

WEBSITE HOSTING AGREEMENT & TERMS



Version 1.0, date: 12/10/2020

THIS AGREEMENT is made

BETWEEN:

- (1) Pixel Reset Limited (“the Host”) and
- (2) The Client.

WHEREAS:

- (1) The Host is an internet service provider and offers website hosting facilities to clients using all appropriate hardware connected to the World Wide Web via the Internet.
- (2) The Client wishes to use the Host’s Service to host its website on the Hosting Hardware subject to the terms and conditions of this Agreement.

By utilising the Host’s web hosting Service, **IT IS AGREED** as follows:

1. **Definitions and Interpretation**

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Account” means the Client’s details that are required and held by the Host to facilitate the provision of the Service to the Client including, but not limited to, identification and location details, payment details, username and password, and details of the Service provided to the Client;

“Business Day” means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in the United Kingdom;

“Client Website”	means the website that the Host is hosting for the Client and refers to all parts of that website including, but not limited to, component files and related services such as email;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Fee”	means the sum payable by the Client to the Host in order to receive the Service;
“Hosting Hardware”	means any and all computer and networking equipment used by the Host in the provision of the Service including, but not limited to, servers and network infrastructure;
“Hosting Package”	means one of the Service packages offered by the Host and generally refers to the package selected by or for the Client as detailed in Schedule 1;
“Hosting Software”	means any and all software used by the Host in the provision of the Service;
“Intellectual Property Rights”	means copyright (and related rights), designs, patents, trade marks and any and all other intellectual property rights. This includes all such rights, whether they are registered or unregistered, and the rights to apply for renewals or extensions of those rights (where relevant); and
“Service”	means, collectively, all components of the Host’s website hosting service as provided to the Client and fully described in Schedule 1.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1 “writing”, and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
 - 1.2.6 a “Party” or the “Parties” refer to the parties to this Agreement.

- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. **The Service**

- 2.1 Provision of the Service shall commence on the start date.
- 2.2 The Host is under no obligation to provide any services that do not form a part of the Service as defined in Schedule 1 unless the Host and Client enter into a new written agreement for the provision of additional services.
- 2.3 The Host may, in its sole discretion, alter, improve or otherwise modify the Service provided that any such change will not alter the Service received by the Client to the Client's material disadvantage (which shall include, but not be limited to, the removal of features from the Hosting Package). The Client shall be notified no later than 14 days in advance of any planned changes and shall receive full documentation of any action required on their part. No alterations to the Service shall affect the Fee payable by the Client.
- 2.4 Notwithstanding the provisions of sub-Clause 2.4 the Host may take any action necessary to diagnose and/or rectify faults in the Hosting Hardware or Hosting Software without any prior notice to the Client. If such diagnosis or rectification results in an interruption to the provision of the Service, the Client shall be notified in accordance with the provisions of Clause 3.

3. **Availability of Service**

- 3.1 The Host will use reasonable endeavours to ensure that the Service is provided to the Client on a constant, uninterrupted basis throughout the term of this Agreement.
- 3.2 Notwithstanding sub-Clause 3.1, the Host shall not be liable for Hosting Hardware downtime or interruptions to the provision of the Service where such downtime or interruptions last for no more than 72 hours.
- 3.3 Where the Service is unavailable for more than 72 hours the Host shall contact the Client and shall provide details of the interruption including, but not limited to the cause. If this is not possible due to an undiagnosed problem, the Host shall at a minimum inform the Client that the problem is being investigated.
- 3.4 Where Service interruption due to Hosting Hardware failure cannot be remedied within 120 hours the Host shall transfer the Client Website to alternative Hosting Hardware in order to restore the provision of the Service or, where this is not possible, notwithstanding sub-Clause 8.1.1, from the end of the initial 72 hour period of Service interruption, keep a record of the number of whole days of Service interruption. Upon restoration of the Service, any partial days shall be rounded up and the Host shall reimburse the Client for the interrupted period. Such reimbursement shall be calculated on a pro-rata basis and shall be paid to the Client within 30 days. The Host acknowledges that this is an appropriate remedy in view of the Client's legitimate commercial interest in Service interruption due to failure of the Hosting Hardware being avoided or minimised.

