

GOSSAMA TERMS AND CONDITIONS OF BUSINESS

These terms and conditions of business together with all documents referred to herein shall constitute the legal agreement ("Contract") between **Gossama** (registered as a sole trading business with principal place of business at 1 Wakefield Close, Nottingham, NG11 7HB and with VAT registration number 947 0624 14 ("Gossama")) and the person purchasing Services as specified in the Brief from Gossama ("Customer").

1. INTERPRETATION

- 1.1 Unless the context does not so admit in the Contract the following additional words and expressions shall have the following meanings:

Brief or Brief Plan: the project or brief for the Deliverable as described in the written project, plan, quotation or brief provided by either party and accepted by the other party in writing.

Brief Milestone: a date or event by which the whole or any specific part of the Brief is estimated to be completed, as set out in the Brief Plan or if there is no such date such date as the parties may agree in writing (such agreement not to be unreasonably withheld or delayed).

CMS: a content management system enabling the Customer to interact and edit the content and structure of a Deliverable.

Deliverables: all products, services and materials developed or provided by Gossama in relation to the Brief in any media (including, without limitation, software, mobile apps, ebrochures, websites, computer programs, data, diagrams, reports, consultancy services and specifications (including drafts) and including any Upgrade (as defined under clause 5.5).

In-put Materials: all information (including where appropriate personal information), data, images, text, copy, video and materials and access to rights provided or to be provided by Customer to Gossama for the purpose of the Brief.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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.

Pre-existing Materials: third party data, information, materials, images, text, copy, video or rights (including without limitation Intellectual Property Rights) which existed before the commencement of the Brief Plan or is supplied by Gossama under the Services or is provided to Gossama by the Customer as part of any In-put Materials.

Services: all the services to be provided by Gossama under the Contract (including where appropriate the Deliverables).

Unlawful Material: any content that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.

Virus: any virus or malware (including without limitation anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device).

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to **writing** or **written** includes faxes and e-mail.

2. APPLICATION OF CONDITIONS

- 2.1 These terms and conditions shall:
 - (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Gossama unless accepted in writing.
- 2.3 The Customer's purchase order (if any) constitutes an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by Gossama, or Gossama's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in the purchase order shall not govern the Contract.

- 2.4 If Gossama processes any In-put Materials comprising of any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and Gossama shall be a data processor for the purposes of applicable law. Each party undertakes to carry out all its obligations in respect of personal data in accordance with applicable law.
- 2.5 Where the Services include access to any website, internet service providing, hosting services or telecommunications services, the Customer acknowledges and agrees that Gossama cannot guarantee to achieve continuous, uninterrupted availability of such Services. While Gossama will use all reasonable endeavours to procure continued availability, Gossama will not be liable if for any reason such Services are unavailable at any time or for any period or for any loss or corruption of material or if such Services are interrupted. Access to such Services may be suspended temporarily and without notice in accordance with condition 11 or for emergency or for routine repair and maintenance.
- 2.6 Gossama does not warrant that the Deliverables are appropriate or available for use outside the United Kingdom.
- 2.7 Where Gossama offers the bonus feature comprised in a CMS Contract for "Push Notifications", the Customer acknowledges that this bonus feature may be disabled or removed at any time and without specifying any reason at Gossama's discretion.

3. GOSSAMA'S OBLIGATIONS

- 3.1 Gossama shall manage and complete the Brief and deliver the Deliverables to the Customer in accordance in all material respects with the Brief Plan and using due care and skill.
- 3.2 Gossama shall use reasonable endeavours to meet the performance dates and Brief Milestones specified in the Brief Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 3.3 On delivery of each Deliverable, the Customer shall be able to access the Deliverable online. Within five working days of Gossama's delivery to the Customer of any Deliverable, the Customer shall review the Deliverable to confirm that it functions in material conformance with the Brief. If the Deliverable fails in any material respect to conform with the Brief, the Customer shall give Gossama a detailed description of any such non-conformance ("Error"), in writing, within the five working day review period. If the Customer does not provide any written comments in the five working day period described above, or if the Deliverable is found to conform with the Brief, the Deliverable shall be deemed accepted.
- 3.4 With respect to any Errors contained in any Deliverables delivered to the Customer, Gossama shall use reasonable endeavours to correct any such Error within a reasonable time and, on completion, submit the corrected Deliverable to the Customer.

