 4% above the base rate of Lloyds Bank plc.

7. WARRANTIES

- 7.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.
- 7.2. WePixel shall perform the Services with reasonable care and skill.
- 7.3. WePixel warrants that the Deliverable will perform substantially in accordance with the Specification for a period of one month from Acceptance. If the Deliverable does not so perform, WePixel shall, for no additional charge, carry out any work necessary in order to ensure that the Deliverable substantially complies with the Deliverable Specification.
- 7.4. The warranty set out in clause 7.3 shall not apply to the extent that any failure of the Deliverable to perform substantially in accordance with the Specification is

caused by any Materials or any work undertaken on the Deliverable by any third party not authorised by WePixel.

- 7.5. Whilst WePixel takes all reasonable endeavours to ensure that open source code is in fact open source, it does not provide any warranty and shall not be liable for the use of any open source code in the Deliverable.
- 7.6. This agreement sets out the full extent of WePixel's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

8. LIMITATION OF REMEDIES AND LIABILITY

- 8.1. Nothing in this agreement shall operate to exclude or limit WePixel's liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (c) fraud; or
 - (d) any other liability which cannot be excluded or limited under applicable law.
- 8.2. WePixel shall not be liable to the Client for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 8.3. Subject to clause 8.1, WePixel's aggregate liability in respect of all claims arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 125% of the total Charges payable by the Client to WePixel under this agreement.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. All Intellectual Property Rights in the Deliverable (including in the content of the Deliverable and the Software), but excluding the Materials, arising in connection with this agreement shall be the property of WePixel, and WePixel hereby grants the Client a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Deliverable.
- 9.2. The Client shall indemnify WePixel against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.

- 9.3. Subject to clause 7.5, WePixel shall indemnify the Client against all damages, losses and expenses arising as a result of any action or claim that the Deliverable infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 9.2.
- 9.4. The indemnities in clause 9.2, clause 9.3 and clause 10.2 are subject to the following conditions:
- (a) the indemnified party promptly notifies the indemnifier in writing of the claim;
 - (b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
 - (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - (d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 9.5. The indemnities in clause 9.2, clause 9.3, clause 10.2 and clause 10.3 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

10. DELIVERABLE CONTENT

- 10.1. The Client shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred [or acts of terrorism], menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).
- 10.2. The Client shall indemnify WePixel against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- 10.3. WePixel may include the statement "Designed by WePixel" on the home page of the Deliverable in a form to be agreed.

11. TERM AND TERMINATION

- 11.1. This agreement shall commence on the Effective Date and shall (subject to earlier termination under this clause 11) terminate automatically on Acceptance of the Deliverable and payment of all outstanding sums.
- 11.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of any of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(c) to clause 11.2(h) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) any warranty given by the other party in clause 7 of this agreement is found to be untrue or misleading.

- 11.3. On termination of this agreement by WePixel under clause 11.2, all licences granted by WePixel under this agreement shall terminate immediately.
- 11.4. On expiry or termination of this agreement otherwise than on termination by WePixel under clause 11.2, WePixel shall promptly return all Materials to the Client, and shall provide to the Client an electronic copy of the Deliverable (including all content on the Deliverable). WePixel shall provide such assistance as is reasonably requested by the Client in transferring the hosting of the Deliverable to the Client or another service provider, subject to the payment of WePixel's expenses reasonably incurred.
- 11.5. On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

12. CHANGE CONTROL

Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure.

13. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 10 days' written notice to the affected party.

14. CONFIDENTIALITY

- 14.1. Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 14.2. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 14.3. The obligations set out in this clause 14 shall not apply to Confidential Information which the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this clause 14; or
- (b) was in possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

14.4. The obligations of confidentiality in this clause 14 shall not be affected by the expiry or termination of this agreement.

15. NOTICES

15.1. Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) in electronic mail.

15.2. Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) if sent by electronic mail, at the time recorded by the sender's electronic mail delivery receipt.

15.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16. PUBLICITY

All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

17. ASSIGNMENT

Neither party may assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. WePixel may sub-contract all or part of their obligations to any third party without seeking the consent of the Client.

18. ENTIRE AGREEMENT

18.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

19. THIRD PARTY RIGHTS

19.1. No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

20. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. SEVERANCE

- 23.1.** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 23.2.** If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

24. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).