

# Subliminal Terms and Conditions

## 1. Definitions:

1.1 In these terms the following expressions shall have the following meanings:

“Bespoke Materials” means the materials provided by Us during the Term specifically for You as part of the Services or such updated other materials as expressly agreed in writing between You and Us;

“Client”, “You” and “Your” means the organisation or individual that purchases services directly from Subliminal Limited;

“Your/Client Materials” means any materials provided or made available to Us by You for use in undertaking the Services and/or such updated other materials as expressly agreed in writing between the You and Us;

“Confidential Information” means all information relating to the trade secrets, operations, processes, plans, intentions, product information, know-how, designs, market opportunities, transactions, affairs and/or business of the other party and/or its customers, suppliers, clients, holding companies and/or subsidiaries;

“Fees” means the fees to be paid by You to Us for the provision of the Services as set out in the Schedule;

“Intellectual Property Rights” means copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trade marks and all other industrial, commercial or intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world;

“Personal Data” shall have the meaning given in the Data Protection Act 1998;

“Proof” means a first copy of printed or audio or visual material or stationary;

“Services” means the services to be carried out by Us as set out in the Schedule;

“Term” means the period during which the Services are to be provided;

We”, “Us”, “Our”: means Subliminal Limited (Company Number 5825794);

“Website” means the Website ([insert ULR]) to be [designed and/or hosted] by Us for You.

1.2 All transactions made with Us are subject to these standard terms and conditions, except where otherwise agreed in writing.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

## 2. Our Service

2.1 In consideration of payment by You of the Fees, We shall perform the Services in accordance with these terms and conditions and as specified in the Schedule.

2.2 In performing the Services We shall:

2.2.1 use all reasonable skill and care to provide the Services; and

2.2.2 respond to Your reasonable requests and written instructions and act in a professional manner.

## 3. Fees

3.1 The Fees are payable by You to Us for the Services provided.

3.2 We shall invoice you as follows:

3.2.1 We shall invoice You for the Services following the provision of the Services to You

3.2.2 Where the Services are the hosting of the Website We shall invoice You after We have commenced hosting the Website; and

3.2.3 We shall set out reasonable details of the Services and expenses to which the invoice relates.

3.3 You shall pay the Fees within 14 days of the date of Our invoice.

3.4 The Fees do not include VAT which You shall pay in addition to the Fees at the rate prevailing on the date of the invoice.

3.5 If You fail to make any payment in full on the due date:

3.5.1 We reserve the right to charge You a £75 administration fee;

3.5.2 Where the Services include the hosting of the Website, access to the Website via the internet will be prevented and the Website will be replaced with a notice that payment has not been received, an example of which can be viewed at [www.subliminalinternet.co.uk/nonpayment.htm](http://www.subliminalinternet.co.uk/nonpayment.htm), this page will be marketed and remain live and linked to your domain name for up to 2 years or until settlement of the outstanding Fee is made by You in full;

3.5.3 We reserve the right to charge You interest on the outstanding Fees. Such interest shall accrue on a daily basis at the rate of 5% above the base rate of National Westminster Bank Plc from time to time in force from the due date until the date of payment, whether before or after payment, compounded monthly.

#### **4. Your Obligations**

4.1 The data stored in Your account shall not exceed the amount of data permitted by Us, You will be notified of the permitted data allowance in writing which we may vary from time to time.

4.2 In order to prevent fraud, You shall keep the ftp account password confidential and You must not disclose it or share it with a third party. If You become aware or suspect that someone other than You knows the password then You must notify Us by contacting security@subliminalinternet.co.uk immediately in writing so that the password may be changed.

4.3 You must keep a backup copy of all Your Materials.

4.4 You shall not run server processes from the Website.

4.5 You shall not use bandwidth in excess of Our fair usage policy. In the event that You have bandwidth usage which We deem to be excessive, We reserve the right to restrict or disable access to the Website until the bandwidth usage has been reduced.

4.6 You must not participate in the bulk sending of un-solicited emails, if We reasonably suspect that You are doing so We reserve the right to restrict or disable Your access to the Services.

4.7 You must ensure the accuracy of Your Materials. We shall not be held liable for errors in the Services which occur as a result of inaccuracies in Your Materials.

4.8 Where the Services include printing or production We may provide You with a Proof prior to the commencement of printing or production. You must ensure that the Proof is free from any errors or omissions prior to giving Us Your approval of the Proof.

#### **5. Our Services**

5.1 Although We aim to offer You the best service possible, We make no promise that the Services will meet Your requirements. We cannot guarantee that the Services will be fault-free.

5.1.1 If a fault occurs with the Website You should report it to support@subliminalinternet.co.uk and We will make reasonable endeavours to correct the fault as soon as We can.

5.1.2 Where the Services involve printing or production We may provide You with a Proof for Your approval. We shall take great care to ensure that the Proof is correct before being delivered to You. We shall not be held liable for errors in the Services which occur as a result of inaccuracies in a Proof which has been approved by You.

5.2 Access to the Website may be occasionally restricted to allow for repairs, maintenance or the introduction of new facilities or services. We will make reasonable endeavours to restore the access to the Website as soon as We can.

5.3 We warrant that the Website will perform substantially in accordance with the Schedule for a period of 90 (ninety) days from entering into this Agreement. If the Website does not so perform, We shall for no additional charge promptly ensure that the Website complies with the specification set out in the Schedule.

