

## 6.9 TERMS & CONDITIONS

1	DEFINITIONS AND INTERPRETATION	
1.1	In these Conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:-	5.5
	"Conditions" the conditions set out herein;	
	"Contract" the contract for the provision of Services between us and you constituted by the Proposal, your acceptance of same and these Conditions;	5.6
	"Intellectual Property" the meaning given in Clause 5;	6.0
	"Price" the price as detailed in the Quotation Proposal, subject always to Clause 3;	6.1
	"Proposal" the proposal to which these Conditions are attached;	
	"Purpose" the purpose for which the Intellectual Property may be used as set out in the Proposal;	6.2
	"Services" the services which we have proposed to perform for you as set out in the Proposal as such Services may be varied by agreement between you and us from time to time;	
	"Us" Pixel Image Limited, 100 Constitution Street, Edinburgh, EH6 6AW ("we" and "our" being construed accordingly);	
	"You" being the customer to whom the Principal is being addressed ("your" being construed accordingly);	7.0
	References to Clauses shall mean the clauses of these Conditions and headings and punctuation are for ease of reference only and shall not affect interpretation.	7.1
2	ACCEPTANCE OF CONDITIONS	
2.1	The Proposal submitted by us to you constitutes an offer by us to provide the Services subject always to these Conditions. You shall have 14 days from date of the Proposal to confirm in writing acceptance or rejection thereof by execution of the Proposal, failing which such offer will lapse, unless otherwise agreed in writing by us.	7.2
2.2	The Proposal and these Conditions shall constitute the whole agreement between you and us to the exclusion of any other terms and conditions which may have been submitted by you or subject to which the Proposal is accepted or purported to be accepted by you, unless otherwise expressly agreed by us in writing or permitted in terms of these Conditions.	
2.3	Without prejudice to Clause 2.2, in the event of any conflict between these Conditions and any condition in any communication from you whether upon initial acceptance of these Conditions or at any time thereafter, these Conditions shall prevail.	
3.0	PRICE	
3.1	The Price(s) shall be exclusive of any applicable Value Added Tax (which shall be payable by you at the applicable rate from time to time).	8.0
3.3	The Price is based upon our estimate of the labour involved and only those third party costs that are expressly set out in the Price. If for any reason the labour involved or such third party costs change then we shall be entitled to adjust the Price accordingly and you agree to pay same.	9.0
3.3	Any expenses and/or outlays properly incurred by us in providing the Services which are not already incorporated in the Price (including without limitation outlays and/or expenses incurred relative to third party consultants, the licence of any third party software, accommodation, travel and food) shall be payable by you at cost [plus 15%] within 7 days of us issuing you with a valid invoice therefore.	
3.4	Subject to Clause 3.3, the payment of all sums due under the Contract, including without limitation the Price, shall be made within 14 days of the date of our invoice to you therefore. Notwithstanding the foregoing, if you use the Services for any purpose whatsoever prior to the issue of our invoice then the Price together with all expenses and outlays due under Clause 3.3 shall immediately become due and payable.	10.
3.5	If you fail to make payment of any sums due to us in terms of the Contract within 14 days of the due date therefore, then, without prejudice to any other rights or remedies available to us, we shall be entitled to (i) cancel the Contract or suspend further provision of Services to you and appropriate any payment made by you to such of the Services as we may think fit and (ii) charge you interest on the amount unpaid at the rate of 4% per annum above Bank of Scotland base rate from time to time from the due date until payment is made in full and you agree to pay same.	10.1.1 10.1.2 10.1.3 10.1.4
3.6	You shall not be entitled to withhold payment of any amount payable under the Contract to us because of any disputed claim in respect of the Services or any other alleged breach of the Contract.	
