

# Digital Terms & Conditions

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**Before you agree that Voice Brand Design will provide the Products, please read these terms and conditions.**

**If you have questions concerning them please ask before entering into a contract with Voice Brand Design.**

## 1 Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

'Agreed Price' The cost of providing the Products as set out in the The Proposal

'Annual /Monthly Fees' Means the hosting fee and domain fee and any other fees payable monthly/annually for continued use of the Products

'Customer' Means the person, persons or company to whom the The Proposal is addressed

'Customer Specifications' the visual features or layouts of the Products created at the specific request of the Customer which do not form part of their generic functionality

'The Proposal' The document sent to the Customer detailing the Products and the Agreed Price and 'The Proposal Date' means the date of the The Proposal

'Products' Any internet or off-line materials, products and services or website which Voice Brand has agreed to provide as set out in the The Proposal

'Intellectual Property Rights' all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trade marks, service marks and trade names

'Third Party Software' any software owned and controlled by a third party being customised by Voice Brand to the specification of the Customer for use as part of the Products

'Voice Brand' Means Voice Brand Design Ltd (Co reg'n no 6620368) whose registered office is Winding House, 24 Narborough Wood Park, Desford Road, Enderby Leicestershire LE19 4XT

## 2 Voice Brand's obligations

Voice Brand shall:

- 2.1 agree with the Customer the Customer Specifications and
- 2.2 design and produce a prototype of each of the Products for the Customer according to the Customer Specifications
- 2.3 upon completion of the initial design provide the Customer with a prototype of each of the Products for approval
- 2.4 (in respect of any website or internet based Product) upon approval being obtained produce a working model of the Products and present them to the Customer for testing
- 2.5 Upon completion of 2.1 to 2.4 above produce the Products for use by the Customer.

## 3 Customer's obligations and acknowledgements

The Customer shall:

- 3.1 furnish Voice Brand with such information and documents as it may reasonably request and make available to Voice Brand, free of charge, such facilities as are necessary to enable Voice Brand to carry out its obligations under this Agreement; and
- 3.2 ensure that its employees and other independent contractors co-operate reasonably with Voice Brand;

- 3.3 keep all information (including but without limitation passwords and manuals) provided by Voice Brand relating to the Products safe and confidential
- 3.4 promptly deal with any request from Voice Brand for approval at any stage of development of the Products and the Customer acknowledges that if at any time the Customer shall commence live running or use of the whole or any part of the Products (other than for testing in accordance with 2.4 above) then the Customer shall be deemed to have accepted the Products
- 3.5 comply at all times with all applicable laws relating to the Products and the use of them
- 3.6 comply at all times with Voice Brand's anti-spamming policy as published on Voice Brand's website
- 3.7 pay the Annual Fees on each anniversary of the The Proposal Date and the Customer acknowledges that failure to pay these fees will result in the Products (and any associated email products) becoming unavailable or unusable.
- 3.8 the Customer warrants and represents to Voice Brand that the Customer is the owner of all Intellectual Property Rights in any materials (including but not limited to any images or text) which the Customer provides to Voice Brand and the Customer will indemnify Voice Brand in full against any claim or action or loss which Voice Brand suffers as a result of any breach of this warranty'.

## 4 Third Party Software

- 4.1 Voice Brand shall, where it considers it appropriate, use Third Party Software or the services of third parties in order to provide the Products
- 4.2 Voice Brand does not give any warranty in respect of Third Party Software or any third party services and will not accept liability for any defect in the facilities, products, software or services of any third party including the Third Party Software.

## 5 Warranties

- 5.1 Voice Brand warrants that it is entitled to enter into this Agreement and that it is entitled to grant the Customer the right to use the Products and the Third Party Software in accordance with this Agreement.
- 5.2 Voice Brand shall not be liable to the Customer for any claim brought by or against the Customer (whether for breach of the Intellectual Property Rights of any third party or otherwise) caused by modifications or customisation made by or on behalf of the Customer to the Products, without the authorisation of Voice Brand.
- 5.3 If Voice Brand receives a written notice from the Customer identifying a breach of the warranties set out in clause 5.1, or otherwise becomes aware of its failure to comply with the warranties set out in clause 5.1, then Voice Brand shall, at its own expense, promptly remedy such breach or failure provided that Voice Brand shall have no liability or obligations under the warranties unless it shall have received written notice of the defect or error.

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5.4 To the extent permitted by applicable law, Voice Brand:

5.4.1 excludes all conditions, terms, representations (other than fraudulent or negligent representations) and warranties relating to the Products, either express or implied, that are not expressly stated herein, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;

5.4.2 makes no warranty that the Products are error free or that their use will be uninterrupted and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of this Agreement;

## 6 Data protection

The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

## 7 Ownership of the Products

7.1 Ownership of the Products (save for any Third Party Software) shall belong to the Customer but the Customer acknowledges that ownership of the domain name of any website does not pass to the Customer and may be used only for so long as the Annual Fees are paid.

