

## **TERMS & CONDITIONS:**

Customer is subject to all terms and conditions set forth herein, as well as any guidelines, rules or operating policies that E.O. may establish and post from time to time on <http://www.evolvedoffice.com> (the "site"), including, without limitation the Evolved Office anti-spam policy, privacy policy and prohibited content and commerce statement (collectively, the "policies"), E.O. agrees to use commercially reasonable efforts to provide Customer with the Services. From time to time, Evolved Office may modify the terms and conditions of this Agreement and any of the foregoing guidelines, rules, policies and/or statements.

**2. Description of Services.** Evolved Office's online marketing products includes a PDF and HTML newsletter solutions (individually and collectively referred to as the "**Services**"), as more fully described in subsections immediately below. The selection(s) made and submitted by Customer during the registration process will identify the specific Service(s) subscribed to by Customers hereunder. The following describes the Services currently offered by Evolved Office Webtools

**Evolved Office:** Evolved Office, will design, upload and deliver monthly ready-to-go End User Electronic and Print Newsletters for customer to send out to their local audience. Your monthly newsletter will be delivered within the first 5 days of the month to your account. An HTML email will notify you and provide you with a link to access your Evolved Office account. By subscribing to the Evolved Office, a customer may use the Evolved Office online library and upload feature to edit specific portions of the newsletter except,

**PDF Newsletters:** Customer is able to utilize Evolved Office to generate a PDF newsletter. Printing cost is at customer's expense.

**HTML Newsletter:** Customer is able to utilize our tool to broadcast (or send) unlimited HTML newsletter to its email database. Customer can also download the HTML to post their website or upload into a 3<sup>rd</sup> party email marketing system. The system utilizes iContact's email deliverable engine which streams your email results (click through, opens, undeliverable, etc) into your Evolved Office account. This service is not available to customers who signed up to the Access Program.

**Training Webinar:** Evolved Office will provide a free training webinar for the customer to get familiar with the system. Customer will also receive an End User Guide which will offer step-by-step instructions on how to use the system.

**Support:** Evolved Office provides full phone and web support at no cost. The support includes guiding the client through the tool via webinar or email. Support does not cover writing content or creating new graphics.

**3. Term.** The term of this Agreement shall be for a period of one (1) year from the date set forth as the "Effective Date" on the signature page to this Agreement (the "**Term**"), subject to earlier termination in the manner set forth in Section 19 below; provided, however, that the Term of this Agreement shall automatically renew for an unlimited number of additional one-year terms unless Customer provides notice E.O. not less than thirty (30) days prior to the then-current year of the Term of Customer's intention not to renew this Agreement, and the "Term" of this Agreement shall be deemed to include each renewal year prior to such notice or early termination in accordance with the provisions hereof.

**4. Subscriber Fees and Payment; Other Payment Terms.** In consideration for the Evolved Office Services to be provided by IN, participating subscribers agree to pay the annual subscription fees set forth in the order form linked to this Agreement (the "**Subscription Fees**") on a monthly basis. All subscription fees are non-refundable and subject to the payment of the annual amount for each such subscriber's term, notwithstanding that E.O. permits monthly payment installments of such annual fee. Each Subscriber acknowledges that from time to time, delivery of email messages sent using the Services may be blocked or prevented at destination email servers. Subscriber's payment obligation set forth herein continues regardless of whether delivery of such email messages is prevented or blocked by a third party. The fees shall include all applicable foreign, federal, state and local taxes payable with respect to this Agreement. Any payment not received by E.O. from either Customer or a Subscriber by the due date may be subject, at E.O.'s sole discretion, to a late fee equal to 1.5% per month (or the maximum rate permitted by law) of the amount then due. In the event either Customer or Subscriber fails to make timely payments when due, E.O. may, at its election, discontinue, terminate or suspend any or all Evolved Office Services and delete all Customer Data (as defined below) from its systems.

**5. Customer Data.** E.O. will not own any data, information or material that Customer submits to Evolved Office in the course of its provision of the Services, whether relating to Customer or to any Subscriber (collectively, the "**Customer Data**"). E.O. will not use, sell, distribute data submitted, nor will E.O. market to customers contact list at any given time. Customer will be solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, and sole intellectual property ownership thereof.

**6. Passwords.** In connection with E.O.'s provision to Customer of the Services, E.O. will send to Customer's designated email address of record in Customer's account information, information such as user-ids and/or passwords which will enable Customer to access the Evolved Office Services software (the "**Passwords**"). Customer agrees to maintain the Passwords in strict confidence and not to provide the Passwords to any third party. Any unauthorized use of the Passwords by Customer will constitute a material breach of this agreement.

