



Terms & Conditions – Supply of Services

In these Terms and Conditions “we” and “our” refers to Vanilla Active Limited, a limited liability company incorporated in England (registered number 06672476) with registered office address at 11 Welbeck Street London W1G 9XZ and correspondence address at Devonshire House, Borehamwood, Hertfordshire WD6 1QQ, and “you” and “your” refers to the person firm or entity on whose behalf any Proposal issued by us is acknowledged and/or signed. Our Services are supplied strictly subject to these Terms and Conditions.

These Terms and Conditions shall apply to all Service Agreements to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document). No terms or conditions endorsed on, delivered with or contained in any document from you shall form part of a Service Agreement simply as a result of such document being referred to in a Service Agreement. Any order or acceptance of any Proposal by you shall be deemed to be an offer from you subject to these Terms and Conditions. No order placed by you shall be deemed accepted by us until we issue a written acknowledgement.

1 Our Responsibilities

- 1.1 We shall use reasonable care and skill in the provision of the Services.
- 1.2 We shall use reasonable endeavours to meet any specified delivery dates, but any such dates shall be an estimate only and time for such delivery shall not be of the essence of any Service Agreement. We do not operate an out-of-hours service and are only contactable during our normal office hours (9am-5.30pm on Business Days), unless agreed in advance in writing.

2 Your Responsibilities

- 2.1 Our performance of the Services is dependent on you providing us (including any of our employees, agents, consultants and subcontractors) with such information and assistance (including Client Materials) that we may reasonably require from time to time. You will use reasonable care and skill to ensure that all such information and assistance is provided on a timely basis and is accurate and complete.
- 2.2 You will appoint a project manager (**Project Manager**) who shall have the authority to bind you on all matters relating to any Service Agreement. The Project Manager shall also act as a liaison between us and shall be responsible for acting on all requests for information and guidance given by us under a Service Agreements.
- 2.3 You shall be responsible for ensuring that the terms of the Proposal and any information it provides relating to the Specification is complete and accurate. It is your exclusive responsibility to ensure that the Specification contains full details of, and adequately reflects, your business and/or functional requirements in relation to the Services and/or Deliverables.
- 2.4 You will be responsible for ensuring your computer system contains proper security and safety measures, including comprehensive virus, firewall in accordance with best computing practise.
- 2.5 It shall be your sole responsibility to obtain and maintain all necessary licences, permissions and consents in all countries which may be required in connection with the provision and use of the Services, before the date on which the Services are to start. This includes ensuring that the Services comply with all disability discrimination legislation and compliance with the W3C standards. It shall also be your responsibility to ensure that the Website carries all disclaimers, warnings and public information which any competent lawyer acting for you would advise.
- 2.6 Accordingly you agree to indemnify us and hold us harmless and our, subcontractors agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that the Services or use of them are contrary to any law, code or regulation in any country.

3 Change in Services

- 3.1 If after the commencement of a Service Agreements either of us wishes to change the scope or specification of the Services, the party desiring a change shall submit details to the other in writing.
- 3.2 We shall consider any such changes and within a reasonable amount of time supply you with any revisions to the relevant Proposal relating to any affects to timing, our charges, the proposed Specification and any other changes. We shall be under no obligation to proceed with any changes unless you agree to such necessary changes.
- 3.3 You shall be responsible for paying for all Services or other work or services provided by us to you even though not contained or stated on a Proposal, including, but not limited to any Services, work or services provided:
 - 3.3.1 on a experimental, testing or evaluative basis;
 - 3.3.2 in connection with correcting, amending or redoing any Client Materials and necessary or required in order to provide the Services in accordance with a Proposal; or
 - 3.3.3 alterations, amendments or corrections made or requested to be made by you including after the receipt the Deliverables by you.
- 3.4 Where you allow us to propose, decide or use our judgment as to design, layout, type style, typeface, style etc of any material then, if you wish to make any changes, alterations or amendments, you shall pay for such changes, alterations or amendments.
- 3.5 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event.



- 3.6 If the performance of any of our obligations under a Services Agreement is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (**Customer Default**):
- 3.6.1 we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer Default prevents or delays our performance of any of our obligations;
- 3.6.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 3.6; and
- 3.6.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

4 Service Exclusions

- 4.1 Our Services **do not** include:
- 4.1.1 any work that is required due to a computer virus or other malicious contamination whatsoever and howsoever caused and of any nature;
- 4.1.2 any amendments and modifications if there are changes to any features, policies or regulations by any third party which affects the Services; and
- 4.2 Where our Services relate to the supply of website pages, we cannot guarantee that the website pages will be optimised for every browser or user preferences. Consequently, there may be certain browsers and user preferences where Website will not display or function as desired.

