



Human  *Pixel*
SERVICES AGREEMENT

PREPARED FOR:

DATE:

February 19, 2018

Web & Application Development, Hosting and Other Services

It is agreed that:

1. Commencement date and term of the Agreement

- 1.1 The Agreement between Human Pixel and the Customer commences on the date this Agreement for the Human Pixel Service is accepted by Human Pixel.
- 1.2 This Agreement includes these Terms and Conditions, all attached Schedules and any product or service specific Terms and Conditions, and continues in force until terminated by either party in accordance with the terms of this Agreement.

2. Web & Application Development, Hosting, Design & Other Services Terms & Conditions

- 2.1 Where Human Pixel's quote is accepted by the Customer, this Agreement applies to those services.
- 2.2 The Customer and the Registered Users must use Human Pixel's service in accordance with all applicable laws, and with the Acceptable Use Policy which can be amended by Human Pixel from time to time.
- 2.3 If the Customer downgrades the Human Pixel service or product to one of a lesser value, Human Pixel may impose an administration fee being reasonable compensation for the work already undertaken by Human Pixel based on the higher package which is then downgraded.
- 2.4 Human Pixel performs planned maintenance to servers from time to time. If planned maintenance requires the service to be offline for more than 30 minutes, Human Pixel will inform its Customer of that planned maintenance. It will do this at least 48 hours in advance of the planned maintenance.
- 2.5 If unplanned maintenance requires the Human Pixel service to be offline for more than 30 minutes, Human Pixel will, to the best of its ability, endeavour to inform all the customers that could be affected by that outage. While every endeavour will be made to contact the Customer at that time, it foresees situations where the Customer is unreachable.
- 2.6 Human Pixel will make reasonable efforts to archive the Customer's data onto backup mechanisms on a monthly basis for the purposes of disaster recovery.
- 2.7 In the event of equipment failure or data corruption, Human Pixel will restore from the last known back-up. However, the Customer should maintain a recent copy of their data either at their own premises or elsewhere at all times. Human Pixel will not accept liability for incomplete, out-of-date, corrupt or otherwise deficient Customer data recovered from its or the Customer's back-ups.
- 2.8 Human Pixel may use spam and virus filters, which may require the use of third party equipment, or a service to monitor and filter email traffic between the equipment of Human Pixel and the Internet. The Customer agrees that Human Pixel will not be liable for any loss resulting from any use of spam or as a result of a virus.
- 2.9 By contracting with Human Pixel, the Customer does not acquire rights to the hardware or other infrastructure & facilities used by Human Pixel to deliver the service to the Customer.
- 2.10 Human Pixel may sub-contract all or any part of the performance of this Agreement to one or more third parties.
- 2.11 The Customer will be deemed to have accepted the Customer's website or any other Human Pixel Service [10 days] after delivery by Human Pixel, except to the extent that the Customer notifies Human Pixel within that period of any changes to the Customer's website, or the relevant Human Pixel service to comply with this Agreement.
- 2.12 If the Customer requests Human Pixel to provide any services not listed in the order form then:

- a) Human Pixel may provide a quote for the provision of those services; and
- b) a quote is deemed accepted when either the order form is completed and signed by the Customer or an acceptance is made by electronic mail.

3. Fees and Charges

Terms of payment

- 3.1 The Customer agrees to pay to Human Pixel the fees and usage charges in accordance with Human Pixel's prices in this Agreement, and in accordance with the Human Pixel schedule of payments for the Human Pixel Service, as agreed, and as may be varied by Human Pixel from time to time.
- 3.2 The Customer agrees to pay Human Pixel in accordance with the payment schedule (in this Agreement).
- 3.3 Fees and charges are exclusive of all GST unless specified as GST inclusive.

Billing

- 3.4 Human Pixel offers direct debit from a bank account or credit card as forms of payment.
- 3.5 Where the billing option does not specify otherwise, all service fees and charges are payable within 14 days of the date of the invoice.