**7. Proprietary Rights.** This is an Agreement for Services and Customer is not granted any license or any other intellectual property right hereunder. All software and other intellectual property used in connection with, or embedded in, the Services (the "software") and all content (excluding Customer Data), are and shall remain the sole and exclusive property of E.O. Accordingly, Customer acknowledges that E.O. owns all right, title and interest in and to the Services and all the software and other intellectual property used in connection with, or embedded in, the Services, including, without limitation, all UNITED STATES and international patent rights, copyrights, trademark rights, trade secret rights, and all other proprietary rights pertaining thereto (collectively, "**E.O. IP**").

**8. No Tampering.** Each email message that is sent using the Services must contain an "unsubscribe" link that allows visitors to remove themselves from Customer's mailing list and a link to the Evolved Office policies. Customer agrees that it will not remove, disable or attempt to remove or disable either link. Further, each such email message may contain an automatic identifying footer such as "powered by Evolved Office" or words of similar effect. Customer agrees that it will not remove, disable or attempt to remove or disable such footer.

**9. Representations, Warranties and Covenants.** Customer represents, warrants and covenants to E.O. that: (i) if an individual, is at least eighteen (18) years old; (ii) if an entity, it is an entity duly organized and validly existing in good standing under the laws of the state in which it was organized; (iii) it has full power and authority to enter into this Agreement, which, upon its execution hereof, will constitute a legal, valid and binding obligation enforceable against it in accordance with the terms hereof; (iv) all information provided by it to E.O. during the term of this Agreement, is and will be truthful, accurate and complete; (v) its use of the Services will be in accordance with the terms and conditions of this Agreement.

**10. Disclaimer of Warranties.** The Services are provided "as is" and "where is", and without representation or warranty of any kind. To the maximum extent permitted by applicable law, E.O. and its affiliates, distributors, customers, marketing partners and suppliers (collectively, the "**Representatives**") disclaim any and all representations and warranties, whether oral or written, express or implied, including (without limitation) any warranty as to merchantability, fitness for a particular purpose or use, title, or non-infringement, with respect to the Services. The Representatives do not warrant that the Services will meet Customer's requirements, nor that the Services will be provided without interruption, nor that any particular results will be achieved or obtained by using the Services.

**11. Indemnification.** Customer agrees to indemnify, defend and hold harmless all E.O. Parties from any and all claims, liability, damages and/or costs (including, but not limited to, reasonable attorneys' fees) arising from Customer's negligence or intentional misconduct, Customer's violation of this Agreement, Customer's violation of any Evolved Office guidelines, rules, operating policies or statements, Customer's breach of any of its representation, warranties or covenants set forth herein, Customer's breach of any law, statute, regulation or other legal requirement applicable to it, or Customer's infringement of any intellectual property rights or other rights of any person or entity.

**12. Termination.** E.O. reserves the right to terminate this Agreement immediately if Customer breaches any of its material obligations under this Agreement. Customer reserves the right to cancel this agreement only upon notice to E.O. as provided in Section 3 above. Any default in the performance of any of Customer's obligations hereunder, shall be considered a material breach of this Agreement and shall entitle E.O. to terminate immediately this Agreement, to terminate the provision of Evolved Office and the Services, and to pursue all available equitable and legal remedies available to E.O. Upon termination of this Agreement, Customer's payment of all unpaid and outstanding fees through the end of the next contract year in which Customer may terminate this Agreement must be received by E.O. within thirty (30) days of such termination, Customer acknowledges and agrees that after the thirtieth (30th) day following termination, E.O. has no obligation to retain the Customer Data and may delete and destroy such Customer Data without providing Customer with notice of such deletion.

**13. Governing law.** This Agreement will be governed by the laws of the state of Florida as applied to agreements entered into and performed entirely within the state of Florida, without regard to any choice of law provisions thereof. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the United Nations convention on contracts for the international sale of goods.

**14. Relationship.** This agreement does not create a partnership, joint venture or agency relationship between Evolved Office and customer. Customer does not have any right, power, or authority to act as a legal representative of evolved office.

**15. Assignment.** Customer may not transfer, assign, sublicense, or delegate any right or duty under this agreement to another entity or person without the express written consent of E.O. Any such transfer, assignment, sublicense or delegation without consent will be null and void.

**16. Export restrictions.** Customer agrees not to export, or transfer for the purpose of re-export, the Services (including technical data) in violation of any U.S. or other applicable export control laws and regulations.