

XoomIM, LLC Terms and Conditions

By using the XoomIM, LLC services, you agree to be bound by the following terms and conditions. XoomIM, LLC reserves the right to change the Terms and Conditions at any time without notice, and your continued work with XoomIM, LLC constitutes your consent to such changes.

By utilizing XoomIM, LLC's services, through executing a customized marketing agreement or otherwise, you ("Customer" or "you") agree to be bound by the following terms and conditions (the "Agreement"). The Customer and XoomIM, LLC ("XoomIM") are collectively referred to herein as the "Parties" and individually as a "Party". XoomIM reserves the right to change the terms and conditions herein at any time without notice, provided the terms of any customized marketing agreement will be binding wherein a conflict exists between the customized marketing agreement and this Agreement. Customer consents to any and all changes in the terms and conditions by continuing to work with XoomIM after the date of change in terms and conditions. Customer waives all rights to object to such changes of the terms and conditions if Customer does not send written objection to marketing@xoomim.com, specifically stating the terms and conditions to which Customer objects within five (5) days of the change in the terms and conditions.

1. Description of Services.

Customer wishes to be provided with the services described herein and within Customer's customized marketing agreement. XoomIM will provide an ongoing set of online services which may include web/landing page design and creation, content copy and editorial development, search engine optimization, website updates, email marketing, social media marketing, and/or other specific marketing services and solutions described in your customized marketing proposal.

2. Website Design.

XoomIM provides website samples and ideas for you to view before hiring XoomIM for your project so you can see XoomIM's work and be completely comfortable working with XoomIM prior to signing a customized marketing or website production agreement. If you have any questions or reservations, please contact us at marketing@xoomim.com prior to making payment for XoomIM's services. Once a payment or deposit is made to XoomIM, the payment is non-refundable. If a project is cancelled or postponed by Customer, all monies paid shall be retained by XoomIM. If

applicable, Customer will be held responsible for complete payment of the term and amounts of any and all existing agreements between XoomIM and Customer.

3. Scope of Work.

XoomIM is not responsible for work that is beyond the scope of services set forth in Customer's customized marketing proposal. Any change to the scope of services in the Customer's customized marketing proposal shall not be binding or effective unless approved in writing, signed by XoomIM. Customer acknowledges and agrees that XoomIM may, at its sole discretion, use subcontractors and consultants to perform some of the services to be provided under this Agreement. In the event XoomIM utilizes subcontractors or consultants to perform any of the services, XoomIM shall remain responsible to Customer for performance under this Agreement.

4. Management Responsibility; and Compliance with Laws, Permits and Licenses.

XoomIM will provide certain tools, methods and resources to Customer that are intended to help Customer market its business, services and products. However, Customer is solely and exclusively responsible for Customer's business performance and Customer's clients' satisfaction. Customer additionally has full and exclusive responsibility for ensuring compliance with any regulatory, legal or contractual obligations relating to Customer's business, including but not limited to, data held by Customer and Customer's clients, information provided by Customer to Customer's clients and/or other third parties, and any safeguarding or security measures that may be required to be implemented by Customer. Customer agrees, at its own expense, to operate in full compliance with all governmental laws, regulations and requirements applicable to the duties conducted hereunder. It shall be the responsibility of the Customer to pay for any necessary licenses, permits, insurance and approvals as may be necessary for the performance of the services under this Agreement, unless otherwise specified in writing and agreed to by XoomIM. XoomIM is not responsible for misuse of any copyrighted material by Customer.

5. Confidential Information.

The Parties acknowledge that by reason of their relationship to the other pursuant to any customized marketing agreement or otherwise between the Parties, each may disclose or provide access (the "Disclosing Party") to the other Party (the "Receiving Party") certain Confidential Information. "Confidential Information" shall mean (i) information concerning a Party's products, business and operations including, but not limited to, information relating to business plans, financial records, customers, suppliers, vendors, products, product samples, costs, sources, strategies, inventions, procedures,

