



Online Marketing Services Terms & Conditions – Bee Media & Engagement Pty Ltd

Bee Media & Engagement Pty Ltd provides a range of marketing products and services for small and medium-sized businesses (the "Marketing Services"). The Order Form (the "Order Form") sets forth which Marketing Services are being purchased by the client who signed the Order Form ("you" or "Client"), the costs for such Marketing Services, and other relevant details. These Online Marketing Services Terms and Conditions ("Marketing Services Terms") are incorporated by reference into and made a part of any Order Form submitted to Bee Media & Engagement and govern the relationship between you and Bee Media & Engagement. All Order Forms are subject to acceptance by Bee Media & Engagement, in its sole discretion. The Order Form, the Marketing Services Terms, and the documents and/or links referenced in such documents are together referred to as the "Agreement."

If you are accepting on behalf of your employer or another entity, you represent and warrant that (i) you have full legal authority to bind your employer or such legal entity to this Agreement, (ii) you have read and understand this Agreement and (iii) you agree, on behalf of the Client, to this Agreement.

We reserve the right to make changes to these Marketing Services Terms at any time. We shall provide notification of changes in these terms by updating the last modified date set forth above. All such changes shall be binding upon you once posted online at our website www.beeme.com.au unless such changes are material in which case such changes shall not take effect until the next time you sign an Order Form.

1. Fees

(a) Identification of Fees. You agree to pay the amounts set forth in the Order Form in accordance with Section 3 or as may be further explained in the Product Terms (the "Fees"). The Fees are generally divided into Product Fees (e.g. Campaign Media, Management & Optimisation Fees), Service Fees, and Set-up Fees. Product Fees are the recurring fees that you will be charged for the specific product you have purchased as shown on the Order Form. Service Fees are for the delivery of any premium services that Bee Media & Engagement may, from time to time, offer. Set-up Fees are one-time fees for the set-up of campaigns or other services. Bee Media & Engagement reserves the right to change any of the Fees at any time, provided that such changes will not take effect until a new Order Form has been executed and delivered to Bee Media & Engagement by you.

(b) No Pass-Through Obligations. You are not entitled to any credits, discounts, rebates, refunds provided to Bee Media & Engagement by its third-party publisher partners (the "Publishers").

(c) Promotional Credits. If Bee Media & Engagement offers any special promotions that provide you with credits or other incentives in connection with purchasing Marketing Services (the "Promotional Credits"), and you cancel one or more of the Marketing Services prior to completion of the Minimum Term (other than for cause, as set forth below), then you will be required to repay to Bee Media & Engagement the full amount of the Promotional Credit(s).

2. Payment Terms

(a) General. Once an Order Form has been accepted by Bee Media & Engagement, you will be responsible for payment in full of all Fees, except as may otherwise be provided in Section 3(c) hereof. The Fees shown are not inclusive of sales, use or similar taxes which may be applicable. If applicable, sales, use and similar taxes shall be your sole responsibility and may be assessed on the invoice. Please note that the sales tax shown on an



Order Form is only an estimate. The actual amount of sales tax will be determined at the time that payment is made. All payments are due in Australian dollars.

(b) Manner of Payment. You must pay for all amounts payable under this Agreement either by direct transfer (electronic transfer from your bank account or such other form of payment as Bee Media & Engagement may, in its sole discretion, permit. You will be required to agree to the applicable payment authorisation form(s), which also permit Bee Media & Engagement to recover any Promotional Credits (as set forth above) in the authorised manner. With Bee Media & Engagement's prior approval, under certain circumstances you may pay by cheque. In the case of payment through direct debit, no amounts owing are considered paid until the electronic debit has been received by Bee Media & Engagement's bank.

(c) Timing of Payment. Fees, as identified on the Order Form, are due in advance of each Cycle as more fully described in the Product Terms. If there are Set-Up Fees (as set forth on the Order Form), such Fees shall be paid in advance together with all amounts owed for the first Cycle. Bee Media & Engagement shall have the right to charge the Client Card or debit from your account through direct debit the Fees in accordance with these Marketing Services Terms and the Product Terms. You understand and acknowledge that all amounts owed must be paid in advance and that, in addition to being in breach of your contractual obligations, your campaign or service may be paused or terminated if timely payment is not received.

