



# TERMS OF SERVICE

**UPDATED 29/05/2017**

Please read these terms of service carefully. They govern provision of Webgator's services described in this Agreement, acceptance of which constitutes a legally binding contract.

## TERMS & CONDITIONS

Please read these terms of service carefully. They govern provision of Webgator's services described in this Agreement, acceptance of which constitutes a legally binding contract.

## INTERPRETATION AND DEFINITION

In this agreement the following terms shall have the respective meanings assigned to them:

**"Agreement"** means these Terms and Conditions, Service descriptions, Terms of Use, Payment Terms and the Proposal and any addenda. In the event of any conflict between the terms of this Agreement for the provision of Services, the details of the Proposal shall prevail, except for payment terms where the Payment Schedule shall prevail;

**"Client"** means the Company that enters into an agreement with Webgator, its employees, agents, representatives and sub- contractors, to whom the Service is provided as set out in the Proposal;

**"Commencement Date"** means the date of commencement of the Services as set out on the signed Letter of Engagement;

**"Fees"** means the amounts payable by the Client for the Services provided by Webgator as detailed in the Proposal;

**"Initial Term"** unless otherwise stated in Proposal means 30 days from Commencement date.

**"Payment Terms"** means the agreed schedule of payments that the customer shall make to Webgator for the provision of services forming part of these Terms and Conditions;

**"Proposal"** means the brief or quote for the project provided by Webgator that outlines the services sought by the Client and determines the Services to be provided by Webgator. In the event that multiple options are provided in the proposal, the

Proposal Summary outlined in this Service Agreement specifies which option is covered by this Agreement;

**“Project”** means the work required to achieve the goals outlined in the Proposal;

**“Services”** means the services that Webgator currently offers, details of which are on the Webgator website and the services to be provided by Webgator to the Client as specified in the Proposal;

**“Site”** means the Webgator website at [www.webgator.com.au](http://www.webgator.com.au);

**“Webgator”** means Webgator Pty Ltd ACN 609 487 541, Digital Marketing Agency.

## GENERAL

This Agreement is by and between Webgator Pty Ltd, its Clients their heirs, assigns, agents and contractors and is made effective as of the date of electronic execution. By accessing the Webgator website, you acknowledge and agree that you have read, understood, acknowledged and agreed to be bound by all the terms and conditions of this Agreement.

## TERMS OF SERVICE

Webgator offers internet marketing services that include, *but not limited to*: search engine optimization (hereinafter “SEO”), Google AdWords®, Facebook and other Social Media advertising and Link Building.

### 1. QUOTE FOR PROVISION OF SERVICES

1.1 All quotes supplied by Webgator are valid for 7 days from the date the quote is provided. Webgator may amend this provision during promotional periods. Acceptance can be provided in writing, via electronic mail, via the quote issuing platform (Eg Quickbooks) or in writing or via fax.

### 2. COMMENCEMENT OF SERVICES

2.1 Webgator will send Client an email requesting additional information for the Project. Webgator will commence work within fourteen (14) days after the date of receipt of information and initial payment.

2.2 Webgator will use its best endeavours to provide the Service to Client within a reasonable timeframe. Webgator is not liable for delays to project or anticipated timeframes for delivery of service.

### 3. **PAYMENT TERMS**

- 3.1 Client agrees to pay for the Products and Services in full prior to work commencing on the Project, unless otherwise agreed at Webgator's discretion, such as by an arranged payment plan or monthly service charge. Invoices are payable within five (5) business days from the date of the invoice.
- 3.2 Client may request a full refund within seven (7) days of remitting payment to Webgator, prior to work commencing. Client acknowledges that no refunds are available once work has commenced on the Project.
- 3.3 If on a payment plan, a one-time setup fee may be assessed and payment is required prior to work commencing. The Client will also be billed in advance of each 30-day billing period thereafter at the rate and for the period of time as outlined in the Proposal and related quote. Invoices are payable within five (5) business days from the date of the invoice.
- 3.4 If Client provides Webgator with their credit card information, you authorise Webgator to automatically charge your credit or debit card for charges that apply to your account. Recurring charges will be charged to your credit card until all required payments have been completed or until such time that you cancel your account in accordance with Webgator cancellation policy.
- 3.5 Clause 3.4 applies in respect of any direct debit, PayPal reoccurring subscription, or eWay reoccurring subscription arrangement entered into between Webgator and the Client.
- 3.6 All payments to Webgator Pty. Ltd. will be made in AUD (Australian Dollars).

