

## GENERAL CONDITIONS

V2 21.03.17

### GENERAL CONDITIONS OF THE PARTNERSHIP

#### Definitions:

**Agreed Purposes:** the purposes set out in the Schedule to this Agreement, as amended from time to time.

**Agreement:** this partnership agreement comprised the General Conditions, the Annex and the Schedule.

**Annex:** the contractual documents attached to the Agreement, which define the Services provided by the Partner, their pricing and the reimbursement terms. They also contain all the needed information and administrative documents relating to the Partner and its establishment.

**Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** shall have the respective meanings prescribed by Data Protection Legislation in force at the time.

**Data Protection Legislation:** (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.

**Experience:** total of the Service(s) offered to a Voucher Holder.

**Experience Gift:** Gift box or e-Box distributed under the Trademarks, which offer one Service or a selection of various Services offered by the Partner, which shall be made up of an illustrated guide and a Voucher, whether physical or dematerialised.

**Group:** in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time

to time of a holding company of that company, and any reference to **Group Company** shall be construed accordingly. For the purposes of which, a reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the CA 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), by way of security or in connection with the taking of security; or (b) its nominee.

**Buyagift Companies:** means each of *Buyagift Plc*, *Smartbox Group Limited*, registered under n°463103, registered office at Joyce's Court, Block A, Talbot St, Dublin 1, F01FV59 Ireland; *Smartbox Group Company Limited*, registered under n°450421, registered office Joyce's Court, Block A, Talbot St, Dublin 1, F01FV59 Ireland; *Wish Days Srl*, registered under n°03591370238, registered office Via Guglielmo Oberdan, 4, 37121 Verona VR, Italy, and all other Group Companies of *Smartbox Group Company Limited*, from time to time:

**Partner:** the company or person which is the signatory of this Agreement and provides the Service.

**Permitted Recipients:** the Relevant Parties to this Agreement, the employees of each Relevant Party, any Group Company of a Relevant Party, any third parties engaged to perform obligations in connection with this Agreement, and any other Permitted Recipients identified and agreed between the parties from time to time.

**Relevant Parties:** means:

- (a) on one hand, the Partner (as one Relevant Party); and
- (b) on the other hand, any Buyagift Company (as the other Relevant Party) which from time to

time shares any Shared Personal Data with the Partner, or with whom the Partner from time to time shares any Shared Personal Data.

**Service or Component:** offer(s) of the Partner, as described in the Annex.

**Shared Personal Data:** the personal data shared between the Relevant Parties under clause 12.1 of this Agreement. Shared Personal Data shall be confined to the categories of data, relevant to the categories of data subject, as collected by or on behalf of the relevant Data Discloser (or by or on behalf of any Group Company of that Data Discloser), in each case, as identified in the Schedule to this Agreement, as amended from time to time.

**Trademarks:** SMARTBOX®, LA VIDA ES BELLA®, DAKOTABOX®, BUYAGIFT®, BONGO®, CADEAUBOX®, EMOZIONE3® and any other trademarks that any Buyagift Company may acquire and/or market.

**Voucher:** the document with no face value, whatever the form and packaging thereof, that gives right to the Voucher Holder to the provision of the Experience from the Partner.

**Voucher Holder:** any person who holds a Voucher giving him the opportunity to enjoy an Experience from the Partner of his choice

### Clause 1 - Purpose

**1.1** This Agreement sets out the terms and conditions in accordance with which Buyagift is entrusted as a business developer by the Partner, with the task of bringing him new customers and promoting his Services as described in the Annex.

The promotion of the Partner's Services will be done by issuing Vouchers, editing and marketing, offline and online, Gift Boxes, at Buyagift cost, in the name and on behalf of the Partner, in exchange for the provision of the Partner's Services.

In no circumstances does Buyagift purchase the Partner's Services.

### Clause 2 - Commission

In consideration of Buyagift's business development services provided to the Partner, Buyagift will invoice a commission fee as referred to in the Annex.

