



Terms and Conditions – ONTOP SEO

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SERVICE TERMS AND CONDITIONS

1 APPLICATION

1.1 The following terms and conditions (“**Terms and Conditions**”):

- (a) shall govern the relationship between ONTOP SEO and the Client in relation to the provision of any Services undertaken by ONTOP SEO at the request of a Client;
- (b) shall apply as a matter of contract to any acceptance by ONTOP SEO of any request made by a Client to ONTOP SEO to perform Services for the Client;
- (c) are incorporated into the contract between Client and ONTOP SEO upon acceptance by ONTOP SEO of an order for Services;
- (d) are subject to change from time to time without notice, in ONTOP SEO’s sole discretion, provided that ONTOP SEO will notify any amendments to these Terms and Conditions by posting them to this website and the changes shall be incorporated into and apply to any pre-existing relationship of ONTOP SEO with the Client; and
- (e) are in addition to any terms and conditions that may be contained in any invoice or other document or agreement between ONTOP SEO and a Client, to the intent that these Terms and Conditions shall prevail to the extent of any inconsistency unless the contrary intention is otherwise expressed or implied.

1.2 The following terms have the following meaning in these Terms and Conditions:

Business Day means a day that is not a Saturday, Sunday, national public holiday or national bank holiday in the place within Australia where the Services are being provided.

Client is the party to whom ONTOP SEO supplies the Services.

Client Materials means all text, data, images, documents, reports, logos, trademarks, copy, electronic files, proofs, designs, product descriptions and other materials, whether electronic or in hard copy form, submitted to ONTOP SEO by or on behalf of the Client for the purposes of providing the Services.

Confidential Information means any information of or relating to the business, data, systems, software and information technology systems, finances, operations, customers, fees or pricing, properties, assets or affairs of a party or a Related Body Corporate which is or has been disclosed by a party to the other party or learnt or acquired by the other party during the provision of the Services, whether orally, electronically or in writing.

Intellectual Property includes copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in

databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the jurisdiction in which the Services are being supplied.

Personal Information has the meaning as defined in the Privacy Act from time to time.

Privacy Act means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles contained in that Act, as amended from time to time.

Related Body Corporate has the meaning given to it in section 50 of the *Corporations Act 2001* (Cth).

Services means the Search Engine Optimisation (SEO) work or services and any deliverables set out in the SOW and any further services agreed in writing between the parties.

Statement of Work (SOW) means a document setting out service requirements and the commercial terms including fees and pricing, set out in a quotation, proposal, client brief, order or a statement of work, as the case may be,

Term means the term specified in the SOW, including any renewals.

2 QUOTES AND PAYMENT TERMS

2.1 All quotes for Services supplied by ONTOP SEO remain valid for a period of 7 days, unless stated otherwise.

2.2 The Client agrees to pay the full charge for services or consultation work demanded by ONTOP SEO prior to work commencement, unless agreed otherwise.

3 REFUND

The Client may not seek, and ONTOP SEO shall not be obliged to pay a refund to any Client for any Services:

- (a) if ONTOP SEO has already commenced the Services; and/or
- (b) in any case, if any such request is made more than 7 days after payment for the Services has been received by ONTOP SEO.

4 CANCELLATION

4.1 The Client may only cancel any engagement of ONTOP SEO to provide Services if the Client first gives ONTOP SEO 45 days' written notice of the requested cancellation.

4.2 In the case of any engagement of ONTOP SEO for a period of 3, 6 or 12 months, it is an essential condition of any cancellation of such engagements that the agreed fees for the Services is paid in full by the Client to ONTOP SEO.

4.3 In the case of any engagement of ONTOP SEO to provide Services on a monthly or month-by-month basis, the engagement will automatically be renewed for a further month unless ONTOP SEO has received at least 45 days' written notice of cancellation from the Client.

4.4 If any campaign is updated or changed (in terms of keywords/key phrases, change of pricing etc.) the term of the campaign is renewed and begins again from the date of the client's request of change was implemented and work on the site begun.