- 3.5 The Contract shall not prevent Gossama from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under the Contract.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) co-operate with Gossama in all matters relating to the Brief Plan;
- (b) where appropriate, provide in a timely manner such access to the Customer's premises, staff, office accommodation and other facilities, as is reasonably requested by Gossama;
- (c) provide in a timely manner the In-put Materials as are specified in the Brief Plan or as Gossama may request, and ensure that the same is complete and accurate in all material respects. Where any In-put Materials relies on, refers to or includes any Pre-existing Materials the Customer shall be responsible for ensuring that it has all necessary rights and licences required to provide access thereto to Gossama for the purpose of the Contract; and
- (d) be responsible (at its own cost) for preparing the relevant facilities for the supply of the Services.

- 4.2 If Gossama's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, (including without limitation the failure of or late supply of In-put Materials or the supply of inaccurate or incomplete In-Put Materials) the Customer shall in all circumstances be liable to pay to Gossama on demand all reasonable costs, charges or losses sustained or incurred by it subject to Gossama confirming such costs, charges and losses to the Customer in writing.

- 4.3 Customer shall be responsible for ensuring that none of the In-put Materials contains, stores, distributes or transmits any Virus or any Unlawful Material.

- 4.4 The Customer shall own all rights, title and interest in and to all of the In-put Materials and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the In-put Materials.

5. CHANGE CONTROL AND ADDITIONAL FUNCTIONALITY

- 5.1 If either party wishes to change the scope of the Services or the Brief Plan (including the Brief Milestones), it shall submit details of the requested change to the other in writing.

- 5.2 If either party requests a change to the scope or execution of the Services, Gossama shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
 - (b) any variations to Gossama's charges arising from the change;
 - (c) the likely effect of the change on the Brief Plan or Services; and
 - (d) any other impact of the change on the terms of the Contract.
- 5.3 If Gossama requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 5.4 If the Customer wishes Gossama to proceed with the change, Gossama has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Brief Plan and any other relevant terms of the Contract to take account of the change.
- 5.5 From time to time a Deliverable may be supplied by Gossama with adapted, upgraded, additional, improved or increased functionality (beyond that described in the Brief) ("Upgrade") at no extra cost to the Customer and the Customer agreed to accept such Upgrade.

6. CHARGES AND PAYMENT

- 6.1 Unless otherwise agreed in the brief or by the parties in writing, Condition 6.2 shall apply if any of the Services are to be provided on a time-and-materials basis; Condition 6.3 and condition 6.4 shall apply if any of the Services are to be provided for a fixed price; and Condition 6.5 shall apply if any of the Services comprise CMS or hosting Services; and the remainder of this condition 6 shall apply in every case.
- 6.2 Where the Services comprise of or include consulting services these are provided on a time-and-materials basis:
- (a) the charges payable for such Services shall be calculated in accordance with Gossama's standard daily fee rates as amended from time to time;
 - (b) Gossama's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) Gossama shall be entitled to charge at an overtime rate of fifty (50) of the normal rate for part days and for time worked by members of the Brief team outside the hours referred to in condition 6.2(b) on a pro-rata basis;
 - (d) Gossama shall complete time sheets recording time spent on the Brief, and Gossama shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.2(e); and
 - (e) Gossama shall invoice the Customer weekly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the week

concerned, calculated as provided in this condition 6. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses, consumables and materials, accompanied by the relevant receipts.

- 6.3 Where any part of the Services are provided for a fixed price the total price for such Services shall be the amount set out in the Brief Plan. Unless otherwise agreed in writing by the parties or in the Brief Plan. the total price shall be paid to Gossama (without deduction or set-off) in full on entering into this Contract and prior to delivery of the Deliverables and no Deliverable shall be provided until payment in full has been received by Gossama.
- 6.4 Any fixed price, CMS or time and materials pricing contained in the Brief Plan excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Gossama in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Gossama for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Gossama at cost; and
 - (b) VAT, which Gossama shall add to its invoices at the appropriate rate.
- 6.5 Where any part of the Services includes or comprises of CMS or web hosting services then such Services comprise of an initial set up (the costs for which are payable in advance in the amount agreed in the Brief or otherwise in writing) and on-going monthly Services. The on-going Services are provided on a twelve (12) month (renewable) basis and the costs for such on-going Services (and for each annual renewal) are payable monthly in advance in full by the Customer by direct debit. The costs for such on-going Services shall be reviewed by Gossama not more than once in each year and Gossama shall give the Customer not less than three (3) months prior notice of any increase. However, if the Customer's requirements for on-going Services increase (for example where the Customer requires additional support from Gossama) then Gossama shall review the costs and notify the Customer in writing in advance of any adjustment to the costs in order to accommodate such increased requirements. The on-going Services shall be deemed to be automatically renewed for the following twelve (12) month period unless the Customer gives Gossama written notice that it wishes to terminate such Services, such notice to be given not less than thirty (30) days prior to any renewal date.
- 6.6 The Customer shall pay each invoice submitted to it by Gossama in full, and in cleared funds, by BACS into the account nominated by Gossama for this purpose within not more than seven (7) days of receipt.
- 6.7 Without prejudice to any other right or remedy that Gossama may have, if the Customer fails to pay Gossama on the due date Gossama may:
- (a) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.

