

Gift Voucher Brilliance Terms and Conditions

DATED: MARCH 2019 | VERSION 4

SUMMARY:

- (A) Gift Voucher Brilliance (hereafter referred to as GVB) has developed Software which it makes available to Experience Suppliers via the internet on a free to browse, pay-per-purchase basis.
- (B) Experience Suppliers may upload Experiences to the Software for the purpose of promoting Experiences to Customers via the Experience Suppliers own website.
- (C) The Software also processes Gift Vouchers for an Experience as provided by the Experience Supplier.
- (D) The Experience Supplier wishes to use the Services in order to offer Gift Vouchers to Customers.
- (E) These terms govern the relationship between GVB and the Experience Supplier and come into effect from the date GVB begin to provide the Services.

OPERATIVE PROVISIONS:

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users those employees, agents and independent contractors of the Experience Supplier who are authorised by the Experience Supplier to use the Services.

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

Commission the percentage as notified to you by GVB.

Confidential Information information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8.6 or clause 8.7.

Content Management System (CMS) the system made available by GVB for the Experience Supplier to upload details and images regarding their Experience and to process Gift Voucher redemption.

Customer the purchaser of the Gift Voucher.

Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.

Effective Date the date of this Agreement.

End User the person who receives the Experience in exchange for the Gift Voucher.

Experience the experience provided by the Experience Supplier to Customer via the Services provided by GVB.

Experience Supplier the party that GVB agrees to supply the Services to in accordance with these terms.

Gift Vouchers the proof of purchase of an Experience via the Platform that the End User must produce when attending the booked Experience.

Gift Voucher Fulfilment Fees any administrative and postal charges payable by the Experience Supplier to GVB.

GVB Clockwork Marketing And Direct Mail Limited trading as Gift Voucher Brilliance incorporated and registered in England and Wales with company number 04831890 whose registered office is at Longlands Barns Whilborough Road, Kingskerswell, Newton Abbot, Devon, TQ12 5DY.

Normal Business Hours 9.00 am to 5.00 pm local UK time, each Business Day.

Services GVB's provision of the Software and Gift Vouchers for the Experience under this agreement via the Experience Supplier's website.

Software the online software applications provided by GVB as part of the Services.

Support Services GVB's on-going support in relation to the Services provided for the Term as more particularly detailed at clause 3.

Term the duration of the agreement as set out in clause 11.1.

Virus any thing 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; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

1.8 A reference to writing or written includes email but not fax.

1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. Use of the Software

2.1 This Agreement shall commence on the date when GVB agrees to provide the Services to the Experience Supplier.

2.2 Subject to the payment of Commission, GVB hereby grants to the Experience Supplier a non-exclusive, non-transferable right, without the right to permit the Authorised Users to use the Software solely for the Experience Supplier's to provide Gift Vouchers to Customers.

2.3 In relation to the Authorised Users, the Experience Supplier undertakes that:

2.3.1 each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential; and

2.3.2 it shall not use an alternative provider for the Services (or enter into an analogous contract) during the Term.

- 2.4** The Experience Supplier shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.4.1** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.4.2** facilitates illegal activity;
 - 2.4.3** depicts sexually explicit images;
 - 2.4.4** promotes unlawful violence;
 - 2.4.5** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.4.6** is otherwise illegal or causes damage or injury to any person or property;

and GVB reserves the right, without liability or prejudice to its other rights to the Experience Supplier, to disable the Experience Supplier's access to any material that breaches the provisions of this clause.

- 2.5** The Experience Supplier shall not:
- 2.5.1** except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - (a)** attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
 - (b)** attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 2.5.2** access all or any part of the Services in order to build a product or service which competes with the Services; or
 - 2.5.3** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
 - 2.5.4** attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2.
- 2.6** The Experience Supplier shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services on and, in the event of any such unauthorised access or use, promptly notify GVB.
- 2.7** The rights provided under this clause 2 are granted to Experience Supplier only, and shall not be considered granted to any subsidiary or holding company of the Experience Supplier.

3. Services and Support Services

- 3.1** GVB shall provide the Services to the Experience Supplier on and subject to the terms of this agreement.
- 3.2** GVB shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.2.1** planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - 3.2.2** unscheduled maintenance performed outside Normal Business Hours, provided that GVE has used reasonable endeavours to give the Experience Supplier at least 6 Normal Business Hours' notice in advance.
- 3.3** GVB will provide the Experience Supplier with support services during Normal Business Hours. Experience Supplier may purchase such support services separately at the fees set out by GVB to the Experience Supplier.
- 3.4** GVB will provide on-going support services to the Experience Supplier for the Term of the agreement.