5 Intellectual Property

Bespoke Content

- 5.1 Subject to clause 5.2, subject to you paying to us all Fees and other sums due to us under a Service Agreement we grant to you a non-exclusive, non-transferable, royalty-free licence to use the Bespoke Materials in respect of that Service Agreements.

Your Content

- 5.2 You agree that you shall at your own expense provide or make available to us the Client Materials as reasonably required by us so that we can perform our obligations under any Service Agreements.
- 5.3 You agree to grant to us a non-exclusive, non-transferable, worldwide licence during a Service Agreement to use the Client Materials in accordance with your instructions for the performance of our obligations in respect of that Service Agreement.
- 5.4 We acknowledge that you (or your licensors) are the owner of all Intellectual Property Rights in the Client Materials and that nothing in these Terms and Conditions shall result in us owning any Intellectual Property Rights in the Client Materials.
- 5.5 You warrant that:
- 5.5.1 you, or your licensors, are the owner of any Intellectual Property Rights in the Client Materials; and
- 5.5.2 our use of the Client Materials in accordance with any Service Agreement shall not infringe any third party Intellectual Property Rights.
- 5.6 You shall indemnify and hold us harmless from and against all and any losses, liabilities, demands, claims, costs and expenses (including legal costs and disbursements on an indemnity basis) and damages incurred or suffered by us, and any damages awarded against us, arising directly or indirectly as a result of or in connection with any claim that the Client Materials infringe any Intellectual Property Rights of any third party or are libellous, defamatory or obscene.

Our Content

- 5.7 Subject to you paying to us all Fees and other sums due to us under a Service Agreement we grant to you a non-exclusive and non-transferable licence to use the Supplier Materials (in relation to any software Deliverables, in object form only) in respect of that Service Agreements. You agree that nothing in any Service Agreement shall give you the right to obtain source codes relating to the Deliverables unless expressly agreed otherwise by us on such terms as we shall determine.
- 5.8 You shall not (except to the extent necessary to make proper use of the Deliverables):
- 5.8.1 alter, adapt, reverse engineer or decompile the Supplier Materials except as permitted by law nor attempt to do any of those things;
- 5.8.2 reproduce or deal in the Supplier Materials (in whole or in part) in any way;
- 5.8.3 make copies of the Supplier Materials except to the extent reasonably necessary for back up purposes or for other purposes permitted by any Service Agreement;
- 5.8.4 make the Deliverables available to any third party without our prior written consent and on such terms (including payment of further Fees) as we may determine;



- 5.8.5 remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Deliverables and you agree to incorporate any such proprietary markings in any copies you take of the Deliverables;
- 5.8.6 at any time (whether during or after termination of any Service Agreement) use and/or exploit or allow any third party to use and/or exploit the Deliverables or any of our confidential information to design, develop or otherwise commercially exploit any product that competes, or may compete, with the Deliverables.
- 5.9 You acknowledge that we (or our licensors) are the owner of all Intellectual Property Rights in the Supplier Materials and that nothing in any Service Agreement shall result in your owning any Intellectual Property Rights in the Supplier Materials.
- 5.10 Notwithstanding clause 5.9 you hereby assign with full title guarantee any such right, title and interest in the Supplier Materials which may have been vested in you for any reason absolutely to us. Further, you will execute such further documents and undertake such further acts as we may reasonably require from time to time, at our expense, to give full effect to the assignment in this clause.
- 5.11 You agree with us not to cause or permit anything to be done which may damage or endanger our intellectual property or any title to such intellectual property or assist or allow others to do so.
- 5.12 If there are new inventions, designs or processes evolved in the provision of the Services or the design of the Deliverables, you acknowledge that these shall belong to us. Furthermore, you agree to assist us (at our reasonable cost) in the registration of any of the inventions, designs or processes as may be determined by us.

