



GOSS

Software as a Service Agreement

GCloud 10

GOSS Interactive Ltd Software as a Service Terms and Conditions (GCloud 10)

Business Name and Address ("Client")	[COMPANY] [Address]												
Date of Agreement													
Software supplied by GOSS ("Software")													
No of users (if applicable)													
Client Contact	[Specify contact details]												
Client Deliverables	[Specify if there are any services/ software/ hardware provided by the client which is necessary for GOSS to provide the service]												
Location	GOSS Interactive Ltd ("GOSS") 24 Darklake View Plymouth PL6 7TL												
Site or Sites	[Specify site(s) URL]												
Bandwidth purchased	Excluding any Bandwidth Bursting Charge												
Initial Service Period	[] Months												
Services included as standard	<p>The provision of the following for Client production environment (not Client pre-production, Client test, Client development or GOSS Development environments.</p> <ul style="list-style-type: none"> Online, email and telephone support for GOSS Trained Users during standard Working Hours Application support and Help line for GOSS Trained Users during the hours of 08:00 to 18:00 for the purpose of assisting in any queries relating to any GOSS Software Fault (as defined in Section 1) via GOSS online support system. Full access to GOSS FAQ section, Support webinars and GOSS iCM HelpText. Hosted services for the Site according to Service Levels (SLA), percentage calculated monthly. 												
Service Levels (SLA)	<p>GOSS SLA is divided into two types; network availability and site availability</p> <p>A. Network downtime exists when designated server is not reachable as a result of a failure in data centre network.</p> <table border="1"> <tr> <td>Network Availability Level</td> <td>99.99%</td> </tr> <tr> <td colspan="2">Service Availability Credit Bandings and Service Credits</td> </tr> <tr> <td>99.99% or more</td> <td>Nil</td> </tr> <tr> <td>Between 99.98% and 99.50%</td> <td>3% of Monthly charge</td> </tr> <tr> <td>Between 99.49% and 99.00%</td> <td>7% of Monthly charge</td> </tr> <tr> <td>Below 98.99%</td> <td>20% of Monthly charge</td> </tr> </table>	Network Availability Level	99.99%	Service Availability Credit Bandings and Service Credits		99.99% or more	Nil	Between 99.98% and 99.50%	3% of Monthly charge	Between 99.49% and 99.00%	7% of Monthly charge	Below 98.99%	20% of Monthly charge
Network Availability Level	99.99%												
Service Availability Credit Bandings and Service Credits													
99.99% or more	Nil												
Between 99.98% and 99.50%	3% of Monthly charge												
Between 99.49% and 99.00%	7% of Monthly charge												
Below 98.99%	20% of Monthly charge												

	<p>B. Site availability shows availability of the production Site (not applicable to development, test or pre-production sites). In the case of LiveChat the Service Level Site availability below will apply only to LiveChat service not the Site unless the Site is hosted by GOSS.</p> <table border="1"> <tr> <td>Site Availability Level</td><td>99.95%</td></tr> <tr> <td colspan="2">Site Availability Credit Bandings and Service Credits</td></tr> <tr> <td>99.95% or more</td><td>Nil</td></tr> <tr> <td>Between 99.9% and 99.00%</td><td>3% of Monthly charge</td></tr> <tr> <td>Between 98.99% and 97.50%</td><td>7% of Monthly charge</td></tr> <tr> <td>Below 97.49%</td><td>20% of Monthly charge</td></tr> </table> <p>The Client will promptly request any claim on Hosting service credits within 7 days at end of each calendar month.</p>	Site Availability Level	99.95%	Site Availability Credit Bandings and Service Credits		99.95% or more	Nil	Between 99.9% and 99.00%	3% of Monthly charge	Between 98.99% and 97.50%	7% of Monthly charge	Below 97.49%	20% of Monthly charge
Site Availability Level	99.95%												
Site Availability Credit Bandings and Service Credits													
99.95% or more	Nil												
Between 99.9% and 99.00%	3% of Monthly charge												
Between 98.99% and 97.50%	7% of Monthly charge												
Below 97.49%	20% of Monthly charge												
Additional services (if any)													
Shared data with Third party (if applicable)	GOSS may use 3rd party organisation to host its Disaster recovery. Please refer to GOSS service definition or contact GOSS for more details												
Amount (ex VAT) due to be paid	£ [] monthly per arrears / quarterly in arrears/ annual in advance												
Payment due date (if applicable)	[Specify due date]												