sales aids or literature, technical advice or knowledge, contractual agreements, pricing, price lists, product white paper, product specifications, trade secrets, procedures, distribution methods, inventories, marketing strategies and interests, algorithms, data, designs, drawings, worksheets, blueprints, concepts, samples, inventions, manufacturing processes, computer programs and systems and know-how or other intellectual property, of a Party and its affiliates that may be at any time furnished, communicated or delivered by the Disclosing Party to the Receiving Party, whether in oral, tangible, electronic or other form; (ii) the terms of any agreement, including the customized marketing agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of or while present at a Party's facilities; and (iv) all other non-public information provided by the Disclosing Party hereunder. In no event shall XoomIM's use or disclosure of information regarding or relating to the development, improvement or use of any of XoomIm's services or products be subject to any limitation or restriction. Unless signed and acknowledged by Receiving Party, it shall be presumed that information provided from Disclosing Party to Receiving Party is not confidential information. Receiving Party shall only use the Confidential Information in furtherance of its performance of its obligations under this Agreement, and agrees not to use the Disclosing Party's Confidential Information for any other purpose or for the benefit of any third party, without the prior written approval of the Disclosing Party. Confidential Information does not include information that: (a) was lawfully in Receiving Party's possession before receipt from Disclosing Party; (b) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the Receiving Party; (c) is developed by Receiving Party independently of any Confidential Information it receives from Disclosing Party; (d) Receiving Party receives from a third party free to make such disclosure without, to the best of Receiving Party's knowledge, breach of any legal or contractual obligation, or (e) is disclosed by Receiving Party with Disclosing Party's prior written approval. If Disclosing Party believes confidential information has been misused in any way under this Agreement, a notice and right to cure must first be sent to Disclosing Party describing the purported misuse of the information with a ten (10) day right to cure to the best ability of Receiving Party. The Notice and Right to Cure are an absolute condition precedent to any litigation or dispute involving confidential information. If, after the right to cure period, the Receiving Party is confronted with any legal action regarding Confidential Information, all disputes must first be mediated under this Agreement in Miami-Dade County, Florida, subject to Florida Law. In the event the Receiving Party discovers that any Confidential Information has been used, disseminated or accessed in violation of this Agreement, it will immediately notify the Disclosing Party, take all commercially reasonable actions available to minimize the

impact of the use, dissemination or publication, and take all necessary steps to prevent any further breach of this Agreement and harm of Disclosing Party.

6. Link.

Customer hereby acknowledges and agrees that XoomIM shall have the right to use the name of Customer, including Customer's websites and domains for reference, referral, and marketing purposes.

7. Term/Termination.

The term of this Agreement shall be specified in writing within Customer's customized marketing proposal (the "Term"). Except for reasons of non-performance or breach by either party under this Agreement and the customized marketing proposal, in the event no term is specified, the Agreement will remain in effect until formally terminated in writing by either party. A liquidated termination fee of 50% of the remaining months' fees on the term of the Customized Marketing Agreement shall be imposed if Customer cancels the Agreement prior to the close of the term of the Customized Marketing Agreement. A repeated failure to make payment by date due during any period gives XoomIM the option for immediate termination. Upon the expiration or termination of this Agreement for non-payment or non-performance by Customer, (i) all licenses granted by XoomIM to Customer hereunder shall automatically terminate and Customer shall immediately cease its use of the licensed content and other provided marketing collateral, and (ii) Customer's right to the services afforded to XoomIM's customers shall automatically terminated. Either Party may terminate this Agreement at any time in the event of a breach by the other Party of a material covenant, commitment or obligation under this Agreement that remains uncured: (i) in the event of a monetary breach, three (3) calendar days following written notice thereof; and (ii) in the event of a non-monetary breach after fifteen (15) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party. Either Party may terminate this Agreement immediately at its option upon written notice if the other Party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within ninety (90) calendar days after its filing; (iii) ceases to do business in the normal course; or (iv) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U.S.C. §365). Termination of this Agreement

for any reason shall not discharge either Party's liability for obligations incurred hereunder and amounts unpaid at the time of such termination. Customer shall pay XoomIM for all Services rendered prior to the effective date of termination.

8. Billing; Fees and Expenses.

XoomIM will start billing Customer pursuant to the terms of the Customer's customized marketing proposal or other executed agreement. The billing cycle will begin on the date of such agreement and will automatically renew on a month-to-month basis following the end of the Term until the agreement is formally terminated pursuant to the terms of the agreement between XoomIM and Customer ("Renewal"). Client will pay monthly fees and/or retainer to XoomIM for services as described in Customer's individually customized marketing proposal. Invoices will include monthly fees and any additional fees for elective or other additional services that have been purchased by Customer. Invoices will be issued and automatic transactions processed at the end of every month and upon Renewal. XoomIM reserves the right to assess and collect late payment charges of 1.5% per month on past-due invoices and balances.

9. Warranty.

The services provided by XoomIM to Customer will be performed by qualified personnel in a professional and workmanlike manner in accordance with the generally accepted industry standards and practices. XoomIM does not warrant in any form the results or achievements of the services provided or the resulting work product and deliverables. All services are provided "As-is". **LIMITATION OF WARRANTY.** THE WARRANTY SET FORTH IN THIS SECTION IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SERVICES, WORK PRODUCT OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, OR AS TO THE RESULTS WHICH MAY BE OBTAINED THEREFROM. XOOMIM DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT. XOOMIM SHALL NOT BE LIABLE FOR ANY SERVICES OR WORK PRODUCT OR DELIVERABLES PROVIDED BY THIRD PARTY VENDORS IDENTIFIED OR REFERRED TO THE CUSTOMER BY XOOMIM DURING THE TERM OF CUSTOMER'S AGREEMENT WITH XOOMIM, PURSUANT TO ANY SOW OR OTHERWISE. CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY IS REPERFORMANCE OF THE SERVICES, OR IF REPERFORMANCE IS NOT POSSIBLE OR CONFORMING, REFUND OF AMOUNTS PAID UNDER THIS AGREEMENT FOR SUCH NON-CONFORMING SERVICES. XoomIM does not warrant that the software or any products or services provided hereunder will be uninterrupted or error-free. Under no circumstances,

including negligence, shall XoomIM be responsible for incidental, special, consequential damages, or otherwise, that result from the use of or inability to use XoomIM or Customer's websites. XoomIM shall not be responsible for any damages whatsoever that result from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation or transmission, or any failure of performance.