- 3.5 Where the provision of the Service is interrupted through the fault of any third party, the Host shall bear no responsibility or liability.

4. Fees and Payment

- 4.1 Fees for the Hosting Package are detailed in Schedule 2.
- 4.2 The Client shall be required to pay all Fees due in advance of a 12 month period of Service provision.
- 4.3 For the first 12 month period of Service provision, payment of Fees shall take place on within 28 days of the Start Date. For subsequent 12 month periods of Service provision, the Host shall send to the Client a renewal notice and invoice not less than 28 days prior to the expiry of the then current 12 month period. Payment must be made within 28 days of receipt of the renewal notice and invoice in order for provision of the Service to continue without interruption.
- 4.4 The Host shall be free at any time to change the price of its services (including, but not limited to, the Hosting Package chosen by the Client under this Agreement). The Client shall not be subject to any additional charges during a 12 month period of Service Provision resulting from a price increase, nor to any refunds resulting from a price decrease. Any changes in Fees due shall be reflected in subsequent renewals only. The Host reserves the right to continue charging old Fees for renewals.
- 4.5 All Fees payable by the Client to the Host shall be paid in full, without set off or deduction. The Host reserves the right to suspend the Service or terminate this Agreement if Fees are not paid on or before the due date.
- 4.6 The Client may, at any time, change their Hosting Package. If the Client chooses to do so, the Host shall refund the original Fee paid by the Client relative to the number of whole months out of the 12 month period of Service provision that remain. Refunds shall be issued within 28 days. The Client shall be invoiced for a new 12 month period of Service provision in accordance with the Fees for the new Hosting Package selected.

5. Changes to this Agreement

- 5.1 The Host reserves the right to change the terms of this Agreement and any and all other terms and conditions and/or policies which may affect the Client in order to comply with changes in the law.
- 5.2 The Client shall be informed of any changes made under this Clause 5 and shall be deemed to be bound by them 14 days after receipt of the notice.
- 5.3 If the Client does not agree to be bound by any changes made under this Clause 5, they may terminate this Agreement in accordance with sub-Clause 13.5.

6. Client Undertakings and Obligations

- 6.1 The Client may not use the Service (including, but not limited to, the Hosting Hardware and/or the Hosting Software) for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:

- 6.1.1 Distribution of computer viruses, malware, spyware or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
 - 6.1.2 Distribution of pirated material including, but not limited to, software, videos, music and written works; and
 - 6.1.3 Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities.
- 6.2 The Client may not use the Client Website to link to any other websites or systems hosting any material described in sub-Clause 6.1.
 - 6.3 The Client undertakes to monitor and supervise any and all third party activity on the Client Website (including, but not limited to, the submission of material by users and the use of communication systems such as forums). Any third party activity that may fall within the provisions of sub-Clause 6.1 must be stopped or removed, as appropriate.
 - 6.4 The Client undertakes to ensure that any and all personal information collected through the Client Website is gathered, processed and held in accordance with the relevant provisions of the General Data Protection Regulation (GDPR).
 - 6.5 The Client undertakes to ensure that any and all e-commerce conducted through the Client Website complies with all relevant laws in force at the relevant time including, but not limited to, the The Consumer Contracts Regulations and the EU E-Commerce Directive 2000.
 - 6.6 The Client shall be responsible for all activity relating to the Client Website.
 - 6.7 The Client shall use reasonable endeavours to ensure that the Host is furnished with any information reasonably required by the Host to provide the Service in a timely manner.