4.5 If the Client cancels any engagement of ONTOP SEO to provide Services before the end of the Term and fails to pay ONTOP SEO the balance of any outstanding amounts due for the Services, the Client shall be liable for and must pay to ONTOP SEO, in addition to the outstanding balance owing and any interest payable in accordance with these Terms and Conditions (and without prejudice to ONTOP SEO's other legal and equitable

rights and entitlements), an amount of up to \$2,200 (incl. GST) as liquidated damages to ONTOP SEO as a reasonable pre-estimate of damages on account of its additional administration and legal costs that ONTOP SEO incurs in order to obtain outstanding payment from Client.

5 INTEREST

If ONTOP SEO issues an invoice to the Client, it must be paid in full within 7 days of being issued to the Client. If the Client has not paid the invoice in full within 7 days, interest will be charged on the unpaid amount at the rate of 10%, the Client will have seven (7) days to pay the unpaid amount otherwise the entire contract will be void and the client will be liable to pay the full contract amount out within seven (7) days.

6 PAY ON RESULTS

If ONTOP SEO agrees to provide services to the Client on a PAY ON RESULTS basis for an agreed period, the Client must pay 50% of the agreed fee before commencement of the Service and the remaining 50% must be paid once 50% of the targeted key phrases are appearing on Page 1 of Google search results. If the agreed PAY ON RESULTS service period is 12 Months and the services extend beyond 12 Months, the Client must pay the remaining 50% once the agreed target is achieved and must also pay for the additional months that the website was worked on in addition to the agreed fee. For example, if the campaign took 15 months the 50% would be due with the additional 3 months payment due also. The services will then continue on a month by month basis paid for at the monthly fee rate of the contract.

7 CLIENT OBLIGATIONS

The Client must provide ONTOP SEO with direct and remote access to its website. The Client must also provide to ONTOP SEO on request (and otherwise assist ONTOP SEO to obtain when requested) any details required by ONTOP SEO to perform the Services.

8 CLIENT WEBSITE CHANGES

ONTOP SEO will not make any changes, edits or updates to the Client's website without first having prior written or verbal consent, stating that ONTOP SEO have the right to make all and any reasonable changes to its website. The Client agrees and takes full responsibility for all changes being made or having already been made to its website.

9 IMPLEMENTATION OF SERVICES

9.1 Client acknowledges that ONTOP SEO may add links, content, images and all relevant materials onto the Client's website.

9.2 The Client acknowledges that Search Engine Optimisation (SEO) is governed by numerous factors which are beyond of the control of ONTOP SEO. Search engines are third party softwares programmed with unknown algorithms and variables which can change at any given time.

9.3 The Client understands and agrees that website rankings may decrease. ONTOP SEO will use its best efforts, strategies and techniques to improve client's website rankings but it does not and cannot represent, warrant or guarantee that website rankings will increase.

9.4 ONTOP SEO is not and shall not be responsible or liable for any negative changes made to the website by any third party entities.

9.5 ONTOP SEO shall not be responsible nor liable for any consequences if the Client overwrites or overrides any services or work done by ONTOP SEO to the Client's website.

9.6 ONTOP SEO follows a strictly ethical SEO policy, utilising only white-hat optimisation and practices. ONTOP SEO shall not be responsible of liable for any penalisation or suspensions issued by a search engine.

10 SOCIAL MEDIA PROMOTIONS

10.1 All social media vouchers are valid for all website packages only unless stated on the social media post.

10.2 Vouchers are only applicable on full priced packages and not applicable with discounted packages.

11 CAMPAIGNS

11.1 If ONTOP SEO has been retained by the Client to provide Services for a campaign over a fixed period (e.g. 3 months, 6 months or 12 months), then at the end of that fixed period the retainer for those Services shall automatically roll over for a further period of the same duration upon the same Terms and Conditions, unless the Client gives written notice to ONTOP SEO before **45** days of the periods end that they do not want to continue the campaign for the further period.

