

UpMyBrand.com

Terms and Conditions

If you are representing a company or other legal entity, when accepting or agreeing to these Terms and Conditions, you are stating that you have the authority to legally bind the company or other legal entity that you represent to these Terms and Conditions, and as such, any use of “you”, “your”, “yours”, “client” and “clients” will refer and apply to both you and the company or other legal entity.

1. Definitions

In these Terms and Conditions,

“UpMyBrand.com”, “UpMyBrand”, “us”, “we”, “website”, “service” refer to BGBC Management, LLC DBA, a limited liability company formed under the laws of the State of Texas, doing business as UpMyBrand.com.

“Customer”, “users”, “user”, “you”, “your”, “they”, “their”, “client”, “clients” refer to you and the company or other legal entity that you represent

2. General

This website (UpMyBrand.com) and all of its content are owned by UpMyBrand. This Terms and Conditions document is a legally binding agreement between you the customer (also referred to as clients in this document) and UpMyBrand. UpMyBrand may update these Terms and Conditions from time to time by providing notice to you, and the updated Terms and Conditions are binding as provided in the notice.

The mission of UpMyBrand is to provide hosting opportunities and e-learning solutions for clients who post, upload or place content for beneficial use of its employees, vendors or customers. Accordingly, UpMyBrand does not take or assume any responsibility for any of the content created or used by its customers and users. You may not hold us liable for content posted by clients or users.

2A. Clients represent and warrant that the following are true, will remain true while Client is a customer, and for the periods thereafter to allow the time periods herein to be completed:

2.A(1). **Post At Own Risk.** Any content uploaded or actions performed through their UpMyBrand account are done so at the client’s own risk.

2.A(2). **No Intermediary.** Client understand that all correspondences and dealings with users of their account or website are their responsibility. UpMyBrand shall not act as an intermediary.

2.A(3). **Lawful Use.** Client has express permission to use all content and images on their UpMyBrand account, free of any claims by third parties for infringement, piracy or unlawful use.

2.A(4). **Client must secure password.** Client shall secure their UpMyBrand.com password. UpMyBrand shall not be expected to police the use of a valid password.

2.A(5). **Client responsible for content.** Client shall take responsibility for all content and date on their UpMyBrand.com account.

2.A(6). **Client will not upload any content that is illegal or offensive.** Client agrees that any content that they upload is in their discretion and that UpMyBrand is not responsible for this content, nor will Client or third parties associated with Client hold us liable for actions caused by Client account and/or content.

(a) **No degrees or diplomas.** Client shall not advertise or claim that it offers a diploma or degree for completion of any courses or material provided by client. UpMyBrand does not offer or promote the issuance of diplomas or degrees.

(b) **Removal.** Clients shall immediately remove any content which is illegal or offensive on demand by UpMyBrand .

2.A.(7) **Restriction on posting on Social Media during disputes.**

(a) **Cooling off period – 365 days.** Client will not, directly or indirectly, post negative or derogatory information about UpMyBrand online until the end of the “Cooling Off Period” which shall run for three hundred sixty-five (365) days beginning the day that the dispute is reported to UpMyBrand help system.

(b) **Customer must cure posts.** In the event of a customer service issue or dispute between you and UpMyBrand or a customer of UpMyBrand, Client agrees that during the Cooling Off Period it will (i) cease or suspend activities that result in negative or constructive testimonials or experiences as to UpMyBrand being posted or shared in any and all social media sites and postings, (ii) take all actions required to remove any negative or constructive post by request to a third party host, and (iii) continue to comply with (i) and (ii) for the duration of the Cooling Off Period. During the Cooling Off Period, Client agrees to work in good faith to resolve the customer service issue with UpMyBrand.

