

TERMS OF SERVICE

RESBM ENTERPRISES PTY LTD ABN 13 167 658 522 of Suite 201-203, Level 2, 2 Queen St, Melbourne VIC 3000 (BM Solutions)

1. Foreword

- 1.1. Please read these Terms of Service carefully before signing and/or engaging with any of BM Solutions's services. Failure to read these Terms of Service before engaging with BM Solutions does not constitute an acceptable reason for the dismissal of any clauses or conditions contained within this Agreement, and neither you nor your business, employer, or client will be entitled to any refunds or compensation in the event that you have not fully read & understood these Terms.
- 1.2. You are invited to seek clarification on any areas of concern from BM Solutions before you sign anything. Should you have such questions, please email solutions@barnardmarks.com
- 1.3. The headings used in this agreement are included for convenience only and will not limit, change, nullify, negate or otherwise affect these terms.

2. Application

- 2.1. These Terms & Conditions (known as "**Terms**") shall apply to all services, contracts, work, and activities undertaken by BM Solutions on your behalf "**The Client.**"
- 2.2. The agreement shall commence on the date specified in the Proposal or Agreement unless otherwise agreed upon between The Client and BM Solutions. Note that late initial payment or total failure to pay may impact the start date of the agreement.
- 2.3. If acceptance does not take place within 5 business days from the date the Agreement is provided to The Client, then BM Solutions's offer will lapse and will not be available for acceptance. If the agreement is not accepted in that time, BM Solutions will not guarantee it will be able to accommodate The Client's campaign(s).
- 2.4. The Agreement shall continue in full effect until **The Services** have been completed or terminated and all **Fees** and Costs have been paid to BM Solutions by The Client, subject to termination in accordance with these Terms.

3. Services and Fees

- 3.1. BM Solutions will provide the selected or outlined services as contained in the Proposal or Agreement, hereby known as **"The Services"**.
- 3.2. The Client agrees to pay to BM Solutions the stated Fees of for the Services as contained in the agreement, along with any agreed costs, expenses or additional charges as described in the Proposal or Agreement. The amount payable to BM Solutions is hereby referred to as **"the Fees"**.
- 3.3. The Client warrants & agrees that the Fees are accurate & fair for the Services provided by BM Solutions.
- 3.4. The Client also warrants that they are in a financial position to pay for such services, and that should they become unable to cover the costs of the Fees, they will notify BM Solutions as soon as they are aware of their upcoming inability to pay the Fees.
- 3.5. The Client also warrants that there may be additional charges for activities carried out by BM Solutions on behalf of the Client that fall outside the scope of the Services.
- 3.6. BM Solutions will inform The Client of any additional charges this work may carry before conducting the work that incurs such charges. For these ad hoc requests, email confirmation from The Client shall serve as a legally binding agreement to pay those additional Fees.

4. **Breach & Termination**

- 4.1. BM Solutions may terminate this agreement immediately if The Client
 - 4.1.1. fails to pay any Fees or Costs when they are due for payment;
 - 4.1.2. contravenes any obligations pursuant to the terms of this Agreement;
 - 4.1.3. fails to respond to BM Solutions communication in a reasonable and timely manner;
 - 4.1.4. fails to act in a professional manner;
 - 4.1.5. disparages BM Solutions on social media, forums, reviews or websites;
 - 4.1.6. fails to supply timely and adequate access to any of the platforms or tools that BM Solutions will require to perform the Services including The Client's website, Google Ads account, Google Analytics, Meta Ad Management platform, cPanel, FTP or CMS logins;
 - 4.1.7. makes unreasonable or repeated requests for services outwith the scope of this Agreement without offer of payment for said services;
 - 4.1.8. is slanderous, rude, offensive, racist, sexist, or in any way abusive towards BM Solutions and its stakeholders, whether physically or emotionally.

This list is not exhaustive.

- 4.2. Termination of the Agreement under clause 4 does not affect The Client's liability to pay the Fees outlined in the Proposal or Agreement during the Termination Notice Period (**see Section 5. Termination Notice**).
- 4.3. Either party may terminate this agreement immediately by giving written notice of termination to the other party if:
 - 4.3.1. The other party commits a material breach of this Agreement and the breaching party fails to remedy the breach within the period of 30 days following receiving written notice of this breach.
 - 4.3.2. The other party persistently breaches this Agreement irrespective of whether such breaches collectively constitute a material breach.
- 4.4. Either party may terminate this Agreement by giving the other party written notice of termination to work.