7.2 Ownership of the Third Party Software shall belong to the third party and the Customer shall comply with any conditions for its use that may at any time be communicated to the Customer .

## 8 Payment

8.1 The Agreed Price shall be payable by the Customer as set out in The Proposal

8.2 Any charges payable by the Customer under this Agreement in addition to the Agreed Price shall be paid within 7 days of the date of the invoice

8.3 Voice Brand shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of HSBC Bank plc, calculated from the date when payment of the invoice becomes due up to and including the date of actual payment whether before or after judgment.

8.4 The Customer shall also pay or procure the payment to Voice Brand of all reasonable travelling and other out-of-pocket expenses incurred in the course of the Project subject to a maximum amount of £500 per day excluding all travel costs.

## 9 Liability

9.1 Voice Brand shall during the term of this Agreement maintain employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with this Agreement.

9.2 Voice Brand shall indemnify the Customer for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under this Agreement or by defects in the Products.

9.3 Voice Brand will indemnify the Customer for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under this Agreement limited to £250,000 for any one event or series of connected events.

9.4 Save in respect of claims for death or personal injury arising from Voice Brand's negligence, in no event will Voice Brand be liable for any damages resulting from loss of data or use, lost

profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Voice Brand, whether such damages were reasonably foreseeable or actually foreseen.

9.5 Except as provided above in the case of personal injury, death, and damage to tangible property, Voice Brand's maximum liability to the Customer under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the greater of the sum for which Voice Brand carries professional negligence insurance cover pursuant to clause 9.1 above, whether or not the claim in question is covered by such policy; or a sum equivalent to the price paid by the Customer for the products or services that are the subject of the Customer's claim, plus damages limited to 25% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Customer in obtaining alternative products and/or services.

9.6 The parties acknowledge and agree that the limitations contained in this clause 9 are reasonable in the light of all the circumstances.

9.7 The Customer's statutory rights as a consumer (if any) are not affected.

9.8 All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort (including negligence) or any other form of action. For the purposes of this clause, 'Voice Brand' includes its employees, subcontractors and suppliers who shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

## 10 Hosting

10.1 You acknowledge that you have no right, title or interest in any IP address allocated to you by us and that any IP address so allocated is done so as part of the Services and is not portable or otherwise transferable by you in any manner whatsoever. You agree that you will have no right title or interest in the IP address upon termination of this agreement and that the acquisition by you of a new IP address for your website following termination of this Agreement shall be your exclusive responsibility.

10.2 If an IP address is renumbered or reallocated by us, we shall use reasonable endeavours to avoid any disruption to you.

10.3 If and to the extent that you require use of any software supplied by us in order to use the Services we shall grant you a royalty-free, worldwide, non-transferrable, non-exclusive licence to use the same in object code form only. You have the right to authorise your employees, agents and third party consultants (if any) and contractors to use the same as aforesaid provided that such use is consistent with these terms and conditions.

10.4 You agree to grant to us a royalty-free, worldwide, nonexclusive licence to use any software supplied by you in relation with performing our obligations under these terms and conditions in connection with providing the Services.

10.5 For the avoidance of doubt nothing in clauses 10.3 and 10.4 above transfers or grants any right title interest or intellectual property rights in the software so used and it is hereby agreed that you will make no copies of any software provided by us save whereby our express written consent is given.

