

## **Website, Done For You Services, And Subscription Terms & Conditions Of Use**

**3 Oct 2023**

### **1. About the Website**

- a. Welcome to [www.pronarrative.com.au](http://www.pronarrative.com.au) (the 'Website').
- b. The Website is operated by Optimiser Digital Pty Ltd (ACN 616 838 629). Access to and use of the Website, or any of its associated Products or Services, is provided by Optimiser Digital Pty Ltd. Please read these terms and conditions (the 'Terms ') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any Optimiser Digital Pty Ltd's services, immediately and notify us in writing.
- c. Optimiser Digital Pty Ltd reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Optimiser Digital Pty Ltd updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.
- d. The Website provides:
  - i. free generalised information about digital marketing ('Free Content')
  - ii. information about the 'done for you' digital marketing services provided by Optimiser Digital Pty Ltd ('Done For You Consulting')
  - iii. recurring monthly licences to receive pre-written fact sheet documents, pre-written emails, and pre-written social media posts each month; and access to a hosted landing page ('Services')

### **2. Acceptance of the Terms**

- a. You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Optimiser Digital Pty Ltd in the user interface.

### **3. Subscription to use the Services**

- a. In order to access the Services, you must first purchase a monthly subscription through the Website (the 'Subscription') and pay the applicable fee for the selected Subscription (the 'Subscription Fee').
  - i. the monthly Subscription Fee for new customers is
    1. For 1 user licence: \$349 per licence, inclusive of GST, per month
    2. For 2-5 user licences: \$299 per licence, inclusive of GST, per month
    3. For 6-10 user licences: \$279 per licence, inclusive of GST, per month
    4. For 11+ user licences: \$249 per licence, inclusive of GST, per month

- ii. the monthly subscription fee will be charged every calendar month, upon the monthly anniversary of the first subscription payment
  1. if the monthly subscription anniversary falls on a non-existent date for any given month, the closest earliest day will be set as the anniversary date for that month only
- b. In purchasing the Subscription, you acknowledge and agree that it is your responsibility to ensure that the Subscription you elect to purchase is suitable for your use.
- c. In purchasing the Subscription, you acknowledge and agree that the materials we produce and make available to you via our shared library will be used by other businesses. You will not have ownership rights of any content we make available to you via our shared library.
- d. Your payment method will be charged monthly, on an ongoing basis, until you cancel the Subscription.
- e. Once you have successfully purchased the “ProReferral” Subscription option, you will receive the following content each month (the ‘Content’):
  - i. a fact sheet PDF document
    1. the fact sheet will contain pre-written articles and content made available via our shared library, via a design made available via our shared library
    2. the fact sheet will be customised to contain
      - a. your logo
      - b. your contact information
      - c. your business name
      - d. a profile picture
      - e. a short biography
  - ii. access to the front-end of a pre-designed landing page, hosted on our server and top level domain.
    1. The landing page will be customised to contain the following unique features only:
      - a. a URL featuring your business name as the subdomain
      - b. your logo
      - c. your contact information
      - d. your business name
      - e. a profile picture
      - f. a short biography
      - g. your business’ colour palette (one colour tint only)
      - h. a web form that