Third Party Content

- 5.13 We shall use reasonable endeavours to obtain all necessary licences to use the Third Party Materials.
- 5.14 Subject to the Third Party supplier's standard terms and conditions and subject to your payment of all Fees and other sums due to us under a Service Agreement we grant to you a non-exclusive and non-transferable sub-licence to use the Third Party Materials (in relation to any software Deliverables, in object form only) in accordance with the Service Agreement.
- 5.15 You agree to comply with any terms and conditions of a third party supplier in relation to any Third Party Materials and shall not (except to the extent necessary to make proper use of the Deliverables):
 - 5.15.1 alter, adapt, reverse engineer or decompile the Third Party Materials except as permitted by law;
 - 5.15.2 reproduce or deal in the Third Party Materials (in whole or in part) in any way;
 - 5.15.3 make copies of the Third Party Materials except to the extent reasonably necessary for back up purposes or for other purposes permitted by this agreement;
 - 5.15.4 make the Deliverables available to any third party without our prior written consent and on such terms (including payment of further Fees) as we may determine;
 - 5.15.5 remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the Deliverables and you agree to incorporate any such proprietary markings in any copies you take of the Deliverables.
- 5.16 You acknowledge that the relevant third party supplier (or its licensors) is the owner of all Intellectual Property Rights in the Third Party Materials and that nothing in any Service Agreement shall result in your owning any Intellectual Property Rights in the Third Party Materials.
- 5.17 You agree that unless termination of a Service Agreement arises as a result of a material breach of the licence of Deliverables granted under a Service Agreement this clause 5 shall survive termination of a Service Agreement.

6 Illegal material

- 6.1 If in our reasonable opinion, we consider that any Client Materials provided to us by or on behalf of:
 - 6.1.1 are defamatory;
 - 6.1.2 contain, express or indicate illegal racist or otherwise discriminatory opinions;
 - 6.1.3 contain any designs, images, graphics or photographs which are illegally racist or otherwise discriminatory;
 - 6.1.4 are illegal or contain illegal content;
 - 6.1.5 infringe or breach the intellectual property rights of a third party; or
 - 6.1.6 are used outside the provisions of any licence that you may have to use those Client Materials,then we shall not be required to supply any Services in relation to such Client Materials or any Deliverables based on them.
- 6.2 The right not to provide any Services shall also apply where carrying them out would involve the creation, design, layout, production or reproduction of copy, designs, artwork or images (in any format) which fall into one of the categories set out in clauses 6.1.1 to 6.1.6.

7 Client Materials

- 7.1 If you provide Client Materials to us by electronic means (**Electronic Files**), we shall not be responsible for checking unless provided in a Proposal:



- 7.1.1 where the Client Materials consist of copy, the accuracy of the content, including but not limited to checking whether the copy is spelled correctly, is grammatically correct, or formatted in accordance with any specification, layout or design or otherwise; or
- 7.1.2 where the Client Materials consist of artwork or layouts, whether the artwork or layouts are positioned correctly on a page or in accordance with any instructions as to how the artwork or layout are to be reproduced or printed.
- 7.2 For Client Materials submitted as Electronic Files:
 - 7.2.1 You acknowledge and agree that:
 - 7.2.1.1 the devices on which Electronic Files are stored (or on which they are submitted by you shall); and/or
 - 7.2.1.2 the communication methods used by you shall to transmit the Electronic Files to us, may be subject to interception, corruption or alteration which is not within our reasonable control or reasonable knowledge of us.
 - 7.2.2 You shall keep one or more copies as backup.
 - 7.2.3 You shall make available copies of the Electronic Files at dates and times that we reasonably require.
 - 7.2.4 You shall submit Electronic Files in the software programme, version and format we specify to you (**Supported Format**).
- 7.3 We may reject any Client Materials or other materials selected by you which appear to be unsuitable for use, and additional charges may be made for materials which we are obliged to acquire in substitution.
- 7.4 Materials used or produced by us specifically for you shall normally be stored by us in a secure and dry environment. They will be stored for a period of 3 months following the delivery of the service for which they were used or produced.
- 7.5 Materials used or produced electronically or digitally by us specifically for you shall normally be stored by us in a secure fashion. Should they not be used or required for 'live' web sites, they will be stored for a period of 12 months following closure of the service for which they were used or produced.

8 Location

- 8.1 Unless we both agree, or a Proposal provides otherwise, we shall provide the Services in such places and locations as we consider appropriate to the type and nature of your requirements. For the avoidance of doubt, the performance of the Services shall not require attendance at your premises or face-to-face meetings with you, unless agreed in a Proposal.