3. Term & Cancellation

(a) Term. The Agreement shall commence upon execution of an Order Form and, unless otherwise provided in the Product Terms, shall continue until all Marketing Services under Order Forms have been completed or terminated in accordance with the terms of this Agreement.

(b) Minimum Term. Unless otherwise provided in the Order Form, the Marketing Services supplied by Bee Media & Engagement to you are supplied for at least the Minimum Term set forth in the Order Form. The Marketing Services will be continued to be supplied after the Minimum Term until you cancel or terminate. Sections 4(c) to (e) (below) apply to the termination of the Marketing Services before and after the expiry of the Minimum Term.

(c) Termination (without cause). (i) If you give written notice to Bee Media & Engagement of the termination of the Marketing Service (the "Termination Notice") at least 7 days prior to the expiry of the Minimum Term then such termination will take effect on the on the expiry of the Minimum Term. (ii) If you give written notice of the termination of the Marketing Service less than 7 days before the expiry of the Minimum Term or at any time after the expiry of the Minimum Term, then such termination will take effect on the date of expiry of the first full Cycle following the date of the termination notice. For example, if the Minimum Term is 4 Cycles and you give the Termination Notice while you are in the middle of 5th Cycle, the termination will be effective after completion (and payment) through and including the 6th Cycle). (iii) You must pay all Fees in relation to the Marketing Service that accrue prior to the date of termination. (iv) Bee Media & Engagement may terminate at any time for any reason on written notice to you (which may be provided by email).

(d) Termination Revocation. You may, on written notice to Bee Media & Engagement (email is acceptable) revoke such termination within fourteen (14) days after you have provided Bee Media & Engagement with the Termination Notice, in which case the Order Form will be reinstated and all applicable campaigns, if they had been stopped, will be re-initiated upon payment in full of all amounts owed.

(e) Termination for Cause. Either you or Bee Media & Engagement may terminate the Agreement (which will terminate all current Order Forms) on 30 days prior written notice (the "Notice Period") if the other party is in material breach of its obligations hereunder and such breach has not been materially cured by the conclusion of the Notice Period. For the avoidance of doubt, Bee Media & Engagement makes no guarantees with respect to the performance of any campaign or any other service and therefore such performance shall not be a basis for termination pursuant to this Section.



(f) Campaign Pauses. Bee Media & Engagement may pause a Media Product campaign at any time for operational reasons. You may also request a pause in a campaign, however, it will be in Bee Media & Engagement's sole discretion to determine if a campaign pause is appropriate. If you request to pause your campaign and the campaign is paused for more than 30 days, you will have to pay an additional Campaign Set-Up Fee to restart the campaign. Bee Media & Engagement may charge the Client Card and invoice you for such additional Set-Up Fee, which invoice must be paid within seven (7) business days after the invoice date.

(g) No Refunds. You understand and agree that subject to Section 13(c) you will not be entitled to any refunds of amounts already paid to Bee Media & Engagement, unless Bee Media & Engagement terminates under Section 4(c)(iv), in which case you shall only be entitled to a refund for the unspent balance of the then applicable Cycle Payment (as defined in the applicable Product Terms) or equivalent, which shall be your sole remedy.

(h) Collection of Amounts Owed. Any amounts not paid by you when due shall bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). You agree to pay all costs of collection (including attorneys' fees and costs and all other legal and collection expenses) incurred by Bee Media & Engagement in connection with its enforcement of its rights under the Agreement.

(i) Effect of Termination; Survival. You understand and acknowledge that due to the nature of the Internet, certain information regarding you that was posted on the Internet as part of the Marketing Services may continue to be available on the Internet following termination of Marketing Services and/or the Agreement. All provisions of the Agreement that by their sense or nature should survive termination of the Agreement (including, without limitation, all limits of liability, indemnity obligations, and confidentiality obligations) shall survive. Without limiting the generality of the foregoing, in the event of any termination, you shall remain liable for any amounts due to Bee Media & Engagement as of the effective date of termination.

4. Privacy Considerations

You shall, at all times, post a privacy policy on your native web site (the "Existing Site") and comply with such privacy policy. The privacy policy must comply with all applicable laws. You shall ensure that your privacy policy does not contain provisions that are inconsistent with the nature of the services being provided by Bee Media & Engagement. In that regard, please see the Bee Media & Engagement Marketing Practices for a description of the privacy implications of Bee Media & Engagement's products and services. Bee Media & Engagement may, but is under no obligation to, insert or otherwise make visible from the Proxy Site (as defined in the Tracking Terms), such notifications as it may deem appropriate. You understand and acknowledge that your failure to maintain a privacy policy that complies with the foregoing requirements may (a) result in your campaign not being run or being suspended and (b) expose you and Bee Media & Engagement to liability which you shall fully indemnify Bee Media & Engagement for.

