



SERVICE AGREEMENT

1. INTERPRETATION

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

1.1. Definitions:

Additional Services: any additional services not set out in the Services section of the Commercial Terms.

Additional Services Fees: the Charges for the Additional Services.

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

Charges: the charges in respect of the Services set out in the Commercial Terms, together with any charges arising from the Additional Services.

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), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- (c) **Downtime:** means temporary cessation of access to the Services for essential maintenance and repair and may be Emergency Downtime or Scheduled Downtime.
- (d) **Emergency Downtime:** means immediate Downtime.

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 Customer from time to time for incorporation in the Site.

Services: the services to be provided under this agreement as described in the Commercial Term.

Scheduled Downtime means essential downtime of the Service notified to the Client in advance.

Site: the website at [URL] to be hosted by WePixel under this agreement.

Site Software: the software for the Site commissioned by the Customer.

Site Specification: the specification for the Site.

Term: 12 months from the Effective Date.

Visitor: a visitor to the Site.

- 1.2. **Clause and Schedule headings shall 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. **If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement 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 amended, extended or re-enacted from time to time.**
- 1.7. **A reference to a statute or statutory provision shall include all subordinate legislation made from time to time 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 website for access by a visitor to that website.**

2. SERVICES

- 2.1. The Client acknowledges that for the first thirty business days of the Term ("Integration Period"), WePixel requires this time to process the Client's requirements into the Supplier's systems. During the Integration Period, the Client accepts that WePixel shall use its reasonable endeavours to provide the Services.**
- 2.2. The WePixel shall perform the Services in accordance with the Commercial Terms.**
- 2.3. Where WePixel is performing or has performed Additional Services, the Client shall pay, the Additional Services Fees in respect of that work.**
- 2.4. Supplier does not warrant that the Services shall operate without interruption or error.**
- 2.5. Supplier shall use reasonable commercial endeavours to keep Downtime to a minimum.**
- 2.6. If Emergency Downtime is required, Supplier shall use reasonable commercial endeavours to notify Client in advance of the same.**
- 2.7. If Scheduled Downtime is required, Supplier shall use reasonable commercial endeavours to notify Client in writing at least 5 days in advance of the same.**

3. HOSTING OBLIGATIONS

- 3.1. Where WePixel is hosting the Client's site, WePixel shall:**
 - (a) host the Site on a Server;**
 - (b) grant access to the Materials and Site on the Server only to those staff of WePixel (or its sub-contractors) who require access in connection with the provision of the Services.**
 - (c) implement appropriate technical and organisational security measures to protect the Site against unauthorised or unlawful accidental loss, destruction, alteration or damage.**

4. CUSTOMER RESPONSIBILITIES

- 4.1. The Customer shall be responsible for the accuracy and completeness of the Materials.**
- 4.2. The WePixel shall not be liable for any delays in providing the Services resulting from the Customer's failure to fulfil any of its obligations set out**

in the Schedule. The WePixel reserves the right to invoice the Customer for any additional expenses reasonably incurred by WePixel as a result of such delays.

5. CHARGES AND PAYMENT

- 5.1. The WePixel shall invoice the Customer in advance for the Services.**
- 5.2. The WePixel shall issue a monthly VAT invoice in respect of the Charges, and the Customer shall pay to WePixel the Charges set out in WePixel's invoice within 14 days of the date of WePixel's invoice.**
- 5.3. All Charges are exclusive of VAT.**
- 5.4. 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.**

6. WARRANTIES

- 6.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.**
- 6.2. The WePixel shall perform the Services with reasonable care and skill.**
- 6.3. The warranty set out in clause 2 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification or WePixel failing to provide the Services is caused by the Site Software or any Materials.**
- 6.4. 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.**

7. LIMITATION OF REMEDIES AND LIABILITY

- 7.1. 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.

7.2. 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.

7.3. 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.

8. INTELLECTUAL PROPERTY RIGHTS

8.1. All Intellectual Property Rights in any works arising in connection with the performance of the Services by WePixel (Works) shall be the property of WePixel, and WePixel hereby grants to the Customer a non-exclusive licence to such Intellectual Property Rights for the purposes of hosting the Site.

8.2. The Customer shall indemnify WePixel against all damages, losses and expenses arising as a result of any action or claim that the Site Software or the Materials infringe any Intellectual Property Rights of a third party.

8.3. The WePixel shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Works infringe the Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 6.3.

8.4. The indemnities in clause 6.3, clause 6.4, and clause 7.3 are subject to the following conditions:

- (a) the indemnified party promptly notifies the indemnifier in writing of the action or 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.

8.5. The indemnities in clause 6.3, clause 6.4, and clause 7.3 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.

8.6. At its own expense, the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to clause 6.2.

9. SITE CONTENT

9.1. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (such as 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).

9.2. The WePixel shall include only the Materials on the Site. The Customer acknowledges that WePixel has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The WePixel reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The WePixel shall notify the Customer if it becomes aware of any allegation that content on the Site may be Inappropriate Content.

9.3. The Customer shall indemnify WePixel against all damages, losses and expenses arising as a result of any action or claim that the Materials or any other material posted to, or linked to, the Site constitutes Inappropriate Content.

9.4. The WePixel may include the statement "Powered by WePixel" on the home page of the Site in a form to be agreed.

10. TERM AND TERMINATION

10.1. This agreement shall commence on the date it is entered into (Effective Date) and shall continue, unless terminated earlier in accordance with this clause 8, for the Term, when it shall continue for a further 12 months unless terminated no later than 3 months before the end of the Term (Extended Term). Unless it is terminated earlier in accordance with this clause 8, the agreement shall terminate automatically without notice at the end of the Extended Term.

10.2. 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 10 Business Days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 Business 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;
- (d) the other party commences negotiations with all or any class 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 any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (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 (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction 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 (being a company) 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) the other party (being an individual) is the subject of a bankruptcy petition or order

- (j) 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;
- (k) 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 8.2(c) to clause 8.2(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

10.3. On termination of this agreement by WePixel pursuant to clause 8.2, all licences granted by WePixel under this agreement shall terminate immediately.

10.4. On expiry or termination of this agreement otherwise than on termination by WePixel under clause 8.2 WePixel shall:

- (a) promptly return to the Customer the Site Software and all Materials, and shall provide to the Customer an electronic copy of the Site (including all content on the Site).
- (b) provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Site to the Customer or another service provider, subject to payment of WePixel's expenses reasonably incurred.

10.5. On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11. 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.

12. CONFIDENTIALITY

12.1. 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.

12.2. 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.

12.3. The obligations set out in this clause 11 shall not apply to Confidential Information that the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this clause 11; or
- (b) was in the 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, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

12.4. The obligations of confidentiality in this clause 11 shall not be affected by the expiry or termination of this agreement.

13. NOTICES

13.1. 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.

13.2. 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.

13.3. 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.

14. ANNOUNCEMENTS

No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

15. ASSIGNMENT

15.1. Neither party may assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement, in whole or in part, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

15.2. Notwithstanding Clause 15.1, WePixel may sub-contract some or all of its obligations to a partner of WePixel without the need to obtain prior written consent.

16. ENTIRE AGREEMENT

16.1. 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.

16.2. 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 based on any statement in this agreement.

17. THIRD PARTY RIGHTS

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

18. VARIATION

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

19. 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.

20. 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.

21. SEVERANCE

21.1. 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.

21.2. 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.

22. NO PARTNERSHIP OR AGENCY

22.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. GOVERNING LAW

The construction, validity and performance of this Agreement shall be governed by the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales over any claim, matter or dispute

arising under or in connection with this Agreement or the legal relationships established under it.