The VAT regime applicable to this commission is defined in the Annex.

### Clause 3 - Promotion of the Partner's Services

Buyagift has acquired genuine experience and a recognised know-how in the creation of "Experience Gifts".

The Partner agrees that Buyagift shall be free to integrate his Service(s) into any one or other of its Vouchers of the Buyagift' Trademarks which are **BUYAGIFT®**. After acceptance by the Partner, his Services could be marketed in the Gift-boxes and e-Boxes, their guides, the website(s) of any Buyagift Company, etc. Buyagift can also market the Partner's Service as a Unique Experience Voucher.

Buyagift shall be free in the organisation of the promotion of the Partner's Service(s) and its prospecting of new customers for the Partners. In particular, Buyagift may devise and distribute, subject to its sole discretion, the presentation of the Partner's Service(s), without restriction, in the framework of its Vouchers, including, *inter alia*, all visuals accompanying the description of such Service(s). These Experience Gifts shall be marketed through multiple distribution channels at the discretion of Buyagift: mass retail, specialized stores, Buyagift's websites, online stores, etc.

### Clause 4 - Price of the Experience Gifts

The Partner agrees that the facial value of the Experience Gifts may differ from the price payable for his Services.

In any event, the Partner shall always be reimbursed the amount set out in the Annex.

### Clause 5 - Quality of the Services and treatment of the Voucher Holders

**5.1.** A high-quality service is very important for the satisfaction of Buyagift, and the Partner agrees to deliver a high-quality of Services to the Voucher Holders.

The Partner shall ensure that:

- all equipment used in the provision of any experiences, activities or services provided are properly maintained and kept in good state of repair; and
- all its staff and any independent contractors used by him are adequately trained and/or qualified for their respective jobs.

The Partner agrees to accept all the Voucher Holders, throughout the year, during his opening periods specified in the Annex; except in cases of proven unavailability, and to treat them in the same manner as his other customers.

The quality of the Service provided by the Partner to the Voucher Holders shall be rated by Buyagift according (but not limited to) the result of Buyagift beneficiary survey, any proactive and direct feedback made by the Voucher Holder to Buyagift Customer Service and quality data obtained from external service providers. The Partner agrees to discuss immediately any quality issue brought up to Buyagift attention by a Voucher Holder.

**5.2** If it is not the case, Buyagift may terminate the Agreement pursuant to Article 16.

#### **Clause 6 - Intellectual property rights**

**6.1.** The Partners agrees to provide Buyagift at least 4 High Definition digital photos for each Service, in accordance with the [Photographic Charter](#).

**6.2** At the same time, the Partner authorises Buyagift to act in accordance with the provisions of the clause below:

If Buyagift identifies visual elements which could permit a best promotion of the Partner's Services, it may request the Partner to use them, such request being notified by email. Failing to receive from the Partner a reasoned refusal within 7 calendar days from the date of notification of the request of use, Buyagift will be authorized to use the visual elements that were notified in compliance with the conditions of use from sections 7.3, 7.4, and 7.5 this article.

**6.3.** The Partner assigns Buyagift, for free and in a non-exclusive way, the right for online and offline exploitation on any Vouchers and by any means (including the right of representation and the right of reproduction, which contains the right of modification and adaptation) of all original contents (photographs, texts, logos, brands, etc.) directly (clause 6.1 above) or indirectly (clause 6.2 above) provided by the Partner, across all geographies and for the duration of the partnership, increased by a period of 2 years. This assignment includes the right for Buyagift to use the visual and textual elements for promoting and marketing the Services, and for referencing, informing, filing and/or booking purposes.

**6.4.** The Partner authorizes Buyagift to use on any Voucher and by any means, across all geographies and for the duration of the partnership, increased by a period of 2 years, the non-original content (photographs, texts, etc.) directly (clause 6.1 above) or indirectly (clause 6.2 above) provided by the Partner for promoting, referencing, informing, filing and/or booking purposes. This authorization provided for free and in a non-exclusive way includes the right for Buyagift to transfer to any Buyagift Company and to its partners the files related to the non-original contents for promoting and marketing the Services.

