

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

GRATUU LIMITED

The attention of the Customer is particularly drawn to the provisions of clause 12.

1. DEFINITIONS

1.1 Definitions. In these Conditions, the following definitions apply:

Accounts : The bank accounts of the Payers, Receivers and Employers set up on the Application for paying or receiving Payments.

Application: the application, including as set out in the Deliverables, supplied by the Supplier to the Payer and Receiver as set out in the Specification.

Appointed Representative: the individual appointed by a Employer to distribute Payments made into a Tip Jar account.

Business Day: for Payment purposes a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. For supply purposes, any day on which Receivers and Employers operate.

Charges: the charges payable by the Payer to the Receiver via the Application for the supply of the Receivers Goods.

Commencement Date: has the meaning set out in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.7.

Contract: the contract between all direct parties to the Conditions for the supply of Services in accordance with the Conditions.

Deliverables: the Application produced by the Supplier and used by the Payer for the purchase of Goods and Services and used by the Receiver for the supply of Goods.

Goods: any product or service provided by the Receiver or Employer in the course of its business.

Employer: Any business that employs staff (Receivers) that use Gratu services.

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

Payer: the person or firm who purchases the Services from the Supplier and Goods from the Receiver.

Payment Processors: Third party companies appointed by the Supplier to handle incoming and outgoing transactions.

Receiver: the individual or business who purchases Services from the Supplier and provides Goods to the Payer.

Services: any administrative tasks undertaken by the Supplier at a charge to the Payer and/or Receiver.

Specification: the description or specification for the Application provided in writing by the Supplier to the Payer and Receiver.

Supplier: Gratau Limited (registered in England and Wales with company number 09574486).

Supplier Materials: Supplier materials include but are not limited to artistic works, designs, symbols, names, images, marketing and promotional materials, documents, reports and other materials produced by or on behalf of the Supplier.

Payment: the discretionary Payment made by the Payer on the Application for the Goods supplied by the Receiver.

Tip Jar: An account set up on the Application by a member of staff to collect Payments to be distributed amongst members of the Employer's business.

Wrongdoing: Any illegal or dishonest act or behaviour.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) A reference to a party includes its personal representatives, successors or permitted assigns;
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) A reference to **writing** or **written** includes emails.

2. **BASIS OF CONTRACT**

2.1 The Payment constitutes an offer by the Payer to pay the Receiver or Employer for the Goods provided in accordance with these Conditions.

2.2 The Payer will allocate the Payment to the Receiver via the Application. If the Payment is made to a Tip Jar account, the money will be allocated to all

Receivers assigned to that particular Tip Jar by an Appointed Representative of the Employer's team.

- 2.3 The Payment shall only be deemed to be due to be paid to the Receiver or their Appointed Representative in accordance with clause 2.2 above when:-
- (a) the Payer has made the Payment to the Supplier into its nominated bank account; and
 - (b) the Payment has been received and cleared into the Supplier's nominated bank account.
- 2.4 The Contract constitutes the entire agreement between the parties. The Payer, the Receiver (and their Appointed Representative) and the Employer acknowledge that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues, leaflets, brochures or any other marketing materials of the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Application described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Payer, Receiver or Employer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. SUPPLY OF THE APPLICATION

- 3.1 The Supplier shall supply the Application to the Payer, Receiver and Employer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Conditions and any other written material produced by the Supplier, but any such dates shall be estimates only and time shall not be of the essence for performance of the Application.
- 3.3 The Supplier shall have the right to make any changes to the Application which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Application, and the Supplier shall notify the other parties in any such event. The Supplier shall not be liable for any loss suffered to the Payer, Receiver or Employer where the Application is not available to enable such changes to be made.
- 3.4 The Supplier warrants to the Payer, Receiver and Employer that the Application will be provided using reasonable care and skill.
- 3.5 The Supplier reserves the right to adapt the Application on an ongoing basis which can include, but is not limited to, the introduction of new incentives and rating schemes. The Supplier shall not be liable for any loss suffered to the

Payer, Receiver or Employer where the Application is not available to enable such changes to be made.