I/We have read and accept the Agreement set out below: (for and on behalf of GOSS)		I/We have read and accept the Agreement set out below: (for and on behalf of Client)	
Signed:		Signed:	
Name:		Name:	
Position:		Position:	
Date:		Date:	

1 Definitions

'Agreement'	together with the terms and conditions set out in these terms, the Front Sheet, Call-off and the annexure inclusive;
'Bandwidth Bursting Charge'	the charges to bandwidth usage for the previous calendar month calculated by taking 95% of the average bandwidth used in a month and then applying a charge for any excess above the amount set out on the Front sheet for Bandwidth purchased pursuant to clause 3.9.
'Charges'	the charges (including without limit Bandwidth Bursting Charge) to be levied by GOSS pursuant to this Agreement as identified on the Front Sheet;
'Client Contact'	the person identified on the Front Sheet as such or such person as the Client may notify GOSS of from time to time in writing;
'Client Content'	any content, text, graphic, audio, video, photograph or image to be used on the Software and any content including but without limitation forms, processes, and end-points created by the Client using the Software;
'Client Deliverables'	the documents, the Client Software, equipment and/or information to be supplied by the Client pursuant to this Agreement as identified in Front Sheet or as GOSS may reasonably request from time to time;
'Confidential Information'	all information designated as such by either party in writing together with all other information relating to the business, affairs, plans, discussions, contacts, products, developments, trade secrets, know-how, personnel, Clients, partners and suppliers of GOSS;
'Documentation'	the online help files for and accessible via the Software;
'Excusable Downtime'	any period where the Software is inaccessible as a consequence of work carried out pursuant to clause 6 or as a consequence of an event pursuant to clause 17
'Fault'	any error, fault or problem with Software and/ or hosting services of the Software which has a material impact on the operation or use of the same. "material impact" for the purpose of this definition shall mean an impact where the Fault prevents or severely restricts the Client using the Software or the Fault is resulting in a loss of or corruption to data which is critical to the Client business;
'Front Sheet'	The front page to this agreement;
'GOSS Content'	Data owned and managed by GOSS, any content, text, graphic, audio, video, photograph or image to be used on the Software and any content including but without limitation forms, processes, and end-points created by the GOSS using the Software
'Intellectual Property Rights'	copyright, database rights, trade and service marks or names, design rights, patents, rights in inventions and all similar rights, whether registered or not, and including the rights to apply for registration.
'Location'	The location set out on the Front sheet for Client deliverables
'Network Availability'	when designated server is not reachable as a result of a failure in data centre network but excluding network downtime due to Excusable downtime or pursuant to clause 3.63.5, 3.10 and 9.6
'Parties'	GOSS and the Client;
'Parts'	the sections of this Agreement identified as such;
'Personal Data'	shall have the same meaning as set out in the "Data Protection Act 1998, General Data Protection Regulation and any successor and supplementary legislation, together referred to as the "Data Protection Legislation" ;
'Service Levels'	the service levels to be met by GOSS pursuant to this Agreement as set out in Front Sheet;
'Services'	the services identified in Front Sheet to be undertaken by GOSS pursuant to this Agreement;
'Site'	Site(s) to be hosted by GOSS as part of the Services as identified by the URL(s) set out on the Front Sheet;
'Site Availability'	the period of time whereby the site is accessible by end users without severe impairment but excluding site unavailable due to Excusable downtime or pursuant to clause 3.6, 3.10, and 9.6
'Software'	the software subject to this Agreement as identified on the Front Sheet for the purpose set within GOSS GCloud service definition or Call-off agreement for the software;

2 GOSS Obligations

2.1 Subject to this Agreement, GOSS shall use its reasonable endeavours to carry out the Services in accordance with the Service Levels. GOSS shall carry out the Services in a professional, diligent and timely manner. Time for delivery of the Services shall not be of the essence unless otherwise agreed.

2.2 GOSS may subcontract at any time with prior written consent from the Client any or all of its obligations under this Agreement to any third party provided that such third party can provide the Services at the same standard and quality than that provided by GOSS hereunder.