7. Intellectual Property Rights

- 7.1 The Client shall not acquire any rights in or over any Intellectual Property Rights subsisting in any materials and/or property owned by the Host or by any third parties (where, for example, the Host is using materials under licence).
- 7.2 The Host shall not acquire any rights in or over any Intellectual Property Rights subsisting in any materials and/or property owned by the Client or by any third parties (where, for example, the Client is using materials under licence) including, but not limited to, the Client Website.
- 7.3 The Client hereby agrees to fully indemnify the Host against all costs, expenses, liabilities, losses, damages, claims and judgments that the Host may incur or be subject to as a result of the infringement of any Intellectual Property Rights arising out of the Client's failure to obtain the necessary rights and permissions from third parties with respect to any materials used by the Client as hosted by the Host under this Agreement.

8. Limitation of Host's Liability

- 8.1 Subject to the provisions of sub-Clause 3.4 and the remainder of this Clause 8, and to the fullest extent permitted by law, the Host shall not be liable to the Client or to any third party, whether in contract or tort (including negligence) for any loss or damage, direct or indirect, whether foreseeable or otherwise (including any indirect, consequential, special or

exemplary damages) arising from:

- 8.1.1 interruptions or downtime to the Service;
 - 8.1.2 any damage, loss or corruption of data (including, but not limited to, the Client Website or any part thereof);
 - 8.1.3 any incompatibility, whether of the Hosting Software, Hosting Hardware or the Client Website with any of the Client's equipment (or that of any third party);
 - 8.1.4 any inability, on the part of the Client, to use the Service (including, but not limited to, failure to follow reasonable instructions provided by the Host);
 - 8.1.5 the loss of confidentiality caused by the storage of information on the internet (this does not refer to the mutual confidentiality obligations of the Parties under Clause 11).
- 8.2 Nothing in this Agreement shall exclude the Host's liability for death or personal injury resulting from its negligence or that of its employees or agents.
- 8.3 Nothing in this Agreement shall exclude the Host's liability for fraud or fraudulent misrepresentation.
- 8.4 Nothing in this Agreement excludes or restricts the Host's liability for any loss resulting from its failure to use reasonable skill and care, from its gross negligence, or from its wilful misconduct.

9. **Warranty Disclaimer**

Subject to the provisions of this Agreement, the Host gives no further warranty, express or implied, in connection with the Service as to fitness for purpose, quality, non-infringement or merchantability.

10. **Client Indemnity**

The Client shall fully indemnify the Host against all costs, expenses, liabilities, losses, damages and judgments that the Host may incur or be subject to as a result of any of the following:

- 10.1 The Client's misuse of the Service;
- 10.2 The Client's breach of this Agreement;
- 10.3 The Client's negligence or other act of default;
- 10.4 The activities of third parties conducted on or through the Client Website.

11. **Confidentiality**

11.1 Each Party undertakes that, except as provided by sub-Clause 11.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 1 year after its termination:

- 11.1.1 keep confidential all Confidential Information;
- 11.1.2 not disclose any Confidential Information to any other party;
- 11.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

- 11.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 11.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 11.1.1 to 11.1.4 above.
- 11.2 Either Party may:
- 11.2.1 disclose any Confidential Information to:
 - 11.2.1.1 any sub-contractor or supplier of that Party;
 - 11.2.1.2 any governmental or other authority or regulatory body; or
 - 11.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
- to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 11.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 11, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 11.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 11.3 The provisions of this Clause 11 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

12. **Force Majeure**

- 12.1 Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 12.2 In the event that a Party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 14 days, the other Party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for the Service as provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.