- 3.5** In the first instance, Experience Suppliers should contact GVB with any support queries via email to the address support@giftvoucherbrilliance.co.uk, alternatively Experience Suppliers can call GVB with queries on 01803 872999.
- 3.6** Any issue which prevents Customers from purchasing Gift Vouchers will be addressed on the same Business Day between the hours of 8am and 8pm. Any issues experienced after 8pm will be addressed the following Business Day unless deemed critical by GVB.

4. Gvb's Obligations

- 4.1** GVB undertakes that the Services will be performed with reasonable skill and care.
- 4.2** The undertaking at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to GVB's instructions, or modification or alteration of the Services by any party other than GVB or GVB's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, GVB will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Experience Supplier with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Experience Supplier's sole and exclusive remedy for any breach of the undertaking set out in clause 4.1. Notwithstanding the foregoing, GVB:
- 4.2.1** does not warrant that the Experience Supplier's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Experience Supplier through the Services will meet the Experience Supplier's requirements; and
- 4.2.2** is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Experience Supplier acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.3** This agreement shall not prevent GVB from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 4.4** GVB warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

5. Experience Supplier's Obligations

The Experience Supplier shall:

- 5.1.1** provide GVB with:
- (a)** all necessary co-operation in relation to this agreement; and
- (b)** all necessary access to such information as may be required by GVB;

in order to provide the Services, including but not limited to access information and configuration services;

- 5.1.2** without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- 5.1.3** ensure the integrity of all unique logins and passwords provided;
- 5.1.4** make all Experiences available to End Users in exchange for any GVB issued Gift Voucher and purchased by the Customer;

- 5.1.5** be responsible for their use of the Services, ensuring the verification and validity of any Gift Vouchers supplied by GVB provided to them by End Users and for redeeming the Gift Vouchers via the CMS;
- 5.1.6** accept any Gift Voucher issued by GVB, subject to Experience availability and be responsible for ensuring the verification and validity of any Gift Vouchers supplied by GVB provided to them by End Users;
- 5.1.7** be responsible for all aspects of the Experience including, but not limited to, health and safety requirements, obtaining and maintaining all necessary licences and consents and complying with all relevant legislation as required to enable the provision of the Experience;
- 5.1.8** carry out all other Experience Supplier responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Experience Supplier's provision of such assistance as agreed by the parties, GVB may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 5.1.9** ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- 5.1.10** obtain and shall maintain all necessary licences, consents, and permissions necessary for GVB, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- 5.1.11** ensure that its network and systems comply with the relevant specifications provided by GVB from time to time; and
- 5.1.12** be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to GVB's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Experience Supplier's network connections or telecommunications links or caused by the internet.

6. Charges and Payment

- 6.1** In consideration of the provision of the Software, the Experience Supplier will pay a one-off fee as agreed prior to entering this agreement.
- 6.2** In consideration for providing the Gift Vouchers, GVB will invoice the Experience Supplier the Commission calculated from the Gift Voucher gross sales in the calendar month and subject to VAT.
- 6.3** Where the Experience Supplier provides GVB with their VAT number, GVB will issue VAT receipts to the Experience Supplier.
- 6.4** The Experience Supplier shall invoice the Customer via their own systems and GVB have no responsibility regarding Customer payment for Gift Vouchers.
- 6.5** The Commission and Gift Voucher Fulfilment Fees will be invoiced at the end of each month and payment will be collected by direct debit on the 14th of the following month.
- 6.6** GVB may adjust the Commission not more than once in any 12 month period and shall provide notice of any adjustment to the Experience Supplier.

7. Proprietary Rights

- 7.1** The Experience Supplier acknowledges and agrees that GVB and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, this agreement does not grant the Experience Supplier any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 7.2** GVB confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

8. Confidentiality

- 8.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 8.1.1** is or becomes publicly known other than through any act or omission of the receiving party;
 - 8.1.2** was in the other party's lawful possession before the disclosure;
 - 8.1.3** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 8.1.4** is independently developed by the receiving party, which independent development can be shown by written evidence.
- 8.2** Subject to clause 8.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 8.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 8.4** A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 8.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 8.5** Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 8.6** The Experience Supplier acknowledges that details of the Services, and the results of any performance tests of the Services, constitute GVB's Confidential Information.
- 8.7** No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 8.8** The above provisions of this clause 8 shall survive termination of this agreement, however arising.