Establishment related expenses

- 3.6 The Customer must provide and pay for:
 - a) the installation and use of telephone lines and all other equipment needed to access the Human Pixel Service; and
 - b) all government taxes, duties and levies (if any) and GST imposed on either you or us in respect of the Human Pixel Service.
- 3.7 Human Pixel will not provide any Human Pixel Service pursuant to this Agreement until:
 - a) this Agreement is accepted by the Customer and Human Pixel; and
 - b) all applicable payments and/or deposits are paid by the Customer.
- 3.8 Human Pixel will not refund any payments and/or deposits if the Customer terminates this Agreement; or does not use any Human Pixel Service paid for by the Customer unless otherwise agreed by both parties.
- 3.9 Human Pixel reserves the right to invoice the Customer directly for any approved out of scope work and also for all reasonable out of pocket expenses incurred in the event of any issues not found to be directly attributable to the service Human Pixel provides.

Use of credit card

- 3.10 If the Customer intends to use their credit card to pay Human Pixel, the Customer must register the relevant credit card account with Human Pixel, and provide authorisation to debit the Customer's credit card for all charges.
- 3.11 A surcharge for credit card payments may be imposed as set out in the Schedule 2.

Late Fees

- 3.12 If your account exceeds our trading terms, a late fee may be imposed equivalent to 10% of the remaining invoice amount or \$15 (whichever is the greater) for each 30 day period that the amount remains outstanding.
- 3.13 If payment remains outstanding for an extended period of time, we may pass the debt over to a

collection agency and the Customer will be liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Human Pixel for enforcement of obligations and recovery of monies due from the Customer to Human Pixel.

4. Customer's warranties and indemnities

- 4.1 The Customer will conduct such tests and computer virus scanning as may be necessary to ensure that data uploaded by the Customer onto or downloaded by the Customer from the Human Pixel server does not contain any computer virus and will not in any way, corrupt the data or systems of any person
- 4.2 The Customer will keep secure any passwords used with the Human Pixel Service.
- 4.3 The Customer is solely responsible for dealing with persons who access the Customer's data, and must not refer complaints or inquiries in relation to such data to Human Pixel.
- 4.4 The Customer indemnifies Human Pixel against all losses that Human Pixel may suffer (directly or indirectly) resulting from:
 - a) the Customer's breach of this Agreement;
 - b) the Customer's use or misuse of the Human Pixel Service;
 - c) the use or misuse of the Human Pixel Service by any person using the Customer's account; and,
 - d) the publication of defamatory, offensive or otherwise unlawful material on the Customer's website.
- 4.5 If the Customer's use of the Human Pixel Service involves storage, processing or transmission of or access to any credit cardholder data, the Customer warrants that the tools, programs, processes and technologies they use to do so comply with the Payment Card Industry Data Security Standard ('PCI Standard') which is available at <https://www.pcisecuritystandards.org>
- 4.6 If the Customer breaches any of these warranties, Human Pixel may terminate this Agreement immediately. In such instances, it will provide written notice to the Customer of the termination.

5. Human Pixel's warranties and liabilities

- 5.1 Human Pixel accepts liability for the supply of the Human Pixel Service, but only to the extent provided in this clause of this Agreement.
- 5.2 Human Pixel does not warrant that :
 - a) the Human Pixel Service provided under this Agreement will always be uninterrupted or error free;
 - b) the Human Pixel Service will meet the requirements of the Customer other than as expressly set out in this Agreement, or
 - c) by the very nature of the Human Pixel Service, the Human Pixel Service will be free from external intruders (hackers), virus or other actual or viral attacks, denial of service attack, or other person or persons will have unauthorised access to the Human Pixel Service or systems of Human Pixel from time to time.
- 5.3 Human Pixel accepts liability where:
 - a) the Human Pixel Service is not supplied to the Customer with due care and appropriate skills;
 - b) any material supplied in connection with the Service is not reasonably fit for the purpose for which it was supplied; and
 - c) Human Pixel is required to do so by the Trade Practices Act 1974.

