Website / Application Development Terms and Conditions

EVOLVED BUSINESS IT SOLUTIONS PTY LTD

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Statement of Confidentiality

Website development terms and conditions

This web site development agreement ("agreement") is an agreement between Evolved Business IT Solutions Pty Ltd (ACN: 169 625 067) (hereinafter referred to as "Company" or "The Service Provider") and the party set forth in the Proposal ("Customer" or "You") herein by this reference (together with any subsequent accepted Proposals submitted by customer, the "order" which also can be referred to as the "proposal" and/or "quote") and applies to the purchase of all services ordered by customer on the order (collectively, the "services"). The parties understand, acknowledge and agree that this is an agreement which is being entered into in conjunction with the order.

Please read this agreement carefully.

By signing up for the services creates a contract between customer and The Service Provider, consisting of the order, the applicable service description and this agreement and you are agreeing to be bound by the terms of this agreement and all terms and conditions incorporated by reference in this agreement, including The Service Provider's usage policies. Your use of the services constitutes acceptance of this agreement. Your agreement to the terms hereof also constitutes your agreement to the user agreement and other "terms of service" located at: www.evolvedbusiness.com.au

Quoting, development and testing phases

A.   Quoting and Scope. The quoting phase and scope will identify the customers' requirements for the website. All details and as much detail should be provided to the service provider to develop a proposal and scope for the customer which will outline the scope of work to be completed in the quote. If the customer does not provide all details required for the scope and quote and/or proposal, then additional charges may be incurred to the customer for additional work to complete the website development as per the customers' requirements that were not initially prepared or costed during the initial quotation and/or proposal. The Scope of work which may be in the proposal or a separate document outlines the total work and milestones and/or features and/or graphical user interface for the website development. This includes all specifics of the design which may include the structure, total pages, design and interface, the platform and any software or services provided. It is important to understand the scope of work, and if you have any questions, please contact the service provider as soon as possible.

B.   Acceptance of proposal/order/quote. Once the customer is happy with the proposal (and in accordance to the scope of work) and/or order and/or quote, the customer is required to have an authorised representative sign the proposal and provide back to the service provider. A receipt of acceptance will be sent from the service provider to the customer upon acceptance. The proposal will then become binding. If a deposit is stated on the proposal / order / quote, then this will be due at the time of acceptance of the quote/proposal/order. Failure for the customer to pay the agreed deposit amount or full amount if stated within 7 business days, will be cause for termination of the agreement/proposal/quote/order. The Service provider will not commence work on the website development until the deposit is paid (unless no deposit has been stated on the proposal/quote/order/agreement).

C.   Site development. The service provider will build and/or develop the site in accordance to the scope of work and/or proposal. The service provider will from time to time ask for input and feedback on the current state of the development. Any changes can be made in this stage that fall within the scope of work. Any changes outside of the scope of work, will be quoted on in addition to the proposal/order/quote provided initially which will need to be paid by the customer to the service provider at time of acceptance testing.

D.   Acceptance testing. The service provider will ask an authorised representative of the customer to approve and test the site. Once the customer has given written notice (in the form of an email, or approved Acceptance Testing and Sign Off form) the final payment of outstanding amounts based on the total cost outlined in the proposal/order/quote minus any deposits paid (except when there has been amendments to the scope of works that has been approved by both the service provider and customer. Any additional fees based on changes throughout the development stage, will be payable at this time in addition to the total cost minus deposits outlined in the scope of work/quote/order/proposal.) Once the payment has been received by the service provider, the site will transfer ownership to the customer and the site will be moved in to a live state, ready for visitors to the website. Any changes after the acceptance testing are billable and due prior to any work is to commence.

Term and termination

A. Term of agreement. This agreement shall be effective as of the date set forth on the order and shall remain in force until seven (7) days after the last coordination step as set forth in the applicable order, which shall take place not later than one hundred twenty days (120) after the order ("delivery date"). The Service Provider cannot guarantee the delivery date but will use commercially reasonable efforts to perform the services in an efficient and timely manner.

