

**EVOLVED BUSINESS  
IT SOLUTIONS**

ACN: 169 625 067



# SEO and Marketing Terms and Conditions

**EVOLVED BUSINESS IT SOLUTIONS PTY LTD**

Last revision: 1/12/2014

## **Statement of Confidentiality**

The contents of these terms and conditions and any attachments are confidential. The information may also be legally privileged.



## SEO and marketing terms and conditions

This Search Engine Optimization and Reporting Agreement ("Agreement") is hereby entered into between Evolved Business IT Solutions Pty Ltd (ACN: 169 625 067) (hereinafter referred to as "The Service Provider") and the party set forth in the Proposal (hereinafter referred to as "The Customer" or "you") herein by this reference (together with any subsequent Proposals submitted by The Customer, the "Proposal" also referred to as the "Order" or "Quote") and applies to the purchase of all Search Engine Optimization and Reporting Services (hereinafter collectively referred to as "SEO Services") ordered by The Customer.

### TERM AND TERMINATION.

This Agreement shall be effective as of the time frame set forth on the Proposal. This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice. This Agreement may be terminated by The Service Provider (i) immediately if The Customer fails to pay any fees hereunder; or (ii) if The Customer fails to cooperate with The Service Provider or hinders The Service Provider's ability to perform the SEO Services hereunder.

### SEO SERVICES.

The Service Provider agrees to provide The Customer with SEO Services as described in the Proposal and this Agreement. The Service Provider is authorized to use the specific keywords and/or phases set forth in the Proposal for development, improving the ranking of, and/or positioning the contents of the Customer's URL(s) (as set forth in the Proposal) in search engines and/or directories. SEO Services are intended to provide the Customer with preferential positioning in selected search engines and report results on an ongoing and timely basis.

### FEES.

The Customer agrees to pay The Service Provider any and all fee(s) as stated in Proposal. The fee(s) must be received prior to the start of any SEO Services. The Customer further agrees that, in the event of any termination of this agreement or the Proposal by The Customer, any outstanding invoices that have not been paid must be paid within 7 business days. If the Customer cancels the service part way through a month that they have paid for, the Customer agrees that no refund is payable for the month. If the Customer pays more than one month in advance any credits the Customer has are refundable. The Service Provider is hereby authorised to deduct any amounts remaining due from The Customer from any refunds/credits and to charge The Customers credit card or direct debit account or any other payment mechanism for any amounts owed within the terms of this agreement and the Proposal. If the Customer chooses to pay on invoice, the Customer must make sure they pay the invoices provided by The Service Provider on the payable due date, or within 7 days of receiving the invoice (whichever is due last).

### DELIVERABLES AND MILESTONES.

The SEO Services as mentioned in the proposal, and herein the agreement are performed monthly. Please read thoroughly throughout your proposal as it outlines the SEO Agreement you will enter by accepting the proposal. The SEO Services can be either of the following (i) Monthly SEO Services and (ii) Pay on position. The Service Provider always recommends Monthly SEO services are an ongoing service to gain preferable ranking in the major search engines. The monthly SEO Services can be cancelled at any time, but there may be early termination fees if you enter into a fixed term contract. Monthly SEO Services can be fixed term or flexible ongoing arrangements with no contract. If you choose to enter in an Monthly SEO agreement, the anniversary date is always on the first (1st) day of the month. Within a Monthly SEO agreement, the payments for SEO Services to the Service Provider are fixed and the same each month, unless detailed in the Proposal, and/or has written confirmation from the customer and the customer has agreed to a change in price. If the customer chooses a pay on position SEO service, the customer will have no monthly costs, but will pay the service provider upon search engine ranking performance, for example, the customer would pay when their website is listed in google for position 10, 5 and 1. If the customer chooses the pay on position SEO service, the customer shall pay the service provider, once the service provider has proven evidence that the website is ranking for the keywords in the search engine listed in the proposal. The customer must pay the invoice related to the milestone within 7 business days. Once the service provider has provided evidence of the ranking based on the position in the search engine listed in the proposal, the service provider makes no guarantees and/or warranties that the website will stay in that position, This is why the service provider recommends the Monthly SEO Service, as it helps maintain the preferable position the website is ranked for. There are no milestones for Monthly SEO Services, only pay on position. In both services, the service provider cannot and will not make guarantees and/or warranties on any positioning and/or ranking or future ranking.