2.3 It is expressly agreed and understood by the Parties that:

2.3.1 GOSS is not in any way liable or responsible for selecting, advising in connection with the selection of, procuring, delivering, installing or paying for, or for the performance or non-performance of, the Client Content, the Client Deliverables or any of them;

2.3.2 save as may be expressly provided in this Agreement, GOSS is not in any way liable or responsible for selecting, advising in connection with the selection of, procuring, delivering or paying for, or for the performance or non-performance of, any third party hardware, software and/or services (or any part thereof) or for any unavailability or non-performance of the Software caused by a third party;

2.3.3 GOSS shall not be responsible for the provision or maintenance of any external operating environment, infrastructure or telecommunication links (from the firewall out) which are used directly or indirectly in the provision of the Services and the Parties hereby agree that any failure of the same shall not render GOSS in breach of its obligations hereunder;

2.4 GOSS shall be entitled to move (temporarily or permanently) the Software to other equipment or location provided that such move does not reduce or permanently impair the Services provided hereunder;

2.5 GOSS will use its reasonable endeavours to replicate any Fault reported by Client. Fix times stipulated within GOSS published support SLA will only be applicable after Fault successfully replicated by GOSS within GOSS local environment.

3 Client obligations

3.1 The Client shall:

3.1.1 pay the Charges pursuant to clause 4;

3.1.2 deliver the Client Deliverables to the Location by the agreed date in such format and on such media as GOSS may reasonably stipulate;

3.1.3 report all faults, problems and/or errors in respect of the Services or their delivery as soon as reasonably possible upon becoming aware of the same to the GOSS contact notified on the front sheet or the person with whom the Client has liaised as regards the provision of the Services;

3.1.4 appoint a person to be the Client Contact for all matters relating to this Agreement and/or the Services and ensure that such person has the necessary expertise to deal with enquiries raised by GOSS and the necessary authority to make decisions relating to this Agreement.

3.2 The Client shall:

3.2.1 procure all necessary licences, waivers, consents or registrations necessary to enable GOSS and/or the Client (as the case may be) to deliver, install, use and/or keep installed the Client Deliverables at or from the Location and shall provide evidence of the same immediately upon request from GOSS;

3.2.2 acknowledges that GOSS or its sub-contractors are permitted to inspect or test the Client Deliverables at all reasonable times during normal Working Hours;

3.2.3 comply with the IP address allocation rules set out by RIPE, and to complete and submit form Ripe-124 (or any form which might supersede that form) where necessary on request; and

3.2.4 without limitation, comply in a timely manner with its obligations contained herein.

3.3 The Client acknowledges that GOSS's ability to perform its obligations under this Agreement is dependent upon the Client's full and timely co-operation with GOSS, as well as the accuracy and completeness of the Client Deliverables or any information and data the Client or its agents, sub-contractors and/or representatives provide to GOSS. The Client shall without limitation:

3.3.1 provide GOSS with access to, and use of, the Client Content and the Client Deliverables and all information, data, documentation, computer time, facilities and personnel deemed necessary by GOSS to enable GOSS to perform its obligations hereunder;

3.3.2 forthwith upon being requested by GOSS to do so at any time, provide any test data or other information and/or assistance reasonably requested by GOSS from time to time.

3.4 The Client shall not use the Services:

3.4.1 other than in conformance with the acceptable use policies of any connected networks and the Standards;