5. Intellectual Property Matters

(a) License to Bee Media & Engagement. You hereby grant to Bee Media & Engagement and the Publishers a non-exclusive, royalty-free, worldwide license to use, copy, modify (as permitted herein), publicly perform, display, broadcast and transmit during the term of this Agreement (i) any text, images, logos, trademarks, service marks, promotional materials, product or service information, comments, reviews, photos, audio and video clips and other information ("Client Content") you provide in connection with any Marketing Service and (ii) the Existing Site, to the extent necessary for Bee Media & Engagement to perform the Marketing Services. Except as set forth in any Product Terms and this Agreement, title to and ownership of all intellectual property rights of all Client Content shall remain with you or your third-party licensors. You agree that Bee Media & Engagement may, during the term of this Agreement and thereafter, include your name (including any trade name, trademark, service mark and logo) on Bee Media & Engagement's client list, and in its marketing materials, sales presentations and any online directories that Bee Media & Engagement may, from time to time, publish.



(b) Bee Media & Engagement Creative Services. Except as may be otherwise provided in any of the Product Terms, if you request that Bee Media & Engagement provide any creative services, you will remain fully responsible for any content you provide to Bee Media & Engagement. With respect to any content created by Bee Media & Engagement, as between you and Bee Media & Engagement, Bee Media & Engagement shall retain ownership of the design elements of such content, excluding any of your trade names, trademarks, service marks or logos or other proprietary elements that may be included within such content, but that predate the creation of the content.

6. Your Representations, Warranties and Covenants

You represent and warrant that you have all necessary rights and authority to enter into the relationship with Bee Media & Engagement contemplated by the Agreement. You represent, warrant and covenant that the Existing Site, any content linked to the Existing Site and any content or materials that you provide to Bee Media & Engagement, do not and will not: (a) infringe on any third party's copyright, patent, trademark, trade secret, moral right or other proprietary rights or right of publicity or privacy; (b) violate any law, statute, ordinance or regulation, including, without limitation, laws and regulations governing export control, false or misleading advertising or unfair competition; (c) be defamatory or libellous; (d) be pornographic or obscene; or (e) contain viruses, trojan horses, worms, time bombs, cancelbots or other similar harmful or deleterious programming routines. You further represent, warrant and covenant that the product or service that is being (or will be) promoted through any campaign is (i) lawful and (ii) not the subject of any ongoing investigation by any local, state or federal regulatory or quasi-regulatory authorities.

7. Indemnification

(a) You will indemnify, defend (with counsel reasonably acceptable to Bee Media & Engagement) and hold harmless Bee Media & Engagement, the Publishers, their subsidiaries, affiliates and parent companies and each of their respective directors, officers, agents and employees and each of their successors and assigns from and against any and all claims, liabilities, damages, losses, costs, expenses, fees of any kind (including without limitation reasonable attorneys' fees and expenses) incurred in connection with any claim, action or proceeding arising from or relating to: (i) any breach by you of any representation, warranty, covenant or other obligation contained in these Marketing Services Terms or in any of the Product Terms; (ii) the violation of any rights of any third party, including intellectual property, privacy, publicity or other proprietary rights by you or anyone using your account; (iii) the sale, license, supply or provision of your goods or services; or (iv) any other act, omission or misrepresentation by you. Bee Media & Engagement reserves the right, at its own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you. If Bee Media & Engagement does assume the defence of such a matter, you will reasonably cooperate with Bee Media & Engagement in such defence. You will not enter into any settlement or compromise of any such claim, which settlement or compromise would result in any liability to, or any admission of wrongdoing by, any indemnified person or entity, without Bee Media & Engagement's prior written consent.

(b) Bee Media & Engagement will indemnify, defend, and hold you harmless from and against any loss, damage, cost, liability or expense (including reasonable legal fees) arising out of any claim that any Bee Media & Engagement technology used in connection with its provision of the Marketing Services infringes the copyright, patent, trade secret or other proprietary rights of any third party, provided that notice is given to Bee Media & Engagement promptly of such claims and that you provide such assistances as may be reasonably required in the defence of such matters.