12 WARRANTIES

12.1 Each of the parties warrants to the other that:

- (a) it has full power and authority to enter into and perform these Terms and Conditions;
- (b) it shall comply and shall ensure that its employees and agents comply, with any Law; and
- (c) it has or will acquire all Intellectual Property rights needed to perform its obligations under these Terms and Conditions.

12.2 The Client warrants that:

- (a) it will not do, and it will not direct or request ONTOP SEO to do, anything which may breach any Law or applicable industry code;
- (b) it will make any decisions and provide any approvals, data, documentation and information reasonably required by ONTOP SEO, promptly;
- (c) it will carry out any tasks assigned to it and its agents or contractors in a timely manner and in such a way as to not delay ONTOP SEO in the provision of the Services;
- (d) the Client Materials:
 - (i) do not contain any matter which is obscene, defamatory, or illegal;
 - (ii) are not false, misleading or deceptive or likely to mislead or deceive;
 - (iii) are up to date, technically accurate, complete and correctly formatted for any distribution or use by ONTOP SEO in the provision of the Services; and
 - (iv) are free from viruses and do not contain malware, spyware or any other code which could alter or disrupt any program, product, service or device;
- (e) the use of the Client Materials by ONTOP SEO for the purposes of providing the Services and all matters incidental thereto will not breach any Law or infringe the Intellectual Property rights or other rights of any person or entity; and
- (f) it will pay to ONTOP SEO any additional costs incurred by ONTOP SEO in converting or processing Client Materials which are not in compliance with this clause.

12.3 To the extent that the law permits, ONTOP SEO makes no representation of any kind, express or implied, with respect to the Services.

12.4 The Client acknowledges and agrees that ONTOP SEO makes no guarantee regarding the results, outcomes or profitability of any campaigns conducted by ONTOP SEO for or on behalf of the Client.

13 PRIVACY

13.1 If a party is provided with, or has access to Personal Information in connection with the Services, it must comply with the Privacy Act and any other applicable law in respect of that Personal Information.

13.2 If Personal Information is provided to ONTOP SEO by or on behalf of the Client, then the Client:

- (a) must do all things necessary, including but not limited to:
 - (i) obtaining all appropriate consents from individuals;
 - (ii) providing notifications to individuals; and
 - (iii) maintaining accurate, up to date and complete records; to ensure that ONTOP SEO may lawfully use, process and disclose the Personal Information (and any changes made to any of them) in connection with the provision of the Services;
- (b) acknowledges and agrees that except as may be required by these Terms and Conditions, ONTOP SEO is not required to take steps to ensure that any Personal Information has been collected in accordance with the Privacy Act;
- (c) must do all things reasonably requested by ONTOP SEO to assist ONTOP SEO to comply with the Privacy Act in the course of its provision of the Services under these Terms and Conditions including:
 - (i) assisting ONTOP SEO in the updating of an individual's records in circumstances where an individual elects to "opt out" and not receive direct marketing materials and services;
 - (ii) providing ONTOP SEO with access to information held by the Client in respect of an individual when the individual makes a request for such access; and
 - (iii) providing ONTOP SEO with the policies and procedures the Client has put into effect pursuant to the Privacy Act if requested to do so by ONTOP SEO.

13.3 If ONTOP SEO collects Personal Information in the name of or on behalf of the Client:

- (a) the Client must provide to ONTOP SEO such collection statements, scripts for use, privacy policies and other materials necessary to ensure compliance with the Privacy Act in the collection of such Personal Information; and
- (b) the Client acknowledges and agrees that where ONTOP SEO is authorised or required by the Client to collect or otherwise deal with Personal Information in the name of or on behalf of the Client in connection with providing the Services, that ONTOP SEO does so as agent for the Client.

13.4 If ONTOP SEO processes any Personal Information in the name of or on behalf of the Client:

- (a) the Client acknowledges and agrees that the Personal Information may be disclosed or stored outside Australia in order to provide the Services. The Client consents for ONTOP SEO to receive, share and disclose Personal Information arising from use of the Services with telecommunication or other providers used in conjunction with the Services, or as may be required by Law;
- (b) ONTOP SEO shall process the Personal Information in accordance with these Terms and Conditions and any lawful instructions reasonably given by the Client from time to time; and
- (c) each party shall take appropriate security and organisational measures against unauthorised or unlawful processing of the Personal Information or its accidental loss, destruction or damage.