5.4 The warranty set out in clause 5.3 shall not apply to the extent any failure to perform is caused by Your Materials.

5.5 These terms and conditions set out the full extent of Our obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby excluded.

5.6 Nothing in these terms and conditions shall operate to exclude or limit either party's liability for:

5.6.1 death or personal injury caused by its negligence;

5.6.2 any breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;

5.6.3 fraud; or

5.6.4 any other liability which cannot be excluded or limited under applicable law.

5.7 We shall not be liable to You for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

5.8 Subject to clause 5.6, Our aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with the Services or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 50% of the total Fees payable by You to Us in that calendar year.

5.9 We reserve the right to cancel Your account without notice.

5.10 Upon the cancellation or closing of Your account all Client Materials held by Us will be permanently deleted and/or disposed of.

#### **6. Cancellation**

6.1 If You purchase a 12 month Service package from Us You may cancel the agreement by giving written notice to Us within 28 days of the order for the Service having been made. Cancellations received by Us during this period will be refunded in full to You less any amounts paid by Us for the registration of domain fees or other non-refundable fees.

6.2 Where the Services ordered involve printing or production You shall not be entitled to cancel the order once it has been placed.

#### **7. Bespoke Materials**

Subject to You paying all fees and other sums due to Us, We grant You an exclusive license to use the Bespoke Materials in accordance with these terms and conditions.

## 8. Domain Names

8.1 If We acquire any domain names on Your behalf We agree that following the payment of Our Fees in cleared funds;

- 8.1.1 the domain names shall become Your property and We shall use the domain names solely in accordance with this agreement;
- 8.1.2 We shall properly register the domain names and shall procure that all administration, invoicing and any other communications relating to the domain names are sent directly to You, unless otherwise agreed with You; and
- 8.1.3 We shall provide You with all reasonable assistance in transferring the administration of the domain names to You.

8.2 We do not guarantee the availability of any domain name.

## 9. Termination

9.1 Either party may terminate this agreement immediately by notice in writing if the other party:

- 9.1.1 commits a material breach of any of the terms of this agreement (including without limitation late payment) and, if such breach is capable of remedy, fails to remedy the breach within 10 days of receiving notice from the terminating party specifying the breach and requiring the breach to be remedied;
- 9.1.2 enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);
- 9.1.3 becomes insolvent;
- 9.1.4 ceases or threatens to cease to carry on business;
- 9.1.5 compounds or makes any voluntary arrangement with its creditors;
- 9.1.6 is the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;
- 9.1.7 has an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or part of its assets; or
- 9.1.8 takes or suffers any similar action due to debt.

## 10. Confidentiality

10.1 Each party shall keep secret and confidential all Confidential Information of the other and shall not (and shall procure that its employees and/or officers shall not) copy use or disclose any such information to any third party, other than as may be necessary to comply with its obligations under these terms and conditions.

10.2 This clause shall continue in force notwithstanding the expiry or termination of this agreement, whatever the reason for such termination.

## 11. Website Content

11.1 When included in the Schedule We shall update the Website with Client Materials provided by You from time to time. You shall ensure that Client Materials do not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("Inappropriate Content").

11.2 We shall include only Client Materials on the Website. We have no control over content which is placed on the Website by visitors and We do not purport to monitor the content of the Website. We reserve the right to remove content from the Website where We reasonably suspect such content is Inappropriate Content. We shall notify You immediately if We become aware of any allegation that content on the Website may be Inappropriate Content.

11.3 You shall indemnify Us against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.

## 12. Intellectual Property Rights

12.1 You warrant that:

- 12.1.1 You, or your licensors, are the owner of any Intellectual Property Rights in the Client Materials; and
- 12.1.2 Our use of the Client Materials in accordance with these terms and conditions to provide the Services shall not infringe any third party's Intellectual Property Rights.
- 12.2 All Intellectual Property Rights in the Website (including in the content of the Website) and in the Bespoke Materials arising in connection with this agreement shall be the property of You, and We hereby assign such Intellectual Property Rights to You. The parties shall execute all documents necessary to give effect to this clause.

12.3 You shall indemnify Us against all damages, losses and expenses arising as a result of any action or claim:

- 12.3.1 that the Client Materials infringe Intellectual Property Rights of a third party or are libellous, defamatory or obscene;
- 12.3.2 resulting from any death or personal injury or damage to property caused by any products sold or otherwise distributed by You through the Website or in connection with our server;
- 12.3.3 resulting from any defective products sold or otherwise distributed by You through the Website or in connection with our server.

## 13 Data Protection

13.1 We warrant that to the extent that we process any Personal Data on behalf of You:

- 13.1.1 We shall act only on instructions from You; and
- 13.1.2 We have in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

**14. Publicity**

All media release, public announcements and public disclosures by either party relating to these terms and conditions or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

**15. Assignment**

Neither party shall assign, transfer, charge or otherwise deal in its rights and/or obligations under this agreement without the other party's prior written consent.

**16. Third Party Rights**

This agreement is made for the benefit of the parties to it and it is not intended to benefit, or be enforceable by, anyone else.

**17. Governing Law**

These terms and conditions shall be governed by and construed in accordance with English law.