4. OBLIGATIONS OF THE SUPPLIER

4.1 The Supplier shall:

- (a) ensure that the terms of the Application and any information provide in the Specification are complete and accurate;
- (b) ensure that all private information and data entered on to the Application remains confidential and is not distributed to third parties, save for any information which a Payer, Receiver or Employer consents to being shared with recommended third parties only;
- (c) ensure that the Accounts set up on the Application are managed in accordance with the Conditions;
- (d) ensure transparency of Payments and that funds are distributed in accordance with the Conditions;
- (e) ensure that money paid via the Application is held in the Application's nominated account until a Receiver opts to withdraw it;
- (f) reserve the right to block, deactivate and/or place an account on hold if the Supplier suspects any wrongdoing on the part of the Payer and/or Receiver. The Supplier shall not be liable for any loss suffered to the Payer, Receiver or Employer where the Application is not available as a result.
- (g) reserve the right to disclose information to the relevant authorities should the Supplier suspect or know of any wrongdoing by the Payer and/or Receiver. The Supplier shall not be liable for any loss suffered to the Payer, Receiver or Employer where the Application is not available as a result.
- (h) not be responsible for any commentary, opinions, ratings or other postings on the Application and shall not be liable for any loss suffered by the Payer, Receiver or Employer as a result of such postings.

4.2 If the performance of the Supplier of any of its obligations under the Contract is prevented or delayed by any act or omission by the operator of the Application, the bank or any other third party, or the failure by the Payer or Receiver to perform any relevant obligation (**the Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Application until the Payer or Receiver remedies the Default, and to rely on the Default to relieve it from the performance of any of its obligations to the extent the Default prevents or delays the performance of the Supplier of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Payer or Receiver arising directly or indirectly from

the failure or delay of the Supplier to perform any of its obligations as set out in this clause 4.2; and

- (c) the Payer, Receiver or Employer as the case may be shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Default.

5. OBLIGATIONS OF THE RECEIVER

5.1 The Receiver shall:

- (a) co-operate with the Supplier in all matters relating to the Application and Services;
- (b) provide all necessary information to the Supplier in order to be registered on the Application;
- (c) not directly return any Payments directly to Payers;
- (d) not accept any Payments made by Payers that are not intended for them;
- (e) not use the Application for any wrongdoing;
- (f) ensure that it does not disclose any information about Payers or any other parties connected to the Application;
- (g) be responsible for any tax liabilities which arise out of Payments received; and
- (h) only create a profile on the Application using its own details and not on behalf of any other individual or business.

6. OBLIGATIONS OF THE PAYER

6.1 The Payer shall:

- (a) co-operate with the Supplier in all matters relating to the Application and Services;
- (b) ensure that all information provided to the Supplier and/or on the Application is complete and accurate;
- (c) make Payment to its nominated Receiver at its discretion;
- (d) comply with all Conditions of the Contract.
- (e) Only create a profile on the Application using its own details and not on behalf of any other individual or business.

7. OBLIGATIONS OF THE EMPLOYER & APPOINTED REPRESENTATIVE

7.1 The Employer and any Appointed Representatives shall:

- (a) co-operate with the Supplier in all matters relating to the Application and Services;

- (b) ensure that a fair and transparent Tip Jar policy is in place and distribution of tips/gratuities is agreed amongst Receivers and not Employer; and
- (c) ensure that managers do not receive any individual transaction paid into a Tip Jar account by a Payer.

8. CHARGES AND PAYMENTS

- 8.1 Payments made by Payers shall be made at the absolute discretion of the Payer and the Parties agree as follows:
- (a) the Payment amount is at the Payers' discretion;
 - (b) no Party can influence the Payment amount;
 - (c) Receivers are not able to select the Payment amount or set a minimum Payment amount;
 - (d) Payments will be made electronically using the Application's Payment Processors. All Payments will be made by bank transfer.
 - (e) Payments will be made using mobile wallets or the bank details provided by each party upon creating an account on their profile. Such details will be stored with a secure payment service provider.
- 8.2 Payments will be collected instantly or once a week (together with the time it takes for a bank transfer to be completed) for all the Payments made by a customer in the previous week.
- 8.3 Payments to Receivers will be sent once a week, once ever two weeks or once a month if and when the Payment has been received by the Payer (together with the time it takes for a bank transfer to be completed) unless a Receiver opts in to save such Payments. The day of the payment is at the discretion of the Supplier.
- 8.4 Bank transfers are subject to the timings of each individual bank and the Supplier is not responsible for any delays caused by the bank in processing Payments. The Supplier shall not be liable for any loss suffered to the Payer, Receiver or Employer as a result of a delay by the bank in processing the Payments.
- 8.5 If a Payer wishes to retrieve a Payment, this will be reviewed on an individual basis by the Supplier and the Supplier reserves the right to withhold the money should it find that the funds have been misappropriated in any way. If the Supplier exercises this right it will notify the Payer in writing setting out the reasons why the Payment will not be returned. Charges for a returned payment will be based on the cost of the transaction and the time needed to administer the returned payment.
- 8.6 The Supplier reserves the right to review Appointed Representatives in order to ensure that managers receive no money paid in to the Tip Jar. For those managers who perform other duties, an individual account specifying such