- 6.8 Time for payment shall be of the essence of the Contract.
- 6.9 All payments payable to Gossama under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.10 Gossama may, without prejudice to any other rights it may have, set off any liability of the Customer to Gossama against any liability of Gossama to the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Save in respect of any Pre-existing Materials, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Gossama. Gossama hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged under the Contract. If Gossama terminates the Contract under condition 10.1, this licence will automatically terminate.
- 7.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials provided by Gossama for the purpose of the Services is conditional on Gossama obtaining and maintaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Gossama to license such rights to the Customer. The use of such Pre-Existing Rights will be subject to and under such additional third party licence terms as may be notified to the Customer by Gossama in writing. The Customer shall not copy, reproduce, re-engineer or deconstruct any Pre-existing Materials provided by Gossama for the purpose of the Services or carry out any act that may adversely impact the Intellectual Property Rights of such third party or use the Deliverables in any way to distribute or transmit any Virus or Unlawful Material or to carry out any unlawful act (including spamming). The Customer agrees indemnify (and keep indemnified during the term of the Contract and thereafter) Gossama against any breach of this Condition 7 by the Customer.

8. CONFIDENTIALITY AND PROPERTY

- 8.1 Each party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to Receiving Party by the other party ("Disclosing Party"), and any other confidential information concerning Disclosing Party's business or its services or products which Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging its rights or obligations under the Contract and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind Receiving Party.

8.2 All materials, equipment and tools, drawings, specifications and data supplied by either party to the other party shall at all times be and remain the exclusive property of the party supplying the same, but shall be held by the other party in safe custody at its own risk and maintained and kept in good condition by until returned to the party supplying the same, and shall not be disposed of or used other than in accordance with its written instructions or authorisation.

8.3 This condition 8 shall survive termination of the Contract, however arising.

9. LIMITATION OF LIABILITY AND INDEMNITY

9.1 The following provisions set out the entire financial liability of Gossama (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions excludes or limits the liability of Gossama:

- (a) for death or personal injury caused by Gossama's negligence; or
- (b) for fraud or fraudulent misrepresentation; or
- (c) for any other liability which under applicable law Gossama may not limit or exclude.

9.4 Subject to condition 9.2 and condition 9.3:

- (a) Gossama shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Gossama's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance

or contemplated performance of the Contract shall be limited to the price paid for the Services.

9.5 The Customer shall defend, indemnify and hold harmless Gossama against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's breach of any of the provision of the Contract, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) Gossama provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

10. TERMINATION

10.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract by written notice and without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (c) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets or 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 becomes bankrupt; or
- (d) the other party ceases, or threatens to cease, to trade or takes; or
- (e) the other party suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

10.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

11. FORCE MAJEURE

Gossama shall not in any circumstances have any liability to the Customer under the Contract if it is hindered or prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, serious adverse weather, strikes, lock-outs or other industrial disputes (whether involving the workforce of Gossama or not), system failure, failure or loss of a server, telecommunication device, transmitter or 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 equipment, plant or machinery, fire, flood, storm or default or failure of Pre-existing Materials, suppliers or sub-contractors.

12. WAIVER

- 12.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13. ENTIRE AGREEMENT

- 13.1 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty ("Representation") (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.
- 13.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Contract].

14. ASSIGNMENT

- 14.1 The Customer shall not, without the prior written consent of Gossama, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 Gossama may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16. THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

17. NOTICES

17.1 Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in the Contract.

17.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.00 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

18. GOVERNING LAW AND JURISDICTION

18.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

18.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).