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- 3.4.2 in order to send or receive a message or communication which is offensive, abusive, obscene, menacing, defamatory, in breach of confidence;
- 3.4.3 for the transmission of unsolicited commercial or advertising material either to other users of the Internet, or to organisations connected to other networks;
- 3.4.4 for the distribution or promotion of chain letter or pyramid-selling schemes;
- 3.4.5 for the distribution of binary files to non-binary news groups;
- 3.4.6 for the transmission of excessive multi-posting (spamming) or excessive cross-postings in news groups or for the dissemination and/or transfer of any virus, worm or hacking device and/or information;
- 3.4.7 to allow deliberate unauthorised access to facilities or services accessible via the Service;
- 3.4.8 in a manner which is contrary to law;
- 3.4.9 in a manner which will or is likely to materially disrupt or prevent GOSS providing services to other third parties.
- 3.5 Whilst GOSS shall use its reasonable endeavours to keep the Client Deliverables secure, the Client accepts that risk in all Client Deliverables shall remain with the Client. The Client is responsible for ensuring that all Client Deliverables have been insured and that appropriate copies and/or backups have been taken and retained by it.
- 3.6 In the event that any problem and/or error should arise with the Client Deliverables, GOSS shall forthwith notify the Client in writing of the same. Subject to the consent of the Client, GOSS shall carry out repair and/or replacement work on such Client Deliverables provided that GOSS shall be entitled to levy additional charges for such work. For the avoidance of doubt, GOSS shall not be liable for any delay and/or loss arising from any problem, fault and/or error with the Client Deliverables nor will it be taken into account in calculating Service Levels.
- 3.7 The Client shall ensure that any Fault is reported in accordance with the reasonable instructions stipulated by GOSS from time to time.
- 3.8 GOSS shall be entitled to charge additional charges for any Services outside the scope of the Service specified in Front Sheet.
- 3.9 In the event that the Client incurs an additional Bandwidth Bursting Charge, GOSS shall:
 - 3.9.1 inform the Client of the charge in the proceeding months' service and the Client shall be invoiced for the Bandwidth Bursting Charge within 1-month notice period.
 - 3.9.2 reserves the right (at its discretion) to cap any excessive use of the bandwidth beyond the bandwidth purchased, when the usage affect the performance of GOSS other client sites.
- 3.10 The Services shall not include dealing with any Fault which has arisen as a consequence of:
 - 3.10.1 the Client's negligence or misuse of the Software or its failure to operate the Software in accordance with the Documentation, instructions or for the purposes for which it was designed;
 - 3.10.2 the alteration modification or maintenance of the Software by any party other than GOSS without GOSS's prior written consent;
 - 3.10.3 any defect or error in any software (other than the Software supplied by GOSS) used upon or in association with the Equipment or the Software;
 - 3.10.4 any accident or disaster affecting the Software including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary; or
 - 3.10.5 the Client's failure or refusal to allow GOSS proper access to the Software, the Site or the equipment;
 - 3.10.6 the adjustment, configuration or tampering of the Software by any other person other than GOSS; or
 - 3.10.7 problems with any external network or equipment or problems caused by spam or mail bombing.
- 3.11 GOSS may (at its discretion) and upon request by the Client provide all or any of the Services in respect of any Fault arising as a consequence of any matter set out in clause 3.10 but shall be entitled to levy additional charges for the same.
- 3.12 Without prejudice to clause 3.10, GOSS shall be entitled to levy additional charges if support is provided in circumstances where any reasonably skilled and competent data operator would have judged the Client's request to have been unnecessary.
- 3.13 The Client will complete in every case an error report in the form notified by GOSS from time to time. GOSS will not be obliged to commence work on any Fault until it has received the error report form correctly completed or, if the error report is by telephone, until it has received such information as should appear on the error report form.
- 3.14 The Client will promptly provide GOSS with all information and materials required by it for the purpose of investigation, diagnosis and correction of any reported Fault and shall provide GOSS with such access to the Site, Software, Client deliverables, and staff of the Client as GOSS may require in order to carry out the Services. GOSS will not be liable for failure to provide, or any delay or error in providing, the Services resulting from the Client's failure or delay in complying with this provision.
- 3.15 The Client acknowledges and accepts that:
 - 3.15.1 in the event that GOSS are unable to rectify a Fault or provide a workaround it may at its absolute discretion replace such Software, which is subject to the Fault; and
 - 3.15.2 if a Fault is found upon investigation not to be GOSS's responsibility under the provisions of this clause 3 GOSS may charge the Client immediately for all reasonable costs and expenses incurred by GOSS in the course of or in consequence of such investigation.
- 4 Payment Terms
 - 4.1 The Client shall pay the Charges without set off or deduction by the agreed date as set in Front Sheet (Due Date). In the event that no Due Date is specified, all Charges (including without limit additional charges) shall be paid within 30 days of receiving a valid invoice from GOSS.