- 5.4 Except as expressly provided to the contrary to this Agreement, Human Pixel does not accept liability for indirect and consequential loss or damage of any kind, loss or corruption of data, loss of revenue, loss of profits, failure to realise expected or projected profits or savings or any other commercial or economic loss of any kind, in contract, tort (including negligence), under any statute or otherwise arising from or relating in any way to this Agreement and/or its subject matter.
- 5.5 Other than the liability accepted by Human Pixel in clause 5.3, Human Pixel's total liability for loss of any kind not excluded by clause 5.4 however it caused in contract, tort (including negligence), under any statute or relating to this Agreement is limited in aggregate for any and all claims to the fees paid by the Customer pursuant to this Agreement in the previous 12 month period.
- 5.6 Whilst we highly recommend that Human Pixel hosts the finished solution, where the Customer chooses to move the site/application to a different environment then Human Pixel cannot warrant the solution once it is moved from our servers.

6. Termination

- 6.1. The Customer may terminate this Agreement by providing at least four weeks written notice to Human Pixel. Any unused pro-rata portion of monthly service fees may not necessarily be refunded to the Customer.
- 6.2 Human Pixel may terminate this Agreement:
- a) by providing four weeks written notice to the Customer;
 - b) immediately & without notice, if the Customer breaches this Agreement; or
 - c) if required by Law or Court Order.
- 6.3 Upon termination of this Agreement, the Customer will be provided with an invoice in relation to any Human Pixel Service used prior to termination. This invoice must be paid using the same payment method agreed to on the order form. All prior invoices immediately become due and payable upon termination of this Agreement.
- 6.4 Upon termination of this Agreement, Human Pixel may delete the Customer's website from Human Pixel's computer system or prevent access to the Customer's website or other services.

7. Registered Users

- 7.1 The Customer may nominate one or more Registered Users as agreed with Human Pixel to access and change the Customer's website and, if applicable, to access the Customer's email service.
- 7.2 Each Registered User of the Customer will have:
- a) a User ID and initial Password; and
 - b) a current email address and mailbox, if email is provided by Human Pixel as part of the Service requested by the Customer.
- 7.3 All access to and use of any Human Pixel Service under a User ID and Password will be assumed to be access and used by the Registered User to whom the User ID has been allocated.
- 7.4 The Customer is responsible and liable for all usage fees, and for all damages that Human Pixel may claim as a result of any loss it can prove (actual or in tort) for the use and misuse of any Human Pixel service, by any person using a User ID allocated to a Registered User of the Customer.

8. Suspension and Cancellation of Service

- 8.1 The Customer may cancel the Human Pixel Service or part of the Human Pixel Service by

notifying Human Pixel in writing.

- 8.2 If the Customer cancels a Web or Application Design Service:
- a) prior to the job commencing, Human Pixel will not refund the deposit paid by the Customer;
 - b) whilst the job is in progress, Human Pixel will bill the Customer for time spent to that time; and,
 - c) if the job is complete, Human Pixel will not refund the Customer any portion of their payment. The Customer must pay Human Pixel the total amount owing, as per the order form.
- 8.3 Human Pixel may suspend or cancel any Human Pixel Service, delete the Customer's website from Human Pixel's hosting environment, or prevent access to the Customer's website, if:
- a) there is an emergency;
 - b) the Customer does not pay an invoice on time;
 - c) the Customer becomes bankrupt, insolvent or has a receiver, manager or a liquidator appointed;
 - d) the Customer or a Registered User's use of Human Pixel Service interferes with the proper operation of Human Pixel;
 - e) the Customer breaches this Agreement;
 - f) Human Pixel believes (regardless whether the belief is reasonable or not in the circumstances) that the Customer's website infringes or may infringe another's Intellectual Property Rights, is defamatory, or may involve Human Pixel in a legal dispute;
 - g) the Customer brings legal action against Human Pixel;
 - h) the Customer's level of use of the Human Pixel Service is significantly greater than average use by other customers of the Human Pixel Service as reasonably determined by Human Pixel; or
 - i) Human Pixel is required to do so by Law or a Court Order.
- 8.4 If any Service is cancelled or suspended pursuant to clause 8.3, then any other Human Pixel Service being provided may also be cancelled or suspended.
- 8.5 Human Pixel may temporarily suspend a service if it is necessary to allow Human Pixel to perform maintenance. In doing so, Human Pixel will attempt to give the Customer prior notice of the suspension and will attempt to minimise inconvenience to the Customer.