8. Agency

In the event you are purchasing advertising on behalf of another company, you represent and warrant that you have been authorised by each such company to act as its agent in all respects relating to the Agreement, including, without limitation, the making of any elections or giving of any consents. Without limiting the generality of the foregoing, you agree on behalf of each such company that such company has been made



aware of, and agrees to be bound by, these Marketing Services Terms. You and each such company shall be jointly and severally liable for fulfilment of obligations under this Agreement, including all payment obligations.

9. Confidentiality

Except as may be required by applicable law, you shall not disclose the contents of the Agreement to any third party (other than its employees and representatives who are made aware of and agree to this restriction) without Bee Media & Engagement's prior written consent. Except as otherwise expressly herein permitted, no party may issue a press release concerning the existence or terms of the Agreement without the prior written consent of the other party. In addition, except as may be required by applicable law, you may not disclose any Confidential Information regarding Bee Media & Engagement. "Confidential Information" means information about Bee Media & Engagement's (or its suppliers') business, products, technologies, strategies, financial information, operations or activities that is proprietary and confidential, including without limitation all business, financial, technical and other information disclosed by Bee Media & Engagement. Confidential Information will not include information that you can establish is in or enters the public domain without breach of these confidentiality obligations.

10. DISCLAIMER OF WARRANTIES

BEE MEDIA & ENGAGEMENT PROVIDES ALL MARKETING SERVICES PERFORMED HEREUNDER ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTY OF ANY KIND AND WITHOUT ANY GUARANTEE OF CONTINUOUS OR UNINTERRUPTED AVAILABILITY. IF THE MARKETING SERVICES ARE INTERRUPTED OR DELAYED, REACHLOCAL'S SOLE OBLIGATION WILL BE TO RESTORE SUCH SERVICES AS SOON AS PRACTICABLE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REACHLOCAL DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. REACHLOCAL WILL HAVE NO LIABILITY FOR ANY: (i) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT OR INFORMATION; (ii) CLAIMS RELATING TO INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY (OTHER THAN BY THE PLATFORM) OR DEFAMATION; (iii) PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR ACCESS TO OR USE OF ANY OF THE MARKETING SERVICES; (iv) UNAUTHORISED ACCESS TO OR USE OF REACHLOCAL'S SERVERS OR OF ANY PERSONAL OR FINANCIAL INFORMATION; (v) INTERRUPTION OF TRANSMISSION TO OR FROM THE MARKETING SERVICES; (vi) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED ON OR THROUGH THE MARKETING SERVICES BY ANY THIRD PARTY; (vii) LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, E-MAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE ON OR THROUGH THE MARKETING SERVICES; OR (viii) MATTERS BEYOND REACHLOCAL'S REASONABLE CONTROL. REACHLOCAL DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY ON OR THROUGH THE OFFERINGS OR ANY LINKED WEB SITE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM REACHLOCAL OR THROUGH THE MARKETING SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE IN THESE MARKETING SERVICES TERMS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, REACHLOCAL MAKES NO GUARANTEES WITH RESPECT TO THE PERFORMANCE OF ANY CAMPAIGN OR ANY PRODUCT OR SERVICE.

11. LIMITATIONS OF LIABILITY

(a) NO CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR STRICT LIABILITY), OR FOR INTERRUPTED COMMUNICATIONS, LOSS OF USE, LOST BUSINESS, LOST DATA OR LOST PROFITS (EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE FOREGOING EXCLUSION OF LIABILITY WILL NOT APPLY TO (I) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, INCLUDING ANY AMOUNTS PAYABLE IN CONNECTION THEREWITH; (II) TO YOUR CONFIDENTIALITY OBLIGATIONS AND/OR (III) EITHER PARTY'S WILLFUL MISCONDUCT.

(b) LIMITATION ON DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL REACHLOCAL'S CUMULATIVE, AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY EXCEED THE AMOUNTS RECEIVED BY REACHLOCAL FROM YOU DURING THE 12-MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY. IN LIEU OF REFUND, REACHLOCAL SHALL BE PERMITTED, IN ITS SOLE DISCRETION, TO PROVIDE "MAKE-GOOD" MARKETING SERVICES, PROVIDED SUCH "MAKE-GOOD" MARKETING SERVICES ARE PROVIDED WITHIN A REASONABLE PERIOD OF TIME AFTER THE LIABILITY HAS ACCRUED.