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- 4.2 GOSS may increase the Charges in line with RPI commencing on each anniversary of this Agreement on giving the Client no less than one month notice in writing.
- 4.2.1 For the purposes of this clause 4, RPI Index means the "Retail Prices Index" as published by the Office of National Statistics.
- 4.2.2 Where the RPI Index is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless GOSS and the Client shall agree otherwise.
- 4.2.3 In the event that any changes occur to the basis of the RPI Index, or it is no longer published, GOSS and the Client shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Schedule.
- 4.3 Without prejudice to GOSS' rights pursuant to clause 14:
- 4.3.1 The Client shall pay interest on an amount overdue under clause 4.1 at the rate of 4% per annum above the base rate of HSBC Bank plc from time to time in force from the date that the payment was due to the date of actual payment (whether before or after judgement). Such interest shall accrue on a daily basis, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 4.3.2 suspend the provision of any or all of the Services (at GOSS' absolute discretion).
- 4.4 All Charges and additional charges payable hereunder are exclusive of VAT.
- 5 Proprietary rights
- 5.1 Without prejudice to clause 4, GOSS shall not be liable for any delays to the supply of, or the performance or non-performance of the Services or its failure to meet the Service Levels to the extent that such failure is caused by or resulting directly or indirectly from:
- 5.1.1 any failure by the Client to perform its obligations under clause 3;
- 5.1.2 the act or omission of a third party other than GOSS or its sub-contractors; or
- 5.1.3 Excusable Downtime.
- 5.2 GOSS shall be entitled to charge the Client, and the Client shall pay, additional cost of any kind whatsoever suffered or incurred by GOSS arising out of or in connection with clause 5.1.1.
- 5.3 The Client must provide, at its sole cost, all telecommunication services, computers and other equipment or services necessary to enable it to fully and properly access the Software and the Client shall comply with all the rules and regulations that apply to such services and equipment.
- 5.4 The Client:
- 5.4.1 agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Software or which is visible during its operation or which is on the Software or on any Documentation. The Client shall incorporate such proprietary markings in any back-up copies of the Software and/or Documentation;
- 5.4.2 shall notify GOSS immediately if the Client becomes aware of any unauthorised access to, use (including Use) or copying of any part of the Software by any person or organisation;
- 5.5 shall permit GOSS to check the use of the Software by the Client at all reasonable times. GOSS may upon reasonable notice send its representatives to any of the Client's premises to verify compliance with this Agreement and the Client irrevocably consents to GOSS representatives entering such premises for this purpose.
- 6 Maintenance
- 6.1 Without prejudice to clause 6.2, GOSS shall wherever reasonably possible:
- 6.1.1 give the Client no less than (7) days' notice of any planned maintenance or upgrade work;
- 6.1.2 carry out such planned maintenance work outside of Working Hours.
- 6.2 GOSS shall be entitled to carry out any emergency and/or urgent maintenance work without notice to the Client and at such times as it feels reasonably necessary PROVIDED THAT GOSS will as soon as reasonably possible notify the Client as to the likely time frame for completing such emergency maintenance work.
- 7 Confidentiality
- 7.1 Each Party acknowledges that the other is likely to provide it with Confidential Information. Each Party undertakes to the other to treat as confidential and to use all reasonable endeavours to keep secret all Confidential Information contained in or otherwise received from the other and shall not use the same for purposes other than in carrying out their respective rights and obligations hereunder.
- 7.2 Each Party may disclose the terms of this Agreement to its legal advisors.
- 7.3 The provisions of this clause 7 will not apply to any Confidential Information which:
- 7.3.1 is or becomes public knowledge other than as a result of the receiving Party's conduct; or
- 7.3.2 is independently developed without access to or use of the Confidential Information.
- 7.4 This clause 7 will continue in force notwithstanding the termination of this Agreement for any reason.
- 7.5 The Client shall be entitled to disclose information to the extent that it is required to do so pursuant to the Freedom of Information Act 2000 ("FOIA"). Notwithstanding the previous sentence, the Client shall (unless prohibited by law) before disclosing pursuant to the FOIA notify GOSS of its wish to disclose and the reasons for the same and shall give due and proper consideration to all comments and concerns raised by GOSS in respect of the same in deciding whether to disclose or not.

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8 Warranty

8.1 GOSS warrants to the Client that GOSS:

8.1.1 shall use reasonable endeavours to provide the Services in accordance with the Service Levels; and has full right, power and authority to enter into and perform this Agreement in accordance with its terms.

8.2 The Client warrants to GOSS that:

8.2.1 it has the full right and power to grant the licences in clause 11 and that it has obtained or will obtain all necessary permissions and consents to enable GOSS to use any Client Content, the Client Deliverables or any intellectual property or other proprietary rights of the Client (including, without limitation, any Client hardware or software) or any third party in providing the Services;

8.2.2 any Client Content, Client Deliverables, or any other hardware, software, material or data provided to GOSS will be free from any virus and will not damage or corrupt the GOSS Equipment or any other GOSS Content or networks.

8.3 The Client shall indemnify and keep GOSS indemnified against any and all losses, claims, damages, demands, liabilities, costs and expenses (including without limitation, legal costs and expenses) incurred or suffered by GOSS arising out of or in connection with a breach of clause 8.2.

8.4 GOSS does not provide any warranties whatsoever in respect of any third party hardware or third party software and no representation or warranty is given by GOSS that all Faults will be fixed, or will be fixed within a specified period of time.