5. Termination Notice

- 5.1. Unless otherwise stated, a standard termination period of 30 days applies to every Service detailed in the Proposal or Agreement. That 30-day period commences on the date written notice is given to the other party.
- 5.2. The Client remains liable to pay for Services during the 30-day termination period, irrespective of whether the Services are utilised.
- 5.3. Where this Agreement is validly terminated by BM Solutions in accordance with **clauses 4.1 through 4.4**, The Client agrees to pay a break fee equal to 1 month's Fees remaining due under the Agreement together with all Fees due as at the date of termination.
- 5.4. Where BM Solutions elects to terminate this Agreement without material breach by The Client, The Client will not be liable for a break fee, but shall remain liable for all Fees payable during the 30-day termination period.
- 5.5. The termination of this Agreement shall be without prejudice to the accrued rights of either party prior to termination.
- 5.6. All outstanding fees payable under the Agreement will be due and payable in accordance with the billing cycle and invoice terms upon termination of the Agreement.
- 5.7. The cancellation of part or parts of the overall Proposal or Agreement does not automatically result in a reduction of the monthly Fees. This will be considered on

a case-by-case basis considering the size of the Service being cancelled, and may result in an amended agreement between BM Solutions & The Client.

6. End of Initial Contract

- 6.1.** For Proposal or Agreements that specify a fixed timeframe for the delivery of the Services (i.e. 12 months), at the end of that fixed timeframe the Services shall continue on a rolling monthly basis with the same monthly Fees until a new Proposal or Agreement is signed between both parties, or the Services are terminated by either party.
- 6.2.** Should the client fail to notify BM Solutions of their intention to end the Services at or prior to the conclusion of the fixed timeframe, then the Client will be liable to pay either a break fee equal to one month's Fees, or trigger the 30-day cancellation period detailed in **Section 5: Termination Notice**.

7. Availability

- 7.1.** BM Solutions's standard working hours are Monday to Friday, 9:00am to 5:00PM AEDT / AEST. BM Solutions adheres to Victoria's public holiday schedule each year, but does not observe the public holidays of any other Australian state or territory.
- 7.2.** Work outside of these standard business hours will be offered at the discretion of BM Solutions. As such, BM Solutions may not be contactable outside of the hours and days listed above.

8. Attendance At Place of Business

- 8.1.** While BM Solutions may attend The Client's place of business for reasons related to the provision of the Services, this agreement does not mandate that BM Solutions, its employees, its associates or stakeholders present themselves at The Client's place of business unless otherwise stated. BM Solutions's attendance remains at the discretion of BM Solutions.
- 8.2.** BM Solutions may, at its discretion, charge for any time and costs incurred while travelling to and from The Client's place of business.

9. Confidentiality

- 9.1.** Any party included in this Agreement, whether employed, related to, or aware of BM Solutions or The Client (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, or processes which are of a confidential nature and have been disclosed to the Receiving Party, its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

- 9.2.** The Receiving Party shall ensure that its employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Contract.

10. Limitation of Liability and Indemnity

- 10.1.** Nothing in this Agreement will limit or exclude any liability for fraud or fraudulent misrepresentation; or exclude or limit liabilities in a manner that is not permitted under the applicable law.
- 10.2.** Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 10.3.** BM Solutions's liability to The Client under this Agreement in respect of any event or series of related events shall not exceed the total Fees paid to date by The Client to BM Solutions under this Agreement in the 6 months preceding the commencement of the event or events.
- 10.4.** BM Solutions shall not be liable for downtime, hacking, viruses, disruptions, interruptions, faulty third-party software, search engines or websites on which a service is dependent or other deliveries from a third party.
- 10.5.** Similarly, BM Solutions shall not be liable for delays arising from inaction from The Client or The Client's insistence on how the Services should be conducted.
- 10.6.** The Client shall indemnify and keep BM Solutions indemnified fully against all liabilities, costs and expenses whatsoever and howsoever incurred by BM Solutions in respect of any third parties as a result of the provision of the Services in accordance with the Agreement, or the content of The Client's advertising or web pages which result in claims or proceedings against BM Solutions for infringement of any Intellectual Property Rights or other proprietary rights of third parties, or for breach of confidentiality or contract or for defamation.
- 10.7.** The Client shall indemnify and hold BM Solutions harmless against all claims, liabilities, damages, penalties, fines, and expenses (including legal fees) arising out of third-party claims, regulatory investigations, governmental actions, or proceedings relating to the Client's materials, conduct, or use of the Services.
- 10.8.** Without limiting the generality of the foregoing, The Client will ensure that any product or service offered by The Client's business will be in accordance with applicable laws and regulations.

11. Disclaimer of Warranties

11.1. BM Solutions does not guarantee, represent, or warrant that the Services provided under the Proposal or Agreement will generate positive results for The Client. While every effort is made to provide positive growth, due to the dynamic and evolving nature of digital marketing, BM Solutions does not offer any guarantees that a particular marketing channel, or channels, will be profitable for the short or long term. This is why the termination period for each service is 30 days (unless otherwise stated), and there is no minimum length of agreement unless otherwise stated.

