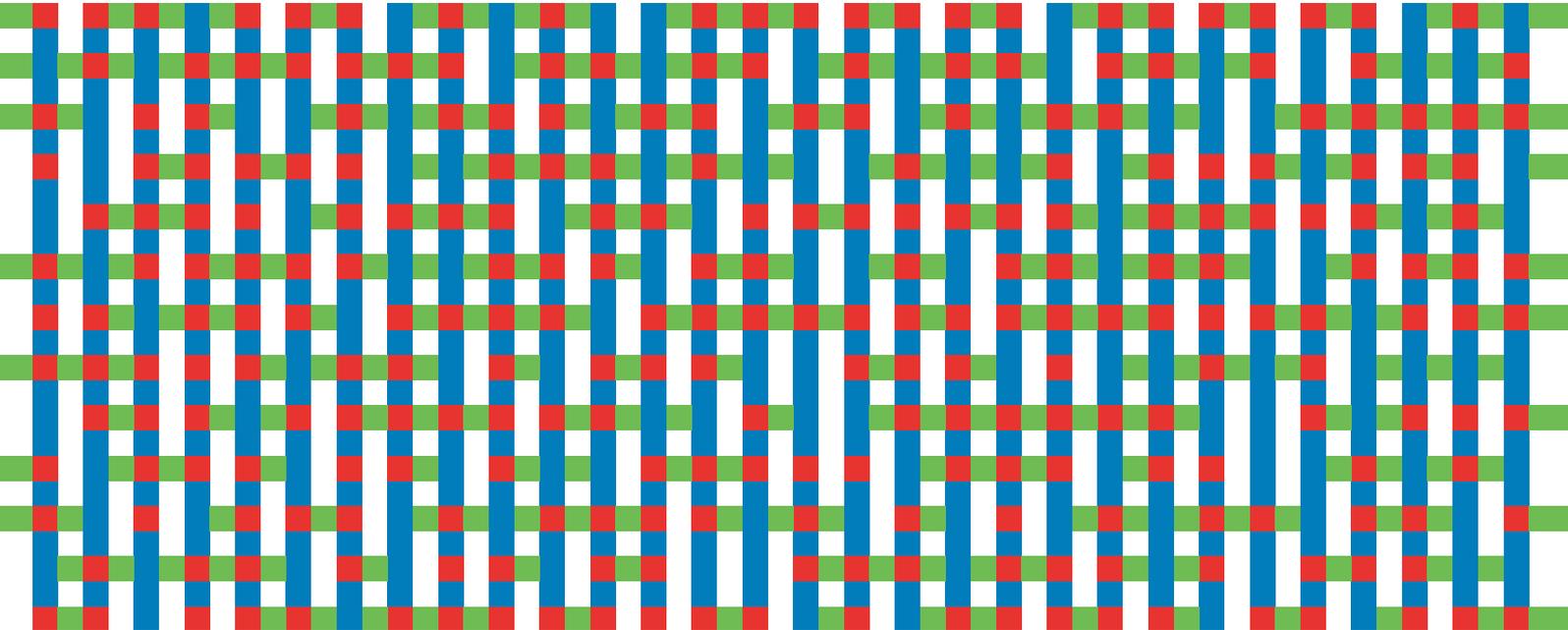


**Terms of Business**

Version v1.1



# Active Pixels Limited Terms of Business

## 1. In this Agreement:

"Acceptance" means the acceptance or deemed acceptance of the Media by the Client pursuant to clause 4.

"Acceptance Tests" means the testing of the Media by the Client to determine whether it complies with the Specification;

"Activepixels" means Active Pixels Limited incorporated in England and Wales with Company Number: 05081009 whose registered office is at Suite SF8 The Heybridge Business Centre, 110 The Causeway, Heybridge, Maldon, Essex CM9 4ND;

"Agreement" means these terms and where applicable any Design Brief, Budgetary Quotation, Specification, Final Quotation or similar document;

"Budgetary Quotation" means the document setting out the provisional cost estimate;

"Charges" means the fees payable by the Client for the Services as set out in the Budgetary Quotation and confirmed in the Final Quotation;

"Client" means the person that Activepixels is to provide the Services to in accordance with the Agreement;

"Design Brief" means the document setting out the Client's creative objectives for the Project;

"Document" includes, in addition to a document in writing, a plan, design, drawing, picture or other image, or any other record of any information in any form;

