



## Service Terms & Conditions Effective September 1, 2008

### Terms & Conditions

Northwest Phoenix, Marketing and Business Development will provide clients with marketing consulting and services (collectively, "Services" or generically, "Service) further outlined in section three (3). Your use of such Services shall be deemed to be your agreement to abide by this Agreement, including any materials available on the NorthwestPhoenix.com website, including but not limited to Northwest Phoenix's policies.

#### 1. Services.

##### a. Search Engine Marketing

- i. **Search Engine Optimization (SEO).** Northwest Phoenix, Marketing and Business Development, provides SEO services designed to improve the organic placement of a website within designated search engines such as Google and/or Yahoo. The process is designed to meet the specific business needs of the client based on current market trends and is developed over the course of several consultative meetings. This service is billed at a monthly rate but will contain an estimated hours required for service. An additional "grace period" is assigned and any hours beyond the grace period are billed hourly according to the Service Description. SEO Services include, but are not limited to copy writing, keyword submission and HTML coding.
- ii. **Search Engine Placement (SEP).** Northwest Phoenix, Marketing and Business Development, provides SEP services designed to position designated website(s) among the Sponsored Results on the first search results page on the Search Engine(s) and/or Search Engine Networks(s) you select within 10 business day of opening your account contingent upon your designated website(s) passing the Quality Standards Review(s) imposed by the selected Search Engine(s) and/or Search Engine Network(s). This service includes a one time account set-up fee along with a flat monthly service fee
- iii. **Banner Advertisement.** Northwest Phoenix, Marketing and Business Development provides Internet Banner Advertisement Services designed to place graphically oriented Banners among selected search results and relevant websites within 15 days of opening your account contingent upon your designated website(s) passing the Quality Standards Review(s) imposed by the selected Search Engine(s) and/or Search Engine Network(s). This service includes a one time account set-up fee along with a flat monthly service fee.

##### b. Website Development.

- i. **Website Design.** Northwest Phoenix, Marketing and Business Development, provides custom website design, consultation, and maintenance services. The creative process is designed to meet the specific business needs of the client based on current market trends and is developed over the course of several consultative meetings. This service is billed at a flat rate but will contain an

estimated hours required for service. An additional “grace period” is assigned and any hours beyond the grace period are billed hourly according to the Service Description. Website design includes, but is not limited to copy writing, graphic design, flash programming, database management and HTML coding.

- ii. **Hosting.** Northwest Phoenix, Marketing and Business Development will work with client’s existing hosting services. The specific needs of the client may require additional hosting services at which point Northwest Phoenix may provide recommendations in which a monthly management fee may be required. Northwest Phoenix and its clients will operate and be bound to the terms and conditions of the designated hosting service provider.

**c. Graphic Media.**

- i. **Graphic Design.** Northwest Phoenix, Marketing and Business Development, provides graphic design services including, but not limited to, logo design, banner design, photography, videography, computer generated imagery and production. The creative process is designed to meet the specific business needs of the client based on current market trends and is developed over the course of several consultative meetings. This service is billed at a flat rate but will contain an estimated hours required for service. An additional “grace period” is assigned and any hours beyond the grace period are billed hourly according to the Service Description.

- ii. **Publication & Signage Production.** Northwest Phoenix, Marketing and Business Development, provides publication and signage production services including, but not limited to, business cards, letterhead, mailers, flyers, magazines, and catalogs. The creative process is designed to meet the specific business needs of the client based on current market trends and is developed over the course of several consultative meetings. This service is billed at a flat rate but will contain an estimated hours required for service. An additional “grace period” is assigned and any hours beyond the grace period are billed hourly according to the Service Description.

- d. **Public Relations.** Northwest Phoenix, Marketing and Business Development, provides public relations services including, but not limited to, publicity consultation, press releases, distribution, clipping services and follow-up. This service is billed using a combination of flat fees, monthly fees and hourly fees. The billing arrangement is further detailed in the Service Description on a client by client basis.

**e. Event Planning.**

- i. **Event Coordination.** Northwest Phoenix, Marketing and Business Development, provides event coordination services designed the specifications presented by the client. Services are billed at an hourly rate plus expenses which include materials, food and beverage not covered by sponsorship. This service includes, but is not limited to, venue procurement, catering, planning and execution.

- ii. **Promotions & Sponsorship.** Northwest Phoenix, Marketing and Business Development, provides promotion and sponsorship services designed the specifications presented by the client. This service includes, but is not limited to, media buying (Radio/Television/Internet/Outdoor Media) and sponsorship solicitations. Services are billed at an hourly rate plus commission further detailed in the events Service Description.

