

**HAPPYWIRED LTD**

**TERMS AND CONDITIONS**

**FOR THE SUPPLY OF CONSULTANCY SERVICES**

**The Customer's attention is particularly drawn to the provisions of clause 9.**

## **1. INTERPRETATION**

### **1.1 Definitions**

In these Conditions, the following definitions apply:

**Agreement:** the contract between the Consultant and the Customer incorporating these Terms and Conditions

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the fees that are payable by the Customer to the Consultant as set out in the Agreement.

**Commencement Date:** the commencement date stated the Agreement.

**Consultant:** HappyWired Ltd registered in England and Wales with company number 10186580

**Consultant Materials:** has the meaning set out in clause 4.1(f).

**Customer:** the person or firm named as such in the Agreement.

**Deliverables:** any deliverables to be produced by the Consultant for the Customer under this Agreement.

**Existing Data:** the data included within the Customer's databases as at the Commencement Date.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Schedule:** the schedule to the Agreement

**Services:** the expert support services provided by the Consultant for the Customer on an ad hoc basis or otherwise, as more particularly described in the Specification.

**Specification:** the agreed description or specification of the Services and/or the Deliverables set out in the Agreement.

### **1.2 In these Conditions, the following rules apply**

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;

- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## **2. BASIS OF CONTRACT**

- 2.1 Any purchase order or similar document issued by the Customer relating to Services or Deliverables shall be deemed to constitute an offer by the Customer to purchase the same in accordance with this Agreement.
- 2.2 This Agreement shall be effective from the Commencement Date.
- 2.3 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Consultant which is not set out in the Agreement.
- 2.4 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any estimate or quotation given by the Consultant shall not constitute an offer, and is intended to apply for a period of 20 Business Days from its date of issue.

## **3. SUPPLY OF SERVICES**

- 3.1 The Consultant shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Consultant shall use all reasonable endeavours to meet any performance dates specified in the Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Consultant shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Consultant shall notify the Customer in any such event.
- 3.4 The Consultant warrants to the Customer that the Services will be provided using reasonable care and skill.

## **4. CUSTOMER'S OBLIAGTIONS**

- 4.1 The Customer shall:
  - (a) co-operate with the Consultant in all matters relating to the Services and to give support, facilities and information as may be reasonably required;
  - (b) provide the Consultant, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Consultant;
  - (c) provide the Consultant with such information and materials as the Consultant may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

- (d) prepare the Customer's premises for the supply of the Services;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (f) keep and maintain all materials, equipment, documents and other property of the Consultant (**Consultant Materials**) at the Customer's premises in safe custody at its own risk, maintain the Consultant Materials in good condition until returned to the Consultant, and not dispose of or use the Consultant Materials other than in accordance with the Consultant's written instructions or authorisation; and

4.2 If the Consultant's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Consultant shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Consultant's performance of any of its obligations;
- (b) the Consultant shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Consultant's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Consultant on written demand for any costs or losses sustained or incurred by the Consultant arising directly or indirectly from the Customer Default.

## 5. CUSTOMER DATA

The Customer warrants that it is the owner of any data or information that will be produced to the Consultant for the purpose of enabling the Consultant to provide the Services, or that it has obtained the right to disclose the data or information to the Consultant. Title to the data and information will remain with the Customer. The Customer shall also keep title to any Deliverables, upon payment in full of the Consultant's Charges.

## 6. CHARGES AND PAYMENT

6.1 Unless otherwise provided in the Agreement, the Charges for the Services shall be on a time and materials basis, and:

- (a) the Charges shall be calculated in accordance the Consultant's fee rates set out in the Schedule;
- (b) the Consultant shall be entitled to charge an additional amount for any changes to the Specification that the Customer may request; and
- (c) the Consultant shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Consultant engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Consultant for the performance of the Services, and for the cost of any materials.

6.2 The Consultant reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 month period. The

Consultant will give the Customer written notice of any such increase two months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Consultant in writing within four weeks of the date of the Consultant's notice and the Consultant shall have the right without limiting its other rights or remedies to terminate the Agreement by giving two weeks' written notice to the Customer.

- 6.3 The Consultant shall invoice the Customer in accordance with the Agreement.
- 6.4 The Customer shall pay each invoice submitted by the Consultant:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Consultant, and
- for this purpose time for payment shall be of the essence of the Agreement.
- 6.5 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Agreement by the Consultant to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Consultant, pay to the Consultant such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.6 Without limiting any other right or remedy of the Consultant, if the Customer fails to make any payment due to the Consultant under the Agreement by the due date for payment (**Due Date**), the Consultant shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current base rate of Barclays Bank plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 6.7 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Consultant in order to justify withholding payment of any such amount in whole or in part. The Consultant may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Consultant to the Customer.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 [Any materials produced or supplied to the Customer by the Consultant in which Intellectual Property Rights are capable of subsisting shall be licensed to the Customer for internal use only in connection with the purposes of the Terms of Engagement and such licence shall forthwith terminate if notice is given by the Consultant terminating this contract pursuant to clause 12.]
- 7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Consultant obtaining a written licence from the relevant licensor on such terms as will entitle the Consultant to license such rights to the Customer.
- 7.3 Unless otherwise expressly set out in this Agreement but without prejudice to any existing right of the Consultant in respect of the Existing Data, the Consultant shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.