13.5 ONTOP SEO's Privacy Policy found at www.ontopseo.com.au will apply to any Personal Information that it collects, processes and holds.

14 INTELLECTUAL PROPERTY

Except as expressly provided:

14.1 Nothing in these Terms and Conditions conveys to either party any right, title or interest in the other party's pre-existing Intellectual Property.

14.2 Intellectual Property in all items, materials, and works (including software developments and enhancements or modifications to applications) developed or produced by ONTOP SEO in order to carry out the Services will be the sole and exclusive property of ONTOP SEO.

14.3 Rights in Intellectual Property owned by ONTOP SEO remain at all times the sole and exclusive property of ONTOP SEO and no licence of these rights is granted to the Client except a right to use the same to the extent required for the Client's enjoyment of the Services.

14.4 Rights in third party Intellectual Property licensed or procured by ONTOP SEO in connection with the provision of the Service remain at all times the sole and exclusive property of that third party and no licence of these rights is granted to the Client except a right to use the same during the Term to the extent required for the Client's enjoyment of the Services, subject always to any third party end user terms and payment of any applicable third party licence fees.

14.5 All Intellectual Property rights in the Client Materials remain at all times the sole and exclusive property of the Client and no licence of these rights is granted to ONTOP SEO except for a right to use and reproduce the same for the purposes of providing the Services or as may be otherwise specified in these Terms and Conditions.

14.6 The Client warrants and agrees in providing ONTOP SEO with access to its web site that the content of the Client's web site:

- (a) does not infringe the intellectual property rights of a third party;
- (b) is not stolen, fraudulent or unlawful;
- (c) does not convey any form of pornography, hate, crime or drugs; and
- (d) does not contain viruses or any related virus-like software which are designed to destroy, hack or steal computer software, hardware and data.

15 INDEMNITIES

15.1 ONTOP SEO shall not have any obligations or liability to or indemnify the Client for any liabilities, costs, loss or damage in connection with:

- (a) the Client's use of any Services in a modified form not approved by ONTOP SEO or in combination with materials not furnished by ONTOP SEO, or
- (b) the Client Materials.

15.2 Subject to clause 15.3, during the Term the Client will indemnify and defend ONTOP SEO from and against all liabilities, damages, and costs (including reasonable legal costs) arising out of a third party claim that ONTOP SEO's use of the Client Materials for the provision of the Services, infringe the Intellectual Property Rights of such third party.

15.3 The party seeking the indemnity must:

- (a) give the other party prompt written notice of the claim;
- (b) permit the other party to have full and complete control over the defence and settlement of the claim;
- (c) provide assistance in connection with the defence and settlement of the claim as the other party may reasonably request; and (d) comply with any settlement or court order made in connection with the claim (e.g., relating to the future use of any infringing materials).

15.4 The indemnities above are a party's only remedy under these Terms and Conditions for violation by the other party of a third party's Intellectual Property Rights.

16 CONFIDENTIAL INFORMATION

16.1 Each party shall, and shall use its best endeavours to ensure that its employees and agents, keep the Confidential Information confidential and not use or disclose the Confidential Information to any person other than:

- (a) in confidence to that party's professional advisers to obtain professional advice;
- (b) as may be properly required for the purpose of the provision of the Services and the performance of any obligations under these Terms and Conditions;
- (c) with the consent of the other party;
- (d) as may be required by any Law, the rules of any stock exchange or any court of competent jurisdiction; or
- (e) to the extent that any part of the confidential information is in the public domain otherwise than through the breach by a party of its obligations under this clause 16.

16.2 Each party must as reasonably required by the other party, destroy or return to the other party any Confidential Information, at the requesting party's cost.

16.3 Each party acknowledges that in the event of any alleged breach of clause 16.1 by it, damages may not be an adequate remedy and the other party will be entitled to seek equitable relief in the nature of specific performance and injunctive relief, in addition to damages.