2. **Privacy & Security; Disclosure.** You may view Northwest Phoenix's privacy policy at [www.northwestphoenix.com](http://www.northwestphoenix.com). Northwest Phoenix reserves the right to modify the policies in its reasonable discretion from time to time. You are responsible for knowing the current policies, and your continued use of the services indicates your agreement to the policies as they may be modified or revised. Northwest Phoenix may need to notify all service users of important announcements regarding service operation. You agree that Northwest Phoenix may disclose the fact that you are a user and the service you are using.
3. **Service Fees.** Each client engaging in services with Northwest Phoenix will be presented with a Service Description outlining the services to be rendered along with any combination of the following fee structures.
  - a. **Set-up Fees.** You agree to pay a nonrefundable account set-up fee for each service you purchase as detailed by your Service Description.
  - b. **Monthly Fees.** You agree to pay the Monthly Service Fee each month on the same date you opened your account. The Monthly Service Fee is due in advance of the delivery of Services. For example, if you opened your account on January 3, your Monthly Service Fee will be due on the 3rd of each month thereafter until your account is terminated; the Monthly Service Fee for Services delivered from January 3 to February 2 would be due on January 3. Your monthly fees are not refundable if your account is terminated, regardless of the reason.
  - c. **Hourly Fees.** You agree to pay the Hourly Fee for Services as detailed and defined in the initial Service Description. Hourly Fees are assessed and invoiced at the end of each monthly billing cycle with a Net-15 arrangement. Hourly Fees accrued from January 1 through January 30 are invoiced on February 1 with payment in full due by February 15.
  - d. **Flat Fee.** You agree to pay the Flat Fee for Services as detailed and defined in the initial Service Description. Flat Fees are assessed at the start of Services with 50% deposit required. The remained balance will be invoiced at the conclusion of the Service a Net-15 arrangement. Flat Fee Services completed on January 16 are invoiced on February 1 with payment in full due by February 15.
4. **License Grant & Restrictions.** In exchange for your access to and use of the Service and the fees you pay for such access and use, Northwest Phoenix hereby grants you a nonexclusive, nontransferable, limited right to access and use the Service, subject to the terms and conditions of this Agreement. Your license shall be solely for your internal business. You confirm that all persons accessing the Service under your password or on your behalf have your authority to do so, and you assume total and complete responsibility for their compliance with this Agreement. Northwest Phoenix reserves all rights not expressly granted to you.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service in any way; (ii) modify or make derivative works based upon the Service; (iii) create Internet "links" to the Northwest Phoenix website, except as authorized in writing by Northwest Phoenix, or to "frame" or "mirror" any material or content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual but may be reassigned from time to time when new Users replace former Users who have terminated employment or the business relationship or otherwise changed the job status or function and no longer use the Service

Northwest Phoenix reserves the right to audit you, at Northwest Phoenix 's expense, to ensure compliance. However, in the event the audit in Northwest Phoenix 's reasonable determination

indicates noncompliance, you agree to bear all reasonable costs associated with the audit, including Northwest Phoenix 's time, billed at Northwest Phoenix 's then-current consulting rates.

You shall not: (i) send SPAM or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous or otherwise unlawful or tortuous material, including material harmful to children or that violates third-party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer codes, files, scripts, agents or programs; (iv) interfere with or disrupt the Service's integrity or performance or that of the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related system or network. Violation of your security obligations and/or the breach of any system or network security may result in civil or criminal liability. Northwest Phoenix may investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting Users who are involved in such violations

- 5. User Content.** One or more of the Services may include the means by which you can specify, transmit, add or upload data, material, information or other content or materials ("User Content"). You agree not to use the Service for: (a) any activity that is unlawful (whether criminal or tortuous) under the laws of any jurisdiction to which you or Northwest Phoenix is subject; (b) any activity that promotes others to act unlawfully; (c) any activity that constitutes competition with the Service; (d) uploading, submitting or otherwise making available material that infringes another's copyright, trademark or other intellectual property rights; or (e) uploading, submitting or otherwise making available threatening, defamatory or obscene comments, proprietary, confidential or insider information, obscene or pornographic material, or falsified and/or misleading information ("Objectionable Content").