B. Termination. 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 customer fails to pay any fees hereunder; or (ii) if customer fails to cooperate with The Service Provider or hinders The Service Provider's ability to perform the services hereunder.

The Service Provider's and customer's responsibilities

A. Scope of work. Customer hereby retains the services of The Service Provider to design the web site for customer in accordance with the order.

B. Changes. Changes to this agreement, the order or to any of the specifications of the web site shall become effective only when a written change request is executed by the customer and The Service Provider ("change order"). The Service Provider agrees to notify customer promptly of any factor, occurrence, or event coming to its attention that may affect The Service Provider's ability to meet the requirements of this agreement, or that is likely to occasion any material delay in the services. In the event of a conflict between the terms of this agreement and a change order, the terms of this agreement shall govern. If any changes are requested by the customer, after the agreement has been signed and delivered to the service provider that are not included in the scope of work, the service provider will quote on additional work and a new proposal may be generated. The service provider may also discuss additional prices and/or quotes and/or proposals via email with the customer, if the customer accepts the additional charges and changes as outlined in the email, this will become an amendment to the original proposal and any further charges will be due at time of completion of the design of the project and/or website.

C. Customer's responsibilities. Customer agrees to perform all tasks assigned to customer as set forth in this agreement or a change order, and to provide all assistance and cooperation to The Service Provider in order to complete timely and efficiently the web site. The Service Provider shall not be deemed in breach of this agreement, the services, a change order, or any milestone in the event The Service Provider's failure to meet its responsibilities and time schedules is caused by customer's failure to meet (or delay in) its responsibilities and time schedules set forth herein, a change order, or this agreement. In the event of any such failure or delay by customer (i) all of The Service Provider's time frames, milestones, and/or deadlines shall be extended as necessary; and (ii) customer shall continue to make timely payments to The Service Provider as set forth in this agreement and any change order(s) as if all time frames, schedules, or deadlines had been completed by The Service Provider. Customer shall be responsible for making, at its own expense, any changes or additions to customer's current systems, software, and hardware that may be required to support operation of the web site. Unless otherwise contracted with The Service Provider or reflected in a change order, customer shall be responsible for initially populating and then maintaining any databases on the web site as well as providing all content for the web site. With the execution of a change order specifically asking The Service Provider to assesses the customer's systems, software and hardware from time to time, The Service Provider may agree to perform this function at the Service Provider's normal rates.

Web site design

A. Design. The design of the web site shall be in substantial conformity with the material provided to The Service Provider by customer. Web site consultation will be provided according to the number of coordination steps outlined for the plan purchased in the order. Customer will provide direction to The Service Provider by providing and delivering content for web site construction within in electronic form sent to the service provider via email or other electronic methods. Web site text will be supplied by the customer unless copywriting services have been purchased. Development of web pages will take place on the customer's established web hosting service with The Service Provider. All server technical issues are to be handled by The Service Provider only if the website hosting services are provided by the service provider. If the customer chooses to provide it's own hosting environment or server, the liability falls with the customer, unless otherwise noted amongst all parties and set forth in the proposal. If the customer chooses to provide its own website hosting or server, it must be approved prior to work commencement as not all servers or web hosting platforms are guaranteed to work with the design and architecture proposed by the service provider. Minor updates and changes include any minor modifications and modifications to work out backend database issues and functionality. This does not include adding features beyond the scope of the order. The Service Provider shall not include, as determined in its sole discretion, any of the following in the web site or in customer's directory on The Service Provider's web server: text, graphics, sound, or animations that might be viewed as obscene or any illegal activities; links to other we sites that might be viewed as obscene or related in any way to any illegal activities; impressionistic or cartoon-like graphics (unless provided by customer); invisible text, metatags (i.E., text that is present only when a "webcrawler" or other web indexing tool accesses the web site), or any other type of hidden text, hidden information, hidden graphics, or other hidden materials; or destructive elements or destructive programming of any type.

B. Coordination steps. Customer understands that submissions for web site development are limited to the number of coordination steps as provided in the order. Customer is encouraged to provide as much instruction and direction as possible with each submission.