If the client is made aware, through UpMyBrand a negative or constructive post exists before the expiration of the 365 day cure date, the Client agrees to immediately take all required actions to delete the post or content upon notice from UpMyBrand or be subject to the costs associated with curing and purging the negative information from such sites. Client understands the costs to cure and purge such reputational constructs may exceed, and not be limited to, \$1500.00 or more. Client gives UpMyBrand permission to charge \$275.00 to the account and payment method on file to cover cost of reputation remediation during the remainder of the 120-day

period if the post in question is not removed within 3 business days of formal notice from UpMyBrand to Client that such post exists. It is the responsibility of the Client to deal with third parties associated with negative or constructive posts. Client agrees that email notification to Client Admin account is acceptable notice for three-day notice to remove posting(s). Client agrees not to dispute or to remove any dispute to credit card or electronic payment for fees associated with reputational remediation as outlined in this agreement.

(c) **Except as prohibited by law.** The restrictions of this section 2.A(8) shall not apply (i) when an applicable law precludes enforcement, and, (ii) for any report made to a federal, state or local government agency charged with enforcement of the laws and regulations of the federal, state or local government.

2A(9). **Reliance by UpMyBrand.** UpMyBrand may rely upon the above representations and warranties. Any material breach of the representations and warranties by Client shall entitle UpMyBrand to receive indemnity from Client as provided in Article 4, herein.

2B. UpMyBrand is not liable for the following:

2.B(1). Any loss or liability that arises from delaying or failing to provide the service.

2.B(2). Any confidential information lost via communication or through the use the UpMyBrand.com platform.

2.B(3). Any third-party service related to UpMyBrand .

2.B(4). Any loss or liability that arises from use of the system and compliance associated with continuing education programs or certifications the Client may use or be associated with during time of subscription to UpMyBrand .

2.B(5) The limitations or releases of liability in in 2.B(1).-(4) in favor of UpMyBrand shall include any claims based in whole or part on the acts, omissions or negligence of UpMyBrand .

2.B(6). UpMyBrand does not provide any warranties of any kind. **UPMYBRAND disclaims any warranty, whether statutory, written, oral, express, or implied, including but not limited to any warranties of merchantability, fitness for a particular purpose or arising out of any course of dealing or usage of trade.**

2C. Clients are liable for any loss, damage and/or liability suffered by UpMyBrand from the following:

2.C(1). Client misuse of our services in any fashion.

2.C(2). Client breach of these terms and conditions.

2.C(3). The misuse of Client account by another person.

2.C(4). Client is solely liable for all losses in 2.C(1)-C(3), even if a producing cause or proximate cause of the loss was, in whole or part, the acts, omissions or negligence of UpMyBrand .

2D. Up-time and Back-up

UpMyBrand will take reasonable precautions to maintain and back-up your data on a periodic basis. However, UpMyBrand does not guarantee this process and it is users must independently make or take, and store, periodic back-ups of data that is on their UpMyBrand account. Further, UpMyBrand does not guarantee this process when making additional back up or data storage packages, offerings, or charging additional fees for additional back up or data storage solutions and offerings. Clients agree that UpMyBrand has no responsibility or obligation to cure or reimburse for any loss or damage due to loss of data even if the reason for data loss is determined to be the fault of systems or process directed by UpMyBrand .

Clients understand that UpMyBrand uses third party vendors to provide its services. In the case where a service outage or failure occurs, Client may not hold UpMyBrand liable or responsible for data loss even if the loss of data was occasioned by or based in whole or part on the acts, omissions or negligence of UpMyBrand .

2E. Content and Information

All data and content on the UpMyBrand platform will remain in a client's account until the account is closed. None of the data will be shared with a third-party unless otherwise allowed by the client or required by law or court order.

Client grants UpMyBrand a limited and royalty-free license to use the content uploaded by Client for the purpose of delivering services to Client and for quality control purposes, with the term of the royalty-free license commiserate with the term of this Terms and Conditions. Any goodwill generated by the use of Client's content shall inure to the benefit of Client.

2.E(1). UpMyBrand may suspend all accounts during times of technical repair. Client agrees that any costs or disruption experienced by Client during such an activity is at the sole cost of the Client.