Northwest Phoenix has no obligation to monitor User Content. However, Northwest Phoenix has the right to perform such monitoring, and the right (but not the obligation) to reject, withhold, remove and/or discard User Content without notice for any breach, including without limitation, your nonpayment. Upon termination, your right to access or use User Content immediately ceases, and Northwest Phoenix shall have no obligation to maintain or forward any User Content.

Northwest Phoenix does not own any User Content. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and intellectual property ownership or right to use of all User Content. Northwest Phoenix shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any User Content.

- 6. Client Responsibilities.** You agree that you will use the Service only for lawful purposes within the stated context of Northwest Phoenix's intended and acceptable use of the Service, which shall be interpreted solely by Northwest Phoenix. You agree that you are responsible for all activity occurring under your account and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) immediately notify Northwest Phoenix of any unauthorized use of any password or account or any other known or suspected security breach; (ii) immediately report to Northwest Phoenix and use reasonable efforts to stop immediately any copying or distribution of Content that you know or suspect; and (iii) not impersonate another User or provide false identity information in order to gain access to or use the Service.

You are responsible for providing Northwest Phoenix relevant and accurate information pertaining to the Services listed by the Service Description.

- 7. Intellectual Property Ownership.** Northwest Phoenix (and its licensors, where applicable) solely owns all rights, title and interest, including all related intellectual property rights, in and to the Services and related Northwest Phoenix provided Content ("Service Content"), and any suggestions, ideas, enhancements, requests, feedback, recommendations or other comments or

information relating to the Service provided by you or any other party. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Service Content or intellectual property owned by Northwest Phoenix.

**8. No Endorsement of Linked Sites.** Northwest Phoenix does not endorse any websites linked through the Services or its website, and provides these links only for convenience. In no event shall Northwest Phoenix be responsible for any content, products or other materials on or available from such linked sites.

**9. Term & Termination.**

**a. Monthly-to-Month Agreement.** This is a month-to-month agreement, which shall automatically renew unless terminated.

**b. Termination.**

**i. By Notice.** You may cancel your account at any time by providing an email to [info@northwestphoenix.com](mailto:info@northwestphoenix.com) and you will receive a follow-up phone call for verbal confirmation to complete your cancellation. Notice must be received by Northwest Phoenix at least 14 days prior to your monthly bill date.

**ii. For Cause.** Northwest Phoenix, in its sole discretion, may disable your password and/or terminate your account or use of the Services at any time and without notice if Northwest Phoenix in good faith believes you have breached this Agreement. You acknowledge and agree that Northwest Phoenix has no obligation to retain the Customer Content and may delete such Customer Content if Northwest Phoenix terminates your account for breach and such breach is not cured within 30 days of such breach

**10. Representations & Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Northwest Phoenix represents and warrants that it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Services will perform substantially in accordance with Northwest Phoenix 's claims. You represent and warrant that you have not falsely identified yourself nor provided any false information in order to gain access to the Services. You represent and warrant that your access to the Services shall not violate any contract, statute, rule, regulation or other obligation under which you are bound. You represent and warrant that you shall not access the Services to conduct or solicit the performance of any business or activity that is tortuous or prohibited by law

**11. No Guarantee of Results.** Northwest Phoenix, Marketing and Business Development strives exceed expectations and is committed to the client's success but makes no representations or guarantees regarding effectiveness or timeliness of the Services in meeting your business objectives.

**12. Mandatory Indemnifications.** You shall indemnify and hold Northwest Phoenix, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that access to the Service was unauthorized and such unauthorized access has caused harm to you or a third party; (ii) a claim alleging that use of the Customer Content infringes the rights of, or has caused harm to, a third party; (iii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iv) a claim arising from the breach by you of this Agreement, provided in any such case that Northwest Phoenix (a) promptly gives you written notice of the claim; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you

unconditionally release Northwest Phoenix of all liability and such settlement does not affect Northwest Phoenix 's business or Services); (c) provide to you all available information and assistance; and (d) has not compromised or settled such claim.

Northwest Phoenix shall indemnify and hold you and your parent organization, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in 12. Northwest Phoenix Terms and Conditions 9/01/2008 connection with: (i) a claim alleging that the Services directly infringe on a copyright, a US patent issued as of the effective date of this Agreement, or a third party's trademark; (ii) a claim, which if true, would constitute a violation by Northwest Phoenix of its representations or warranties; or (iii) a claim arising from Northwest Phoenix 's breach of this Agreement; provided that you (a) promptly give Northwest Phoenix written notice of the claim; (b) give Northwest Phoenix sole control of the claim's defense and settlement (provided that Northwest Phoenix may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Northwest Phoenix all available information and assistance; and (d) have not compromised or settled such claim. Northwest Phoenix shall have no indemnification obligation and you shall indemnify Northwest Phoenix pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Services with any of your products, services, hardware or business process(es).

