

# **EPICDEV (PTY) LTD TERMS AND CONDITIONS**

## Terms and Conditions

These terms and conditions are the contract between you and **EPICDEV (PTY) LTD.**

By visiting or using Our Website, you agree to be bound by them. **EPICDEV (PTY) LTD** is a company registered in terms of the Companies Act, 2008 with registration number 2012/061897/07 and whose registered office is at 25A Old Main Road, Gillitts, Durban, South Africa.

You are: Anyone who uses Our Website.

Please read this agreement carefully and save it. If you do not agree with it, you should leave Our Website immediately.

### These are the agreed terms

## 1. Definitions

“Content”	means the textual, visual or aural content that is encountered as part of your experience on Our Website. It may include, among other things: text, images, sounds, videos and animations.
"Intellectual Property"	means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights.
“Our Website”	means any website or service designed for electronic access by mobile or fixed devices which is owned or operated by us.
“Services”	means the service provided from Our Website.

## 2. Use of site by children

We do not market to children, nor do we sell products or services for purchase by children. We do sell products and services for end use by children, but for

purchase by adults. If you are under 18, you may use our site only with consent from a parent or guardian.

### **3. Intellectual Property**

You agree that at all times you will:

- 3.1 not do anything which does or might reduce the value of our Intellectual Property or challenge our ownership of it.
- 3.2 notify us of any suspected infringement of the Intellectual Property;
- 3.3 so far as concerns our work provided or made accessible by us to you, you will not:
  - 3.3.1 copy, or make any change to any part of its code;
  - 3.3.2 use it in any way not anticipated by this agreement;
  - 3.3.3 give access to it to any other person than you, the licensee in this agreement;
  - 3.3.4 in any way provide any information about it to any other person or generally.
- 3.4 not use the Intellectual Property except directly as intended by this agreement or in our interest.

### **4. Disclaimers and limitation of liability**

- 4.1 The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 4.2 All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warrant or term cannot be excluded, then this sub paragraph shall be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.
- 4.3 You are advised that Content may include technical inaccuracies or typographical errors. This is inevitable in any large website. We would be grateful if you bring to our immediate attention, any that you find.
- 4.4 Our Website contains links to other internet websites. We have neither power nor control over any such website. You acknowledge and agree

that we shall not be liable in any way for the Content of any such linked website, nor for any loss or damage arising from your use of any such website or from your buying services or goods via such a website.

4.5 The EPICDEV (PTY) LTD website, training, coaching services and digital tools are provided “as is”. We make no representation or warranty that Our Website will be:

4.5.1 useful to you;

4.5.2 of satisfactory quality;

4.5.3 fit for a particular purpose;

4.5.4 available or accessible, without interruption, or without error.

4.6 We accept no responsibility for third party advertisements which are posted on Our Website or through the Services;

4.7 We shall not be liable to you for any loss or expense which is:

4.7.1 indirect or consequential loss; or

4.7.2 economic loss or other loss of turnover, profits, business or goodwill even if such loss was reasonably foreseeable or we knew you might incur it.

4.8 This paragraph (and any other paragraph which excludes or restricts our liability) applies to our directors, officers, employees, subcontractors, agents and affiliated companies as well as to ourselves.

## **5. Miscellaneous matters**

5.1 Our privacy policy is strong and precise. It complies fully with the current privacy law which can be found on our website at <https://www.epicdev.co.za/privacy>

5.2 If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.

5.3 No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.

5.4 Any communication to be served on either party by the other shall be delivered by hand or sent by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

If sent by e-mail to the address from which the receiving party has last sent e-mail: within 48 hours if no notice of non-receipt has been received by the sender.

5.5 The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa and you agree that any dispute arising from it shall be litigated only in that country.

## **6. Web/App Design and Development**

6.1 Concept designs might only be 90% accurate, the final user interface might differ by 10%.

6.2 Epicdev will allow up to ten business days for The Client to email one list of revisions on concept designs. If these revisions have not been sent to Epicdev after these ten business days, Epicdev holds the right to invoice The Client for the balance payment as per the quote/proposal and request payment thereof with immediate effect.

6.3 In the case where a website/application needs to be uploaded to a server other than one controlled by Epicdev, payment of the balance owing is required in full before the website / app will be uploaded / handed over.

6.4 A Project Resurrection fee might apply to Clients who do not offer constructive feedback on projects within twenty business days from when a response was requested.

6.5 Error fixing and any type of support on custom software developed by Epicdev will be billed for at Epicdev's hourly rate, unless a system warranty has been agreed upon and/or The Client has entered into a support contract.

6.6 All fees are non-refundable unless otherwise stipulated and agreed upon in writing.

## 7. Digital Marketing

- 7.1 The Service Provider will ensure that invoices are issued in advance on or before the 25<sup>th</sup> of each month.
- 7.2 The Client shall complete a debit order form for the deduction of the monthly payments on the 1<sup>st</sup> of each month, payable in advance to the bank account held in the name of the Service Provider, which details are as follows:

EPICDEV (PTY)Ltd.  
FIRST NATIONAL BANK  
ACC NO: 623 560 266 19  
CHEQUE ACCOUNT  
BRANCH: KLOOF  
BRANCH CODE: 221526

- 7.3 Six even consecutive monthly payments as per the agreed upon quote/proposal are payable in advance, before the 1st day of each month, without set off or deduction, for the duration of six consecutive months, unless otherwise agreed upon and stipulated in writing.
- 7.4 The commencement of Online Marketing Services and/or a Digital Marketing Campaign will begin only once the first payment as per the agreed upon quote/proposal is received from the Client.
- 7.5 The Client agrees to submit all feedback to the Service Provider by the 15th of every month to ensure that the Service Provider can plan and schedule the work for the following month.
- 7.6 The Client accepts that the current and future policies of search engines with respect to the type of websites and / or content is not controlled or influenced by the Service Provider and the Client's accepts that the website may be excluded from any directory and or search engine at the sole discretion of the search engine and or directory.
- 7.7 Due to the competitiveness of some keywords/phrases, on-going changes in search ranking algorithms, and other competitive factors, the Service Provider will not guarantee #1 positions or consistent top 10 positions in any search engine's search results for any particular keyword, phrase, or search term.
- 7.8 Google has been known to hinder the rankings of new websites (or pages) until they have proven the viability to exist for an applicable amount of time. This is referred to as the "Google Sandbox." The Service

Provider assumes no liability for ranking / traffic / indexing issues related to Google Sandbox penalties for new sites.

- 7.9 At times the search engines will drop listings for no predictable reason, however often, the listing will reappear without any additional SEO. Should a listing be dropped during the SEO campaign and does not reappear within 30 days of campaign completion, the Service Provider Epicdev will re-optimize the website / page based on the current policies of the major search engines.
- 7.10 THE CLIENT agrees to provide the following:
- 7.10.1 Administrative / backend access to the website / application for analysis of content and structure.
  - 7.10.2 Permission to the Service Provider to make changes for the purpose of optimisation, and to communicate directly with any third parties, e.g. The Client's web / app developer, if necessary.
  - 7.10.3 Unlimited access to the Service Provider to the existing web traffic statistics for analysis and tracking purposes.
  - 7.10.4 Authorisation to use The Client's pictures, logos, trademarks, web site images, pamphlets, content, etc. for any use as deemed necessary by the Service Provider for search engine optimisation purposes and / or other digital marketing techniques.
  - 7.10.5 Linking to "bad neighbourhoods" or getting links from "link farms" can seriously damage all SEO efforts. The Service Provider does not assume liability for The Client's choice to link to or obtain links from any particular website without prior consultation.

## **8. Domain Registration and Hosting**

- 8.1 The Client agrees to pay monthly, bi-annual or annual invoices to The Service Provider in a timely manner, in advance for any month/year in which they wish to continue hosting services.
- 8.2 Domain hosting fees are subject to change with reasonable notice to The Client.
- 8.3 An annual domain registration renewal fee will be required as per the agreed upon quote/proposal.
- 8.4 Domain registration renewal fees are subject to change with reasonable notice to The Client.

- 8.5 The Service Provider reserves the right to cancel The Client's hosting service at any time and The Client will be entitled to a pro rata refund based upon the remaining period of membership.
- 8.6 Should The Client violate the Service Provider's terms of service, a refund will not be issued in the event of a cancellation.
- 8.7 The Client may cancel their account at any time with 20 day's written notice to the Service Provider of their intention to cancel, however. fees charged / received on a prepay basis are non-refundable.
- 8.8 Web hosting companies occasionally implement changes on servers which may require minor adjustments to your website code by the Service Provider which may result in "down-time" or other problems requiring the assistance of The Service Provider.
- 8.9 The Service Provider undertakes to notify The Client ahead of time on such occurrences and can negotiate a schedule that suits The Client.
- 8.10 The Service Provider will not be responsible for any loss of business or other damages resulting from occasional "downtime" or other technical problems related to the host server, whether caused by the web hosting company or by broader Internet problems beyond the Service Provider's control.
- 8.11 The Service Provider will not be held responsible for any security flaws, technical and / or performance issues for websites or systems that were not developed by the Service Provider.
- 8.12 If a system is attacked in any way, the Service Provider will have to charge for any extra data costs that might occur. In this instance, a quote will be sent to The Client for approval and once approved the Service Provider implement all measures to try and avoid an attack, however the Service Provider cannot take responsibility for the failure of any measures they have implemented.
- 8.13 The Client's hosting account has a bandwidth usage limit of seven gigabytes per month. The Service Provider is aware that from time to time, The Client may have unanticipated circumstances which cause their websites / applications to exceed this limit. In such instances, The Service Provider will make every effort to contact and notify The Client of the situation and The Client will be entitled to request the suspension of the services alternatively approve the additional cost of R5.00 excl. VAT per exceeding gigabyte.
- 8.14 The Service Provider will activate up to 10 email accounts per hosting agreement.



- 8.15 The Service Provider is not a Desktop Support company and The Clients are responsible for contacting their IT companies to set up email accounts whilst the Service Provider will provide the server settings only.
- 8.16 In the event that The Client has contracted a separate web designer / administrator and / or application developer other than the Service Provider, it will not be held liable for any setting changes made by The Client's development company. Setting / code changes could hinder the website/application's functionality, making it inactive as a result.
- 8.17 The Service Provider will not be liable for any consequence resulting from a third-party developer changing settings and codes.
- 8.18 The Service Provider reserves the right to refuse service and / or access to its servers to all third parties.
- 8.19 The Service Provider will not allow content stored on its servers which is illegal material, including copyrighted works, commercial audio, video, or music files, and any material in violation of any Federal, State or Local regulations. Miscellaneous content including pirated software, ROMS, emulators, phreaking, hacking password cracking, IP spoofing, etc. and encrypting of any of the above including any sites providing "links to" or "how to" information about such material.