2.E(2). UpMyBrand may terminate a client's account if the client fails to comply with the terms set in this agreement. Client agrees that any costs or disruption experienced by Client during such an activity is at the sole cost of the Client.

2.E(3). UpMyBrand can remove or limit the amount of content on a client's account at any time. Content regarded as inappropriate will be removed immediately. Further, UpMyBrand may remove, update, or change the client's data if there is any misuse of UpMyBrand.com , claim or allegation made against the client, or court order to do so. Client agrees that any costs or disruption experienced by Client during such an activity is at the sole cost of the Client.

2.E(4). UpMyBrand may suspend, or terminate your account for any breach of payment. Client agrees that any costs or disruption experienced by Client during such an activity is at the sole cost of the Client.

2.E(5). UpMyBrand may add your logo and company name to marketing material for as long as you have a non-cancelled account. Client agrees that any costs or disruption experienced by Client during such an activity is at the sole cost of the Client.

2F. Communication

An “Administrator(s)” is a user that is designated as an “Admin” within the client’s platform. All communication between UpMyBrand and clients must occur with designated Administrators of the account.

2.F(1). Only Administrators may receive technical support.

2.F(2). Plan changes, including cancellations, can only be made by Administrators.

2G. Support

Technical support is provided for UpMyBrand to clients if a support request is made explicitly regarding the UpMyBrand platform, and, so long as the requests are made on a weekday (Monday through Friday) between 0900 and 1600 Eastern Standard Time (excluding US Holidays). UpMyBrand will answer all support requests in the order that they are received as long as they are pursuant to the guidelines specified in this section, but no particular time frame is represented or guaranteed. If a request is made outside of the foregoing times, UpMyBrand will respond at the earliest reasonable time that falls within our business hours as outlined above, following the order in which requests are received. The type of support that a client is entitled to depends on the plan that they are subscribed to and UpMyBrand reserves the right to decline providing support if contacted through a means that is not supported by the client’s current plan. Support will only be provided to registered platform administrators and will not be provided to anyone else, including, but not limited to, registered non-administrators, people and/or persons claiming to be an administrator without being able to prove their identity, and executives of the client’s company who are not registered as an administrator on the platform. UpMyBrand can be contacted with issues regarding specific technical questions and/or general knowledge, so long as all enquiries made are regarding the UpMyBrand platform. Before contacting UpMyBrand’s support services, the client must have shown due diligence in exhausting all attempts to investigate and solve their problem on their own, including, but not limited to, the use of the UpMyBrand Help functions. The client agrees to contact UpMyBrand’s support services at a reasonable frequency to report reasonable technology issues. UpMyBrand reserves the sole and absolute right to terminate support services for clients who have shown they are misusing the support services in accordance to the terms stated above.

2H. Billing and Refunds.

Please check the Pricing Plan with the latest billing options we provide. UpMyBrand may, at any time, change the prices and packages it offers. It is the responsibility of the client to watch for these updates. Month-to-month clients will be given three billing months to switch into a new plan if their current plan becomes unavailable. Yearly contracts will not be affected in the same fiscal year. Refunds may be given at the discretion of the company and is subject to our refund policy.

Any charge-backs or declined payments made by clients against UpMyBrand will incur a \$60 service fee per charge-back, on-top of the existing amount charged back and owed to UpMyBrand. However, if this charge is deemed interest for purposes of usury laws, then this charge is reduced to the maximum allowable charge under the applicable usury laws, and any excess received shall be credited to Client's account or refunded.

No pro-rated refunds will be given for clients who cancel their service during the middle of their billing cycle and they will be billed the full amount at the end of their current billing cycle.

If a client's payment is not made on time, UpMyBrand reserves the right to remove or revoke any discounts associated with client account, and/or suspend the client's account until payment is made.

A client on a monthly plan will be charged at end of their billing cycle, i.e., post-pay, except for their first monthly payment which will be collected on the day they subscribe for a UpMyBrand plan.