- 13. Disclaimer of Warranties.** Northwest Phoenix and its licensors make no representation, warranty or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the Services or any Service Content. Northwest Phoenix and its licensors do not represent or warrant that (a) the use of the Services will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) the Services will meet your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, services, information or other material purchased or obtained by you through the Services will meet your expectations, (e) errors or defects will be corrected, or (f) the Services or the server(s) that make the Services available are free of viruses or other harmful components. The Services and all Service Content is provided to you strictly on an "as is" basis, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose or non-infringement of third-party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Northwest Phoenix and its licensors.
- 14. Internet Delays.** Services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications. Northwest Phoenix is not responsible for any delays, delivery failures or other damage resulting from such problems.
- 15. Downtimes.** You hereby acknowledge and agree that the Services may be inaccessible for a period or periods of time for purposes of maintenance, installation, update implementation, replacements, back-up or modification. Northwest Phoenix hereby disclaims, and you hereby waive, any and all responsibility of Northwest Phoenix resulting from Northwest Phoenix 's inability or failure to provide the Services during such downtime.
- 16. Limitations of Damages.** Northwest Phoenix shall not be liable for any lost profits or consequential, exemplary, incidental or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, and regardless of whether such damages are reasonably foreseeable. Notwithstanding any provision to the contrary, the liability of Northwest Phoenix for any reason and for any cause of action whatsoever in connection with this Agreement, the Services, the Service Content or the services provided by Northwest Phoenix shall not exceed the total amount of money paid by you to Northwest Phoenix within the 12 months preceding the date on which such claimed damage or injury arose. This paragraph shall survive termination and cancellation of this Agreement.

- 17. Local Laws & Export Control.** The Services may provide and use software and technology that may be subject to United States export controls administered by the US Department of Commerce, the US Department of Treasury Office of Foreign Assets Control and other US agencies. You acknowledge and agree that the site shall not be used, and none of the underlying information, software or technology may be transferred or otherwise exported.
- 18. Notice.** Northwest Phoenix may give notice by means of a general notice on the Services, via electronic mail to your email address on record in Northwest's account information or by written communication sent by first class mail or prepaid post to your address on record with Northwest Phoenix. Such notice shall be deemed given upon the expiration of 24 hours if sent by email or 3 days after mailing or posting (if sent by first class mail or prepaid post). You may give notice to Northwest Phoenix at any time by email to: [info@northwestphoenix.com](mailto:info@northwestphoenix.com). Your notice will be deemed given when received by Northwest Phoenix.
- 19. Amendments & Modifications.** Northwest Phoenix reserves the right to modify the terms and conditions of this Agreement or its policies related to the Services at any time, effective upon posting of an updated version of this Agreement on the Northwest Phoenix website or upon delivery of a copy of the updated version by email or post. You are responsible for regularly reviewing this Agreement. Continued use of the Services after any such amendments or modifications shall constitute your consent to such amendments or modifications.
- 20. Assignment.** You may not assign this Agreement. Northwest Phoenix may assign this Agreement without your consent to (i) a parent or subsidiary; (ii) an acquirer or assets; or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.
- 21. General.** This Agreement shall be governed by Oregon law and controlling US federal law, without regard to choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or in the Service shall be subject to exclusive jurisdiction of the state and federal courts located in Lake Oswego, Oregon. No text or information set forth on any other purchase order, preprinted form or document (other than a Northwest Phoenix order form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment or agency relationship exists between you and Northwest Phoenix as a result of this Agreement or use of the Services. The failure of Northwest Phoenix to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Northwest Phoenix in writing. This Agreement, together with any applicable order form, comprises the entire agreement between you and Northwest Phoenix and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein
- 22. How to Contact Us.** Should you have other questions or concerns about these Terms & Conditions, please contact:

W. Dyer Vest  
Partner, Business Development Manager  
Northwest Phoenix, Marketing and Business Development  
429 6<sup>th</sup> Street  
Lake Oswego, OR 97034  
(503) 974-5734  
[dyer@northwestphoenix.com](mailto:dyer@northwestphoenix.com)  
[www.northwestphoenix.com](http://www.northwestphoenix.com)