9 Contracts with Third Party Suppliers

- 9.1 We shall be permitted to use other persons to provide some or all of the Services.
- 9.2 We shall be responsible for the work of a sub-contractor to the same standard as stated in a Service Agreement and any Specification. However, you acknowledge and agree that the some sub-contractors have their own terms and conditions on which the sub-contractor trades and which are more restrictive than those in these Terms and Conditions. For example, without limiting the generality of the foregoing, a sub-contractor may have more restrictive wording as to the standard they will reach in work they perform (as to timing or quality, what is to happen if that standard is not reached or met, issues concerning the restriction and exclusion of liability, and so on). Where the terms and conditions of a sub-contractor are more restrictive or exclusory then the provisions of these Terms and Conditions, you agree that the work provided by any such sub-contractor will be governed by the terms and conditions of that sub-contractor rather than the provisions of these Terms and Conditions.

10 Branding

- 10.1 Whilst we may provide certain branding design and development services (**Design Services**) as part of the Services we shall not have any responsibility to appoint solicitors or trade mark agents to carry out any trade mark, domain name or common law searches whether in respect of a name or visual concept or otherwise to assess the potential for conflict between any and all Intellectual Property Rights in the Design Services and any other third party rights.
- 10.2 If we reasonably believe that certain designs and/or features are unsuitable for creation or use, for example they violate standard industry practice, or they cannot be created on time or on budget, then we reserve the right not to do such work.

11 Domain Names

- 11.1 Subject to your paying our Fees and any other amount agreed between us in respect of acquiring and maintaining a domain name for you if we agree to acquire any domain names on your behalf, we agree that:
 - 11.1.1 such domain names shall be your property and we shall use the domain names solely in respect of a Service Agreement;
 - 11.1.2 to provide you with all reasonable assistance as may be required to transfer the administration of the domain names to you subject to a transfer fee.
- 11.2 We do not guarantee the availability of any domain name (or underlying IP address).

12 Citation Policy

- 12.1 You agree that we may include a statement on the Deliverables (including the home page of the Website) stating that the Deliverables were either (as we determine in our reasonable opinion) "powered by Vanilla Active Limited" or "designed by Vanilla Active Limited" with, in respect of the Website, an accompanying hyperlink to our website.



- 12.2 Protecting our branding from being associated with a Website which we in our absolute and sole discretion consider to be objectionable is paramount to us and you agree that we may remove any statement or hyperlink on the Website (as included in accordance with clause 12.1 above) without notice and, on demand, you agree to execute all such further documents and do all such further acts as we may reasonably require to protect our branding.

13 Electronic Storage and Passwords

- 13.1 Where the Deliverables are supplied to you on computer disks or other electronic storage method, then we remain the owner of these storage media and we reserve the right to require immediate return of them. Should any artwork be supplied to you in digital form, you may not amend it or otherwise use it for purposes outside those contemplated by the Service Agreement without our express prior written permission.
- 13.2 If as part of the Services we are required to hold any of your passwords to access and/or edit the Website, it is your responsibility at the completion of the Services to ensure, where we are no longer instructed, that such passwords are immediately changed. For the avoidance of doubt we do not accept any responsibility for your failure to change passwords in such circumstances.
- 13.3 If you change any passwords which we use in order to provide the Services then you must immediately notify us of the new password.

14 Approval and Acceptance of Services

- 14.1 Before we deliver the Deliverables (or any part of them) to you, we shall test them to satisfy ourselves that they function correctly and are otherwise in accordance with the Proposal.
- 14.2 Acceptance of our Services and Deliverables shall occur when we have confirmed to you in writing that our Acceptance Tests have been passed.
- 14.3 If any failure to pass the Acceptance Tests is caused by (i) your act or omission; or (ii) any amendment or modification to the Deliverables by you or any third party on your behalf then the Deliverables shall be deemed accepted. However, in such circumstances we shall use reasonable endeavours to remedy the cause of such failure on a time and materials basis at our then current rates.
- 14.4 It is your sole responsibility to ensure that the content of the Website is correct, accurate, in compliance with all laws and regulations and up to date at all times.
- 14.5 Acceptance of our Services and Deliverables shall also be deemed accepted if you give us notice of acceptance or if you use the Deliverables in a live environment unless such use is solely for the purposes of carrying out the Acceptance Tests.
- 14.6 Unless a rejection fee has been agreed in advance, you shall have no right to terminate a Service Agreement, allege breach of contract or seek any cancellation, reduction or repayment of the Fees on the basis of style or composition.
- 14.7 Where we supply Proofs to you, you shall be responsible for checking whether the Proofs are in accordance with the Specification set out in the Proposal or as agreed between us for the provision of the Services. You shall approve the Proofs and after approval, any remaining errors, whether in:
- 14.7.1 the content or Client Materials provided by you,
- 14.7.2 the design or layout created, made or carried out by us, or
- 14.7.3 the application of the Specification for the provision of the Services (relating to such matters for example as the colours to be used, size, position, folding etc),
- shall be your sole responsibility.
- 14.8 We shall be entitled to use the approved Proofs as the basis for carrying out the remainder of the Services.