(c) NON EXCLUDABLE CONDITIONS. CERTAIN LAWS, INCLUDING THE AUSTRALIAN CONSUMER LAW, IMPLY TERMS AND CONDITIONS INTO CONTRACTS FOR THE SUPPLY OF GOODS OR SERVICES THAT CANNOT BE EXCLUDED (FOR EXAMPLE, THAT SERVICES MUST BE PROVIDED WITH DUE CARE AND SKILL AND FIT FOR ANY SPECIFIED PURPOSE) ("NON-EXCLUDABLE CONDITION"). IN THE EVENT THAT A TERM, CONDITION OR WARRANTY IS IMPLIED BY LAW INTO THIS AGREEMENT AND REACHLOCAL BREACHES THAT NON-EXCLUDABLE CONDITION, REACHLOCAL'S LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

(d) Acknowledgement. Each party acknowledges that the other party has entered into the Order Form in reliance upon the limitations of liability set forth herein and that the same is an essential basis of the bargain between the parties.

12. Third Party Beneficiaries

You understand and acknowledge that the Publishers are intended third-party beneficiaries of Sections 7, 8, 9 and 13.

13. Informal Dispute Resolution

It is Bee Media & Engagement's goal that the Marketing Services meet your expectations. However, there may be instances when you feel that Bee Media & Engagement may not be fulfilling its obligations. In those instances, Bee Media & Engagement is committed to working with you to reach a reasonable resolution that satisfies you; however, we can only do this if we know about and understand your issue. Therefore, for any problem or dispute that you may have with Bee Media & Engagement, you acknowledge and agree that you will first give Bee Media & Engagement an opportunity to resolve your problem or dispute. This includes you first outlining your problem or dispute within 30 days of the Marketing Services being performed by lodging via the contact form at www.beeme.com.au. You then agree to negotiate with Bee Media & Engagement in good faith about your problem or dispute. This should lead to resolution, but if for some reason your problem or dispute is not resolved satisfactorily within 60 days after Bee Media & Engagement's receipt of your written description of it, you retain all rights to pursue your claims.

14. Miscellaneous

(a) Governing Law/Venue. The Agreement will be governed and construed in accordance with the laws of the State of Victoria, Australia without giving effect to conflict of laws principles. You submit to the non-exclusive jurisdiction of the Courts of Victoria.



(b) Timing of Claims. You agree that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Agreement must be filed within one year after such claim or cause of action arose or be forever barred; provided that this section shall not in any way limit the time in which claims for infringement or misappropriation of intellectual property rights may be brought.

(c) Entire Agreement. The Agreement (which includes the Order Form, all applicable Product Terms and any payment authorisation forms) sets forth the entire agreement of the parties and supersedes any and all prior oral or written agreements or understandings between the parties as to the subject matter hereof. It may be changed only by a writing signed by both parties. With respect to changes to IOs then in effect, such writing may include email, provided that such changes are limited to a change in the term of the Order Form or the amounts being paid under the Order Form.

(d) Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way.

(e) Assignment. You may not assign any Order Form or the Agreement without the prior written consent of Bee Media & Engagement. The parties' rights and obligations will bind and inure to the benefit of their respective successors, heirs, executors and joint administrators and permitted assigns.

(f) Independent Contractors. The parties to the Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by the Agreement.

(g) Subcontracting. Bee Media & Engagement may, without your consent, subcontract to any party the performance of all or any of Bee Media & Engagement's obligations under this Agreement provided that Bee Media & Engagement remains primarily liable for the performance of those obligations.

(h) Referrals. You acknowledge that Bee Media & Engagement may provide incentives to third parties to introduce potential clients to Bee Media & Engagement or to direct Bee Media & Engagement to potential clients.

(i) Force Majeure. Neither party shall have any liability for any failure or delay (other than with respect to payment obligations) resulting from any governmental action, fire, flood, insurrection, earthquake, power failure, riot, explosion, embargo, strikes whether legal or illegal, labor or inventory shortage, unavailability of currency, transportation interruption of any kind, work slowdown or any other condition affecting production or delivery in any manner beyond the reasonable control of such party.

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