17 LIMITATION OF LIABILITY

17.1 To the extent that any Law (including the *Competition and Consumer Act 2010*(Cth)) implies certain non-excludable conditions and warranties into these Terms and Conditions for the supply of goods and services, then to the extent permitted by Law, ONTOP SEO limits its liability in relation to the provision of the Services under these Terms and Conditions to the supplying of the Services again or the payment of the costs of having the Services supplied again, at ONTOP SEO's option.

17.2 Subject to Clause 17.1 and except as otherwise provided in these Terms and Conditions, ONTOP SEO shall not be liable for any loss or damage, whether arising in contract, tort (including negligence), under product liability legislation, under any other statute, under any indemnity or otherwise, sustained by the Client or any other person directly or indirectly from or in connection with the supply of goods or services or otherwise arising out of these Terms and Conditions.

17.3 The liability of a party is reduced proportionately to the extent to which the liability is caused, or contributed to, by the other party.

17.4 Each party must do what is reasonable in the circumstances to mitigate and minimise any costs, damages, expenses and/or losses incurred or suffered by the other party in connection with any claim under these Terms and Conditions.

18 TERMINATION

18.1 Either party may terminate these Terms and Conditions without prejudice to its other remedies by notice in writing to the other (Defaulter):

- (a) if the Defaulter commits a material breach of these Terms and Conditions and the Defaulter has not remedied the breach within 45 days of having been given notice in writing specifying the breach and requiring it to be remedied;
- (b) if the Defaulter is or becomes insolvent or bankrupt, becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth) or steps are taken by any person towards external administration; or
- (c) if any monies to be paid under these Terms and Conditions are not paid by their due date and remain unpaid for a period of 7 days after notice has been served requiring the payment default to be remedied.

18.2 On termination of these Terms and Conditions:

- (a) the Client's right to use the Services ceases; and
- (b) except for Fees that are the subject of a genuine dispute notified to ONTOP SEO in accordance with these Terms and Conditions, the Client must immediately pay to ONTOP SEO, without deduction or set off, all outstanding Fees and any other amounts payable to ONTOP SEO under these Terms and Conditions at the date of termination.

18.3 At any time prior to the termination or expiry of these Terms and Conditions, the Client may submit a written request for disengagement services and/or assistance with transitioning to a new provider. Unless these services are agreed, scoped and costed pursuant to a Change Request or a separate SOW, such services shall be provided in ONTOP SEO's absolute discretion at ONTOP SEO's then current rates and charges.

18.4 Termination of these Terms and Conditions does not affect the accrued rights or liabilities of either party.

19 DISPUTES

19.1 The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these Terms and Conditions (a "dispute") prior to commencing any proceedings in any court or otherwise in respect of that dispute ("proceedings").

19.2 If a party requires resolution of a dispute it must do so in accordance with the provisions of this clause 19 and the parties acknowledge that compliance with those provisions is a condition precedent to any entitlement to claim relief or remedy by way of proceedings in respect of a dispute.

19.3 If a party requires resolution of a dispute it must immediately submit full details of the dispute to its managing director or equivalent officer (each called a "responsible party").

19.4 On submission of details of a dispute in accordance with clause 19.3 the parties must procure each of their responsible parties to meet and try, on a bona fide basis, to resolve that dispute.

19.5 If a dispute is not resolved within 20 Business Days of submission of the dispute in accordance with clause 19.3 or within such other longer period as they agree, the provisions of clauses 19.6 and 19.7 will apply.

19.6 A dispute must be submitted to mediation at the option of the party requiring resolution of that dispute in Sydney, NSW in accordance with the standard rules of the Australian Commercial Dispute Resolution Centre (ACDC) before a mediator to be agreed. If the parties cannot agree on a mediator, the chief executive for the time being of the ACDC (or nominee) will be requested to appoint a mediator within 10 Business Days of the request.