**6.5.** Regarding the images of the Service, including the Partner's staff, the Partner undersigns to have obtained the agreement of the person(s) shown in the photograph(s), for the publication and diffusion of the images.

**6.6.** The Partner guarantees Buyagift against all claims, judicial or extrajudicial actions related to the contents and agrees to fully indemnify Buyagift of all costs and losses which might be caused thereby.

**6.7.** The Partner allows Buyagift to report on all its Vouchers of the Partner's awards, certifications and distinctions obtained from companies or third parties.

**6.8.** The Partner is authorized to use the Trademarks, subject to prior written consent. However the Partner shall not be authorized to

acquire the key words for referencing on Internet, corresponding to the Trademarks.

### **Clause 7 – Our daily relationship**

Once the Partner’s account is set up in Buyagift systems, his/her relationship will be managed by the dedicated Buyagift Partners Relations Team. The Partner Relations Team will support the development of the Partner within the Buyagift ecosystem from initial Welcome stage, Training and Support through to business development to maximise the business volume for the Partner. The Partner Relations Team will also communicate all developments and innovations that further enhance the business volume of the Partner.

### **Clause 8 – Financial conditions**

#### **8.1 Promotion Fee**

The Partner agrees to pay Buyagift the promotion fee calculated in accordance with Appendix 1 (‘the Promotion Fee’) in relation to each Activity that is validly booked by a Customer with the Partner.

The Promotion Fee shall be inclusive of VAT unless otherwise expressly stated.

The Partner shall immediately notify Buyagift, by means of the Buyagift online booking verification and notification process, of the redemption of each Voucher for an Activity booked with the Partner. Buyagift shall invoice the Partner each month for the Promotion Fee payable on all bookings notified to Buyagift in respect of the previous month and shall be entitled to deduct all outstanding Promotion Fees (including any VAT) from any payment due to the Partner.

#### **8.2 Voucher Redemption Payments**

The voucher redemption payment for each particular Activity (the “Voucher Redemption Payment”) shall be the amount specified in Appendix 1.

Buyagift agrees to account to the Partner for the balance (after deducting the Promotion Fee) of the Voucher Redemption Payment on each valid booking to receive Activities from the Partner which has been notified to Buyagift through the Buyagift

booking verification and notification process. The payment to the Partner shall be made on the 20<sup>th</sup> of each month against each valid booking for Activities booked up to 60 days from the date the statement of account is generated, unless Buyagift has any queries about the booking.

Buyagift reserves the right to withhold payment to the Partner in the event that the Partner is in breach of its contract to provide an Activity to a Customer.

Buyagift will issue a VAT invoice in respect of its supply of services to the Partner.

#### **8.3 Booking Process**

The Partner agrees to comply fully with Buyagift’s online booking verification and notification process, as set out on Buyagift’s website and/or notified to the Partner from time to time.

The Partner shall be responsible for using the Buyagift booking verification and notification process to ensure that Vouchers used by Customer are valid, meaning the Voucher must, as at the date of the booking, be one that:

- can be validly redeemed for the specified Activity;
- has sufficient credit against it to meet or exceed the Voucher Redemption Payment for the specified Activity; and
- has not expired.

If the credit against a Voucher is not sufficient to meet the Voucher Redemption Payment, Buyagift shall only pay to the Partner an amount equal to the credit against the Voucher (less the Promotion Fee) but the Partner may, at its own discretion, agree to accept top up payment directly from the Customer.

### **Clause 9 – Legal authorisations, insurance and change of situation**

9.1 The Partner undertakes to hold and provide Buyagift all the professional certifications and authorisations legally required to provide his Service(s).

9.2 The Partner is required to arrange insurance in its own name against the risks assumed under this agreement for any incident or any claim arising in

connection with the supply of Services, covering all types of damage, including professional civil liability insurance policy. Such insurance shall at all times be to a minimum value of £5million, be provided by an insurer of good repute and the Partner shall provide a copy of the same to Buyagift on request.

