

General Terms of Service

This document provides the **“General Terms of Service”** under which Noggin intends to provide its Service to the Customer in exchange for the Charges. The Agreement is to be entered into by Noggin and the Customer.

1. DEFINITIONS

“Agreement” means the General Terms of Service, the Schedule and any additional terms specified in the Schedule.

“Materials” means any data, information, media or other digital or physical assets required for the provision of the Service.

“Noggin” means Noggin Ltd, a limited company registered in England and Wales, company number 06363503.

“Service” means the collection of web portal, printed and electronic material, presentations and any other forms of digital or physical assets provided by Noggin to the Customer as part of this Agreement.

“Charges”, “Minimum Term”, “Notice Period”, “Start Date”, “End Date” and the **“Customer”** are defined in the accompanying Schedule document.

Unless otherwise indicated, both the singular and plural of definitions shall be construed as the same.

2. WARRANTIES

- 2.1 Each of the parties warrants to the other that it has full power and authority to enter into and fulfil its obligations under this Agreement.
- 2.2 Noggin warrants that it shall provide the Service with reasonable care and skill, and will use its best and reasonable endeavours to ensure that the Service are provided to the Customer on an ongoing and uninterrupted basis.

3. CHARGES AND PAYMENT

- 3.1 Noggin shall issue invoices in respect of the Charges arising from the Service provided, and the Customer shall pay to Noggin the charges set out in such Noggin’s invoice by the due date indicated.
- 3.2 If the Customer fails to pay any amount payable by it under this Agreement, Noggin reserves the right to suspend the provision of the Service until all amounts payable have been received by Noggin.

4. LIMITATION OF REMEDIES AND LIABILITY

- 4.1 Neither party will be liable under this Agreement for loss of revenues, anticipated profits, anticipated savings, goodwill or business opportunity, or for any other indirect or consequential loss or damage.
- 4.2 Noggin shall not be liable in the event of any failure of the Service to perform substantially in accordance with expectations if this is caused by the failure of the Customer to supply Materials to Noggin within a reasonable time.
- 4.3 Both parties’ aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Agreement shall not exceed the total Charges payable by the Customer to Noggin under this Agreement in that calendar year.
- 4.4 These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party’s Intellectual Property rights by the other party, or indemnification obligations.

5. USE OF MATERIALS & INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Customer hereby warrants that it holds copyright or is otherwise licensed or permitted to provide any Materials it provides to Noggin for the purpose of providing the Service, and that such licences shall not be detrimental to the commercial interests of Noggin.
- 5.2 The Customer shall grant Noggin licence to use and distribute Materials as necessary for the provision of the Service.

- 5.3 The Customer may grant access to Noggin to obtain Materials directly from one or more third-parties on the Customer's behalf. Where such access has been granted, the Customer warrants that they have permission to grant such access, and that Noggin may use automated techniques to obtain these Materials.
- 5.4 The Customer shall indemnify Noggin from any third-party claims in respect of such access granted in Section 5.3.
- 5.5 All Intellectual Property arising in connection with this Agreement shall remain the property of Noggin. Subject to receipt of Charges when due, Noggin shall grant the Customer a licence of such intellectual property for the purpose of subsequent re-use and publication.
- 5.6 Each party shall notify the other of any licences and conditions applied to Materials it has obtained, used or intends to use as part of this Agreement, as soon as practically possible and in any case before the Materials are used for any purpose related to this Agreement.

6. TERM AND TERMINATION

- 6.1 The terms constituted by this Agreement shall commence upon the Start Date, and shall continue thereafter until:
 - 6.1.1 The End Date is reached; or
 - 6.1.2 Either party serves notice of termination to the other, subject to Notice Period and Minimum Term; or
 - 6.1.3 Both parties agree in writing to terminate this Agreement at any time; or
 - 6.1.4 Either party breaches the terms of this Agreement, whereupon the other party may terminate this Agreement immediately.
- 6.2 Where Charges are made on a pre-payment basis, refunds on a pro-rata basis shall be at the discretion of Noggin.
- 6.3 On termination of the Agreement all Charges due by the Customer in respect of the Service already provided will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by Noggin.

7. FORCE MAJEURE

- 7.1 Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labour condition, governmental action and Internet disturbance) that was beyond the party's reasonable control.

8. GOVERNING LAW AND JURISDICTION

- 8.1 This agreement, and any disputes which may arise in connection with it, shall be governed by and construed in accordance with English and Welsh law and the parties shall submit to the exclusive jurisdiction of the English and Welsh courts.

9. MISCELLANEOUS

- 9.1 Notices and consents given under this agreement shall be delivered by hand or by email, to Noggin at support@noggin.bi and to the Customer at the email address supplied on registration. The serving of any document 'in writing' shall include via email.
- 9.2 By exceptional and prior arrangement, notices and consents may also be delivered by post.
- 9.3 Variations to this agreement may be made by Noggin and notified to the Customer not less than 60 days before the variations come into effect. The Customer's continued use of the Service after the effective date shall be deemed to constitute its agreement to these changes.
- 9.4 Neither party may assign or transfer any part of this Agreement without the written consent of the other party.
- 9.5 If any provision of this Agreement is found unenforceable, the remainder of the Agreement will remain in full force and effect.
- 9.6 In the event of a conflict between terms of this Agreement, the Schedule shall take priority, followed by any supplementary terms, followed by the General Terms of Service.

LAST UPDATED 1 NOVEMBER 2014