9. Ownership

- 9.1 The Customer retains ownership of the finished software/website provided by Human Pixel as delivered to the Customer.
- 9.2 Human Pixel has no ownership rights in the Customer Content.
- 9.3 The Customer grants Human Pixel a worldwide, non-exclusive, perpetual, irrevocable, royalty-free licence to:
- a) reproduce the Customer's content for the purposes of performing its obligations under this Agreement, making backups of the Customer's website or otherwise operating the Customer's website;
 - b) grant sub-licences to third parties browsing or wishing to browse the Customer's website allowing them to browse the Customer's website; and
 - c) sub-license the Customer's content to any third party to allow them to assist Human Pixel in performing its obligations under this Agreement.
- 9.4 The Customer warrants that the Customer's content does not and will not infringe the Intellectual

Property Rights of any other person.

- 9.5 The Customer indemnifies, and will waive any liability that it may otherwise pursue against Human Pixel in the event that a Claim is made directly against it. This will include any claim or loss arising out of or resulting from any claimed or actual infringement of Intellectual Property Rights by the Customer or relating to the Customer's website.

10. Addresses and Domain Names

- 10.1 The Customer is responsible for the provision of the Customer content for the Customer's website.
- 10.2 The Customer is responsible for all approvals, consents and permissions necessary in relation to the Customer's website.
- 10.3 The Customer acknowledges that Human Pixel's Service may be provided using third parties. If Human Pixels use of such third party service or products is restricted or interrupted, then this may affect the provision of Service to the Customer. Human Pixel is not liable to the Customer if this occurs.
- 10.4 Human Pixel does not own or control the Internet and is not responsible for Internet problems, faults or delays.

11. Privacy

- 11.1 The Customer must ensure that each Registered User and any other individual whose personal information (as defined in the Privacy Act 1988) is made available to Human Pixel in connection with this Agreement has received all notifications and provided all consents required under that Act for Human Pixel to lawfully collect, use and disclose their personal information for the purpose of fulfilling its obligations under this Agreement. This may require the Customer to inform those individuals of matters in the Human Pixel Privacy Policy.

12. Variation

- 12.1 Human Pixel may vary the terms of this Agreement by written notice to the Customer. If the Customer objects to the change in terms, the Customer must notify Human Pixel in writing within seven (7) days, and cease using all Human Pixel services provided under this Agreement.
- 12.2 If Human Pixel changes the details or pricing for any service it offers where the change will not affect the Customer, Human Pixel is not obliged to notify those unaffected customers of the specific change.

13. Notices

- 13.1 A notice or communication to a party under this agreement must be in writing in English.
- 13.2 Written notices by the Customer to Human Pixel must be by email to accounts@humanpixel.com.au and by mail to Human Pixel's address set out in this Agreement or as updated by written notice from Human Pixel from time to time.
- 13.3 Written notices by Human Pixel to the Customer must be by email or mail to the email or mail address set out in the order from as updated by written notice from the Customer to Human Pixel from time to time.

14. Miscellaneous

- 14.1 Human Pixel is not liable for any failure to comply with this Agreement if that failure is caused by an act beyond Human Pixel's reasonable control.
- 14.2 The Customer may not transfer this Agreement or any service provided under this Agreement without Human Pixel's prior written consent. Human Pixel may assign this Agreement to a third party without the Customer's consent.
- 14.3 Clauses 4, 5, 6.4, 6.5, 9, 13, 15 and 17 survive the termination of this Agreement or cancellation or suspension of the Human Pixel Service or any part of the Human Pixel Service.

- 14.4 The Customer may not set-off any claim against amounts payable to Human Pixel.
- 14.5 Human Pixel may, but is under no obligation to, monitor the Customer's website (including its non-public sections) to ensure compliance with this Agreement and for any other reason considered appropriate by Human Pixel.
- 14.6 The Customer expressly permits and authorises Human Pixel to furnish to the Customer, electronically or by any other means selected by Human Pixel, information including advertising information and solicitations.
- 14.7 Human Pixel is willing to enter into this Agreement only if the Customer accepts all the terms of this Agreement.