9.3 The Partner shall keep Buyagift indemnified in full against all costs, expenses, damages and losses awarded against or incurred or paid by Buyagift as a result of or in connection with any claim made against Buyagift by a Voucher Holder, arising in connection with the supply of Services.

9.4 If the Partner's situation changes with regard to such authorisations, certifications or qualifications or should the Partner stop operating its business, the Partner undertakes to inform Buyagift thereof within seven (7) days after such change.

#### **Clause 10 – The liability**

Buyagift shall have no liability to the Partner in respect of any losses or damages caused by the Voucher Holder or by the Partner to the Voucher Holder.

Any compensation paid by Buyagift to Voucher Holder resulting from the Partner's breach, in the context of the provision of its Services, shall be assumed by the Partner in the form of a partial or full withholding of the reimbursement of the amount payable in respect of its Services. In any case, the Partner will be notified in any circumstances of the eventual compensation paid to the Voucher Holder by Buyagift.

#### **Clause 11 - Confidentiality**

The Parties undertake to keep the terms of this Agreement and all the information of which it may become aware in the context of the performance of the Agreement strictly confidential. In the event of the termination of this Agreement for any reason whatsoever the Parties undertake to keep all the information referred to above of which it may become aware in the context of the performance of this Agreement confidential for a period of 2 years from such termination.

#### **Clause 12 – Personal Data**

**12.1 Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the Relevant Parties as data controllers. Each Relevant Party acknowledges that each Relevant Party (each a **Data Discloser** to the extent that it so discloses Shared Personal Data) is likely to regularly disclose to the other Relevant Party (each a **Data Recipient** to the extent that it has Shared Personal Data disclosed to it), for the Agreed Purposes, Shared Personal Data collected by, or on behalf of, the relevant Data Discloser (or by or on behalf of any Group Company of that Data Discloser).

**12.2 Effect of non-compliance with Data Protection Legislation.** Each Relevant Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Relevant Party (**Defaulting Party**), if not remedied within 30 days of written notice from the other Relevant Party (**Innocent Party**):

(a) shall, where the Innocent Party is Buyagift Company and the Defaulting Party is the Partner, give Buyagift Plc grounds to terminate this Agreement with immediate effect, by giving notice in writing to the Partner;

(b) shall, where the Innocent Party is the Partner and the Defaulting Party is a Buyagift Company, give the Partner grounds to terminate this Agreement with immediate effect, by giving notice in writing to Buyagift Plc.

**12.3 Particular obligations relating to data sharing.** Each Relevant Party shall:

(a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

(b) ensure that full information is given to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case

may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

(c) process the Shared Personal Data only for the Agreed Purposes;

(d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

(e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Agreement; and

(f) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

**12.4 Transfer of personal data outside the EEA.** Each Relevant Party undertakes not to transfer any personal data received from a Data Discloser outside the EEA unless the transferor:

(a) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and

(b) ensures that: (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 of the GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

**12.5 Mutual assistance.** Each Relevant Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Relevant Party shall:

(a) consult with the other Relevant Party about any notices given to data subjects in relation to the Shared Personal Data;

(b) promptly inform the other Relevant Party about the receipt of any data subject access request;

(c) provide the other Relevant Party with reasonable assistance in complying with any data subject access request;

(d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other Relevant Party wherever possible;

(e) assist the other Relevant Party, at the cost of the other Relevant Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the other Relevant Party without undue delay on becoming aware of any breach of the Data Protection Legislation;

(g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;

(h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;

(i) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.5 and allow for audits by the other Relevant Party or the other Relevant Party's designated auditor; and

(j) provide the other Relevant Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

**12.6 Complaints processing.** If either Relevant Party (**First Relevant Party**) receives a complaint from a customer, the First Relevant Party shall not share any personal data collected from the

complainant, with the other Relevant Party (**Second Relevant Party**) which is not in the relevant category of data provided for in the Schedule to this Agreement, and shall, before sharing any of that complainant's personal data with the Second Relevant Party, confirm in writing to the Second Relevant Party:

(a) that the First Relevant Party has complied with Data Protection Legislation for the purposes of collecting the complainant's personal data and sharing it with the Second Relevant Party for the relevant Agreed Purposes; and

(b) that the personal data shared does not contain any sensitive personal data or any special categories of personal data.

