

# Gift Voucher Experiences Terms and Conditions

DATED: OCTOBER 2018 | VERSION 1

Clockwork Marketing And Direct Mail Limited trading as Gift Voucher Experiences.

## SUMMARY

- (A) GVE provides a Platform where End Users can purchase Gift Vouchers for an Experience, provided by the Experience Supplier.
- (B) The Experience Supplier can upload details of the Experience they provide onto the Platform.
- (C) GVE provide the Gift Vouchers for End Users to purchase via the Platform.
- (D) The Experience Supplier wishes to obtain and GVE wishes to provide the Services on the terms set out in this Agreement.
- (E) These terms come into effect from the date GVE begin to provide the Services and the Experience Supplier agrees to be bound to these terms from that date.

## OPERATIVE PROVISIONS:

# 1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

## 1.1 Definitions

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

**Business Hours** the period from 9.00 am to 5.00 pm on any Business Day.

**Commission** the percentage deducted from the total amount paid by the Customer as paid to GVE as notified to you.

**Content Management System (CMS)** the system made available by GVE 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 UK Data Protection Legislation 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.

**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 GVE.

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

**Gift Voucher** the proof of purchase of an Experience issued to a Customer or End User via the Platform.

**GVE** Clockwork Marketing And Direct Mail Limited trading as Gift Voucher Experiences 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.

**Intellectual Property Rights** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

**Parties** GVE and the Experience Supplier..

**Platform** GVE and the Experience Supplier.

**Services** GVE's provision of Gift Vouchers for the Experience provided by the Experience Supplier together with advertisement and promotional services for the Experience.

**1.2** Clause and paragraph headings shall not affect the interpretation of this Agreement.

**1.3** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**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** This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

**1.7** A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

**1.8** A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

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

**1.10** Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**1.11** A reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

**1.12** References to clauses are to the clauses of this Agreement.

**1.13** Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Commencement and Duration

**2.1** This Agreement shall commence on the date when GVE agree to provide the Services to the Experience Supplier and shall continue, unless terminated earlier in accordance with clause 11 (Termination).

**2.2** GVE shall provide the Services to the Experience Supplier in accordance with this Agreement.

## 3. GVE's Responsibilities

GVE shall:

- 3.1.1** use reasonable endeavours to supply the Services in accordance with this agreement in all material respects;
- 3.1.2** advertise and promote the Experience via the Platform and provide gift vouchers to Customers accordingly; and
- 3.1.3** provide access and maintain the CMS for the Experience Supplier's use and ensure each Gift Voucher contains a unique identity code for use with the CMS.

## 4. Experience Supplier's Obligations

The Experience Supplier shall:

- 4.1** co-operate with GVE in all matters relating to the Services;
- 4.1.2** make all Experiences available to Customers in exchange for any GVE issued Gift Voucher and accept any Gift Voucher issued by GVE, subject to Experience availability;
- 4.1.3** provide the Services in accordance with the law (specifically Consumer Rights Act 2015);
- 4.1.4** be responsible for ensuring the verification and validity of any Gift Vouchers supplied by GVE provided to them by End Users;
- 4.1.5** be responsible for uploading details and images of the Experience onto the CMS and shall hereby warrant that the content uploaded does not infringe any third party rights;
- 4.1.6** 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; and
- 4.1.7** agree that no additional, commissions, back-end payments, compensation, overrides, however structured will be used to counteract clause 4.1.6 or the remuneration structure provided in this Agreement.

## 5. Gift Vouchers

- 5.1** Each Gift Voucher is valid for 12 months from the date of issue (unless otherwise stated) and this date is clearly displayed on the Gift Voucher together with the unique identity code.
- 5.2** Any Gift Voucher will be deemed invalid if it has been damaged beyond repair, defaced, tampered with or the Gift Voucher expiry date has passed.
- 5.3** Customers must book the Experience in advance. All Experience Gift Vouchers are subject to availability. GVE will not be responsible for any costs incurred for Customer cancellation or failure to attend the scheduled Experience.

## 6. Charges and Payment

- 6.1** In consideration of the provision of the Services, GVE will deduct the Commission from the total amount paid by the Customer. The remaining amount will be paid to the Experience Supplier in accordance with the terms of this Agreement.
- 6.2** The Customer will pay GVE upfront for any Gift Voucher order, GVE will then hold the full amount on account before deducting the Commission. The Experience Supplier will be paid at the end of the month following the month in which the order is placed (or the next working day if the 14th falls on a weekend).
- 6.3** GVE reserves the right to review and increase the Commission on an annual basis. We will notify you of any change in Commission one month before the change is due to take affect.
- 6.4** GVE will provide the Experience Supplier with an invoice and statement of account each month.

## 7. Proprietary Rights

- 7.1** GVE will own all Intellectual Property Rights relating, but not limited to the Gift Vouchers, the Platform and CMS.
- 7.2** The Experience Supplier will own all Intellectual Property Rights relating, but not limited to, the Experience and any content uploaded on to the CMS.
- 7.3** The Experience Supplier hereby warrants that any content they provide to GVE via the CMS shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 7.4** The Experience Supplier grants GVE a fully paid-up, non-exclusive, royalty-free, perpetual, irrevocable licence to use their brands and name for promotional purposes, save that no commercially sensitive information is disclosed. This licence will continue regardless of termination of this contract.

## 8. Data Protection

- 8.1** Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 8.2** For further information on how GVE handle personal data please see the following Privacy Policy.

## 9. Confidentiality

- 9.1** Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2.
- 9.2** Each party may disclose the other party's confidential information:
  - 9.2.1** to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
  - 9.2.2** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3** No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 10. LIMITATION OF LIABILITY

- 10.1** Nothing in this agreement excludes the liability of GVE for death or personal injury caused by GVE's negligence or for fraud or fraudulent misrepresentation.
- 10.2** GVE 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; and
- 10.3** GVE'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 amount paid by the Customer to GVE in that contract year to the date of the claim.

## 11. TERMINATION

- 11.1** This Agreement shall commence from the Effective Date for a period of 12 months and will then continue for further 12 month periods unless terminated in accordance with this clause 11.
- 11.2** Each party must provide the other party with at least one month's notice of termination. The Agreement will continue until the current term of 12 months are at an end, at which point the termination will come into effect.
- 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 11.4.1 to clause 11.4.7 (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 3 and 4,

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. Consequences of Termination

**12.1** On termination or expiry of this Agreement:

**12.1.1** GVE will remove all Experiences provided by the Experience Supplier from the Platform; and

**12.1.2** any amounts remaining on account will be used to settle any outstanding costs to GVE and the remaining amount will be paid to the Experience Supplier, unless the termination is a consequence of a breach committed by the Experience Supplier, in which case GVE may withhold a portion or all of the amount on account.

**12.2** Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 13. 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.

## 14. Entire Agreement and Variation

**14.1** 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.

**14.2** 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.

**14.3** No variation of this Agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

## 15. No Waiver

- 15.1** 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.
- 15.2** 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.

## 16. Severance

- 16.1** 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.
- 16.2** 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.

## 17. 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.

## 18. Notices

- 18.1** 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.
- 18.2** The following table sets out methods by which a notice may be sent and its corresponding deemed delivery date and time:

<b>Delivery method (to the addresses provided in the Proposal)</b>	<b>Deemed delivery date and time</b>
<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>

- 18.3** 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.

## 19. 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.

## 20. Third Party Rights

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

## 21. 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.

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