4.	SCOPE OF WORK	
4.1	We shall use our reasonable endeavours to perform the Services in accordance with the Proposal.	10.1.5
4.2	We shall be entitled to vary the Proposal at any time and you shall be deemed to have accepted any such variation(s) within 7 days of despatch of such variation(s) unless you advise us in writing within such period that you reject such variation. If any variation is rejected as aforesaid we shall have the option to revert to the original Proposal or to cancel the Proposal without penalty.	10.1.6 10.1.7 10.1.8 10.2
5	INTELLECTUAL PROPERTY	
5.1	You acknowledge that any and all intellectual property rights, including but not limited to any and all copyright, created, developed, subsisting or used by us in performance of the Contract (including without limitation any copyright in any image) (together "the Intellectual Property") shall vest in or (as the case may be) remain the exclusive property of us or of any relevant third party.	10.3
5.2	In consideration of the Price, we agree to grant you a non-exclusive, non-transferable licence to use the Intellectual Property from the date of receipt by us of all sums due by you to us under this Contract provided always that:-	11
5.2.1	such licence is for your sole use and you may not sub-license or assign any of your rights to use the Intellectual Property or allow the Intellectual Property to be used by any third party including without limitation any individual (natural or otherwise) affiliated to you except with our prior written consent in each such case. We acknowledge that where the Purpose includes use of the Intellectual Property on a website, you shall be entitled to permit others to use that Intellectual Property but only in so far as such use is necessary to access and view the website, and for no other purpose whatsoever.	11.1 11.2 11.3 11.4
5.2.2	You shall not use the Intellectual Property for any purpose other than the Purpose except with our prior written consent in each such case;	12
5.2.3	such licence may be terminated by us forthwith if you are in material and/or persistent breach of any term or condition of this Contract or if you fail to pay any sums due to us by you (whether under this Contract or otherwise) within 14 days of the due date therefore;	
5.2.4	Unless expressly stated, no other licence to any intellectual property right (whether of ours or of any third party) is implied or granted under these Conditions; and	
5.2.5	We shall be entitled to terminate this licence in the circumstances mutatis mutandis set out in Clause 10.1.	13 13.1
5.3	You hereby agree to waive any and all moral rights which you may have (and similar or equivalent rights anywhere in the world insofar as it is possible to do so) for any work in which copyright is vested in us whether hereunder or otherwise.	13.2
5.4	You acknowledge and agree that where ongoing use of the Services by you requires the use of any third party intellectual property rights (including without limitation any and all third party rights in computer software or hardware) that you shall remain	13.3
	solely responsible for obtaining all necessary third party consents and that any and all costs of same are not included in the Price.	
	We reserve the right to use any and all Intellectual Property, for avoidance of doubt including but not limited to any Images, animations or any other content generated in the course of the contract, for any self promotion purposes whatsoever.	
	This clause 5 shall survive termination or performance of the Contract.	
	WARRANTIES	
	We warrant to use our reasonable endeavours to perform the Services in accordance with the proposal.	
	We do not make and hereby disclaim, any express or implied warranty regarding the Services and/or the Intellectual Property (other than those expressly set out in Clause 6.1) insofar as it is competent to do so, including without limitation any warranty of merchantability or fitness for any particular purpose (including without limitation the Purpose) of any of the Services or of the Intellectual Property notwithstanding that such purpose may have been known or become known to us.	
	LIABILITY	
	No liability will attach to us for any delay or failure in the performance by us of any of our obligations under the Contract if such delay or failure is due to any cause beyond our reasonable control (including without limitation any adverse weather conditions) or to the delay or failure on the part of any third party.	
	Subject to the other provisions hereof and except insofar as our liability may not be excluded or limited by law, you acknowledge and agree that our entire liability hereunder shall be limited to the total consideration actually received by us pursuant to this Contract, which you acknowledge and agree is reasonable in all the circumstances. If you wish additional protection above this, you acknowledge and agree that you can obtain insurance cover accordingly. Notwithstanding the generality of Clause 7.2, we shall not be liable to you for any consequential loss or damage (whether for loss of profits or otherwise).	