A client on a yearly plan will be charged at the beginning of their yearly billing cycle, i.e., pre-pay. Any monthly overage fees that apply will be charged at the end of each monthly billing cycle.

All Deposits paid for services, even if not fully delivered by UpMyBrand, are 100% non-refundable.

2I. Cancellation fees mandatory for programs including free website:

Just Getting Started Package

A client agrees to pay **a one time, non-fundable cancellation fee of \$600.00** on the first day of the month after the cancellation is effective.

A client understands that until the cancellation fee has been paid, the website, domain, and all files are property of UpMyBrand .com.

Basic Package, including one marketing campaign

A client agrees to pay a **one time, non-fundable cancellation fee of \$600.00** on the first day of the month after the cancellation is effective.

A client understands that until the cancellation fee has been paid, the website, domain, and all files are property of UpMyBrand .com.

Pro Package, including two marketing campaigns

A client agrees to pay a **one time, non-fundable cancellation fee of \$800.00** on the first day of the month after the cancellation is effective.

A client understands that until the cancellation fee has been paid, the website, domain, and all files are property of UpMyBrand .com.

Premium Package, including three marketing campaigns

A client agrees to pay a **one time, non-fundable cancellation, fee of \$800.00** on the first day of the month after the cancellation is effective.

A client understands that until the cancellation fee has been paid, the website, domain, and all files are property of UpMyBrand .com.

Overage charge Alert: Each plan allows a limited number of Administrators (Admins). Each Admin over the plan limit will be charged at a rate of \$50 per Admin, per month, e.g., if the client's plan allows 5 Admins and the client has 8 Admins, the client will be charged an additional \$150 fee for the 3 Admins that are over the plan limit.

Overage charge Alert: Each plan allows a limited number of Managers (Manager). Each Manager over the plan limit will be charged at a rate of \$35 per Manager, per month, e.g., if the client's plan allows 5 Managers and the client has 8 Managers, the client will be charged an additional \$105 fee for the 3 Managers that are over the plan limit.

Overage charge Alert: Storage for content and client files is specific per package. Each account that exceeds the package storage limits will be charged \$50 per 25GB extra.

Clients on a yearly plan will be automatically renewed to another year commitment once their previous yearly plan expires. Charges for the new yearly plan will be based on the most up-to-date price for their respective plan.

Clients who cancel accounts will lose all previous discounts and pricing if they want to return to UpMyBrand in the future. They will also lose all of their data within 30 days of cancellation.

Custom certificates must be provided as an HTML template by the client. If the client cannot provide an HTML template, UpMyBrand will convert the certificate template provided by the client (e.g. PDF, PNG, JPG) to an HTML version for the client, free of charge, once every six months (two per year), on any yearly plans offering a custom certificate. If the client requires a new custom certificate to be converted to HTML, there will be a fee. The customer can also request the HTML code of the existing certificate if they wish to make changes to it. Due to the dynamic nature of custom certificates, UpMyBrand will do its best to convert the customers provided template as accurately as possible to an HTML template. However, this conversion process is not guaranteed to be 100% accurate.

2J. What is included in the FREE Website?

- A free website is defined as a wordpress website using a wordpress theme selected by UpMyBrand with no more than ten (10) pages in total. The free website includes a basic security plugin to be selected by UpMyBrand , a basic SEO plugin to be selected by UpMyBrand , a basic contact us form with capcha to be selected by UpMyBrand , and images and web copy provided by Client, and links to no more than 4 social media platforms.
- A free website **DOES NOT** include integration with any applications owned by client or third parties, e-commerce or shopping cart features, mobile application, stock images, any feature or plug not identified in 2J(1), or any other feature, technology, or application not expressly identified in 2J(1).

3. UpMyBrand Referral Program

UpMyBrand reserves the right to remove fake/abusive referrals from the platform. Referral discounts awarded from fake/abusive referrals will also be removed.