C. Accessibility of web site during construction. Throughout the construction of the prototype and the final web site, the web site shall be accessible to customer through the web hosting platform. Until customer has approved the final web site, none of the web pages for customer's web site may be accessible to end users. The service provider does not guarantee any part of the webpage or design until final payment has been received, and the customer should not prepare to use the site or provide links to third party's until the design has been completed and paid for.

D. Completion date. The Service Provider and the customer shall work together to complete the web site in a commercially reasonable manner. Customer must supply The Service Provider complete text and graphics content all web pages contracted for within two (2) weeks of the date of the order unless otherwise noted. If customer has not submitted complete text and graphics content within three (3) weeks after the order, the final payment will become due. The completion date is stated at the time that the design of the base site and structure has been completed. The customer shall pay the service provider at this time. The customer shall not withhold payment because they have not failed to prepare all materials (graphics, text, content etc.) in a timely fashion. The final payable amount is due at either 3 weeks from sign off of the proposal, or when the website design is finished as stated above (design is completed) whichever occurs first.

F. Copyright to web site. The Customer acknowledges, understands and agrees that The Service Provider may use its own and/or may purchase third party licenses for products or services that are necessary for The Service Provider to design and develop the web site. Such products may include, but are not limited to server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work ("outside content") which The Service Provider deems necessary to purchase on behalf of customer to design and develop the web site. Customer further acknowledges and understands that any outside content used to design and develop the web site is owned by The Service Provider and/or such third parties and cannot be transferred to customer and is hereby specifically not transferred to customer and shall remain the property of The Service Provider and/or such third parties. Outside content which is owned and/or purchased by The Service Provider may be used in the design and/or development of other web sites separate from customer. Customer and The Service Provider agree that upon payment in full of the fees associated with the design and development of the web site, customer shall own a worldwide right, title, and interest in and to the web site (including, its source code and documentation) (the "custom programming"). Customer and The Service Provider agree that The Service Provider shall retain a worldwide, royalty-free, non-exclusive, transferable, and perpetual right and license to the custom programming including, but not limited to, the right to modify, amend, create derivative works, rent, sell, assign, lease, sublicense, or otherwise alter or transfer the custom programming. Customer and The Service Provider also agree that the design and development of the web site may include source code, documentation, and/or application programs that were previously written or developed by The Service Provider and modified to meet customer's specific requirements (the "code content"). The Service Provider shall own all worldwide right, title, and interest in and to the code content, but shall provide customer (upon payment in full of the fees associated with the design and development of the web site) a worldwide, royalty-free, non-exclusive, transferable and perpetual right and license to use the code content. The Service Provider and its subcontractors retain the right to display graphics and other web design elements of the web site as examples of their work in their respective portfolios. In addition to the rights stated above, the service provider may use open source products/services/code that is deemed "open source" which is maintained by third parties, which ownership cannot be transferred, as the service provider has used the software/code/services/products within the scope of its open source license.

Maintenance

This agreement does not provide web site maintenance unless a web site maintenance plan is purchased. If the customer or an agent other than The Service Provider attempts updating customer's pages, time to repair web pages will be assessed at an hourly rate. Changes requested by the customer beyond those limits will be billed at the hourly rates set forth in the order. This rate shall also govern additional work authorized beyond the maximums specified in the order for such services as webpage design, editing, modifying product pages and databases in an online store, and art, photo, graphics, or any other services. Any changes/requests that have been made outside of 3 weeks or the finalisation of the design and structure of the site (not including content, images, text etc.) are classed as maintenance, as the final completion date which is described as the structure and base design of the site has been met. Any changes/requests that are made, would be charged at a rate/fee of choice of the service provider.

Fees

A. Development fee. The total price for all of the work set forth in the agreement (excluding post-approval modifications not implemented by customer) shall be set forth in the order (the "development fee"). This price covers all work for the order (excluding post-approval modifications not implemented by customer). Unless otherwise stated in the order, the development fee to The Service Provider is due and payable upon placing the order and The Service Provider shall have no obligation to perform any work until payment is received and such funds are cleared from the relevant financial institution. The Service Provider's services are "as-is, where-is, with all faults" and refunds may not be provided for The Service Provider's services hereunder.