"Final Quotation" means the confirmation of the Budgetary Quotation together with the hourly rate for any subsequent variation;

"Input Material" means any Document, or other materials, any data or other information provided by the Client relating to the Services;

"Intellectual Property" means property in which intellectual property rights of whatever nature (including but not limited to patents, trade marks, service marks, design rights, database rights, know-how rights, goodwill, reputation, get-up, logos, devices, plans, models, data, diagrams, specifications, source and object code materials, data and processes, design rights, trade or business name rights, rights in confidential information, present contingent and future copyright, rights to sue for passing-off, plus applications or rights to apply for any of the foregoing) subsist;

"Media" means all media for which Activepixels is requested to provide its Services including but not limited to websites, intranets and extranets and software;

"Project" means the provision of Services by Activepixels to achieve the instructions provided by the Client;

"Services" means the services to be provided by Activepixels to the Client as set out in this Agreement;

"Specification" means the functional specification for the Project.

## 2. Supply of Services

2.1 Activepixels shall supply the Services, in consideration of the Charges and on the terms and conditions of this Agreement.

2.2 Activepixels will make every effort to meet any timescales agreed for the duration of the Agreement and if the timescale is likely to be exceeded through any reasonable or unavoidable delay, Activepixels will inform the Client as soon as possible and agree a revised timescale with the Client and Activepixels shall not be liable for any loss or damage suffered by the Client as the result of the delay.

2.3 Activepixels shall be entitled to employ agents and sub-contractors, to provide any part of the Services, but shall not sub-contract the whole of its obligations under this Agreement without the written consent of the Client. If the Client requests Activepixels to employ a sub-contractor specified by the Client, the Client shall be responsible for the work performed by the sub-contractor.

2.4 This Agreement sets out the full extent of Activepixels' 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.

## 3. Client's Responsibilities

3.1 The Client shall ensure that no material is posted or transmitted to any website hosted by Activepixels.

3.1.1 that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing, scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience;

3.1.2 for which they have not obtained all necessary licenses and/or approvals;

3.1.3 which constitutes or encourages conduct that would be considered a criminal offence, gives rise to all liability, or otherwise be contrary to the law of or infringe the rights of any third party in the UK or any other country in the world; or

3.1.4 which is technically harmful (including, without limitation computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data, pirated software, ROMS, emulators, hacking software or other malicious software or harmful data).

3.2 The Client acknowledges that it shall not have any direct access to the server on which the website developed for the Client is hosted and in the event that the Client requires a designer other than Activepixels to carry out development work to the website the Client shall be required to migrate the website to a server of their own choosing at their own cost.

3.3 The Client shall at its own expense provide Activepixels with all necessary Input Material within sufficient time to enable Activepixels to provide the Services in accordance with the Agreement. The Client shall ensure the accuracy of all Input Material. Activepixels shall be entitled to charge the Client sums additional to the Charges which, at Activepixels' sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

## 4. Development & Acceptance

4.1 Where design and development of Media is included within the Services, Activepixels and the Client shall together carry out Acceptance Tests at a time to be agreed between Activepixels and the Client.

4.2 If the first stage of Acceptance Tests are not carried out within 14 days of the Client receiving the Media from Activepixels, as a result of any cause attributable to the Client, the Media shall be deemed to have passed the Acceptance Tests.

4.3 In the event that any Acceptance Tests are not passed, the failures which cause the relevant test to be failed ("Defects") shall be drawn up and documented by Activepixels and presented to the Client for discussion as to how best to rectify such Defects.

4.4 If any such failure results from a Defect which is caused by an act or omission of the Client or their sub-contractors or agents for which Activepixels shall have no responsibility ("Non-Supplier Defects"), the Media shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. Any registered work attributable to Non-Supplier Defects shall be charged at Activepixels' then current rates.

4.5 Activepixels shall remedy Defects as soon as reasonably practicable so as to ensure that the Media passes the Acceptance Tests on a retest.

4.6 The Acceptance Tests shall be repeated up to 3 times before Activepixels shall be deemed to be in breach of these terms provided the continued failure does not relate to Non-Supplier Defects.

4.7 Once Acceptance has taken place, any further modification to the Media shall be charged at Activepixels' then current rates.

## 5. Amendments

5.1 The parties agree that amendments to the Specification, timescales and/or other documents can only be made if agreed in writing. If at any time the Client wishes to amend any aspect of the implementation of the Project, the Client shall provide Activepixels with written details together with such further information as Activepixels may require in order to assess the proposed amendments.

