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Terms & Conditions



Sparks4Growth Limited

Terms & Conditions

DATED 2015 Valid to DATE (V1.0)

SUBJECT TO APPROVAL BY S4G LTD & CUSTOMER

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NOT BE REPRODUCED, COPIED IN PART OF FULL WITHOUT PRIOR AGREEMENT
Sparks4Growth Ltd. 2015**

THIS AGREEMENT is dated 2015 onwards

PARTIES

- (1) CUSTOMER (Client)
- (2) SPARKS4GROWTHLTD incorporated and registered in England and Wales with company number 09663892 whose registered office is at 10 Cambridge Road, London (Consultant Company).

AGREED TERMS

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

Agreement Clauses 1 – 21 of these terms and conditions and the Statement of Work attached at Schedule 1.

Background IPRs: any methodologies, tools or analyses used by the Consultant Company or any third party consulted by the Consultant Company.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Client Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client [or Group Company] or its [or their] customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant Company or the Individual's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant Company or the Individual on the computer systems or other electronic equipment of the Client, the Consultant Company or the Individual during the Engagement.

Commencement Date: the commencement date as set out in the Statement of Work.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client or any of its suppliers, customers, agents, distributors, shareholders, management or business contacts, and including (but not limited to) information that the Consultant Company or the Individual creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Critical Person: any Person who is or was an employee, agent, director, consultant or independent contractor employed, appointed or engaged by the Consultant Company at any time within 12 months immediately preceding the Termination Date;

Deliverables: the deliverables specified in the Statement of Work.

Engagement: the engagement of the Consultant Company by the Client on the terms of this agreement.

Fees: the fees payable as stated in the SoW.

Individual: the person stipulated in the SoW.

Intellectual Property Rights: patents, rights to Inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Person: any individual, firm, partnership, association or company and any other incorporated or unincorporated body;

Services: the services described in the Statement of Work.

Substitute: a substitute for the Individual appointed under the terms of clause 3.3.

Statement of Work: an agreement for the provision of Services by the Consultant Company to the Customer agreed in accordance with clause 2 and in the form of Schedule 1 (SoW).

Termination Date: the date of termination of this agreement, howsoever arising.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

2. **TERM OF ENGAGEMENT**

2.1 The Client shall engage the Consultant Company and the Consultant Company shall make available to the Client the Individual to provide the Services on the terms of this agreement.

2.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated as provided by the terms of this Agreement.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Consultant Company shall, and (where appropriate) shall procure that the Individual shall:
- (a) provide the Services with all due care, skill and ability; and
 - (b) unless the Individual is prevented by ill health or accident, devote the time required to deliver the project phase or phases as stipulated in the SoW to the carrying out of the Services; and
- 3.2 The Client understands and agrees that the provision of the Services in accordance with the applicable SoW by the Consultant Company or the Individual does not guarantee an increase of profits or business opportunities to the Client.
- 3.3 The Consultant Company may, with the prior written approval of the Client and subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. If the Client accepts the Substitute, the Consultant Company shall continue to invoice the Client in accordance with clause 4 and shall be responsible for the remuneration of the Substitute.
- 3.4 The Consultant Company shall, and shall procure that the Individual shall, comply with all reasonable policy requirements as stipulated in the SoW.
- 3.5 The Consultant Company may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services.

4. FEES AND EXPENSES

- 4.1 The Client shall pay the Consultant Company the Fees in advance and in accordance with the phases and/or dates set out in the SoW. The Consultant Company shall provide invoices in relation to any agreed phases of the Services.
- 4.2 The Client shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant Company or the Individual in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.

5. CLIENT OBLIGATIONS AND CONSENTS

- 5.1 Subject to clause 5.2, the Client agrees to provide in a timely manner:
- (a) any content, copy, video, access to relevant passwords and all other materials required by the Consultant Company to provide the Services; and
 - (b) any required approvals, confirmations and agreement at each stage of the project phase/s.
- 5.2 The Client understands that delays in the provision of information or approvals required under clause 5.1 may result in a delay in the delivery of the Services. The Consultant

Company will not be liable for the provision of additional resources to remedy such delay, and new delivery dates may need to be negotiated.