	We shall be entitled to set off any and all sums due by us to you under this Contract against any and all sums due by you to us whether under this Contract or otherwise. We shall have no liability for any representation, statement, claim or assurance made or given in relation to the Services prior to this Contract being entered into.	
	CANCELLATION	
	Should the Contract be cancelled by you, we reserve the right to charge you the amount of any loss (including loss of profit), costs, charges and expenses incurred by us as a result of the cancellation. In the event of a delay in or to cover the same and you shall be liable to us for any extra expense thereby incurred by us.	
	INDEMNITY	
	You shall keep us fully and effectively indemnified in respect of all losses, liabilities, damages, costs and expenses arising from any failure by you to use the Intellectual Property strictly in terms of the licence granted under Clause 5. The obligations contained in this Clause 9 shall survive termination or performance of the Contract.	
	TERMINATION	
	Without prejudice to other provisions of these Conditions, the Contract may be terminated forthwith by us by notice in writing to you if:-	
	You commit a material breach of any of your obligations under the Contract which is not capable of remedy;	
	You commit a material breach of any of your obligations under the Contract which is capable of remedy and such a breach is not remedied within 30 days of being notified to you by us;	
	There is a persistent breach by you of any term of the Contract, being the repeat of any breach which we have previously notified in writing to you;	
	any encumbrance takes possession of, or an administrator, an administrative receiver, a receiver, a trustee, a liquidator or other similar official is appointed over the whole or any material part of your undertaking, property or assets or that of any of your holding companies from time to time (or the equivalent of any of same in any jurisdiction outside Scotland);	
	There is a presentation of a petition for the passing of resolution for your winding up, otherwise than for the purpose of reconstruction or amalgamation without insolvency this has previously been approved in writing by us;	
	You are subject to a change of control as such term is defined in Section 840 of the Income and Corporation Taxes Act 1988 as amended from time to time;	
	You cease to trade; or	
	You, being an individual, die or become of unsound mind.	
	If any of the events outlined in Clause 10.1 occur, we shall be entitled to terminate any and all other contracts with you then outstanding (including without limitation any licence granted pursuant to Clause 5) and withdraw any proposals open for acceptance by you at that time.	
	Termination of the Contract shall not affect the rights and remedies accrued by the parties as at the date of such termination or any rights or obligations which due to the nature thereof are intended to survive termination (including but not limited to Clauses 5 and 9).	
	FORCE MAJEURE	
	Neither party will be liable to perform obligations under this Contract if it becomes Unable to do so as a result of any of the following, whether happening in the United Kingdom or elsewhere:-	
	force majeure;	
	act of God;	
	refusal of licence or other governmental act or	
	Fire, explosion, accident, industrial dispute, computer breakdown, inability to obtain materials or anything beyond the party's control.	
	NOTICES	
	Any notice required under the Contract may be delivered personally or sent by first class recorded delivery post or airmail or transmitted by telex or facsimile transmission in each case to the registered office or business address of the party to whom the notice is addressed and any such notice shall be deemed to have been validly served if sent by post on the expiry of forty eight hours of the time of posting and if delivered personally or transmitted by telex or facsimile transmission at the time of delivery or transmission provided that any such telex or facsimile Transmission is confirmed by letter sent within twenty four hours of transmission.	
	GENERAL	
	Any failure or neglect by us to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be waiver of our rights hereunder nor in any way affect the validity of the whole or any part of the Contract nor prejudice our right to take any subsequent action.	
	You shall not assign or sub-contract any of your rights or duties under the Contract without our prior written approval. We shall be entitled to assign, sub-contract or otherwise transfer the benefit and/or burden of the Contract without restriction.	
	The Contract shall be governed and construed in accordance with the laws of Scotland and you irrevocably agree to submit to the jurisdiction of the Scottish Courts in all matters relating to the subject matter of the Contract.	