

Booking Agreement

1. MERCHANT ADVERTISING AND PROMOTIONS

1.1. The services offered by Brick & Mortar Digital Pty Ltd ABN 60 653 435 182 (the "Company") through the platform and mobile application (the "Platform") to **Merchant Name** ("Merchant") are made available subject to the terms and conditions of usage as set out herein below (the "Terms and Conditions").

1.2. By joining and using the Platform, the Merchant agrees to be bound by or comply with these terms and conditions of usage and any other terms and conditions that the Company may prescribe from time to time.

1.3. The Merchant is required to read the Terms and Conditions carefully as it contains the terms and conditions of usage of the Platform. It further provides other important legal notices applicable to the Merchant with respect to any advertising or promotions on the Platform.

1.4. The Merchant's usage of the Platform constitutes the Merchant's acceptance of the Terms and Conditions contained below. The Company may amend and/or update these Terms and Conditions at any time. The subsequent use of the Platform shall be governed by such amended terms.

2. TERMS AND CONDITIONS

2.1. **PROMOTIONS** - The Merchant agrees and undertakes to indemnify and hold Brick & Mortar Digital harmless against all and any claims or damages of any third party in respect of the promotions promoted through our platform or advertising campaigns.

2.2. **PAYMENTS** - The monthly amount should be paid and received by Brick & Mortar Digital 3 (three) days (excluding public holidays and weekends), prior to the commencement date each month unless otherwise agreed to. Brick & Mortar Digital reserves the right to de-activate promotions due to delay in payment.

2.3. THIRD PARTY INVOLVEMENT AND THIRD PARTY CLAIMS:

2.3.1. **THIRD PARTY COLLABORATIONS:** In the event the Merchant has an ongoing collaboration with a third party and wishes to promote such collaborations through Brick & Mortar Digital and include any intellectual property of the third party in any promotions, the Merchant shall submit the following to Brick & Mortar Digital: 2.3.1.1. The Partnership/Collaboration Agreement between the third party and the Merchant, expressly stating that there is explicit consent for use of the intellectual property of the third party for promotions through Brick & Mortar Digital and stating the term of such collaboration and limitations if any.

2.3.1.2. A written consent from the third party, and acknowledgement of the promotion by the Merchant with Brick & Mortar Digital.

2.3.1.3. An indemnity agreement signed by the Merchant indemnifying and holding Brick & Mortar Digital harmless against any and all claims raised by the third party or any other person/group/company etc, in reference to the promotion

2.4. **THIRD PARTY CLAIMS:** The Merchant agrees and undertakes to indemnify and hold Brick & Mortar Digital harmless from all/any claims, disputes and contentions against Brick & Mortar Digital raised by any third party regarding the promotions of the Merchant, including but not limited to an infringement of the third party's rights (including intellectual property rights);

2.5. **LIMITATIONS AND LIABILITIES** – Brick & Mortar Digital is not responsible for any action initiated by any party as a result of the Merchant promoting through Brick & Mortar Digital. Brick & Mortar Digital shall not be liable to the Merchant for any direct, indirect, incidental, consequential, special, or exemplary damages or any damages for lost data, business interruption, lost profits, lost

revenue or lost business, whether that liability arises in contract, tort (including by Brick & Mortar' negligence) or under statute, arising from the Merchant's promotions or use of Brick & Mortar for the promotion (even if Brick & Mortar had been advised of the possibility of such damages). The Merchant indemnifies Brick & Mortar and its officers, employees, contractors and agents (the "Indemnified") against any costs, expenses, losses, damages and liability suffered or incurred by the Indemnified arising from the Merchant's breach of this Agreement and any negligent unlawful act or omission of the Merchant in connection with the Promotions.

2.6. INTELLECTUAL PROPERTY & CONFIDENTIALITY - Both the parties agree and undertake that any intellectual property vests solely with the party that owns it and the parties further undertake not to use the intellectual property of the other Party save and except in accordance with these service terms. The Merchant agrees and acknowledges that Brick & Mortar shall be authorised to use the logo and brand name of the Merchant's business for its promotions. The Merchant agrees to keep all terms and conditions of the promotion confidential and not disclose it to any third party. The Merchant shall only share information with its employees and agents on a need to know basis.

2.7. NON-EXCLUDABLE CONDITIONS - To the extent permitted by law, Brick & Mortar excludes from this Agreement all representations, guarantees, conditions, warranties, rights, remedies, liabilities and other terms that may be conferred or implied by statute, general law or custom, except any guarantee, implied term or right conferred under any legislation (including the Australian Consumer Law), the exclusion of which would contravene legislation or cause part or all of this clause to be void ("Non-excludable Condition"). Brick & Mortar limits its liability for breach of any Non-Excludable Condition (to the extent such liability can be limited) and for any other error in the sponsored listing caused by Brick & Mortar the re-supply of the sponsored listing or payment of the cost of re-supply (at Brick & Mortar' option). In this section 7, "Australian Consumer Law" has the meaning given to that term in section 4 of the *Competition and Consumer Act 2010* (Cth).

2.8. WARRANTY - The Merchant warrants to Brick & Mortar that the publication of the promotion does not breach or infringe:

- 2.8.1. the Competition and Consumer Act (Cth) or equivalent State legislation;
- 2.8.2. any obligation and confidentiality, intellectual property rights or other personal or proprietary right;
- 2.8.3. any law of defamation or obscenity;
- 2.8.4. State or Commonwealth privacy legislation or anti-discrimination legislation;
- 2.8.5. any other law or applicable regulation (including any common law, statute, secondary legislation, rule or ordinance of the Commonwealth, or a State or Territory).
- 2.8.6. the Merchant has full rights to enter into this Agreement
- 2.8.7. the Merchant has the financial capacity to fulfill its obligation under this Agreement.

2.9. PRIVACY – Brick & Mortar collects the Merchant's personal information to provide promotions and advertising for the Merchant and for invoicing purposes. The Merchant consents to the use by Brick & Mortar and its related corporations (as defined by the *Corporations Act 2001* (Cth)) of the Merchant's personal information and acknowledges that Brick & Mortar and its related corporations, may, at their discretion disclose and use that personal information for the purpose of providing the Merchant with goods or services, communicating with the Merchant, product and business development and sales, planning and research, the promotion and marketing (of any sort) of their businesses, services or products or those of a third party which we believe may be of benefit to the Merchant. Brick & Mortar may also disclose the Merchant's personal information to credit reporting agencies and other third parties as part of provision of the promotions and for overdue accounts, to debt collection agencies to recover amounts owing.

2.10. GENERAL - This Agreement constitutes the entire agreement of the Merchant and Brick & Mortar. It can only be varied in writing by an authorised officer of Brick & Mortar. Brick & Mortar reserves the right to suspend/restrict the promotion in case of breach of the terms and conditions in this agreement