15 Evaluation Work

- 15.1 Where you are considering, before the formation of any Service Agreement, to retain our Services, in consideration of £1.00 (receipt of which is acknowledged by you) you undertake that:
- 15.1.1 you will not use or exploit any Evaluation Materials for any purpose other than to evaluate whether or not to retain our services, and in particular (but without limitation to the foregoing) unless you do retain our services, any designs, ideas or concepts put forward by us may not be used by you as part of any subsequent advertising campaign, on the Website or otherwise without our prior written consent;
- 15.1.2 you will not divulge any confidential information otherwise than as provided by clause 4.1 of section 2;
- 15.1.3 obey with any reasonable directions we may give for protecting the security of our confidential information.

16 Hosting

- 16.1 Where our Services include the provision of our Hosting Services, you grant to us a non-exclusive and worldwide licence for the term of the Service Agreement to host the Website.
- 16.2 Subject to your payment of all Fees and other sums due to us under any Services Agreement, we grant to you a non-exclusive, non-transferable licence for the term of the Services Agreement to use any hosting software we make available to you.



- 16.3 You agree that you will only use our Hosting Services in accordance with the provisions of a Service Agreement and our reasonable instructions from time to time.
- 16.4 You shall keep any password we give to you to access our or our agents or sub-contractors hosting server confidential. We may reasonably change such password for the purpose of essential maintenance, enhancement, modernisation or other work deemed by us to be necessary to the operation and/or security of our Hosting Service.
- 16.5 You agree that you will at all times comply with our Acceptable Use Policy. The Acceptable Use Policy is a standard policy applicable to all users of our hosting services and is necessary to enable us to provide orderly and efficient hosting services. We may reasonably amend the Acceptable Use Policy at any time on giving notice to you.
- 16.6 We may, at our sole discretion, suspend the Hosting Services (in whole or part) if:
- 16.6.1 We are entitled to terminate any Service Agreement for any reason; or
- 16.6.2 the suspension is for the purposes of carrying out scheduled or emergency maintenance or to substitute, change, reconfigure, relocate or rearrange the hosting server or any other connectivity infrastructure relevant to the Hosting Services; or
- 16.6.3 the suspension is in accordance with an order, instruction or request of government, an emergency service organisation or other competent administrative authority or is a result of our otherwise losing any authorisation we may need to provide the Hosting Services.
- 16.7 We shall notify you as soon as reasonably possible of any suspension (if practicable) and we shall use all reasonable efforts to minimise the downtime incurred in taking such actions.
- 16.8 Exercise by us of our right of suspension under clause 16.6 shall not function as a waiver of any right or termination which we may have under a Service Agreement.
- 16.9 If the Hosting Service is provided on co-located equipment, it is not intended that such co-location will constitute a lease of any real or personal property. You acknowledge and agree that you have been granted only a limited licence to occupy space and use any equipment provided by us in accordance with a Service Agreement.
- 16.10 You warrant that:
- 16.10.1 You or your licensors are, the owner of any Intellectual Property Rights in the Website; and
- 16.10.2 Our use of the Website in accordance with a Service Agreement to provide the Hosting Services shall not infringe any third party Intellectual Property Rights.
- 16.11 You shall be responsible for the costs and expenses involved in hosting the Website. If you require and we accept for the Website to be hosted on our or other third party servers then you shall be responsible for paying us for those services at our or the relevant third party supplier's then current rates and on our or the relevant third party supplier's terms. If you then no longer require the Website to be hosted, the Website may be deactivated subject to a deactivation fee.

17 Term of Service Agreement

- 17.1 A Service Agreement shall, subject to these Terms and Conditions, continue in full force and effect until the acceptance of the Deliverables in accordance with the Acceptance Tests. Where we are providing Hosting Services, the Service Agreement shall, subject to these Terms and Conditions, continue until the later of the expiration of the Hosting Services or the acceptance of the Deliverables in accordance with the Acceptance Tests.