

Wapple Architect Mobile Plugin Agreement

Non-commercial Usage

1 Definitions

In these conditions the following expressions have the following meanings unless the context otherwise requires:

- 1.1 "Acceptable Use Policy" means the set of rules set out at Appendix A applied to control the use of the Wapple Services;
- 1.2 "API Requests" means the two-way communication between the Licensees Site, written in WAPL, and Exhibit, ensuring that any Mobile Device receives the Site in an appropriate form and format;
- 1.3 "Application" means the Licensee registering its details with Wapple on the Website to apply for the Service;
- 1.4 "Architect" means web-based documentation, information and schemas available to the Licensee to develop mobile Sites and mobile applications using WAPL;
- 1.5 "Business Day" means any day (other than Sunday) on which clearing banks are open for normal banking business in the City of London;
- 1.6 "Canvas" means the web-based tool kit, more particularly described on the Wapple website which uses Wapple Intellectual Property, and is supplied by Wapple to the Licensee for designing Sites, managing Site content and integrating with third party applications and Exhibit;
- 1.7 "Commencement Date" means the date of initial sign-up to Wapple Plugins;
- 1.8 "Commercial Gain" means any money, moneys worth, gift, emolument, waiver of debt, voucher, barter, exchange or any other method of benefitting the licensee by virtue of creation and use of Sites;
- 1.9 "Conditions" means these Wapple terms and conditions;
- 1.10 "Confidential Information" means all technical commercial or financial information which touches or concerns the Wapple Intellectual Property and which is either designated as confidential or which by its very nature is confidential howsoever recorded or disclosed;
- 1.11 "Developer Key" means a series of unique numbers and characters given to the Licensee by Wapple which allows access to Architect, WAPL and Wapple Plugins and by which the Licensee can be uniquely identified by Wapple;
- 1.12 "Exhibit" means the Wapple technology created using Wapple Intellectual Property which allows any Site created using Canvas or Architect to be accessed via a specified URL, (Unique Resource Locator), such that any individual visiting the Site via the URL is able to view the content automatically reformatted and displayed for their mobile browser, handset and/or device;
- 1.13 "Know-How" means any and all technical and commercial information, advice, data, knowledge, drawings, information, source code and specifications relating to or useful in connection with Canvas, Architect and Exhibit, their use and sale;
- 1.14 "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
- 1.15 "Month" means a calendar month;
- 1.16 "Licensee" means the individual, partnership or corporate body who is entering into this Wapple Agreement with Wapple;
- 1.17 "Licensee WAP Address" means the URL or other content location designated by the Licensee to Wapple through its registration at the Website, and as updated from time to time;

- 1.18 "Plugin" means the Architect-built installation and WAPL code developed for existing web platforms including, but not limited to, Wordpress, CakePHP, Django, Joomla and PHP Classes, to allow the Licensee to create a mobile web friendly version of their website or application and deliver content to mobile web devices using the API for Exhibit™
- 1.19 "Services" means the provision by Wapple to the Licensee of access to Architect and its Plugins in order to create a mobile web version of their existing website or application;
- 1.20 "Site(s)" means the mobile web sites created by the Licensee using Architect Plugins;
- 1.21 "Software" means all computer codes, architecture, data, structure, algorithms, formulae whatsoever created by Wapple and used in connection with this Agreement;
- 1.22 "WAPL" means the XML based Wapple mark-up language which forms part of the Wapple Intellectual Property that allows the Licensee to create mobile Sites and, when combined with Exhibit, to display conventional web applications and content in a form and format suitable for mobile websites;
- 1.23 "Wapple" means Wapple.net Limited;
- 1.24 "Wapple Agreement" means the agreement made up of the terms in these Conditions for provision of the Services;
- 1.25 "Wapple Intellectual Property" means collectively the Know-How the patent application submitted by Wapple, the Wapple registered trade mark, copyright in all Wapple source code, relating to or useful in connection with Canvas, WAPL, Architect and/or Exhibit which are vested in Wapple or which it is entitled to use or which Wapple may acquire or acquire the right to use;
- 1.26 "Website" means the website located at <http://wapple.net> and such other websites as are used for the purpose of providing the Services;

2 Grant of License and use

- 2.1 Wapple hereby grants to the Licensee via the Developer Key a non-exclusive license to use the Wapple Intellectual Property contained in Architect, Architect Plugins and Exhibit to create mobile Sites for no Commercial Gain by the Licensee only and with the limitations contained in 2.4 below.
- 2.2 No warranty is given by Wapple that the Licensee shall be able to achieve any particular result by using the Plugin.
- 2.3 The license to use the Wapple Intellectual Property contained in Exhibit, Architect and Architect Plugins is free of charge so long as the licensee does not use any of the licensed products for any Commercial Gain.
- 2.4 The Services are subject to Wapple's Acceptable Use Policy held at Appendix A.
- 2.5 If Wapple discovers that the Licensee is using the Services for Commercial Gain then Wapple reserves the right to terminate this agreement and deny the Licensee access to the Plugin and turn off any site created using the Services.
- 2.6 All warranties, terms, conditions and duties implied by or relating to fitness, quality or adequacy or to skill and care are excluded to the fullest extent provided by law.