15. Dispute Resolution

- 15.1 If there is a dispute between Human Pixel and the Customer then the disputing Party must provide details of its grievance and do so in writing to the other party.
- 15.2 A party shall nominate a representative who will be that party's representative for the purposes of this clause.
- 15.3 If a dispute is not settled within 21 days of service, the dispute shall be referred in the first instance to the parties' representatives who shall attempt to resolve the dispute including, if necessary, by formal or informal mediation.
- 15.4 Nothing in clause 15 prevents a party from seeking urgent interlocutory relief in an appropriate court or tribunal.

16. Severability

- 16.1 Any provision of this Agreement which is or becomes illegal, void or unenforceable shall be ineffective to the extent, only of such illegality, or to the degree of not being valid or unenforceable and shall not invalidate the remaining provisions.

17. Governing Law

- 17.1 This Agreement is governed by, takes effect and shall be construed in accordance with the laws of Victoria.
- 17.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria, and courts hearing appeals from those courts.

Website & Application Development, Hosting & Other IT Services Definitions

Schedule 1

'Agreement' means this Agreement made between Human Pixel and the Customer and includes the Schedules.

'Hosting Package' means the actual website hosting service that either Human Pixel directly provides its customer or, in the case where a third party provides that service, Human Pixel facilitates the provision of this service to its Customer.

'Business Day' means a day which is not Saturday, Sunday or public holiday in the state of Victoria.

'Claim' means a demand, action or proceeding of any nature whether actual or threatened.

'Customer Content' means all material and content provided by the Customer and the Registered Users for inclusion in the Customer's website or otherwise for the purposes of this Agreement. It also includes content Human Pixel has created and the Customer has approved.

'Customer's website' is the website and/or applications created and/or hosted by Human Pixel pursuant to this Agreement, and includes all data and programs stored by or for the Customer on Human Pixel's computer system.

'GST' means the Goods and Service Tax as imposed by the Government of Australia and as laid down in its 'A New Tax System' (1999).

'Intellectual Property Rights' means;

- a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- c) confidential information and trade secrets;
- d) trade and service marks (whether registered or unregistered); and
- e) proprietary rights under the Circuit Layouts Act 1989 (Cth).

'Loss' means any liability, loss, cost, expense or damage. In relation to any Claim, 'Loss' includes amounts payable on the Claim and (whether or not the Claim is successful) legal and other professional costs and disbursements on a full indemnity basis.

'Registered User' means a natural person nominated by the Customer and agreed by Human Pixel to have access to the Customer's website and the Customer's email service, as per clause 7.

'Third Party Services' can include any web hosting or related service that Human Pixel facilitates the provision of by a third party, in order to provide the Human Pixel Service. Examples of this could include hosting services; domain name provisioning and management as well as email management services.

'Human Pixel Privacy Policy' means the Human Pixel Privacy Policy in Schedule 3, as updated from time to time. It is publicly available at <http://www.humanpixel.com.au/>.

'Human Pixel Service' means any service provided by Human Pixel to the Customer under this Agreement, whether ordered using the respective order form or otherwise agreed between the parties in accordance with this Agreement.

'Human Pixel Website' means the website under the domain name humanpixel.com.au. 'Human Pixel's 'Acceptable Use Policy' means the policies governing the use of the services provided by Human Pixel and contained in Schedule 4.

Introduction

Human Pixel is covered by the Australian Privacy Principles (APPs), as set out in the Privacy Act 1988 (as amended). The APPs govern the way that we collect, use, disclose, secure and provide access to personal information.

To comply with our obligations under the APPs, Human Pixel has this Privacy Policy, which sets out how we manage privacy in our organisation.

Purpose of the Policy

Human Pixel takes its obligations under the Privacy Act 1988 (as amended) seriously. We have privacy obligations to our customers and to the general public who use the services provided by Human Pixel.

Collection of Personal Information

Human Pixel does not collect personal information unless it is necessary. We only collect personal information by means that are lawful, fair and unobtrusive. When practicable, personal information will only be collected from the individual concerned.