12. Indemnification

12.1. The Client agrees to indemnify, defend, and hold BM Solutions and its parent, subsidiaries, affiliates, partners, offices, directors, agency, contractors, licensors, service providers, subcontractors, suppliers, interns and employees harmless from any claim or demand, including reasonable attorney's fees made by any third party due to or arising out of The Client's breach of these Terms of Service..

13. Intellectual Property

13.1. As much is possible, The Client will be granted ownership of all advertising accounts, reporting platforms, advertising collateral, content, or any other tangible asset produced as a result of conducting the Services as described in the Agreement.

13.2. The Client understands that there are some cases where full ownership cannot be granted. BM Solutions will endeavor to notify the client when delivery of the Services may result in an outcome where full ownership cannot be granted to The Client by BM Solutions.

13.3. In the event that ownership of a tool or account requires payment or subscription, The Client will have the option of declining ownership of the tool or account. BM Solutions may then, at its discretion, cancel its subscription to the tool or account.

13.4. BM Solutions reserves the right to withhold access to all advertising accounts, reporting platforms, advertising collateral, content, or any other tangible asset produced as a result of conducting the Services as described in the Agreement in the event of non-payment by The Client.

13.5. In the event of termination of this Agreement, BM Solutions holds no responsibility to share, grant access to, or deliver advertising accounts, reporting platforms, advertising collateral, content, or any other tangible asset produced as a result of conducting the Services as described in the Agreement after the 30-Day termination period has passed.

13.6. BM Solutions shall not be liable for any losses, damages, whether financial or otherwise, or any legal complications that arise from continued use of assets

produced by BM Solutions after the 30-Day Termination notice has passed and the Agreement has been terminated.

13.7. BM Solutions shall not be liable to pay for any software, tools, or third-party work required to execute the Services described in this Agreement that fall outwith standard delivery of the Services. This includes, but is not limited to:

- Photography or video production;
- Stock imagery;
- Website development or subscription-based plugins/ extensions;
- Subscriptions to software, whether web-based or application-based;
- Contractors required to complete work on The Client's business, website, operations or processes.

13.8. In the event that BM Solutions is required to pay for services such as those listed above, The Client will be liable to cover those costs in their following invoice. Failure to cover those costs may result in a restriction or reduction of services in following months.

13.9. Failure to pay any and all Fees associated with costs & charges incurred by BM Solutions that are incurred fairly & reasonably within the scope of delivery of The Services that have also been presented to The Client before their incurring may limit the delivery of other Services.

14. Warranties

14.1. Both parties represent and warrant that the execution and delivery of this agreement:

- 14.1.1.** has been properly authorised and they have the power to perform their respective obligations under this Agreement;
- 14.1.2.** constitutes a legal, valid and binding obligation enforceable in accordance with its terms by appropriate legal remedy other than in relation to material included.

14.2. BM Solutions represents and warrants to The Client that BM Solutions:

- 14.2.1.** will complete the Services in a professional and workmanlike manner;
- 14.2.2.** will use all reasonable endeavours to meet any performance dates specified in the agreement;
- 14.2.3.** shall not be liable for any delay in delivery of the Services caused by a Force Majeure event or The Client's failure to provide the BM Solutions with adequate delivery instructions or any other instructions relevant to the supply of the Services.

14.3. If The Client is receiving free services for any period of their Agreement with BM Solutions, BM Solutions is under no obligation to provide or meet deliverables or KPIs in relation to those unpaid services.

14.4. The Client represents and warrants to BM Solutions that:

14.4.1. The Client owns, or has all necessary licenses and permissions to use all copy, images, logos, trademarks, business names, video and any other information and materials provided by The Client for use in performing the Services;

14.4.2. any goods or services offered by The Client's business comply with all relevant laws, Quality Standards, and regulations, including those relating to e-commerce, trademark, copyright, defamation and the Australian Consumer Law;

14.4.3. The Client will maintain The Client's own backups of the website following delivery and will not hold BM Solutions liable for restoring any data except to the extent that the data loss arises directly from a negligent act or omission by BM Solutions;

14.4.4. The Client will provide assistance and technical information to BM Solutions, as reasonably required by BM Solutions in sufficient time to facilitate production of the Services;

14.4.5. The Client has sole responsibility for ensuring the accuracy of all information provided to BM Solutions and warrants that The Client's employees and other related parties, in their assisting in the performance of the Services. have the necessary skills and authority to carry out any work assigned to them.

15. Force Majeure

15.1. Neither party shall be liable for any failure or delay in performing its obligations under this Agreement if such failure or delay is caused by circumstances beyond its reasonable control, including but not limited to acts of God, pandemics, natural disasters, government restrictions, cyberattacks, or telecommunications failures.

16. Delayed Payments

16.1. If any Fees are not paid by the date they fall due for payment, BM Solutions may send further reminder letters and invoices.