B. Project abandonment. If after repeated attempts to begin, continue, or finalize the delivery of services, customer fails to participate, or becomes otherwise unresponsive to The Service Provider requests for a period of three (3) months, the project may be considered abandoned, and The Service Provider may reduce any refund the customer may otherwise be entitled to hereunder to zero, and customer will have forfeited all rights to receive any refund for services purchased online or as described in the original Proposal.

Indemnification

A. the Service Provider indemnity. In performing services under this agreement, The Service Provider agrees not to design, develop, or provide to customer any items that infringe one or more patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or other rights of any person or entity. If The Service Provider becomes aware of any such possible infringement in the course of performing any work hereunder, The Service Provider shall immediately so notify customer in writing. The Service Provider agrees to indemnify, defend, and hold customer, its officers, directors, members, employees, representatives, agents, and the like harmless for any such alleged or actual infringement and for any liability, debt, or other obligation arising out of or as a result of or relating to (a) the agreement, (b) the performance of the agreement, or (c) the deliverables, other than customer's responsibilities and customer content. This indemnification shall include attorney's fees and expenses, unless The Service Provider defends against the allegations using counsel reasonably acceptable and approved by the service provider. The Service Provider's total liability under this agreement shall not exceed the amount of the development fee derived by The Service Provider under this agreement.

B. Customer indemnity. 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 customer to The Service Provider (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 customer prompt written notice of a claim; and (ii) allow customer to control, and fully cooperate with customer in, the defense and all related negotiations.

Representations and warranties

A. The Service Provider makes the following representations and warranties for the benefit of customer:

1. No conflict. The Service Provider represents and warrants that it is under no obligation or restriction that would in any way interfere or conflict with the work to be performed by The Service Provider under this agreement and the order. Customer understands that The Service Provider is currently working on one or more similar projects for other clients. Provided that those projects do not interfere or conflict with The Service Provider's obligations under this agreement, those projects shall not constitute a violation of this provision of the agreement.

2. Conformity, performance, and compliance. The Service Provider represents and warrants that (1) all deliverables shall be prepared in a workmanlike manner and with professional diligence and skill; (2) all deliverables will function under standard html conventions; (3) all deliverables will conform to the specifications and functions set forth in this agreement; and (4) The Service Provider will perform all work called for by this agreement in compliance with applicable laws. The Service Provider will repair any deliverable that does not meet this warranty within a reasonable period of time if the defect affects the usability of customer's web site, and otherwise will repair the defect within 24 hours, said repairs to be free of charge to customer. This warranty shall extend for the life of this agreement. This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of The Service Provider.

3. Disclaimer of all other warranties. The Service Provider does not warrant that the functions contained in its web pages or the web site will meet the customer's requirements or that the operation of the web pages will be uninterrupted or error-free. The entire risk as to the quality and performance of the web pages and web site is with customer. Except as otherwise specified in this agreement, developer 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.

4. Limitation of liability. In no event shall either party be liable to the other 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. The maximum remedy available to either party is any amount paid by customer hereunder. 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.

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

1. 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 for inclusion in the web site are owned by customer, or that 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 customer.

2. From time to time governments enact laws and levy taxes and tariffs affecting internet electronic commerce. 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 customer's exercise of internet electronic commerce.

C. 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 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

A. Independent contractor. 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 Service Provider shall be solely responsible for and shall hold customer harmless for any and all claims for taxes, fees, or costs, including but not limited to withholding, income tax and workers' compensation.

B. No agency. Customer does not undertake by this agreement, the order 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 customer in any respect, any other provisions of this agreement notwithstanding.

Notice and payment

A. 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 order mailed by certified, registered or express mail, return receipt requested or by email.

B. 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. 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

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

If this agreement is executed then each party warrants that their representative whose signature appears on such signature pages is the duly authorized by all necessary and appropriate corporate actions to execute this agreement.