5.2 Activepixels shall, within 7 days of receipt of all of the information specified in clause 5.1, submit to the Client a revised Specification, timescale and quotation for any additional Charge required in order to implement the amendments proposed by the Client (the "Response").

5.3 If the Client wishes to accept the Response, then it shall do so within 7 days of receipt of the Response, in which case this Agreement (including timescales and all related documents) shall be amended in accordance with the Response otherwise work shall continue by Activepixels without amendment.

## 6. Software Development

6.1 The development of software is a complex activity, and Activepixels does not warrant that any software that it develops will be free from all defects.

6.2 Activepixels will not provide a user manual in connection with any software it develops for the Client unless it has expressly agreed to do so in writing.

## 7. Hosting

7.1 Activepixels reserves the right to suspend hosting services if a Client is undertaking any activities which are deemed to be detrimental to Activepixels. No such suspension shall affect the liability of the Client to pay charges and other amounts to Activepixels, and without limitation, the charges will continue to accrue.

7.2 Any time incurred updating a Client's website, at the Client's request shall be charged at Activepixels' then current rate.

## 8. Confidentiality

8.1 Subject to Clause 10.3, for the duration that Services are supplied to the Client and for 3 years thereafter, no party shall disclose or make use of in a manner

detrimental to the other, any information relating to the others business, finances, technology or general affairs.

## 9. Charges and Payment

9.1 The Client shall pay a 50% deposit and Activepixels shall not commence work on the Project unless the deposit has been paid. In the event that the Project does not proceed Activepixels may, at its sole discretion, refund the deposit or any part of it.

9.2 Where business analysis or development services are part of the Project Activepixels shall invoice the Client for the Charges on completion of the Project. For the avoidance of doubt, where development services are part of the Project, the Project will be completed on Acceptance. Where hosting services or web application maintenance, monitoring and management services are supplied Activepixels shall issue an annual invoice payable in advance.

9.3 Where the style, type or layout of any Media is left to the judgement of Activepixels, Activepixels shall be entitled to charge the Client at Activepixels' then current rate for any changes requested by Activepixels.

9.4 All Charges quoted to the Client for the provision of the Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

9.5 The Charges shall be paid by the Client (together with any applicable Value Added Tax and without any set-off or other deduction) within 30 days of the date of Activepixels' invoice.

9.6 If payment is not made on the due date Activepixels shall be entitled to charge interest on the outstanding amount at the relevant statutory rate defined in the Late Payment of Commercial Debts (Interest) Act 1998.

9.7 The Client agrees to indemnify Activepixels in respect of all legal fees incurred by Activepixels in attempting to recover payment of overdue invoices.

## 10. Credit and Header Code

10.1 All websites produced by Activepixels for the Client shall feature the words "Powered by Activepixels" in the homepage footer as a clickable http link to the [www.activepixels.co.uk](http://www.activepixels.co.uk) website.

10.2 Activepixels reserves the right to insert a copyright header in the source code of every web page produced, designed or maintained by Activepixels.

10.3 Upon completion of the Project, Activepixels reserves the right to add the Client's business logo and an http link to the Project in the Portfolio section of Activepixels' website at <http://www.activepixels.co.uk>

## 11. Warranties

11.1 Activepixels warrants that the Services will be supplied with due skill, care and attention.

11.2 The Client shall notify Activepixels in writing of any breach of the warranty in 11.1 within 14 days of the Client becoming aware of any such breach.

11.3 The Client must notify Activepixels of any required bug fixes within 90 days of Acceptance. Thereafter, the repair of any identified bugs will be chargeable at Activepixels' then current rate.

11.4 Activepixels shall, upon receipt of a notice in respect of a breach of the warranty in 11.1 or a bug fix in 11.3, remedy such a breach or bug fix by providing technical support to the Client free of charge.

11.5 If the technical support is provided under Clause 11.4 and the problem is caused by a Non-Supplier Defect, Activepixels reserves the right to charge for the time spent providing the technical support.

11.6 Each party warrants to the other that it has the full right, power and authority to enter into and perform this Agreement and has not entered into any arrangement which in any way conflicts with this Agreement or inhibits, restricts or impairs its ability to perform its obligations under this Agreement.

11.7 The Client warrants that it has sufficient rights (including Intellectual Property Rights) in the Input Material to grant to Activepixels the rights set out in this Agreement and has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for Activepixels to complete the Project.

