

# Terms and Conditions

July 2011

**Sleeping Giant Media**

sleepinggiant.<sup>media</sup>  
awake the power

Sleeping Giant Media

Company details:

**Sleeping Giant Media** a company registered in England and Wales, registered no. 6705616, whose registered office is at 28 Bouverie Road West, Folkestone, kent, CT20 2TG (“the Supplier”), which includes where the context allows its employees and officers.

## 1. Recitals

- 1.1. The Supplier is in business as an independent consultancy and is willing to provide its services to the Customer in connection with its business activities.
- 1.2. This Document places no duty on the Customer to request such services nor upon the Supplier to agree to perform such services when requested. Any agreement by both parties shall be instigated by and determined by one or more specific Assignments.

## 2. Definitions and Interpretation

- 2.1. The following terms shall have the following meanings for the purposes of this Agreement

|                            |  |
|----------------------------|--|
| “Agreement”                | each project or piece of work undertaken by the Supplier on behalf of the Customer as specified in the Working Arrangement   |
| “Working Arrangement”      | schedule containing full details of each Assignment, in the format attached at Schedule 1  |
| “Commencement Date”        | the date of this Agreement   |
| “Confidential Information” | means all confidential information relating to the business organisation, transactions, finances, technology, processes, specifications, methods, brands, designs, formulae, technology and business activities or affairs, of and concerning the Customer and its clients and suppliers |

“Intellectual Property”

any and all intellectual property including but not limited to design rights, unregistered designs, trade marks and service marks, brands, domain names, metatags, copyright, patents, search accounts, database rights, goodwill and all similar current and future rights (whether or not they are registered or capable of being registered) subsisting in any part of the world for the full term thereof, including all renewals and extensions, and applications for protection of any of the above rights

- 2.2. Headings contained in this Agreement are for reference purposes only and should not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.
- 2.3. In this Agreement references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.
- 2.4. In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provisions as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

### 3. **Appointment**

The Supplier agrees to perform the Agreement for the Customer throughout the Term in accordance with the provisions of this Document and each Working Arrangement.

## 5. Assignment Delivery

- 5.1. Nothing contained in these Terms shall (subject to clause 14) preclude the Supplier from acting in a similar or any other capacity for any other person firm or company.
- 5.2. In performing the Agreement, the Supplier shall be entitled to utilise any of its appropriately qualified staff who have been previously vetted and approved by the Customer and the Customer shall not be entitled to insist that the Assignments be performed by any specific individual.
- 5.3. The Agreement will be undertaken within such time limits as may be agreed mutually between the Customer and the Supplier from time to time. These will be recorded in each Working Arrangement.
- 5.4. The Supplier acknowledges that in performing the Assignments, its staff may be required to work as part of a team, and in such circumstances agrees to ensure that its staff co-operate with other team members and assist in achieving the objectives of the Assignment.
- 5.5. In carrying out the Assignments, the Supplier will:
  - 5.5.1. ensure that it maintains adequate insurance cover, including professional indemnity and public liability;
  - 5.5.2. be responsible for correcting any defective work carried out in connection with the Assignments at its own expense and without entitlement to any additional fee; and
  - 5.5.3. be free to provide similar services for persons and organisations other than the Customer.

## 6. Length of Assignment

The start date and duration of each Agreement shall be specified in the Working Arrangement document. The Agreement duration may be extended by mutual agreement between the Customer and the Supplier. All agreed agreement extensions will be documented in an additional Working Arrangements.

## 7. No Obligation

During the Term the Customer is under no obligation to offer or allocate work to the Supplier and the Supplier is under no obligation to accept any work which may be offered by the Customer. Neither party wishes to create or imply any mutuality of obligation between themselves other than those obligations contained in these Terms and any Working Arrangement.

## 8. Contract for Services

- 8.1. For the avoidance of doubt, both parties acknowledge and agree that this Agreement is a contract for services and does not constitute a contract of employment, whether for the purpose of taxation, employment legislation or otherwise.