The type of information that Human Pixel collects about you will depend on the nature of the service provided. When you contact Human Pixel, you may provide us with any of the following types of personal information:

- Name
- Date of birth
- Address
- Email address
- Telephone and facsimile number
- Credit card and other bank details
- Occupation, position or job title
- Other information which may be collected when you visit our website to read or download information, which may include your server address, domain name, the date and time of your visit to our site, the pages viewed and the information downloaded.

Use or Disclosure of Personal Information

Human Pixel will only use or disclose your personal information for the primary purpose of collection, or a related purpose, or where we are required or permitted to do so by law or where you have provided consent.

In addition, Human Pixel uses your information when advising you about our products and services, or upcoming events at Human Pixel. Human Pixel will not provide your personal information to any other organisation for marketing purposes without your consent.

With your consent we may disclose your information to:

- Outsourced service providers including but not limited to printing houses and mail-out services, billing and debt recovery services, financial institutions and information technology services
- Professional advisors such as lawyers, accountants and auditors, and
- Government authorities as required or authorised by law

Data Quality and Security

Human Pixel will endeavour to ensure that the personal information we hold about you is complete, accurate and up to date. In order to assist us to achieve this, it is important that you advise Human Pixel when your details change.

Human Pixel may store your information in hard copy or electronic format, in storage facilities that we own and operate ourselves, or that are owned and operated by our service providers. Human Pixel will take all reasonable steps to protect personal information from loss, misuse, or unauthorised access.

Some of the steps Human Pixel has taken to protect the security of your personal information include:

- Computer and network security including passwords and other electronic barriers
- Physical restrictions on access to personal information such as security doors
- Policies for destroying or permanently de-identifying personal information no longer required (subject to legal requirements for retaining certain records), and
- Secure internal information handling processes.

Access to your personal information

You have a right to access and correct personal information that we hold about you.

Access may involve permitting you to inspect or take notes or make photocopies of your personal information. To obtain access you will have to provide proof of your identity. This is necessary so that Human Pixel can ensure that your personal information is not disclosed to any other person.

In some circumstances, Human Pixel may not be able to provide access to your personal information. If this occurs, we will provide you with a written explanation. Requests for access to your personal information should be made in writing to the Human Pixel Privacy Officer. There is generally no fee for access to personal information. However, in some cases a reasonable fee may be charged in order to recover costs if information has to be retrieved from archives or a large quantity of information has been requested.

Human Pixel will respond to all requests for access within 14 days.

Complaint Process

If you have any concerns about the way your personal information has been managed by Human Pixel or if you believe that Human Pixel has breached the APPs, you may make a complaint in writing to the Privacy Officer at:

Human Pixel
PO Box 404
ELSTERNWICK 3185
or email info@humanpixel.com.au.

All complaints will be investigated within 14 days of receiving your complaint. If Human Pixel has not handled your personal information in a way that is consistent with the APPs then we will take steps to remedy this immediately.

If you have any concerns about the way your complaint is being handled, you may contact the Office of the Australian Information Commissioner by email at enquiries@oaic.gov.au or telephone on: 1300 363 992

Human Pixel's Acceptable Use Policy applies to you if you are a Human Pixel Hosting Service Customer or User ('you').

It is intended to ensure that your use of Human Pixel's service is trouble free and that you have due regard to the law and the needs of other users.

Please look out for any amendments to the Policy that Human Pixel ('we') might make in the future. From time to time, we will make amendments to it by giving you notice of the change and you will then be obliged to comply with the policy as amended.

In this policy, we use the following definitions:

'ACMA' means the Australian Communications and Media Authority.

'Mobile Carrier Content Service' is a content service that is controlled by a mobile carrier that is made available to end users in Australia, and hosted on servers within Australia.

'Potentially Prohibited Content' means that content that has not been classified by the Classification Board, but, if it were to be classified, there is a substantial likelihood that it would be Prohibited Content.

'Prohibited Content' means that content classified as RC or X18+ by the Classification Board or is classified R18+ and is not subject to a restricted access system.

'Restricted Content' means content that: is classified by the Classification Board R18+ (and in the case of Mobile Content MA15+ or R18+); or that has not been classified but, if it were to be classified by the Classification Board, there is a substantial likelihood that it would be classified R18+ (and in the case of Mobile Content MA15+ or R18+).