13. Term and Termination

- 13.1 The initial period of Service provision shall commence on the Start Date. This term shall last for a period of 12 months, subject to any provisions in this Agreement to the contrary (including, but not limited to, this Clause 13).
- 13.2 Subsequent periods of Service provision shall last for periods of 12 months each and shall follow on from a previous period, without interruption, subject to the fulfilment of the Client's payment obligations under Clause 4. All subsequent periods of Service provision shall remain subject to the terms of this Agreement unless expressly stated otherwise.
- 13.3 Either Party may immediately terminate this Agreement by giving written notice to the other Party if:
- 13.3.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 28 days of the due date for payment;
 - 13.3.2 the other Party commits any other breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 28 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 13.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 13.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 13.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
 - 13.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 13.3.7 that other Party ceases, or threatens to cease, to carry on business; or
 - 13.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 13, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 13.4 For the purposes of sub-Clause 13.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 13.5 The Client shall have the additional right to request the early termination of the Service and of this Agreement by written notice of 28 days. Such notice shall include the Client's contact name, email address and hosting account reference. The following shall apply to such early termination:
- 13.5.1 The issuing of refunds shall be at the Host's sole discretion.
 - 13.5.2 If the Client wishes to terminate during the course of a 12 months period of Service provision, the Service shall end 1 month after the Host receives the Client's notice.

Refunds shall be proportionate to the remainder of the 12 months period of Service provision. Refunds shall be issued within 28 days.

13.5.3 If the Client sends a termination notice under sub-Clause 13.5 in error or changes their mind, the Host must be informed within 28 days of that notice that the Client wishes their Account to be restored. Any notification outside of this period shall require a new Account to be set up with the Client being required to pay for a full 12 months period. The Client shall be required to pay a re-activation fee of £50 in addition to the return of the previously refunded Fees in proportion to the remainder of the original 12 month period of Service provision.

13.6 The rights to terminate this Agreement given by this Clause 13 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

14. Effects of Termination

Upon the termination of this Agreement for any reason:

14.1 the Host shall ensure the complete and secure removal of the Client Website and all related material from the Hosting Hardware;

14.2 any sum owing by either Party to the other under any of the provisions of this Agreement shall become immediately due and payable;

14.3 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;

14.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of termination;

14.5 subject as provided in this Clause 14 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

14.6 each Party shall (except to the extent referred to in Clause 11) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

15. No Waiver

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

16. Further Assurance

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

17. **Costs**

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

18. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

19. **Assignment and Sub-Contracting**

19.1 Subject to sub-Clause 19.2 This Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

19.2 The Host shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of this Agreement, be deemed to be an act or omission of the Party in question.

20. **Time**

20.1 The Parties agree that all times and dates referred to in this Agreement shall be of the essence of this Agreement.

OR

20.2 The Parties agree that the times and dates referred to in this Agreement are for guidance only and are not of the essence of this Agreement and may be varied by mutual agreement between the Parties.

21. **Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

22. **Third Party Rights**

22.1 No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

22.2 Subject to this Clause 22 this Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

23. **Notices**

23.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by,

or on behalf of, a duly authorised officer of the Party giving the notice.

23.2 Notices shall be deemed to have been duly given:

23.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

23.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

23.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

23.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

24. **Entire Agreement**

24.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

24.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

25. **Counterparts**

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

26. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

27. **Dispute Resolution**

27.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

27.2 If negotiations under sub-Clause 27.1 do not resolve the matter within 28 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.

27.3 If the ADR procedure under sub-Clause 27.2 does not resolve the matter within 28 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

- 27.4 The seat of the arbitration under sub-Clause 27.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 27.5 Nothing in this Clause 27 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 27.6 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 27 shall be final and binding on both Parties.

28. **Law and Jurisdiction**

- 28.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 28.2 Subject to the provisions of Clause 27, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

SCHEDULE 1

Hosting Package

The facilities and features included in the Hosting Package are set on a per-Hosting Package basis and are indicated in communication with the Client.

Where this is not the case, the following defaults shall apply:

- Host 1 web site
- Up to 2GB storage space
- Up to 200GB monthly bandwidth
- 1 x 1GB MySQL database
- Up to 10 1GB mailboxes

The Host may alter these allowances from time to time at its discretion.

SCHEDULE 2

Fees

The fee for this Service is set on a per-Hosting Package basis, is indicated on the invoice and may change from time to time, at the Host's discretion.