#### THE CUSTOMER RESPONSIBILITIES.

For the purposes of providing these services, The Customer agrees:

To provide The Service Provider with FTP/CPANEL/Panel/Control Panel access to its web sites for uploading new pages, and making changes for the purpose of SEO Services optimization or approval to go through a third party.

To authorize The Service Provider use of all The Customer's logos, trademarks, Web site images, text, data, etc., for use in creating informational pages and any other uses as deemed necessary by The Service Provider for search engine positioning and optimization.

That if Customer's web site(s) is light in textual content, The Customer will provide additional relevant text content in electronic format for the purpose of creating additional web pages. The Customer agrees to provide content, for example 200 to 500 word "articles" about each of their keyword phrases.

#### THE CUSTOMER ACKNOWLEDGEMENTS.

The Customer understands, acknowledges and agrees that: The Service Provider has no control over the policies of search engines or directories with respect to the type of sites and/or content that they accept now or in the future. The Customer's web site(s) may be excluded from any search engine or directory at any time at the sole discretion of the search engine or directory entity. The Service Provider will resubmit those pages that have been dropped from the index.

Some search engines and directories may take as long as two (2) to four (4) months, and in some cases longer, after submission to list The Customer's web site(s).

Occasionally, search engines and directories will stop accepting submissions for an indefinite period of time.

Occasionally, search engines and directories will drop listings for no apparent or predictable reason. Often listing will "reappear" without any additional submissions. Should the listing not reappear, The Service Provider will re-submit the web site(s) based on the current policies of the search engine or directory in question.

Some search engines and directories offer expedited listing services for a fee. The Service Provider encourages The Customer to take advantage of these expedited services. The Customer is responsible for all expedited service fees unless otherwise noted in the Proposal.

The Customer agrees that search engine and/or directory sites change and/or modify the listing criteria and methods they decide to "rank" a website by. The Customer agrees that this can sometimes be unpredictable, and may cause the Customer's website to disappear from listings. The Customer agrees that the Service Provider will give its "best effort" to abide by the search engines and their best practices, but the Service Provider cannot be held financially liable for any damages, losses or other litigation from the Customer due to ranking and positioning as the Service Provider does not control how the search engine provider and / or directory sites ranks sites.

#### WEB SITE CHANGES.

The Service Provider is not responsible for changes made to The Customer's web site(s) by other parties that adversely affect the search engine or directory rankings of The Customer's web site(s). If the Customer chooses to use a third party for additional web design or additional services that may or can affect the sites performance, the Service Provider cannot be held liable for such changes, and any re-work that may be needed will be provided in a quote, presented to the Customer for approval before any work is to commence.

#### ADDITIONAL SERVICES.

Additional services not listed herein or in Proposal will be provided for up to \$110.00 per hour. The Service Provider is not responsible for The Customer's (and/or third party) overwriting SEO Services work to The Customer's web site(s). The Customer will be charged an additional fee for re-constructing meta-tags, keywords, content, etc based on the hourly rate of up to \$110.00 per hour.



#### INDEMNIFICATION.

The Customer shall indemnify and hold harmless The Service Provider (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by The Service Provider as a result of any claim, judgment, or adjudication against The Service Provider related to or arising from (a) any photographs, illustrations, graphics, audio clips, video clips, text, data or any other information, content, display, or material (whether written, graphic, sound, or otherwise) provided by The Customer to The Service Provider (the "The Customer Content"), or (b) a claim that The Service Provider's use of the Customer Content infringes the intellectual property rights of a third party. To qualify for such defense and payment, The Service Provider must: (i) give The Customer prompt written notice of a claim; and (ii) allow The Customer to control, and fully cooperate with The Customer in, the defense and all related negotiations.