3 Licensee's Obligations

- 3.1 The Licensee shall ensure that in respect of any data and/or content contained in or linked to the Sites it creates complies with any current laws and regulations.

3.2 The Licensee undertakes to comply with generally accepted principles of Internet and WAP usage (whether governed by the laws of England and/or any other jurisdiction) including without limitation:

3.2.1 not sending "spam" texts (i.e. unsolicited mass communications);

3.2.2 not sending mail bombs; trojan horses, viruses or other disruptive programs or devices;

3.2.3 not pirating or otherwise illegally copying software or other proprietary materials;

3.2.4 not breaching the copyright of any party, including but not limited to not using any third party images or photographs without consent; and/or

3.2.5 not violating the security of any website or engaging in unauthorised decompilation and/or decryption of protected materials.

3.3 The Licensee will:

3.3.1 comply with the Wapple Agreement Conditions at all times;

3.3.2 provide Wapple with such information and assistance as Wapple may reasonably require to facilitate, as far as possible, the timely and uninterrupted provision of the Service;

3.3.3 if requested, provide design, functionality and technical feedback to Wapple to encourage future enhancements to the Services;

3.3.4 follow Wapple's guidelines for the creation of and to optimise Mobile web sites in respect of performance, usage and "look and feel";

3.3.5 be up to date with all the Wapple Intellectual Property as it may be altered or improved from time to time;

3.3.6 upon the Commencement Date, select a password that, in conjunction with its email address permits the Licensee access to the Architect Plugin. The Licensee shall keep the password and Developer Key secure and shall immediately notify Wapple by email at info@wapple.net if the Licensee believes that any unauthorised use has or may be made of such a password or Developer Key;

3.3.7 take all reasonable steps to correct any error, omission or mistake in the content of any Site(s);

3.3.8 ensure that its content is not of a nature likely to bring Wapple or any third party Licensees into disrepute. The Licensee also undertakes to promptly remove any information likely to result in a breach of this clause whether or not requested to do so by Wapple; and

3.3.9 install and maintain up to date generally accepted virus-checking software.

3.4 The Licensee warrants that:

3.4.1 all information provided by it to Wapple is correct, and it will promptly notify Wapple of any changes in such information;

3.4.2 none of the content provided by the Licensee via any Site is or shall breach or infringe the rights of any third party (including copyright, trade marks, privacy or other personal or proprietary rights); and

3.4.3 none of the content provided by the Licensee via any Site:

3.4.3.1 contains or will contain or promote anything defamatory, illegal or violent;

3.4.3.2 makes any criticism or negative comment in relation to Wapple, or the Services or uses any Wapple trade mark or trade name;

3.4.4 it will at all times act in a manner which reflects favourably on Wapple and will not make any statements or comments which are inconsistent with this Wapple Agreement;

3.5 The Licensee acknowledges and agrees that Wapple may be required by a law enforcement agency to monitor the content and traffic on the Site and/or any Wapple server and/or give evidence of the same together with details of user and/or Client identification and/or use of the password to support or defend any dispute or actionable cause or matter which arises in relation to the same.

3.6 The Licensee acknowledges and agrees that on occasion Wapple may use Sites, built by the Licensee, to demonstrate and present the capabilities of Wapple technology and service including, but not limited to, Wapple website presentations and electronic and paper documents that may be sent to prospective customers and/or future Licensees of Wapple.

3.7 The Licensee agree to indemnify and keep indemnified Wapple from and against any Liability resulting in any way from the Licensee's use of the Services and/or any data obtained on Canvas or Architect except where such Liability arises as a direct result of Wapple's fault and/or negligence.

4 Undertakings

4.1 The Licensee undertakes not to nor permit any third party to copy, reproduce, translate, adapt, reverse engineer, decompile (except as permitted under the Copyright, Designs and Patents Act 1988), vary or modify any Software owned and/or used by Wapple or any part of such software.