19.7 A party may not commence proceedings in respect of a dispute unless that dispute is not settled by mediation within 20 Business Days of submission to mediation or within such other longer period as the parties agree.

19.8 Each party will pay its own costs associated with this dispute resolution procedure unless the mediator determines otherwise.

19.9 While any dispute remains unresolved, the parties agree to continue to perform these Terms and Conditions to the extent that such performance is possible, given the nature of the dispute.

19.10 This clause 19 does not limit in any way a party's right to seek any form of equitable relief including, without limitation, injunctive relief.

20 CHANGE REQUESTS

20.1 The parties will follow the change request process described in this clause 20 to initiate and consider:

- (a) new Services that are not within the scope of an SOW; or
- (b) changes to the Services (including any changes to the nature or scope of the Services or to the timing or the delivery of the Services) which cannot be accommodated by another process in these Terms and Conditions, each being referred to in these Terms and Conditions as a "Change Request".

20.2 A Change Request must:

- (a) contain a detailed description of the proposed change;
- (b) detail the effect (if any) on the Services (including the functionality and performance of any deliverables);
- (c) detail impact on the Fees;
- (d) detail the impact to any agreed service levels; and
- (e) contain a timeline for implementation of the change, including any significant milestones.

20.3 Each party will cooperate with the other party as necessary to enable the preparation of a Change Request, including by providing information, documents and details.

20.4 The Client will, within a reasonable period of time from receipt of the relevant information provided pursuant to 20.2, notify ONTOP SEO of its decision in respect of a Change Request including, without limitation, whether it:

- (a) accepts the Change Request;

- (b) wishes to renegotiate any aspect of the Change Request;
- (c) withdraws the Change Request, if initiated by the Client; or
- (d) does not accept the Change Request, if initiated by ONTOP SEO.

20.5 A party must not unreasonably refuse (directly or indirectly) any Change Request by the other party.

20.6 Neither party has any obligation to proceed with any Change Request unless and until the parties have agreed in writing on the necessary variations to the Services, the Fees, any applicable timeframes and/or any other relevant terms of these Terms and Conditions to take account of the change.

20.7 Where:

- (a) the Change Request is relatively minor (in terms of cost and impact) and is fairly routine; or
- (b) if agreed by the parties (agreement not to be unreasonably withheld), a truncated change request process (acceptable to both parties) may be adopted to deal with any particular Change Request.

21 SPECIFIC CONDITIONS

21.1 In addition to and without limiting any other provision in these Terms and Conditions, the following conditions shall apply to the relationship between ONTOP SEO and the Client:

21.1 If ONTOP SEO has to take legal action to recover any amounts due from the Client, then in addition to the amounts due (including interest) the Client is liable to and must pay ONTOP SEO:

- (a) the amount of any Court fees and administrative costs incurred by ONTOP SEO in taking such legal action; and
- (b) liquidated damages at a rate of \$120.00 + GST per hour for each ONTOP SEO employee for the time reasonably incurred by ONTOP SEO in pursuing the legal action against the Client, which the Client and ONTOP SEO agree is a genuine pre-estimate of damages suffered by ONTOP SEO for the professional time thrown away in pursuing legal action when that time could have been otherwise beneficially employed in ONTOP SEO's business.

21.2 If the Client cancels the Services early, the Client must pay ONTOP SEO:

- (a) for the work done for the Client but not paid for before the cancellation, being compensation for the work, time spent and loss of opportunity to pursue other work; and
- (b) the payment shall be by way of liquidated damages at a rate of \$120.00 + GST per hour for each ONTOP SEO employee carrying out the work, which the Client and ONTOP SEO agree is a genuine pre-estimate of damages suffered by ONTOP SEO for the Services carried out and thrown away by the Client's early cancellation of the Services.

21.3 If the Client fails to communicate instructions to ONTOP SEO for a period of 14 days or more after having been asked for instructions by ONTOP SEO:

- (a) the full amount payable for the Services shall thereupon become due and payable to ONTOP SEO and ONTOP SEO may cease work for the Client until such time as that amount is paid in full; or
- (b) if the Client wishes to instead terminate the Services, the Client must immediately pay an exit fee of \$1,000.00 to ONTOP SEO together with all amounts then due and owing for the Services.