- 5.3 The Client agrees that if it chooses not to pay for any subsequent phase for whatever reason, the Consultant Company will not commence with the delivery of the Services in relation to that phase. If the Client chooses to make a payment at a later date, any prior agreed dates and/or fees in the SoW may need to be renegotiated, and the Consultant Company will not be liable for any missed deadlines.
- 5.4 The Client agrees to allow the Consultant Company to publish a case study or studies in relation to the Services solely for the purposes of marketing and subject to any confidentiality provisions between the parties.

6 UNDERTAKINGS

- 6.1 Either party will use its best commercial endeavours to:
- 6.1.1 ensure that any equipment used to provide the Service is protected by firewall, antivirus software and spyware and any antivirus definitions are always up to date;
 - 6.1.2 never knowingly introduce viruses or other malware into the other network nor knowingly disable antivirus protection;
 - 6.1.3 never knowingly cause damage to the other party's facilities or data, do not attempt to bypass or subvert system security controls;
 - 6.1.4 never insert portable computer media into the other party's equipment without authorisation and the screening for malware and viruses;
 - 6.1.5 where a virus is suspected or detected contact the other party immediately;
 - 6.1.6 never download software or programmes from the internet or from removable media onto the other party's equipment; and
 - 6.1.7 never disable any IT security safeguards that have been implemented on computer equipment used to provide the Services.
- 6.2 Both parties agree to work in good faith with each other in an attempt to resolve any potential disputes and deliver the Services successfully.

7. OTHER ACTIVITIES

Nothing in this agreement shall prevent the Consultant Company or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that such activity does not cause a breach of any of the Consultant Company's obligations under this agreement.

8. **CONFIDENTIAL INFORMATION AND CLIENT PROPERTY**

8.1 Neither party shall, and the Consultant Company shall procure that the Individual or any applicable substitute shall, (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information of the other party. This restriction does not apply to:

- (a) any use or disclosure authorised by the other party or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the other party's unauthorised disclosure.

9. **INTELLECTUAL PROPERTY**

9.1 The Consultant Company hereby assigns (and procures that the Individual assigns) to the Client all existing and future Intellectual Property Rights in the Deliverables, with the exception of any Service Provider background IPRs (where applicable, as stated in the SoW), and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Consultant Company holds legal title in these rights and inventions on trust for the Client.

9.2 The Consultant Company warrants that:

- (a) it has not given and will not give permission to any third party to use any of the Deliverables, nor any of the Intellectual Property Rights in the Deliverables;
- (b) it is unaware of any use by any third party of any of the Deliverables; and
- (c) the use of the Deliverables by the Client will not infringe the rights of any third party.

10. **LIMITATION OF LIABILITY**

10.1 Nothing in this agreement limits or excludes the either party's liability:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Company as a result of fraud or fraudulent misrepresentation by the Consultant Company or the Individual.

10.2 Subject to clause 10.1, neither party shall be liable to the other for :

- (a) loss of profits;
- (b) loss of business;
- (c) depletion of goodwill and/or similar losses;
- (d) loss of anticipated savings;
- (e) loss of goods;
- (f) loss of contract;
- (g) loss of use;
- (h) loss of corruption of data or information; or
- (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 10.3 In any event, either party's total liability to the other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of this agreement shall be limited to two times the fee payable for in relation to the applicable SoW.

11 CONTINUING OBLIGATIONS

- 11.1 The Client undertakes that he will not without the prior written consent of the Consultant Company directly or indirectly and whether alone or in conjunction with or on behalf of any other Person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise for the duration of this Agreement and for a period of 12 months from the Termination Date:

11.1.1 **Entice internal people away-** solicit, induce or entice away from the Consultant Company, employ, engage or appoint or in any way cause to be employed, engaged or appointed a Critical Person whether or not such Person would commit any breach of his/her/its contract of employment or engagement by leaving the service of the Consultant Company;

11.1.2 **Entice external people away-** be engaged, concerned or interested in any business which during that period has supplied goods or services to the Consultant Company if such engagement, concern or interest causes or would cause the supplier to cease or material reduce its dealings with the Consultant Company;

PROVIDED THAT this restriction does not apply to prevent the Client from holding shares or other securities in any company which is quoted, listed or otherwise dealt in on a recognised investment exchange or other securities market and which confer not more than 5% of the votes which could be cast at a general meeting of such company.