**12.7 Indemnity.** Each Relevant Party shall indemnify the other Relevant Party (and each of its Group Companies) against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified parties arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified parties give to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

#### **Clause 13 - Termination**

This Agreement can be cancelled by either party giving to the other 9 months' written notice of their intention to terminate the Agreement, or immediately should there be a breach of contract

which (if capable of rectification) is not rectified within 30 days of notice of breach being given to the relevant party or in the event that the other party becomes insolvent or enters into any arrangements with its creditors or takes or suffers any similar action in consequence of debt. All outstanding vouchers must be still honoured or (if this is not possible) where BAG has already passed the Partner the amount paid by the customer for the Activity this amount must be refunded to BAG. Termination of this Agreement must be sent by registered post. Termination shall not affect BAG's right to receive commission in respect of all Vouchers sold prior to the date of termination.

#### **Clause 14 - Early termination for breach**

In the event of non-compliance by one of the Parties with any one of its obligations pursuant to the Agreement, and in particular in the event of the non-compliance of the Partner's Services and/or non-compliance with the quality requirements, within 15 business days of the sending of a warning notice remained unheeded, the other Party may automatically terminate this Agreement, in its entirety and/or one or all of Services included in the Annex, by any means, without notice or compensation.

#### **Clause 15 - Entire agreement**

This Agreement cancels and replaces all previous relationships between the Parties having the same subject-matter.

#### **Clause 16 - Governing law and jurisdiction**

The Agreement shall be governed by the law of the country in which the Partner is established. Any dispute relating to the interpretation, performance or termination will be subject to the exclusive jurisdiction of the competent courts of the defendant's place of residence.

## **Schedule**

<b>Data Discloser</b>	<b>Data Subject</b>	<b>Categories of data</b>	<b>Agreed Purposes</b>
Any Buyagift Company which from time to time shares personal data with the Partner.	Customers of any Buyagift Company.	Name, email address, phone number.	The performance by each Relevant Party of its obligations under this Agreement or its obligations arising in connection with this Agreement.
Any Buyagift Group company which from time to time shares personal data with the Partner.	Persons registering their details on the website of any Buyagift Company.	Name, email address, phone number.	The performance by each Relevant Party of its obligations under this Agreement or its obligations arising in connection with this Agreement. To cross reference the person registering their details, against the person wishing to benefit from the Partner's goods or services.
Any Buyagift Group company which from time to time shares personal data with the Partner.	Persons registering a complaint with any Buyagift Company.	Name, email address, phone number. Details of the complaint.	Any of: Addressing the complaint with the Data Recipient, contacting the complainant in connection with the complaint, deciding what action to take in connection with the complaint, communicating the same to the complainant and actioning the same.
Any Buyagift Group company which from time to time shares personal data with the Partner.	Buyagift points of contact for contract management purposes.	Name, email address, phone number.	The performance by each Relevant Party of its obligations under this Agreement or its obligations arising in connection with this Agreement.
Partner.	Partner customers.	Name, email address, phone number.	The performance by each Relevant Party of its obligations under this Agreement or its obligations arising in connection with this Agreement.



Partner.	Persons registering a complaint with Partner.	Name, email address, phone number. Details of the complaint.	Any of: Addressing the complaint with the Data Recipient, contacting the complainant in connection with the complaint, deciding what action to take in connection with the complaint, communicating the same to the complainant and actioning the same.
Partner.	Partner points of contact for contract management purposes.	Name, email address, phone number.	The performance by each Relevant Party of its obligations under this Agreement or its obligations arising in connection with this Agreement.