16.2. The Client further acknowledges and agrees that if BM Solutions is required to send additional invoices and communications, BM Solutions may charge a reasonable administrative fee for each of these communications. These fees are laid out below:

Delay	Late Fee Applied To Overdue Invoice
14 Days	2.5% of the total invoice value

30 Days	5.0% of the total invoice value
60 Days	10% of the total invoice value

- 16.3.** On the basis that payment is not made, no other additions to any of The Client's Services will commence until payment is made in full.
- 16.4.** BM Solutions reserves the right to suspend this Agreement, cease all Services and withhold all assets in the event that payment becomes overdue for more than 60 days regardless of whether The Client has communicated a reason for the delayed payment.
- 16.5.** Terminating this Agreement when a payable amount is overdue does not affect The Client's liability to pay the outstanding Fees and Costs, or pay the duration of the 30-day termination period.
- 16.6.** The settling of late payments that have led to a suspension of any of The Services for any length of time does not entitle The Client to any backdating of work or activity missed during the time the Services were suspended due to non-payment. If any work is to be backdated under these circumstances, it is done so solely at the discretion of BM Solutions.

17. Pausing Campaigns

- 17.1.** The Client may request to pause their campaign(s) for a maximum duration of one month, once within any 12-month period.
- 17.2.** An administration fee equal to 15% of The Fees will be charged to reserve The Client's place during the pause. This fee is payable within the regular billing cycle and is due within seven (7) days of invoice.
- 17.3.** Campaign pauses must align with full billing cycles. If a pause is requested partway through a billing cycle, it will take effect from the start of the next cycle. No refunds or credits will be issued for the remainder of the current cycle.
- 17.4.** The Client must notify BM Solutions of their intent to pause a campaign prior to the start of the next billing cycle. Failure to do so will result in the full Fees being payable for that cycle.
- 17.5.** Requests to extend a pause beyond the one-month limit in **Clause 17.1** will be considered at BM Solutions's sole discretion.
- 17.6.** BM Solutions reserves the right to terminate this Agreement if The Client seeks to extend the campaign pause beyond the allowable period.

18. Amendments

- 18.1.** From time to time, BM Solutions may be required to make amendments & updates to the General Terms of Service to comply with changing legislation, service provision, or general industry evolution. In the event the General Terms of Service are updated, BM Solutions warrants that it shall provide The Client with updated General Terms of Service.
- 18.2.** Should The Client not wish to be bound by those updated Terms of Service, The Client reserves the right to cancel the Agreement and end the provision of the Services by providing written notice. This notice shall begin the 30-day termination period and remains payable by The Client to BM Solutions.

19. Pricing Changes

- 19.1.** From time to time, BM Solutions may be required to change or increase its pricing structure within reason due to rising operating costs. BM Solutions warrants that The Client shall be notified of the upcoming price increase in writing at least 30 days before the price increase takes effect.
- 19.2.** Should The Client not wish to continue with the Services at the modified pricing, The Client reserves the right to exercise its right to cancel the entire Agreement and end the provision of the Services by providing written notice. This notice shall begin the 30-day termination period and remains payable by The Client to BM Solutions.

20. Refund Policy

- 20.1.** All Fees paid by The Client to BM Solutions under this Agreement are non-refundable, irrespective of the results achieved through the provision of the Services, unless otherwise required by law.

21. Severability

- 21.1.** In the event that any provision of these Terms is determined to be unlawful, void, or unenforceable, such provision shall be nonetheless enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms. Such determination shall not affect the validity and enforceability of any other remaining provisions.

22. Entire Agreement

- 22.1.** The Agreement (comprising these Terms and the Proposal or Agreement) forms the entire agreement between the parties about its subject matter and shall supersede all other negotiations, representations, warranties or agreements.

23. Variation

- 23.1.** No variation to this Agreement will be valid unless in writing and executed by all the parties.

24. No Waiver

24.1. Any rights under this Agreement may not be waived or varied except in writing signed by the party to be bound.

24.2. Unless otherwise expressly stated in the agreement, no waiver or relaxation in whole or in part of any of the terms and conditions of the Agreement will be binding.

25. Jurisdiction

25.1. The laws of Victoria, Australia govern this Agreement and each party submits to the exclusive jurisdiction of the courts of VIC.

26. Failure to Enforce Provisions

26.1. The failure of BM Solutions to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such rights or provision. Any ambiguity in the interpretation of these Terms shall not be construed against the drafting party.

27. Ambiguity

27.1. Any ambiguity in the interpretation of these Terms shall not be construed against the drafting party.

28. Agreement Mistakes

28.1. Any mistakes, whether in spelling, grammatical, factual, or legal in nature, do not constitute grounds to suspend or terminate part or parts of, or the whole agreement.