### 4. **LATE OR NON-PAYMENT**

- 4.1 If payment has been declined or has not been made, the Client's account will be suspended until payment is made.
- 4.2 For returned cheques due to insufficient funds, Webgator reserves the right to request an alternate payment method.
- 4.3 If payment has not been received after 30 days, this may result in termination of our services and the removal of the work we have done.
- 4.4 All work done by Webgator will remain the sole property of Webgator until payment has been made in full.

### 5. **CLIENT OBLIGATIONS**

- 5.1 Client will provide Webgator with reasonable direct and remote access to its website, and shall provide such other reasonable assistance as Webgator may

request, including, but not limited to, providing source code and other statistical, diagnostic information and other relevant information required to enable Webgator to comply with its obligations under this Agreement.

5.2 Where the Service being provided requires, Webgator will liaise with the relevant web agency, hosting company or other third party in order to provide the Services. Webgator shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Webgator breaching its obligations under this Agreement.

5.3 Webgator will not make changes to or update a Customer's website prior to written or verbal consent from the Customer, stating that Webgator have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made.

## 6. IMPLEMENTATION OF SEO SERVICE

6.1 Webgator agrees to provide search engine optimisation services according to industry standard practices. Webgator make no guarantees of any kind, including but not limited to ranking guarantees; unless specified in the Proposal and service agreement.

6.2 Client acknowledges that Webgator may, as part of the client's SEO campaign, add links and content to the client's website.

6.3 Client acknowledges that Search Engine Optimization ("SEO") is governed by many factors which are outside the direct control of Webgator. Search Engines are third party systems with unknown variables, algorithms and indexing decisions that can change at any time and without notice over which we have no control. Webgator will use best efforts, techniques and accepted standards to improve Client's Search Engine Ranking but cannot guarantee a position #1 ranking of Client's website on any major Search Engine using Client's desired keywords. Client further acknowledges that the website's ranking with a particular Search Term will rely on both the relevancy of that term on your pages, and the popularity of that term on other websites.

6.4 Webgator is not responsible for changes made to the website by other parties that adversely affect the search engine rankings of the Client's website.

6.5 Webgator is not responsible for the Client overwriting Webgator's work to the Client's site. (e.g., Client/webmaster uploading over work already provided/optimized). The Client will be charged an additional fee for re-constructing content.

- 6.6 Webgator follows a strictly ethical SEO policy and will not be responsible for any bans or search engine suspension for the following:
- 6.6.1 duplicate sites, duplicate content or pages, redirects or doorway pages.
  - 6.6.2 link farms or any spanning techniques which may harm the web site's ranking with Google.
  - 6.6.3 Increased traffic or sales
  - 6.6.4 hidden links
  - 6.6.5 automated web site submission software or websites.

## 7. **IMPLEMENTATION OF GOOGLE ADWORDS®**

- 7.1 Webgator may provide Client a management service of a Google AdWords® account in accordance with the terms set out in the Proposal. If no such terms appear in the Proposal, this clause does not apply.
- 7.2 Client expressly permits Webgator to create a Google AdWords™ account on their behalf. Client acknowledges that Google AdWords™ are subject to Google's Terms and Conditions. Client's account will be deemed active once Google™ approves it for online advertising. Webgator is not liable if Client's account is rejected.
- 7.3 Webgator will send a draft to Client once the initial configuration is complete. Client agrees to review and approve the draft within fourteen (14) business days. Webgator is not liable for errors or omissions once the ads are deployed.