duties should be set up in that capacity so that it can receive Payments directly from Payers.

- 8.7 A transaction fee will be charged by the Supplier per transaction. Both, Payer and Receiver will bear the cost of the transaction, which will be deducted upon receipt of the Payment from the Payer.
- 8.8 The Supplier reserves the right to increase its standard administrative fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Receiver written notice of any such increase two month(s) before the proposed date of the increase. If such increase is not acceptable to the Receiver, it shall notify the Supplier in writing within two weeks of the date of the notice provided by the Supplier and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving four weeks' written notice to the Receiver.
- 8.9 Where any taxable supply for VAT purposes is made under the Contract to the Payer or Receiver, the Payer or Receiver shall, on receipt of a valid VAT invoice, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as Payment is due for the supply of the Services.
- 8.10 If a party to the Conditions fails to make any payment due to the Supplier under the Contract by the due date for Payment, then the account of the Payer and/or Receiver shall be deactivated in line with the termination provisions of the Conditions.
- 8.11 The parties shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by any other party against any amount payable by the Supplier to the other party.
- 8.12 If a Payer deactivates an account before its last payment is made, the Supplier reserves the right to request that the payment is settled.
- 8.13 If a Receiver deactivates its account, the Supplier reserves the right to pay any outstanding money before the account is deactivated.
- 8.14 Receiver must have a minimum of £2 earnings in its Gratu account/profile for the funds to be transferred by Supplier.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Application shall be owned by the Supplier.
- 9.2 The Payer, Receiver and Employer acknowledges that, in respect of any third party Intellectual Property Rights, the use by any other party of any such Intellectual Property Rights is conditional on the Supplier obtaining a written

licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the other party.

9.3 All Supplier Materials are the exclusive property of the Supplier.

10. INSURANCE

At all material times, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the request of any other party, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. CONFIDENTIALITY

A 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 the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for fraud or fraudulent misrepresentation.

12.2 Subject to clause 12.1:

- (a) the Supplier shall under no circumstances whatsoever be liable to the Receiver and Payer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the total liability of the Supplier to any other party to the Conditions in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £4.

12.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, any party may deactivate its account with the Supplier by giving the other party one months' written notice.

13.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
- (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) any 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (d) any 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 its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) 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 any other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) any other party (being an individual) is the subject of a bankruptcy petition order;
- (g) a creditor or encumbrancer of any other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint

an administrator is given or if an administrator is appointed over any other party (being a company);

- (i) the holder of a qualifying floating charge over the assets of any other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (k) 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 13.2(c) to clause 13.2(j) (inclusive);
- (l) any other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (m) any other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Payer, Receiver or Employer if the Payer, Receiver or Employer (as the case may be) fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

13.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the parties and the Supplier if any other party becomes subject to any of the events listed in clause 13.2(a) to clause 13.2(m) or the Supplier reasonably believes that another party is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Payer, Receiver or Employer (as the case may be) shall immediately pay to the Supplier all of the outstanding unpaid monies and in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Payer, Receiver or Employer (as the case may be) immediately on receipt;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.

15. FORCE MAJEURE

- 15.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2 The Supplier shall not be liable to any other party to the Conditions as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 15.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to any or all other parties.

16. GENERAL

16.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Payer, Receiver and or Employer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

16.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2(a); if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and

at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

16.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

16.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

16.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

16.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising

out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).