12. TERMINATION

- 12.1 Notwithstanding the provisions of clause 2.2, either party may terminate the Engagement with immediate effect without notice if at any time:
- (a) either party commits any serious or repeated breach or non-observance of any of the provisions of this agreement;
 - (b) either party is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - (c) either party is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984; or
 - (d) either party makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to either party.

12.2 The rights of the either party under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on the part of the Consultant Company as having brought the agreement to an end. Any delay by either party in exercising its rights to terminate shall not constitute a waiver of these rights.

13. **FORCE MAJEURE**

The Consultant Company shall have no liability to the Client under this agreement if it is prevented from, or delayed in performing, its obligations under this agreement by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Service Provider 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.

14. **STATUS**

14.1 The relationship of the Consultant Company (and the Individual) to the Client will be that of independent contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Client and the Consultant Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.

15. **NOTICES**

15.1 Any notice given to a party under or in connection with this contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by e-mail.

15.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting;
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16. **ENTIRE AGREEMENT**

- 16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 16.4 Nothing in this clause shall limit or exclude any liability for fraud.
17. **VARIATION**
No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19. **THIRD PARTY RIGHTS**

19.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

19.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

20. **GOVERNING LAW**

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 the law of England and Wales.

21. **JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 Form of Schedule Of Works

This SoW is dated 2015/16 and made between:

SPARKS4GROWTHLTD incorporated and registered in England and Wales with company number 09663892 whose registered office is at 10 Cambridge Road, London (**Consultant Company**), and

(**Client**)

1. BACKGROUND

(A) The Client and the Consultant Company have entered into an Agreement dated 2015/16 (**Agreement**), allowing the Client to request services from the Consultant Company.

(B) In connection with the Agreement, the Client requests certain services to be provided by the Consultant Company, and the Service Provider agrees to provide such services to the Client in accordance with this SoW.

The parties agree that:

2. STRUCTURE

1.1. Unless otherwise defined in this SoW, terms used in this SoW shall have the meaning given to them in the Agreement.

1.2. The Consultant Company agrees that it shall provide the Services in accordance with the Agreement and as further set out in this SoW.

1.3. In the event of a conflict between the terms of the Agreement and this SoW, the terms of the SoW will prevail to the extent expressly stated in the SoW.

3. TERM

1.1. This SoW shall commence on [the date of its execution by the parties **OR DATE WILL BE AGREED** and, unless terminated earlier in accordance with the Agreement, shall continue until **DATE WILL BE AGREED**, or as otherwise agreed between the parties.

4. SERVICES

3.1 The Service Provider shall provide the following Services to the Company:

- (a) DESCRIPTION OF AGREED DELIVERABLE SERVICES; and
- (b) DESCRIPTION OF AGREED DELIVERABLE SERVICES.

3.2 The Supplier shall ensure that the Services comply with the following descriptions and specifications:

3.3 The Services shall be completed by AGREED DATE **OR** performed in accordance with the following timetable:

Phase 1	Due Date	Fee
Phase 2	Due Date	Fee
Phase 3	Due Date	Fee

5. CHARGES AND PAYMENT

1.1. The Fees for the Services shall be as set out above and shall be payable in GBP.

1.2. Payments will be made 100% in advance in relation to each phase.

1.3. Where applicable and agreed, the Client will pay incidental expenses in relation to the provision of the Services.

1.4. The Fees are payable by BACs, PayPal, Standing Order or Debit Card.

6. **ADDITIONAL TERMS**

Or Substitute (if applicable) WILL BE AGREED

7. **CONTACT DETAILS**

1. **CONSULTANT COMPANY: TBA**

2. **CLIENT: TBA**

8. **NOTICES**

The Client's address for notices for the purposes of clause 15 of the Agreement is:

address: ADDRESS

for the attention of: CONTACT

The Consultant Company's address for notices for the purposes of clause 15 of the Agreement is:

address: ADDRESS

for the attention of: CONTACT

SIGNED by

SPARKS4GROWTH_LTD
Director

Signature :
Date :

SIGNED by
Customer
Director / Authorised Signatory

Signature :
Date :