9. Indemnity

- 9.1** The Experience Supplier shall defend, indemnify and hold harmless GVB 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 Experience Supplier's use of the Services, provided that:
- 9.1.1** the Experience Supplier is given prompt notice of any such claim;
 - 9.1.2** VB provides reasonable co-operation to the Experience Supplier in the defence and settlement of such claim, at the Experience Supplier's expense; and
 - 9.1.3** the Experience Supplier is given sole authority to defend or settle the claim.
- 9.2** GVB shall defend the Experience Supplier, its officers, directors and employees against any claim that the Services infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Experience Supplier for any amounts awarded against the Experience Supplier in judgment or settlement of such claims, provided that:
- 9.2.1** GVB is given prompt notice of any such claim;

- 9.2.2** the Experience Supplier provides reasonable co-operation to GVB in the defence and settlement of such claim, at GVB's expense; and
- 9.2.3** GVB is given sole authority to defend or settle the claim.
- 9.3** In the defence or settlement of any claim, GVB may procure the right for the Experience Supplier to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Experience Supplier without any additional liability or obligation to pay liquidated damages or other additional costs to the Experience Supplier.
- 9.4** In no event shall GVB, its employees, agents and sub-contractors be liable to the Experience Supplier to the extent that the alleged infringement is based on:
- 9.4.1** a modification of the Services by anyone other than GVB; or
- 9.4.2** the Experience Supplier's use of the Services in a manner contrary to the instructions given to the Experience Supplier by GVB; or
- 9.4.3** the Experience Supplier's use of the Services after notice of the alleged or actual infringement from GVB or any appropriate authority.
- 9.5** The foregoing and clause 10.3.2 states the Experience Supplier's sole and exclusive rights and remedies, and GVB's (including GVB's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

10. Limitation of Liability

- 10.1** Except as expressly and specifically provided in this agreement:
- 10.1.1** the Experience Supplier assumes sole responsibility for results obtained from the use of the Services by the Experience Supplier. GVB shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to GVB by the Experience Supplier in connection with the Services, or any actions taken by the Supplier at the Experience Supplier's direction;
- 10.1.2** all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 10.1.3** the Services are provided to the Experience Supplier on an "as is" basis.
- 10.2** Nothing in this agreement excludes the liability of either party for:
- 10.2.1** death or personal injury caused by negligence; or
- 10.2.2** fraud or fraudulent misrepresentation.
- 10.3** Subject to clause 10.1 and clause 10.2:
- 10.3.1** GVB shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement;
- 10.3.2** GVB's total aggregate liability 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 the total paid for the Services during the 12 months immediately preceding the date on which the claim arose; and
- 10.3.3** the Experience Supplier will have sole liability to the Customers and End Users.

11. Term and Termination

- 11.1** This Agreement shall commence from the Effective Date for an initial period of 12 months and will then continue for further 6 month periods until terminated in accordance with this clause 11.
- 11.2** Each party must provide the other party with at least three month's notice of termination.
- 11.3** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 days after being notified in writing to do so.
- 11.4** Either party may terminate this Agreement with immediate effect if:
- 11.4.1** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- 11.4.2** the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- 11.4.3** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- 11.4.4** an order is made, for the appointment of an administrator or if an administrator is appointed, over the other party (being a company);
- 11.4.5** the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 11.4.6** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2.1 to clause 11.2.7 (inclusive); or
- 11.4.7** the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.5** For the purposes of clause 11.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- 11.5.1** a substantial portion of this Agreement; or
- 11.5.2** any of the obligations set out in clauses 4 and 5,

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

12. Force Majeure

Neither party shall be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under the contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13. Entire Agreement and Variation

- 13.1** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 13.2** Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
- 13.3** No variation of this agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

14. No Waiver

- 14.1** Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 14.2** No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

15. Severance

- 15.1** If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 15.2** If any provision or part-provision of this agreement is deemed deleted under clause 16.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. Assignment

Except as otherwise provided in this agreement, no party may assign, sub-contract or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.

17. Notices

- 17.1** A notice given to a party under or in connection with this agreement shall be in writing and sent to the party at the address given in this agreement or as otherwise notified in writing to the other party.
- 17.2** The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

Delivery method (to the addresses provided in the Proposal)	Deemed delivery date and time
<i>Delivery by hand or courier.</i>	<i>On signature of a delivery receipt or at the time the notice is left at the address.</i>
<i>Pre-paid first class post or other next working day delivery service providing proof of postage.</i>	<i>Midday on the second Business Day after posting or at the time recorded by the delivery service – whichever is earlier.</i>
<i>Email</i>	<i>At the time of transmission if during Business Hours, otherwise at 10:00 on the next Business Day after transmission.</i>

17.3 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.

18. No Partnership

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

19. Third Party Rights

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

20. Governing Law and Jurisdiction

The validity, construction and performance of the agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Clockwork Marketing, Longlands Barns, Whilborough Road, Newton Abbot, Devon TQ12 5DY
T: 01803 872999 E: info@clock-work.co.uk www.clock-work.co.uk

Company Reg No. 4831890. Managing Director: Clare Bushby.

Reg Office: Clockwork Marketing & Direct Mail Ltd. Longlands Barns, Whilborough Road, Newton Abbot TQ12 5DY