11.8 Except as expressly provided in this Agreement, Activepixels expressly disclaims any further representations, warranties, conditions or other terms, express or implied by statute, collaterally or otherwise, including but not limited to implied warranties, conditions or other terms of satisfactory quality, fitness for a particular purpose or reasonable care and skill.

## 12. Liability

12.1 Nothing in this agreement shall operate to exclude or limit Activepixels' liability for:

12.1.1 death or personal injury caused by its negligence;

12.1.2 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;

12.1.3 fraud; or

12.1.4 any other liability which cannot be excluded or limited under applicable law.

12.2 Activepixels shall be not be liable to the Client for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

12.3 Activepixels shall not be liable for any loss, damage, costs, expenses or other claims for compensation arising from any Documents or materials or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, or arising from their late arrival or non-arrival, or any other fault of the Client.

12.4 Subject to clause 12.1, Activepixels' liability in respect of claims based on events in any calendar year 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 100% of the total Charges payable by the Client to Activepixels under this Agreement.

## 13. Intellectual Property

13.1 The copyright and other Intellectual Property in the Input Material provided by the Client for the Project shall remain in the Client.

13.2 The copyright and other Intellectual Property in any Media designed and developed by Activepixels shall remain in Activepixels unless otherwise agreed in writing. Where Activepixels agrees to assign to the Client the Intellectual Property in any Media designed and developed by Activepixels, such Intellectual Property shall transfer to the Client upon payment of Activepixels' invoice.

13.3 Nothing in this Agreement shall be taken to prevent Activepixels from using any expertise acquired or developed during the performance of this Agreement in the provision of services for other companies or on its own behalf.

## 14. Term and Termination

14.1 Where development services are required alone this Agreement shall terminate on Acceptance and payment of all outstanding sums to Activepixels.

14.2 Where business analysis services are required alone this Agreement shall terminate on payment of all outstanding sums to Activepixels.

14.3 Where hosting and/or web application, maintenance, monitoring and management services are provided this Agreement shall continue for 12 months unless otherwise agreed in writing between Activepixels and the Client and either party may terminate this Agreement by giving 1 months notice in writing, such notice to expire no earlier than the 12 month of the term.

14.4 Activepixels may terminate this Agreement immediately if the Client commits a material breach of the terms of this Agreement which, in the case of a breach capable of remedy, is not remedied within 30 days of service of a notice specifying the breach and stating the intention to terminate the Agreement if not remedied.

14.5 Upon termination all licences granted by Activepixels to the Client shall terminate.

14.6 Upon termination Activepixels will hand over those computer files necessary to operate the website in order that the Client can test the website with an alternative Internet Service Provider.

## 15. Website Compliance

15.1 Activepixels will provide guidance as to the compliance of a Project with any laws or regulations, including but not limited to the Electronic Commerce Regulations 2002; Distance Selling Regulations 2000 and Disability Discrimination Act 1995, but professional advice is recommended and accordingly Activepixels shall not be held liable by the Client for failure of the Project to comply with any legislation anywhere in the world.

15.2 Activepixels will make reasonable effort to ensure that the Project complies with the most popular web browsers and operating systems in existence at the time of the Agreement but shall accept no liability for any failure to comply with software code or any errors, omissions or failure of software code product.

## 16. Notice

16.1 Any notice to be given to Activepixels under this Agreement shall be given in writing to 34 Oak Lodge Tye, Chelmsford, Essex CM1 1QA, or to such other address as Activepixels may have notified to the Client for that purpose.

## 17. Entire Agreement

17.1 Each party confirms that this Agreement sets out the entire agreement and understanding between the parties and that it supersedes all previous agreements, arrangements and understandings between them relating to the subject matter of the Agreement. The Client confirms that it has not relied on any other representation than or understanding other than as set out in this Agreement.

## 18. Severance

18.1 To the extent that any provision of this Agreement is found by any court or competent authority to be unlawful or enforceable in any jurisdiction, then that provision shall be deemed not to be a part of this Agreement, and it shall not affect the validity, lawfulness or enforceability of the remainder of this Agreement.

## 19. Rights of Third Parties

19.1 Nothing in this Agreement shall create or confer any rights or other benefits, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, in favour of any person other than the parties to this Agreement.

## 20. Governing Law

20.1 English law shall apply to the Agreement and the parties agree to submit to the non-exclusive jurisdiction of the English courts.