10. Limitation of Liability.

Except to the extent finally XoomIM's actions are determined to rise to the level of gross negligence or intentional misconduct, XoomIM's liability is limited to no more than the total amount of the most recent month of base fees paid under this Agreement and/or customized marketing agreement with Customer. XoomIM and its licensors will not be liable for lost profits or any consequential, indirect, punitive, exemplary or special damages. In addition, XoomIM shall have no liability to Customer arising from or relating to any third party hardware, software, information or materials. XoomIM is also not liable for direct or indirect damages created by viruses, hackers or other malicious or accidental destruction of systems or data. EXCEPT FOR THE PARTIES CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT AND INDEMNIFICATION OBLIGATIONS UNDER SECTION 11 OF THIS AGREEMENT, IN NO EVENT SHALL XOOMIM BE LIABLE UNDER THIS AGREEMENT TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOST BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, AND COSTS OF COVER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.

11. Indemnification.

Customer agrees to indemnify and hold harmless XoomIM and its officers, directors, employees, and agents harmless from any and all claims, demands, losses, liabilities, and expenses (including attorneys' fees), arising out of or in connection with: (i) Customer's use of the services or services and goods obtained through your use of XoomIM's services; (ii) Customer's breach or violation of any of these terms herein; (3) XoomIM's use of Customer's User Content or (iv) Customer's violation of the rights of any third party, including Third Party Providers. Subject to the provisions herein,

Customer shall indemnify, defend and hold harmless from and against any and all amounts payable under any judgment, verdict, court order, or settlement for third party claims brought against XoomIM and its licensors arising from products or services related to this Agreement or Customer's customized marketing agreement.

Conversely, XoomIM shall indemnify, defend and hold harmless from and against any and all amounts payable under any judgment, verdict, court order or settlement from third party claims brought against Customer strictly arising from the gross negligence or intentional misconduct of XoomIM. The party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any claim and give complete control of the defense and settlement of the Indemnifying Party, and shall cooperate with the Indemnifying Party, its insurance company and its legal counsel in its defense of such claim(s). This indemnity shall not cover any claim in which there is a failure to give the Indemnifying Party prompt notice to the extent such lack of notice prejudices the defense of the claim. SECTION 11 STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDIES WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS AGREEMENT.

12. Ownership of Work Product.

This is not a work-for-hire agreement. The copyright in all deliverables created hereunder for Customer shall belong to XoomIM. All intellectual property rights in all pre-existing works and derivative works of such pre-existing works and other deliverables and developments made, conceived, created, discovered, invented or reduced to practice in the performance of the Services hereunder are and shall remain the sole and absolute property of XoomIM, subject to a worldwide, non-exclusive license to Customer for its internal use as intended under this Agreement, and XoomIM retains all moral rights therein. This Agreement does not grant Customer any license to any of the Service Provider's products, which products must be separately licensed.

13. Cooperation of Customer.

Customer agrees to comply with all reasonable requests of XoomIM and shall provide XoomIM's personnel with access to all documents and facilities as may be reasonably necessary for the performance of the services under this Agreement.

14. Relationship of the Parties.

The relationship of the Parties hereto is that of independent contractors. Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents. The relationship of the Parties hereto is that of independent contractors.

Nothing in this Agreement, and no course of dealing between the Parties, shall be construed to create or imply an employment or agency relationship or a partnership or joint venture relationship between the Parties or between one Party and the other Party's employees or agents.

15. Force Majeure.

Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations under this Agreement, except for the payment of money, if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, or other similar or different occurrences beyond the reasonable control of the Party so defaulting or delaying in the performance of this Agreement, for so long as such force majeure event is in effect. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within five (5) business days of its occurrence.

16. Governing Law and Venue.

This Agreement will be governed by and interpreted in accordance with the laws of the State of Florida, without giving effect to the principles of conflicts of law of such state. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in Miami-Dade, Florida. Both Parties hereby submit to the exclusive jurisdiction and venue of any such court.

17. Attorney's Fees.

If either Party incurs any legal fees associated with the enforcement of this Agreement or any rights under this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation, or other litigation expenses from the other Party.

18. Collection Expenses.

If XoomIM incurs any costs, expenses, or fees, including reasonable attorney's fees and professional collection services fees, in connection with the collection or payment of any amounts due it under this Agreement, Customer agrees to reimburse XoomIM for all such costs, expenses and fees.

19. Severability.

If any provision or portion of this Agreement shall be rendered by applicable law or held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

By signing this document, signatory is certifying that the content herein is acceptable as the terms and conditions of entering into an agreement between XoomIM, LLC and the Customer.

Signature of Authorized Agent

Date

Printed Name

Title