8.5 Save as expressly provided for in this Agreement, all other conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise (including, without limitation, implied terms of satisfactory quality and fitness for a particular purpose) are excluded by GOSS to the fullest extent permitted by law and GOSS shall have no other obligation, duty or liability whatsoever in contract, tort (including negligence), statute or otherwise to the Client.

9 Limitation of liability

9.1 The Client agrees that it has accepted the terms and conditions of this Agreement in the knowledge that GOSS' liability is limited and that the prices and charges payable have been calculated so as to reflect such limitations and thus represent a reasonable and commercial allocation of risk between the parties.

9.2 This clause 9 sets out GOSS's entire liability to the Client and all other liability of GOSS to the Client is, subject to clause 9.3, hereby excluded.

9.3 Notwithstanding any other provision of this Agreement, GOSS does not exclude or limit liability for:

9.3.1 death or personal injury to the extent that such injury results from breach of duty or wilful default of GOSS, its servants, agents or subcontractors; and

9.3.2 fraud or deceit.

9.4 Except as expressly provided in clause 9.3, the total liability of GOSS to the Client shall not exceed 100% of the Charges paid by the Client to GOSS in the year immediately preceding the date giving rise to the claim.

9.5 GOSS shall not have any liability to the Client in respect of any of the following losses or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise) and whether the same arises in contract, tort (including negligence) or otherwise; loss of profits; loss of anticipated savings or of the use of money; loss of business; loss of goodwill; loss of use or downtime; loss of or corruption to data or other information; damage relating to the procurement by the Client of any substitute products or services; or any, indirect, or consequential loss or damage (whether or not such loss or damage is of the type specified above).

9.6 Extraordinary Events. The Client are not entitled to a credit for downtime or outages resulting from denial of service attacks, virus attacks, hacking attempts, or any other circumstances that are not within GOSS control.

9.7 For the avoidance of doubt:

9.7.1 GOSS shall not be liable to the Client in respect of any third party hardware or third party software;

9.7.2 The Client shall not be entitled to a credit for downtime caused by deployment to the hosting environment as result of Change request; and

9.7.3 The Client shall not be entitled to recover against GOSS under this Agreement more than once in respect of any one loss.

10 Security and content

10.1 GOSS shall use reasonable endeavours to put in place and maintain a reasonable level of security, taking into account electronic security technology from time to time, to prevent and detect any breach of external security of the Site (i.e. from the world-wide web through GOSS's Internet firewall).

10.2 In relation to internal security protection for the Software (i.e. within GOSS's firewall), GOSS shall use reasonable endeavours to ensure that the Software is secure in all material respects. For the avoidance of doubt, GOSS shall not be responsible for breaches of GOSS's internal security by the Client's employees, agents, representatives and/or sub-contractors.

10.3 For the avoidance of doubt, GOSS shall not be responsible for

10.3.1 the "look and feel" design or appearance of the Client Site or Sites that are not developed by GOSS,

10.3.2 the Client Content,

10.3.3 the Client Deliverables,

10.3.4 any of the Client's designs, specifications or instructions as to the Client Content,

10.3.5 the linking from Client Site to other websites or the content of those websites,

10.3.6 the linking from the Software to Client Site or other websites or other systems that are not developed and hosted by GOSS,

10.3.7 in the case of LiveChat, the linking of LiveChat to other websites that are not developed and hosted by GOSS;