## 8. **FACEBOOK AND SOCIAL MEDIA ADVERTISING**

- Webgator agrees to promote Client's company on Facebook® and/or Social Media sites including but not limited to Twitter™, YouTube™, Digg™ and LinkedIn™ through targeted advertising campaigns per the agreed specifications set out in the Proposal. If no such terms appear in the Proposal, this clause does not apply.
- 8.1 Client agrees to provide Webgator with information (ad banners and web site links) within ten working days after the Commencement Date and further agrees that they will comply with any technical specifications provided to the customer by Webgator. Drafts will be sent to Client for approval before being submitted to the relevant site.
- 8.2 Client agrees that any images to be used in advertisements will be supplied to Webgator. Client acknowledges that if images are not provided, additional design fees may be payable. Webgator will include these additional fees on the invoice.

- 8.3 Client acknowledges that Facebook and other social media sites reserve the right to refuse adverts at any time for any reason, whether or not the same has already been acknowledged and/or previously published, including but not limited to for reasons relating to the contents of the advertisement or any technology associated with the advertisement. Webgator will make every effort to create a substitute advertisement. If the advertisement is rejected due to content, Webgator shall require Client to supply new copy acceptable to aforementioned sites. Webgator cannot be held liable for rejection of ads by third party websites. Client acknowledges that if an advertisement previously accepted and displayed on a social media site is then subsequently removed by said site, prior to the end of the agreed period, that Webgator is not liable for this decision and no refund will be payable.

## 9. LINK BUILDING

- 9.1 Webgator offers no guarantee for the length of time each link will remain active.
- 9.2 Client acknowledges that linking to “bad neighbourhoods” or receiving links from “link farms” can seriously damage all SEO efforts. Webgator does not assume liability for the Client’s choice to link to or obtain a link from any particular website without prior consultation.
- 9.3 The Client agrees for Webgator to use industry standard practices (as reasonably determined by Webgator) to achieve the results and rankings outlined in the Proposal, including, but not limited to submitting citations, creating backlinks from Web 2.0 properties, and building content related backlinks from other websites.
- 9.4 The Client agrees to pay for any fees required by business directories to list the Client’s business. If these directories are required, Webgator will provide the Client with a list of these directories and details regarding the cost of registration.
- 9.5 The Client authorises Webgator to create social and other web properties on the Client’s behalf, as well as permission to use the Client’s Logo, Business Name, contact details, and any other information Webgator reasonably deems necessary to achieve the results outlined in the Proposal.
- 9.6 Webgator will send all access details to the Client for any citations built. However, no reports regarding other methods used to promote the Client’s website or otherwise achieve search engine rankings will be provided due to the confidential nature of such methods.

- 9.7 The Client acknowledges that all rankings achieved are temporary and variable and that Webgator provides no guarantee for the length that rankings will be sustained.
- 9.8 Webgator has the right to renegotiate the contract in any event that causes a drastic change in industry standard practices, eg. a considerable change to Google's algorithms as verified by the SEO community.
- 9.9 All domains acquired by Webgator for the sole or partial purpose of backlinking to Client's website, remain the property of Webgator.

## 10. **CANCELLATION POLICY**

- 10.1 If on a lock-in contract, Client is required to complete all payments scheduled during the lock-in period.
- 10.2 Following the completion of all payments scheduled in a lock-in period, or in the case that no lock-in contract period applies, the Client may choose to end the agreement at any time providing **at least 30-days' written notice** is given in writing.
- 10.3 If Client chooses to stop the agreement after the lock-in period but before the full-payment period has been completed, Webgator reserves the right to remove the value of the campaign work which has not been covered by Client's payments. In this case, Webgator would not be responsible for any subsequent loss of rankings which would likely occur.
- 10.4 Cancellations become effective on the day processed by Webgator. Client will be notified of the cancellation via email.

## 11. **DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY**

- Webgator warrants that the services provided will at the time of delivery correspond to the specifications provided in the agreed upon Proposal.
- 11.1 Client acknowledges that Webgator does not warrant or make any representations concerning the accuracy of design, content, features, functions and performance of any web pages created by Webgator or any advertisement placed on social media websites or otherwise, nor does it warrant or make any representations concerning the accuracy, likely results, or reliability of any optimization services it provides.
- 11.2 Client hereby agrees that the responsibility to check the performance, accuracy and quality of any web pages created by Webgator rests solely with them.