Spam means:

- commercial messages (including any offers, advertisements, promotions to supply goods, services, business or investment opportunities, or if the purpose of the message is to assist or enable a person to dishonestly obtain a gain from another person);
 - sent to recipients who are not known to you, who have not requested the material, or who have not granted permission for the mail to be sent to them; and
 - delivered via electronic means including email, discussion groups, fax, SMS, MMS and Instant Messaging.

'Users' means users of the Service who have not obtained it as a Customer, but via a Customer who is authorised to resell the Services such as a Human Pixel partner.

1. Some General Principles

1.1 You should familiarise yourself with your legal responsibilities. You can view your legal responsibilities in relation to:

- supervising and controlling children's access to internet content;
- procedures which parents can implement to control children's access to internet content, including availability, use and appropriate application of internet content filtering software; and
- obligations which may exist in relation to your content under the Broadcasting Services Act 1992 (as amended) or other applicable state legislation, at either of the following two websites: <http://www.iaa.net.au>; or <http://www.acma.gov.au>

1.2 You are responsible for complying with conditions of use of other networks. If we provide you with access to a network outside our Service, you must comply with any acceptable use conditions which apply to that network.

2. Unacceptable Uses

You must not use our Services, attempt to use our Services or allow the Services to be used in any way:

Breach of Law

2.1 Which results in you or Human Pixel breaching, or being involved in a breach of a law (including the Broadcasting Services Act), order or regulation (including a foreign law, order or regulation), a mandatory code of conduct, or a voluntary code of conduct that you have agreed to comply with.

Damage to property or people

2.2 Which results, or could result, in damage to property or injury to any person;

- 2.3 To harass, menace or stalk people.

Prohibited Content or Potentially Prohibited Content

- 2.4 To place on the internet, obtain through the internet or transmit using the internet any Prohibited Content or Potentially Prohibited Content.
- Content which is (or would be) classified RC or X18+ by the Classification Board includes content that contains:
 - detailed instruction in crime;
 - child pornography;
 - actual sexual activity.
 - Content which is (or would be) classified R18+ includes content that contains implied or simulated sexual activity.

Restricted Content

- 2.5 To provide content that is likely to be considered unsuitable for minors (even though the content may not be Prohibited Content or Potentially Prohibited Content) without using appropriate warnings and/or labelling systems for that content;
- 2.6 To provide Restricted Content on a Mobile Carrier Content Service to an end user if the end user has not 'opted in' for Restricted Content and without taking reasonable steps to ascertain that the end user is not a minor.

Protection of minors

- 2.7 Which enables a minor to access material inappropriate for a minor or to establish (or try to establish) contact with a minor not otherwise known to you;

Discrimination

- 2.8 Which incites discrimination, hate or violence towards one person or group because of their race, religion, gender or nationality;

Obscene, defamatory, offensive and abusive

- 2.9 To send, display or be otherwise involved in material which is obscene or defamatory;
- 2.10 Which is, or which would be considered by a reasonable person to be, offensive or abusive;

Illegal business practices and gambling

- 2.11 To engage in any misleading or deceptive business or marketing practice;
- 2.12 That involves providing or promoting illegal pyramid selling schemes or unlawful gambling or gaming activities;

The rights of others

- 2.13 Which infringes Human Pixel's or any other person's rights (including intellectual property rights and moral rights);
- 2.14 Which constitutes a misuse of Human Pixel's or any other person's confidential information; or
- 2.15 Which results in a breach by you of any obligation that you owe to any person.

Human Pixel's Service

- 2.16 Undertake any activity which impedes Human Pixel's ability to provide its Service;
- 2.17 Make or receive transmissions of any type or quantity which adversely affect our operation or jeopardise the use of our service, or its performance for other subscribers;
- 2.18 Undertake acts that waste resources or prevent other users from receiving the full benefit of our services;
- 2.19 To solicit subscribers to become subscribers of other competitive services.
- 2.20 Resale of our Services to others is strictly forbidden under all circumstances unless expressly approved by

Human Pixel in writing.