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- all of which will be the sole responsibility of the Client.
- 10.4 The Client shall indemnify and at all times fully and effectively keep GOSS indemnified against any and all losses, claims, damages, demands, liabilities, costs and expenses incurred by GOSS arising from the use of such "look and feel" design of the Client Site, the use of the Client Content, the Client Deliverables or GOSS following the Client's design, specification or instructions as to Client Content or the Client Deliverables, the linking of the Site or Sites to other websites or the content of those websites.
- 10.5 The Client acknowledges that GOSS has no control over the Client Content or the Client Deliverables and does not purport to monitor the same. Notwithstanding the foregoing, GOSS reserves the right (at its discretion) to restrict or prohibit access to the Software at any time or remove any Client Content or Client Deliverables from the Software and/or refuse to carry out any amendments, modifications or replacements of the Software or terminate or suspend the provision of the Services where it has reason to believe that there is or has been a breach of this Agreement.
- 11 Licences
- 11.1 The Client:
- 11.1.1 may use the Software for processing its own internal business purposes only during the term of contract.
- 11.1.2 shall not use or attempt to use the Software or permit any third party to do so other than as set out in this clause;
- 11.1.3 shall not transfer or distribute (whether by licence, sub-licence, loan, rental, sale or otherwise) all or any part of the Software to any other person or organisation;
- 11.1.4 shall not make for any purpose including (without limitation) for error correction, any alterations, modifications, copies, additions, adaptations, translations or enhancements to the Software except as specifically authorised in the Documentation nor permit the whole or any part of the Software to be combined with or become incorporated in any other program save as set out in this Agreement; and
- 11.1.5 shall not, nor permit others to, decompile, reverse engineer or disassemble the Software or any part except that the Client may decompile the Software only to the extent permitted by law where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created program with the Software or with another program and such information is not readily available from GOSS or elsewhere.
- 11.2 The total number of users permitted to use the Software (not the concurrent number of users) may not exceed the permitted number as set in Front Sheet.
- 11.3 The Client hereby grants GOSS (for itself and its sub-contractors) and/or shall procure that GOSS (for itself and its sub-contractors) is granted for the duration of this Agreement a non-exclusive, worldwide, royalty-free licence to copy, make derivative works of, distribute, display, perform, transmit or otherwise use the Client Content, the Client Deliverables and any intellectual property or other proprietary rights of the Client (including, without limitation, any Client hardware or software) or any third party to the extent necessary or desirable for the purpose of GOSS's performance of its obligations under this Agreement.
- 11.4 The Client shall indemnify GOSS and keep GOSS at all times fully and effectively indemnified against any and all losses, damages, liabilities, demands, claims, costs and expenses suffered or incurred by GOSS arising out of or in connection with any breach by the Client of or failure of the Client to comply with this clause 11.
- 12 Intellectual Property Rights
- 12.1 All copyright and other intellectual property or proprietary rights existing prior to the date of this Agreement shall vest in their originator absolutely.
- 12.2 GOSS shall own all intellectual property rights created, made and developed under or in connection with this Agreement by GOSS including, without limitation, all right, title and interest in any ideas, concepts, know-how, techniques, code, materials, documentation and other work product (on whatever media).
- 12.3 The Client shall own all intellectual property of the Client Content.
- 13 Data Protection
- 13.1 Both parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with this Agreement. Without prejudice to the generality of the preceding sentence, both parties shall obtain, and at all times maintain, appropriate notification under the Data Protection Legislation appropriate to the performance of their obligations under this Agreement.
- 13.2 Subject to the Client's compliance with clause 13.1, GOSS shall (to the extent it processes any Personal Data on behalf of the Client):
- 13.2.1 keep the Personal Data confidential and not disclose the Personal Data to any third party unless authorised by the Client or required by law (for the avoidance of doubt, any such disclosure shall not constitute a breach of clause 13 by GOSS);
- 13.2.2 has in place appropriate technical and organisational measures against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and that any persons it authorises to have access to the Personal Data will respect and maintain the confidentiality and security of the Personal Data.
- 13.3 The Client shall indemnify and keep indemnified GOSS from and against any and all costs, claims, damages, losses, expenses and liabilities arising as a result or in connection with any notice, action, claim, demand or allegation that any processing of Personal Data undertaken by GOSS in accordance with the Client's instructions infringes the rights of any third party or is in any way contrary to the provisions of the Data Protection Legislation.
- 14 Termination and Suspension