4. Indemnification, Disputes and Limits on Damages:

4.A(1). **Indemnity by Client.** The client agrees to indemnify and hold UpMyBrand , its officers, directors, executives, affiliates, agents, and employees harmless from any liability, loss, costs, expenses or damages they may suffer as a result of claims, demands, costs or judgments against them (a) for breach of any representation and warranty given herein by Client, (b) for breach of these Terms and Conditions by Client or anyone assuming the identity of the client through the use of the clients computer or login credentials, and, (c) or by or through the use of the UpMyBrand website, platform, and/or service, including, but not limited to (1) claims that the clients use and/or content infringes on intellectual property and/or copyrighted material of a third party, (2) claims that the clients use and/or content has harmed and/or damaged a third party, (3) claims arising from or due to content that the client posts, creates, or otherwise makes visible and/or accessible, and, (d) costs and expenses related to removal of prohibited social media sites.

The client will pay any and all costs and expenses, including, but not limited to, attorneys' fees and costs awarded against or incurred by or in connection or arising from any such claim, suit, action, or proceeding.

4.(A)(2) UpMyBrand limited liability.

The client acknowledges that UpMyBrand 's aggregate liability to you related to and in connection with this agreement shall be limited to a maximum of the amount equal to six (6) months or service provided by UpMyBrand service to Client based on Client's usage for the first six (6) months of the Cooling Off Period.

Clients using UpMyBrand with a DNS pointer, or on their own domain take full and complete liability for any downtime issues related to their service. Clients using UpMyBrand on their own domains guarantee that they will provide a valid, non-expired TLS/SSL certificate to UpMyBrand ,If no valid TLS/SSL certificate is provided to UpMyBrand by the client, the client takes full and complete responsibility for any loss of log-in credentials, data and any security breaches that result.

4.(A)(3). CLIENT waives any right, claims or causes of action UPMYBRAND , whether based in contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise for damages of any kind whatsoever, whether or not caused by or due to, in whole or in part, any actual or alleged act or omission OR NEGLIGENCE by UPMYBRAND , including but not limited to: (I) loss of property OR DATA; (II) loss of profits, revenues, efficiency, productivity; (III) loss of use of property, equipment, facilities, plant, structures, or building; (IV) cost of storing, Replacing or replicating data;

(V) cost of notices to customers or permitted users of client; (VI) use of or access to content posted by client; (VII) any special, incidental, indirect, penal, or consequential loss or damage whatsoever, arising out of, related to, caused by, USE OR ACCESS OF UPMYBRAND ; (VIII) any actual or alleged defect in the design, FUNCTION or installation of UPMYBRAND ; (IX) any actual or alleged violation of any applicable standards, codes, laws, or regulations; or, (X) any delays in access to CONTENT IN OR THROUGH OR ACCESS TO UPMYBRAND .

4.(A)(4). Forum selection clause. Client and UpMyBrand agree that exclusive venue for any dispute between them shall be a court of competent jurisdiction in Harris County, Texas. Each party irrevocably waives any complaint or allegation that Harris County, Texas, is an inconvenient forum, or that another forum is more convenient.

5. Entire Agreement

This Contract contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Contract. This Contract supersedes any prior written or oral agreements between the parties.

6. Severability

If any provision of this Contract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

7. Amendment

Except as otherwise provided herein, this Contract may be modified or amended in writing by mutual agreement between the parties, if the writing is signed by the party obligated under the amendment.

8. Governing Law

This Contract shall be construed in accordance with the laws of the State of Texas, without regard to conflicts of laws principles or rules.

9. Notice

Any notice or communication required or permitted under this Contract shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

10. Waiver of Contractual Right

The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

11. Acknowledgement

By using the services of BGBC Management, LLC DBA as UpMyBrand, you acknowledge that you have read and have accepted these terms and conditions.

12. Confirming your authority

I am:

- a) an officer or director of the company or
- b) a person expressly authorized by an officer or director to complete this application on behalf of the company.