3. Spamming

3.1 You must not use our Services, attempt to use our Services or allow our Services to be used:

- To send, cause the sending of or otherwise be involved in the sending of Spam;
- Provide a capability on an Human Pixel hosted site which permits third parties to send Spam from a Human Pixel server;
- In connection with any program (including a virus, Trojan horse, worm, cancelbot, timebomb) or activity [including a denial of service attack], that is designed to provide or allow any form of unauthorised control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data belongs to Human Pixel or anyone else);
- To access or use Human Pixel's or anyone else's systems, networks or data (including through open relay, port probing and the use of packet sniffers) without consent, regardless of whether or not such access or use has any adverse effect on the system, network or data;
- To create, send or alter in any way and by any means (including spoofing and use of third party mail servers), the contents of an electronic message for the purpose of hiding, obscuring or deleting the source of the message or making the message appear to come from someone other than you;
- Send electronic chain letters;
- To manipulate or bypass Human Pixel's content usage limits;
- Send email to a recipient after the recipient has unsubscribed from your mailing list or has advised you by other means that they do not wish to be on the mailing list;
- Undertake activities which cause or may cause third party service providers to place Human Pixel's internet protocol (IP) addresses on a blacklist and/or block those IP addresses;
- Distribute messages to inappropriate or unrelated forums, newsgroups or mailing lists.

3.2 We support increasing awareness of our Customers about spam and how it can be managed.

Human Pixel uses spam and virus filters and encourages our customers to use spam and virus filters. You agree to Human Pixel's use of spam and virus filters which may require us to use third party equipment or services to monitor and filter email traffic between our equipment and the Internet. You agree that you will not take any steps to disable those filters and that we will not be liable for any loss or damage resulting from the use of spam or virus filters. Further information about these products can be found at the website of the Internet Industry Association at www.iii.net.au/nospam/

4. Third Party Complaint Process

4.1 From time to time, Human Pixel receives complaints from third parties ('Complaints') regarding unacceptable uses, allegedly being conducted by Customers or their Users. Human Pixel will make reasonable endeavours to resolve such complaints by working with Customers. The complaint process set out here does not apply to complaints that are the subject of court order or proceedings, or where Human Pixel reasonably believes that it must take urgent action without reference to the Customer.

4.2 If Human Pixel is unable to resolve the complaint by working with Customers, Human Pixel's policy is to put the complaining party in direct contact with the party best able to answer the complaint. Accordingly, Human Pixel's Customers authorise and direct Human Pixel to provide to third party complainants the relevant Customer's email contact details.

4.3 You have a right to complain to the ACMA about content. If you become aware that a website hosted by Human Pixel contains Prohibited Content or Potentially Prohibited Content, you can make a formal complaint to ACMA by contacting them through their website at www.acma.gov.au/ hotline.

5. What We May Do to Ensure That This Policy is Being Followed

5.1 We may monitor your account but will respect your privacy. We may monitor the conduct of your account to determine whether this policy is being followed.

5.2 If we monitor the conduct of your account we will safeguard your privacy subject to the terms of our Privacy Policy.

5.3 We may suspend or terminate your account and/or notify the authorities. If we believe that your use of the Service may break the law or that you have not complied with this policy we may:

- warn you by email (but we are not obliged to do so);
- suspend your access to the Service;
- terminate your account without notice; and/or
- notify and provide relevant information to the authorities, as appears appropriate in the circumstances.

5.4 In the event of taking action under 5.3 we reserve the right to delete any or all of your information, material, software or other content stored on our system at our sole discretion.

5.5 We may, at our absolute discretion and without notice to you, suspend or terminate your access to the Service:

- where we are made aware that a court order, judgment, decree, determination or otherwise has been made to the effect that the Customer data is illegal, offensive, objectionable or in breach of a third party's rights; and
- if we are directed to do so by ACMA under a takedown notice in accordance with its obligations under the Broadcasting Services Amendment (Online Services) Act 1999 (as amended);
- if we are served with a takedown notice in accordance with part 3A of the Copyright Regulations 1969 (as amended).

5.6 You agree that you will have no claim against Human Pixel in respect of any action reasonably taken by Human Pixel in its implementation of the terms of this Acceptable Use Policy, and you indemnify Human Pixel against any claim by a User arising out of the same.