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- 14.1 Unless otherwise specified on the Front Sheet;
- 14.1.1 either Party may terminate this Agreement at any time by giving no less than 3 months' notice in writing. Such termination notice can only be sent 3 months before the end of the Initial Service Period or any time thereafter. The service period is for the period set on the Front Sheet, commencing on the installation date.
- 14.1.2 The Agreement will continue at the agreed Charges as set in Front Sheet after the Initial Service Period unless terminated by either Party;
- 14.2 Either Party may terminate this Agreement immediately if the other:
- 14.2.1 expressly or impliedly repudiates this Agreement by refusing or threatening to refuse to comply with any of the provisions of this Agreement; or
- 14.2.2 convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or
- 14.2.3 has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator; or
- 14.2.4 being an individual commits any act of bankruptcy or compounds with his creditors or comes to any arrangements with any creditors, then (and in any such case) the non-defaulting Party may, without prejudice to any other of its rights or remedies and without being liable to the defaulting Party for any loss or damage which may be occasioned, give written notice to the defaulting Party terminating this Agreement with immediate effect;
- 14.2.5 is in Material Breach and the breach is not remedied within fourteen (14) days of written notice to the other party. For the purposes of this Agreement, Material Breach means a breach by the other party of their obligations contained in this Agreement unless accepted in writing by the other party;
- 14.2.6 the Client's failure to make payment for the Service GOSS provides under this Agreement and remains in default not less than 14 days after being notified in writing to make such payment;
- 14.2.7 GOSS may terminate this Agreement immediately if the Client breaches the terms of any other agreement that it has with GOSS.
- 14.2.8 GOSS may terminate this Agreement immediately if the Client fails to pay the Charges or the additional charges.
- 14.3 Without prejudice to its rights hereunder, GOSS shall be entitled (at its discretion) to suspend the provision of the Services (or any of them) if the Client fails to carry out its obligations hereunder in accordance with this Agreement.
- 14.4 The Client shall notify GOSS immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("Change of Control") and provided this does not contravene any Law shall notify GOSS immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. Unless a written approval was granted prior to the Change of Control, GOSS may terminate the Agreement by notice in writing with immediate effect within six (6) Months of being notified in writing that a Change of Control has occurred or is planned or in contemplation or where no notification has been made, the date that GOSS becomes aware of the Change of Control.
- 15 Post termination
- 15.1 Upon termination or expiration of the Agreement (for whatever reason), GOSS shall provide to the Client or to any third party appointed by the Client to provide replacement services such reasonable assistance as may be required by the Client or by such third party for the establishment and provision of replacement services, including (but not by way of limitation) assistance in transferring the Client Deliverables and related documentation and knowledge. GOSS shall be entitled to charge additional charges for the provision of such assistance.
- 15.2 Any termination shall not affect any accrued rights or liabilities of either party nor the continuance of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 15.2.1 Within 10 Working Days of termination or expiration of the Agreement (for whatever reason), the Client shall return (or make available) to GOSS any data (including (if any) GOSS data), GOSS Personal Data and GOSS Confidential Information in the Client's possession, power or control together with other related documentation.
- 16 Non-Solicitation
- 16.1 Each party undertakes that it shall not during the Term and for a period of 12 months thereafter, without the prior written consent of the other, either alone or in conjunction with or on behalf of any person, firm or company:
- 16.1.1 directly or indirectly solicit or entice or attempt to solicit or entice any person who, to its knowledge, is or was in the 12 months prior to such solicitation or enticement (or attempted solicitation or enticement) employed by the other; or
- 16.1.2 assist any other person to do any of the foregoing.
- 16.2 Without prejudice to 16.1 above, each party further undertakes that it shall not during the Term and for a period of 12 months thereafter, without the prior written consent of the other, employ any person who, to its knowledge, is or was in the previous 12 months employed by the other.
- 17 Force Majeure
- Neither party will be liable for any delay in performing or failure to perform any of its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of ninety (90) calendar days, either Party may terminate this Agreement with immediate effect by notice in writing to the other Party.
- 18 Assignment

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- 18.1 Unless otherwise specified on the Front Sheet, this Agreement is personal to the Client and the Client may not assign, loan, lease or otherwise transfer its rights or obligations under this Agreement without the prior written consent of GOSS.
- 18.2 GOSS may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement, provided it gives written notice to the Client.
- 18.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19 Notices
- 19.1 All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient set out on the Front Sheet or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered personally by first class pre-paid letter or facsimile transmission and will be deemed to have been received:
- 19.1.1 by hand delivery—at the time of delivery; or
- 19.1.2 by first class post—48 hours after the date of mailing; or
- 19.1.3 by facsimile transmission or electronic transmission –immediately upon transmission.
- 20 Severability
- 20.1 If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.
- 21 Waiver
- 21.1 No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective must be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.
- 22 Entire agreement
- 22.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements, written or oral. The Client acknowledges that no reliance is placed on any representation made but not embodied in this Agreement. The printed terms and conditions of any purchase order or other correspondence and documents of the Client issued in connection with this Agreement will not apply unless expressly accepted in writing by GOSS.
- 22.2 Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.
- 23 Governing law
- 23.1 This Agreement shall be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales. Headings have been included for convenience only and shall not be used in construing any provision in this Agreement.
- 24 Third Party Contracts
- 24.1 GOSS may distribute third party software programs with the Software packages. These third party programs are subject to their own license terms. The Software contains code that is subject to copyright and software distributed under the Licence is distributed on an "AS IS" BASIS, WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, either express or implied.

Except as otherwise expressly stated herein, nothing in this Agreement confers any rights on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act.