## 9. Payment

- 9.1. Payment to the Supplier will be at the rate set out in the Working Arrangement. Agreed rechargeable expenses will be paid in accordance with the policy and guidelines set out in the Contract.
- 9.2. The Supplier is solely responsible for all other costs and expenses incurred.
- 9.3. Media fees incurred, i.e. any fees or costs that are subsequently to be paid directly to a third party as a result of the agreed work undertaken within the working arrangement (example may include Google media fees, display advertising agency fees etc). The customer agrees that they will be fully responsible for meeting these costs in advance of the supplier committing to provide services, alternatively by supplying direct billing details to the third party.
- 9.4. Payment of fees and expenses will be made 30 days from receipt of valid invoice, which the Supplier will issue monthly in arrears.
- 9.5. No fees for United Kingdom bank holidays, Supplier holidays, the Customer holidays or days when the Suppliers' staff are absent on sick leave are chargeable to the Customer.
- 9.6. The parties acknowledge that an average working day will generally constitute 7.5 working hours. In the event that the Supplier's staff work fewer hours than those stated above in any one day, the rate set out in the contract shall be adjusted on a pro rata basis.
- 9.7. Payment for additional hours worked is only payable if agreed in writing with the Customer in advance. In any event payment for additional hours is only payable at the rate set out in the Working Arrangement pro-rata to the additional hours worked.

## 10. VAT

- 10.1. All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes.
- 10.2. Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums subject to the Supplier supplying a VAT invoice to the Customer.

## 11. Termination

- 11.1. Without prejudice to any other rights to which it may be entitled, the Customer may at any time give 30 days notice in writing to the Supplier terminating this Agreement if
  - 11.1.1. the Supplier commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach;
  - 11.1.2. the Supplier breaches any of the provisions set out in the Assignment;
  - 11.1.3. an order is made or a resolution is passed for the winding up of the Supplier or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order;
  - 11.1.4. an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier or documents are filed with a court of competent jurisdiction for the appointment of an administrator or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
  - 11.1.5. a receiver is appointed of any of the Supplier's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager or if any other person takes possession of or sells the Supplier's assets;
  - 11.1.6. the Supplier makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - 11.1.7. the Supplier takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

## **12. Complaints**

The Supplier will take all necessary action, without cost to the Customer, to investigate any complaints about the performance of the working Arrangement or the conduct of its employees and take any necessary remedial action.

## **13. Confidential Information**

- 13.1. Except as authorised or required by its duties or a court of competent jurisdiction the Supplier shall keep secret and shall not use or disclose and shall use its best endeavours to prevent the use or disclosure by or to any person, firm or organisation Confidential Information which comes to its knowledge during the term of this Agreement.
- 13.2. The restrictions in clause 14.1 shall apply during and after the termination of the Supplier's engagement without any time limit but shall cease to apply to information or knowledge which the Supplier establishes has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach on its part of that restriction.

## **14. On and after Termination**

- 14.1. At the end of each term the Supplier shall immediately hand over to the Customer all access details and all other property and things belonging to the Customer relating or connected to the working Arrangement which the Supplier may have in its possession or control and the Supplier shall not take or keep any copy of all or part of any such item, or make use of such items without the prior written permission of the Customer.

## **15. Indemnity**

The Supplier undertakes to indemnify and keep indemnified the Customer against all direct losses, damages, costs, actions, awards, penalties, fines, proceedings, claims, demands, liabilities (including without limitation any liability to tax and national insurance) and expenses (including without limitation legal and other professional fees and expenses) which the Customer may suffer, sustain, incur, pay or be put to by reason or on account of or arising from or in connection with any breach of this Agreement by the Supplier, any act or omission of the Supplier, its employees or officers, or any breach by the Supplier its employees or officers of any relevant legislation, regulation, permit or licence up to the limit of fees charged.

## 16. General

- 16.1. This document constitutes the entire undertaking between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.
- 16.2. No variation or modification of any term of this Agreement shall have any effect unless it is in writing and signed by a duly authorised representative of each of the parties.
- 16.3. Failure or neglect by the Customer to enforce at any time any of the terms of this Agreement shall not be construed nor shall be deemed to be a waiver of the Customer's rights, nor in any way affect the validity of any part of this Agreement, nor prejudice the Customer's rights to take subsequent action.
- 16.4. If any of the restrictions set out in this Document shall be held to be void, voidable, illegal or otherwise unenforceable, the validity of the other restrictions shall be unaffected.
- 16.5. This Agreement shall be subject to the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.
- 16.6. Any notice or other communication given under this Document shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by recorded delivery or fax to the address of the relevant party. Any such notice shall be deemed to have been received:
  - 16.6.1. if delivered personally at the time of delivery so long as delivery occurs during normal business hours on a normal business day;
- 16.7. Neither party shall be entitled to assign this Document or any part of it without the prior written consent of the other party.
- 16.8. The Working Arrangement remains the responsibility of the Supplier, and the Supplier will immediately provide full details to the Customer whenever requested to do so on any matter of project management, quality assurance, client relationship or general management of the Working Arrangement.
- 16.9. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third parties) Act 1999 to enforce any terms of this Agreement.

## 17. Acceptance

17. Acceptance of the terms and conditions is confirmed on signing the working arrangement document