## **8. CONFIDENTIALITY**

Each party shall use reasonable endeavours to keep confidential the commercially confidential information of the other.

## **9. INSURANCE, INDEMNITIES AND LIABILITY**

- 9.1 Subject to Clause 9.3, the Consultant's liability to the Customer is limited to the cost of the Services. The Consultant shall not be liable for any consequential or economic loss or damage or loss of profit suffered by the Customer or any third party.
- 9.2 The Customer agrees to indemnify and keep indemnified the Consultant against all costs, claims and actions brought or made by any person or body against the Consultant in respect of injury or damage to the person or property on the premises of the Customer for the purposes of this Agreement or acting under the express instruction of the Customer.
- 9.3 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for fraud or fraudulent misrepresentation, death or personal injury caused by negligence.

## **10. INDEPENDENT CONTRACTOR**

- 10.1 Nothing in this Agreement shall render any employee, worker, agent or partner of the Consultant an employee, worker, agent or partner of the Customer.

## **11. CANCELLATION**

- 11.1 If the Customer wishes to cancel the provision of the Services either in full or in part, prior to the Commencement Date, the Customer shall indemnify and keep indemnified the Consultant in respect of any costs or losses suffered by the Consultant in this connection.

## **12. TERMINATION**

- 12.1 The Consultant shall be entitled to terminate this Agreement immediately by notice in writing to the Customer if:
- (a) The Customer fails to pay to the Consultant the monies due in accordance with the Schedule and at the required time for payment;
  - (b) The Customer does or neglects to do anything which, in the reasonable opinion of the Consultant brings, or is likely to bring the reputation of the Consultant into disrepute;
  - (c) The Customer is in breach of one of its obligations of this Agreement which breach is not remedied within 30 days of the Consultant requiring it by written notice;
  - (d) Insolvency proceedings are commenced against or in respect of the Customer by any party; or
  - (e) The Customer ceases or threatens to cease to carry on business.
- 12.2 **The Customer shall be entitled terminate this Agreement immediately by notice in writing to the Consultant if:**
- (a) The Consultant is in breach of one of its obligations of this Agreement provided that the Customer shall first give to the Consultant a notice

specifying the alleged breach and requiring it to be remedied as soon as practicable; or

- (b) Insolvency proceedings are commenced against or in respect of the Consultant by any party.

13.3 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and all provisions which expressly or by implication are intended to come into or continue in force on or after termination shall do so.

## **13. CONSEQUENCES OF TERMINATION**

### **13.1 On termination of the Agreement for any reason:**

- (a) The Customer shall immediately pay to the Consultant all of the Consultant's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Consultant shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Consultant Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Consultant may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **14. GENERAL**

### **14.1 Force majeure and delays:**

- (a) For the purposes of this Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Consultant including but not limited to:
  - (i) any default by the Client so that the Consultant is unable to fulfil its obligations under this Agreement;
  - (ii) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Consultant or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- (b) Where performance of the Services is hindered due to the default of the Customer, the Customer will reimburse all extra costs, charges and expenses



that the Consultant incurs (or the Consultant Team Members incur) because of the delay.

- (c) If the Consultant is delayed or prevented from the performance of the Services due to a Force Majeure Event, the Agreement shall be suspended and if the Services cannot be delivered within a reasonable time after the due date, the Agreement may be terminated by either party by giving a notice in writing.
- (d) In the event of the termination as set out at 12 above, the Consultant shall be entitled to the part-payment of the Fees in relation to the Services provided to the Customer prior to the receipt of the written notice of termination.

#### **14.2 Assignment and subcontracting:**

- (a) The Consultant may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Consultant, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement.

#### **14.3 Notices:**

- (a) Any notice required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.
- (d) Any communication sent by email under this Agreement shall be deemed to have been served on the next business day after the email is sent.

#### **14.4 Waiver:**

- (a) A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or

remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

**14.5 Severance:**

- (a) If a court or any other competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**14.6 No partnership:**

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**14.7 Third parties:**

A person who is not a party to the Agreement shall not have any rights under or in connection with it.

**14.8 Variation:**

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Agreement, shall only be binding when agreed in writing and signed by the Consultant.

**14.9 Governing law and jurisdiction:**

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.