5 Confidentiality

5.1 The Licensee shall:

5.1.1 keep confidential all Confidential Information

5.1.2 not reproduce (whether in machine readable or human readable form) any of the Software used on Canvas/Exhibit/Architect and/or the Wapple Intellectual Property; and

5.1.3 without prejudice to the foregoing, take all such other reasonable steps as shall from time to time be necessary to protect the Confidential Information the Wapple Intellectual Property and all software used on Canvas/Exhibit/Architect.

5.2 The obligations of confidentiality in this clause 5 shall not extend to any matter which:

5.2.1 is in or becomes part of the public domain otherwise than by reason of a breach of the obligations of confidentiality in this Wapple Agreement;

5.2.2 the Licensee can show was in its written records and/or possession prior to the date of disclosure of the same by the disclosing party;

5.2.3 is after the date of this Wapple Agreement received without any duty of confidentiality from a third party independently entitled to disclose it free from any obligations of confidentiality; and/or

5.2.4 is required by law or a regulatory authority to be disclosed provided that the Licensee gives Wapple as much advance notice of the required disclosure as possible.

5.3 The Licensee shall indemnify and keep indemnified Wapple (and any person who has provided the Licensee with Confidential Information) against any and all claims, actions, proceedings, damages, lost profits, damage

to goodwill, costs, expenses, special indirect and consequential loss and any other loss and/or liability resulting from any breach of the Conditions of clause 5 by the Licensee.

6 Intellectual Property Rights

6.1 Nothing in this Wapple Agreement shall grant to the Licensee any right to any of Wapple's Intellectual Property Rights before or after the Commencement Date, and thereafter only the limited rights granted in clause 2. For the avoidance of doubt, the Wapple Intellectual Property will remain the property of and will continue to be owned by Wapple. The structure, organisation and code of Wapple's Software are the valuable trade secrets and Confidential Information of Wapple. This Wapple Agreement does not grant the Licensee or any third parties any intellectual property rights in Wapple's Software and all rights are reserved by Wapple.

6.2 All enhancements to Wapple Intellectual Property rights arising as a result of this Wapple Agreement including, but not limited to, improvements and/or adjustments to the Wapple Intellectual Property shall vest in Wapple and all such rights are hereby assigned by the Licensee to Wapple with full title guarantee.

6.3 The Licensee will at the request and expense of Wapple, both during and after the expiry of this Wapple Agreement, do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to the Conditions of this Wapple Agreement and/or to perfect, register and/or protect Wapple's Intellectual Property Rights owned by Wapple before or after this Wapple Agreement commenced and/or created as a result of this Wapple Agreement.

7 Termination

7.1 Wapple may in its absolute discretion terminate this agreement and deny access to the web-based tools without notice and without giving any reason therefore.

8 General

8.1 If any provision of this Wapple Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Wapple Agreement and the remainder of the affected provisions shall be unaffected and shall remain in full force and effect.

8.2 This Wapple Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements understandings or discussions between the parties. None of the parties shall be entitled to rely on any agreement, understanding or discussion which is not expressly contained in this Wapple Agreement.

8.3 Any notice under this Wapple Agreement may be served by first class post, facsimile or email to the address set out below or such other address as may be notified by any of the parties from time to time. A notice shall be deemed served, if sent by facsimile or e-mail, on the Business Day immediately after the day on which it was sent and if sent by first class post, on the second Business Day after posting.

8.3.1 Address: 4 The Courtyard, Buntsford Drive, Bromsgrove, Worcs B60 3DJ,
email: notices@wapple.net fax: +44 (0)1527 558247

8.4 The Licensee may not assign in whole or in part any of the Licensee's rights and/or obligations under this Wapple Agreement.

8.5 All third party rights are excluded and no third party shall have any right to enforce this Wapple Agreement. Any rights of any third party to enforce this Wapple Agreement may be varied and/or extinguished by agreement between the parties without the consent of such third party.

8.6 This Wapple Agreement shall be governed by English law and shall be subject to the nonexclusive jurisdiction of the English courts.

Appendix A: Acceptable Use Policy for the Wapple Architect Plugin

There are no automatic limits applied to the Licensee's usage of the Architect Plugin and API requests to Wapple Exhibit but acceptable use is deemed as 200 API requests per day

- 1) As there are no automatic limits applied any Plugin used by the Licensee will not be automatically switched off upon hitting daily acceptable use, however, Wapple will monitor API requests and use its sole discretion to remove the Service and return an error code to the Licensee when the daily limited is reached. The Service would return the following day.

- 2) Where a Plugin is being used by the Licensee for Commercial Gain the Services will be suspended until the Licensee purchases an appropriate commercial license package.