#### Disclaimer of all other warranties.

The service provider does not warrant that the SEO services will meet the Customer's expectations or requirements. The entire risk as to the quality and performance is with The Customer. Except as otherwise specified in this agreement, the service provider provides its services "as is" and without warranty of any kind. The parties agree that (a) the limited warranties set forth in this section are the sole and exclusive warranties provided by each party, and (b) each party disclaims all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose, relating to this agreement, performance or inability to perform under this agreement, the content, and each party's computing and distribution system. If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

#### Limited liability.

In no event shall the service provider be liable to The Customer for any indirect, special, exemplary or consequential damages, including any implied warranty of merchantability or fitness for a particular purpose or implied warranties arising from course of dealing or course of performance, lost profits, whether or not foreseeable or alleged to be based on breach of warranty, contract, negligence or strict liability, arising under this agreement, loss of data, or any performance under this agreement, even if such party has been advised of the possibility of such damages and notwithstanding the failure of essential purpose of any limited remedy provided herein. There shall be no refunds. The service provider makes no warranty of any kind, whether express or implied, with regard to any third party products, third party content or any software, equipment, or hardware obtained from third parties.

#### THE CUSTOMER REPRESENTATIONS.

The Customer makes the following representations and warranties for the benefit of The Service Provider:

The Customer represents to The Service Provider and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to The Service Provider are owned by The Customer, or that The Customer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, and defend The Service Provider and its subcontractors from any claim or suit arising from the use of such elements furnished by The Customer.

The Customer guarantees any elements of text, graphics, photos, designs, trademarks, or other artwork provided to The Service Provider for inclusion on the website above are owned by The Customer, or that The Customer has received permission from the rightful owner(s) to use each of the elements, and will hold harmless, protect, and defend The Service Provider and its subcontractors from any liability or suit arising from the use of such elements.

From time to time governments enact laws and levy taxes and tariffs affecting Internet electronic commerce. The Customer agrees that the client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend The Service Provider and its subcontractors from any claim, suit, penalty, tax, or tariff arising from The Customer's exercise of Internet electronic commerce.



#### CONFIDENTIALITY.

The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, know-how, business methods, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party; (iii) is independently developed by the receiving party; or (iv) is subject to disclosure under court order or other lawful process. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's proprietary or confidential information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, The Service Provider and The Customer acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the effective date.

#### FORCE MAJEURE.

Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

#### RELATIONSHIP OF PARTIES.

The Service Provider, in rendering performance under this Agreement, shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. The Customer does not undertake by this Agreement, the Proposal or otherwise to perform any obligation of The Service Provider, whether by regulation or contract. In no way is The Service Provider to be construed as the agent or to be acting as the agent of The Customer in any respect, any other provisions of this Agreement notwithstanding.

#### NOTICE AND PAYMENT.

Any notice required to be given under this Agreement shall be in writing and delivered to the other designated party at the addresses listed in the Proposal mailed by certified, registered or express mail, return receipt requested or by email. Either party may change its address to which notice or payment is to be sent by written notice to the other under any provision of this paragraph.

#### JURISDICTION/DISPUTES.

This Agreement shall be governed in accordance with the laws of the State of Queensland, Australia. All disputes under this Agreement shall be resolved by litigation in the courts of the State of Queensland including the federal courts therein and the Parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

#### AGREEMENT BINDING ON SUCCESSORS.

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns.

#### ASSIGNABILITY.

The Customer may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of The Service Provider. The Service Provider reserves the right to assign subcontractors as needed to this project to ensure on-time completion.



#### WAIVER.

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

#### SEVERABILITY.

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

#### INTEGRATION.

This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may conflict with this Agreement.

#### NO INFERENCE AGAINST AUTHOR.

No provision of this Agreement shall be interpreted against any Party because such Party or its legal representative drafted such provision.

#### DISPUTES.

The Customer and The Service Provider agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation. Should the parties fail to resolve any such disagreement within ten (10) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration. The arbitrator shall have the power to enter any award that could be entered by a judge of the state courts of Queensland sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of the State of Queensland or any other applicable law. The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.

#### READ AND UNDERSTOOD.

Each Party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms and conditions.

#### DULY AUTHORIZED REPRESENTATIVE.

Each Party warrants that their representative whose signature appears below is duly authorized by all necessary and appropriate corporate actions to execute this Agreement.