- 11.3 Client hereby agrees that Webgator is not liable for any failure to carry out services for reasons beyond its control including but not limited to acts of God, telecommunication problems, software failure, hardware failure, third party interference, Government, emergency on a major scale or any social disturbance of extreme nature such as industrial strike, riot, terrorism and war or any act or omission of any third party services.
- 11.4 Client agrees Webgator is not liable for absence of services as a result of public holidays or circumstances outside our control.
- 11.5 The content on this Site is for general information only and use and is not intended to address your particular requirements. In particular, the content does not constitute any form of advice, recommendation or arrangement by Webgator and is not intended to be relied upon by users in making (or refraining from making) any specific investment or other decisions. Appropriate independent advice should be obtained before making any such decision. Any arrangements made between Client and any third party named on this Site is at Client's sole risk and responsibility.
- 11.6 USE OF WEBGATOR.COM.AU IS AT YOUR SOLE RISK. ALL MATERIALS, INFORMATION, AND SERVICES ARE PROVIDED "AS IS," WITH NO WARRANTIES OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WITHOUT LIMITATION, WEBGATOR MAKES NO WARRANTY OR GUARANTEE THAT THIS WEBSITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.
- 11.7 TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL WEBGATOR OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, INFORMATION PROVIDERS, LICENSORS, OFFICERS, DIRECTORS, ACCOUNT PROVIDERS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "WEBGATOR") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF WEBGATOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, WEBGATOR IS FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE LIABILITY OF WEBGATOR TO YOU WILL BE LIMITED TO THE AMOUNT YOU PAID FOR THE SERVICES.

- 11.8 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

## 12. TERMINATION

- 12.1 Client acknowledges and agrees that Webgator, at its sole discretion, may suspend access to this website, suspend services or terminate this Agreement if the Client.

- 12.1.1 fails to pay any sum due under this Agreement and such sum remains unpaid for 5 days after written notice from Webgator that such sum has not been paid;
- 12.1.2 ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enter into liquidation or enter into any agreement with its creditors; or
- 12.1.3 fails to fulfil any of its obligations under any part of this or any other agreement that it has with Webgator; or
- 12.1.4 interferes with or impairs the Service, or Webgator's ability to deliver the Services; or
- 12.1.5 behaves in a manner found to be unlawful, inconsistent with, or in violation of, the letter or spirit of the terms of this Agreement.

## 13. CONFIDENTIALITY

- 13.1 Save as provided in this Agreement each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

## 14. INDEMNIFICATION

- 14.1 Client agrees to indemnify and hold harmless Webgator, its employees, directors, heirs and assigns against all liability, loss, damage and expense of any nature, including attorneys' fees, arising out of the publishing, distribution, or transmission of any advertisement submitted by or on behalf of the Client or the linkage of any advertisement to any other material.

## 15. SEVERABILITY

- 15.1 If any provision of these Terms is held to be unenforceable, or invalid, for any reason, then that provision is deemed to be modified to the extent required to remedy the unenforceability or invalidity or if it is not possible to remedy the

unenforceability or invalidity, that provision is to be severed from these Terms and these Terms will otherwise remain in full force.

**16. JURISDICTION**

16.1 This Contract shall be governed by the laws of the State of Queensland, Australia. The parties submit all disputes arising between them to the courts in the State of Queensland and any court competent to hear appeals from those courts of first instance.

**17. ENTIRE CONTRACT**

17.1 These Terms are the entire agreement between the parties regarding the use of this Website and the purchase of any services and supersedes all previous negotiations, commitments and agreements about the website and the services.

**18. OTHER LEGAL NOTICES**

18.1 The Trademarks used herein are registered trademarks and used under license:

18.1.1 YouTube™ and Google AdWords™ are registered trademarks of Google Inc, 1600 Amphitheatre Parkway, Mountain View, CA 94043

18.1.2 LinkedIn® is a registered trademark of LinkedIn Corporation, 2029 Stierlin Ct. Mountain View, CA 94043

18.1.3 Digg® is a registered trademark of Digg Inc, 135 Mississippi Street, 3rd Floor, San Francisco, CA 94107-2536 940