21.4 Until ONTOP SEO receives payment in full from the Client for the Services:

- (a) ONTOP SEO shall have a lien over all work product created for the Client, which ONTOP SEO may retain until such time as ONTOP SEO receives payment in full; and
- (b) in the case of website hosting, ONTOP SEO may take down the Client's web site until such time as all outstanding amounts are paid in full, including payment of a reinstatement fee of \$550.00 (including GST) to restore the Client's web site to normal operation after payment has been received.

21.5 The Client acknowledges and agrees that:

- (a) the Client agrees and accepts the methods employed by ONTOP SEO to carry out the Services;

- (b) ONTOP SEO does not represent or warrant that the Client will achieve any particular results for the Client's business as a result of the provision of the Services by ONTOP SEO; and
- (c) ONTOP SEO shall not be liable or responsible to the Client in any way of the results achieved from the Services are less successful than the Client was expecting to achieve or would have liked to achieve.

21.6 If the Client wishes to pause or suspend the Services during the course of any agreed period for the provision of those Services, then:

- (a) the maximum duration of any such pause or suspension shall be 45 days in any 12 month period; and
- (b) ONTOP SEO will not charge the Client for the Services for the duration of that pause or suspension.

21.7. ONTOP SEO reserves the right to have our company name listed in the footer of any website which we conduct any work on. 'Web and SEO Services by ONTOP SEO' (or variant of) will remain on the footer of the website unless a mutual agreement between both the client and ONTOP SEO is reached whereby a \$1,000.00 (+ GST) fee will be paid by the client to ONTOP SEO in agreeance to have this removed.

22 GENERAL

22.1 Relationship. These Terms and Conditions constitute a relationship between the Client and ONTOP SEO of principal and independent contractor. Without prejudice to clause 13.3(b), nothing in these Terms and Conditions shall constitute any relationship of agency, partnership or joint venture. Neither party, unless expressly stated in these Terms and Conditions, shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party.

22.2 Subcontracting. ONTOP SEO may subcontract performance of all or any of its obligations under these Terms and Conditions and may substitute or change subcontractors but remains liable at all times for performance of its obligations by each subcontractor.

22.3 Assignment. ONTOP SEO may assign or transfer its rights or obligations under these Terms and Conditions to a Related Body Corporate in its absolute discretion. A party may not otherwise assign or transfer its rights or obligations without the prior written consent of the other party.

22.4 Variation. These Terms and Conditions may only be varied, modified, amended or added to in writing executed by the parties in the manner that these Terms and Conditions is executed.

22.5 No Waiver. No delay by a party in exercising any right under this document will operate as a waiver of that right nor will any waiver by a party of any right under this document operate as a waiver of any other right of that party, nor will any single or partial exercise of any right preclude any further exercise of that or any other right under this document.

22.6 Severability. If any provision of these Terms and Conditions is unenforceable it will be read down so as to be enforceable or, if it cannot be so read down, the provision (or where possible, the offending part) will be severed from these Terms and Conditions without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of these Terms and Conditions which will continue in effect.

22.7 Survival. The provisions of these Terms and Conditions which are capable of having effect after termination of these Terms and Conditions will remain in full force and effect following the termination of these Terms and Conditions.

22.8 Entire Agreement. These Terms and Conditions supersede all prior agreements, arrangements and undertakings between the parties and constitute the entire agreement between the parties relating to the subject matter of these Terms and Conditions.

22.9 Notices. If either party gives or is required to give a notice to the other party under these Terms and Conditions, that notice must be in writing and hand delivered, sent by pre-paid post or emailed to the address specified in the SOW.

22.10 **Use of logos.** Unless the Client expressly specifies otherwise, in writing, ONTOP SEO may use and publish the Client's logo for marketing purposes and otherwise disclose that the Client is a customer of ONTOP SEO.

22.11 **Governing Law.** These Terms and Conditions are governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State.