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- 10.6 The website we host for you shall be available to visitors pursuant to the Services for that time as specified in our service level agreement. Where the website is not so available you will be credited with an amount calculated monthly as an aggregate of all downtime events. For the purposes of these terms and conditions 'Downtime' means any service interruption in the availability to visitors of the website pursuant to provision of the Services but only if the interruption is due to a default by us resulting in Downtime.
- 10.7 Outages, including emergency and previously scheduled windows for router, switch or server maintenance, are not to be included in Downtime calculations. We shall take all commercially reasonable efforts to provide you with previous email notification of all scheduled and emergency outages. We shall notify you of any report of Downtime and investigate it using suitably qualified personnel as soon as reasonably practicable after becoming aware of it and shall remedy the Downtime as soon as reasonably practicable.
- 10.8 – You shall not distribute any content on the website any material or other information that:
- 10.8.1 infringes any intellectual property rights;
- 10.8.2 is in breach of any law, statute or regulation;
- 10.8.3 is defamatory, libellous, unlawfully threatening or harassing;
- 10.8.4 is obscene, pornographic or indecent; or
- 10.8.5 contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any personal information
- 10.9 For the further avoidance of doubt, we shall have no liability for the contents of any communication transmitted by virtue of the Services
- 10.10 You acknowledge and agree to grant to us a non-exclusive, royalty free licence during the period when we provide the Services to use store and maintain content on a server for the purposes of providing the Services in accordance with these terms and conditions. We shall be entitled to make such copies as may be necessary to perform our obligations herein, including back up copies of content. For the avoidance of doubt, nothing in this clause transfers or grants us any right title or interest in any intellectual property rights in your content, except for any rights expressly granted herein.
- 10.11 You warrant to us that:
- 10.11.1 our use of your content or software supplied by you shall not infringe any third party intellectual property rights 10.11.2 you have the right power and or authority to licence the content and your software to us.
- 10.12 We shall accept no liability for any loss of data. Where backups are provided, no liability can be accepted for their integrity.
- 10.13 Our hosting service will be available 99.9% of the time in any given month. Please see our Digital SLA's Terms and Conditions available on request.
- 10.14 The minimum hosting term is twelve months unless otherwise stated. Hosting will be renewed automatically for further periods of 12 months at the end of the term unless terminated in accordance with these terms and conditions. If you wish to terminate the agreement we require thirty days written notice prior to the renewal date, where a charge may be incurred for termination. We may terminate this agreement at any time by providing you with thirty days' notice. In this case, we will return all files to you by digital transfer.
- 10.15 If you choose to store credit card information on your website, you do so at your own risk. As the administrator for your website, you are responsible for deleting the customer's order after processing to ensure the details are removed. We can provide secure credit card processing at extra cost, if so required.
- 10.16 We may include footer links on any page of any website hosted with us. We will ensure these footer links are styled in a non-intrusive font and style in order to avoid these links becoming prominent in the website design. These links will be included unless expressly requested otherwise by you.
- 10.17 Where you provide the hosting provision (or an alternative third party suggested by you) we reserve the right to charge for investigation of this hosting provision prior to use, and for uploading of the website and testing on this provision.
- ## 11 Termination
- 11.1 The Customer may terminate this Agreement at any time by giving at least 30 days' prior written notice to Voice Brand.
- 11.2 Voice Brand may terminate this Agreement immediately on giving notice in writing to the Customer if the Customer commits any material breach of this Agreement or the Customer permanently discontinues use of the Products.
- 11.3 Immediately upon the termination of this Agreement, the Customer shall return to Voice Brand the Third Party Software and all copies of the whole or any part thereof or, if requested by Voice Brand, shall destroy the same (for example by erasing them from the magnetic media on which they are stored) and certify in writing to Voice Brand that they have been destroyed.
- 11.4 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- ## 12 General
- 12.1 Voice Brand shall have no liability to the Customer if it is prevented from, or delayed in performing, its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, in which case Voice Brand reserves the right to cancel this Agreement.
- 12.2 Each right or remedy of Voice Brand under this Agreement is without prejudice to any other right or remedy of Voice Brand whether under this Agreement or not.
- 12.3 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
- 12.4 Failure or delay by Voice Brand in enforcing or partially enforcing any provision of this Agreement shall not be construed as a waiver of any of its rights under this Agreement.
- 12.5 Any waiver by Voice Brand of any breach of, or any default under, any provision of this Agreement by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.
- 12.6 Voice Brand shall have the right to assign the benefit of this

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Agreement to any third party and shall notify the Customer in the event of any such assignment being made.

- 12.7 All communications between the parties about this Agreement shall be in writing and delivered by hand or sent by recorded delivery:
- 12.7.1 (in case of communications to Voice Brand) to its registered office or such changed address as shall be notified to the Customer by Voice Brand; or
- 12.7.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Agreement or such other address as shall be notified to Voice Brand by the Customer.
- 12.8 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 12.9 If any dispute of a technical nature relating to the functions or capabilities of the Products or any similar or related matter arises then such a dispute shall be referred for final settlement to an expert nominated jointly by the parties or failing such nomination within 14 days after either party's request to the

other therefore nominated at the request of either party by the President for the time being of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and whose costs shall be borne between the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees. In any other case the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Agreement.

- 12.10 Where a person has signed this Agreement on behalf of another person or a company Voice Brand is entitled to assume that that person has the full authority to do so and that the other person or company accepts these Terms. In addition, the person signing is guarantees the payment for the Service and by signing these Terms agrees that if the other person or company fails to pay any money owing to Voice Brand then the person signing will be personally liable for this amount.
- 12.11 Time shall not be of the essence for any dates or times when Services are due to be performed or completed or the length of time that any Service will take to perform.

Name: .....  
Signature: .....  
Date: .....

For and on behalf of Voice Brand Design Limited

Name: .....  
Signature: .....  
Date: .....

For and on behalf of.....