- i. optionally captures a user's first name and email address and automatically sends them a copy of your latest fact sheet
  - ii. sends you an email notification when a user has provided their first name and email address
2. The landing page cannot be customised via any other attributes or in any other way.
3. You are not permitted access to the back-end or admin area of the landing page.
4. The landing page cannot be connected to a third party tool via API or integration, unless previously agreed by us in writing. If we agree to connect your landing page to a third party tool, we will charge you an up-front connection fee.
  - iii. a pre-written email made available via our content library containing language that helps you promote the fact sheet to your email list
  - iv. a weekly pre-written and professionally designed social media post, made available from our shared library
- f. It may take us up to five business days to prepare your first month's Content, although we will endeavour to provide this sooner.
- g. New Content is updated and shared with you once per calendar month. You will receive new Content via your designated email as soon as you are automatically charged your next monthly Subscription Fee.
- h. If you decide to discontinue your subscription, you will no longer receive the Content and you will no longer have access to your landing page. Your landing page will be deleted within seven days of an expired subscription and no redirect will be implemented.
- i. In promoting the landing page, you agree that you will be held responsible for the data privacy of any personally identifiable information gathered by the landing page. We will not be held responsible for any data breaches that occur once any personally identifiable information leaves our servers.
- j. You agree that you will read every word on every fact sheet, email communication, and social media post you receive to ensure accuracy and validity. If you find any errors or inaccuracies, you are asked to alert us immediately. We will not be held responsible for any damages that may occur if you provide inaccurate information to your recipients.
- k. In purchasing the Subscription, you acknowledge and agree that we will not customise the fact sheet, landing page, email content, or social media content unless previously agreed by us in writing.
- l. Once you have purchased either Subscription option, you will be given an account through a third party provider (the 'Account').
- m. As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
  - i. Email address
  - ii. First name and last name

- iii. Other information as specified in section 3.d.ii.1
- n. Your first fact sheet and tactical delivery email template may be delayed if you do not send your kickoff questionnaire information within 24 hours of your first subscription payment.
- o. You warrant that any information you give to Optimiser Digital Pty Ltd in the course of completing the registration process will always be accurate, correct and up to date.
- p. Once you have completed the registration process, you will be a registered member of the Website ('Member') and agree to be bound by the Terms. As a Member, you will be granted immediate access to the current Content from the time you have successfully paid for a monthly Subscription until the monthly subscription period expires (the 'Subscription Period').
- q. By accessing this Website, accepting the Terms or using the Services you understand that you will not have exclusive ownership rights or publishing rights to any of the blog articles, emails, or social media posts available as part of your Subscription. You are licensed to use this content only. You also acknowledge and agree that the same Content, either exactly duplicated or a derivative thereof, may be used by other customers of Optimiser Digital Pty Ltd in their marketing and client communications.
- r. You may not use the Services and may not accept the Terms if:
  - i. you are not of legal age to form a binding contract with Optimiser Digital Pty Ltd; or
  - ii. you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

#### **4. Your obligations as a Member**

- a. As a Member, you agree to comply with the following:
  - i. you will use the Services and Free Content only for purposes that are permitted by:
    - 1. the Terms; and
    - 2. any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
  - ii. you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;
  - iii. any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Optimiser Digital Pty Ltd of any unauthorised use of your password or email address or any breach of security of which you have become aware;
  - iv. access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of Optimiser Digital Pty Ltd providing the Services;
  - v. you will not use the Services, Free Content or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Optimiser Digital Pty Ltd;

- vi. you will not use the Services, Free Content or Website for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
- vii. you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result in termination of the Services. Appropriate legal action will be taken by Optimiser Digital Pty Ltd for any illegal or unauthorised use of the Website; and
- viii. you acknowledge and agree that any automated use of the Website or its Services **or Free Content is prohibited.**

## 5. Payment

- a. Where the option is given to you, you may make payment of the Subscription Fee by way of:
  - i. Credit Card Payment ('Credit Card')
- b. All payments made in the course of your use of the Services are made using Stripe or PayPal. In using the Website, the Services or when making any payment in relation to your use of the Services, you warrant that you have read, understood and agree to be bound by the Stripe or PayPal terms and conditions which are available on their website.
- c. You acknowledge and agree that where a request for the payment of the Subscription Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Subscription Fee.
- d. You agree and acknowledge that Optimiser Digital Pty Ltd can vary the Subscription Fee at any time.

## 6. Refund Policy

- a. For Subscription services ('Service')
  - i. If you are unsatisfied with your Content in your first monthly subscription within 28 days of your first payment, we will refund your \$1 and provide you with one box of doughnuts from a supplier of our choice, at a size of our discretion, delivered to you via courier or postal service. We will cancel your subscription and you will no longer have access to your landing page and Account.
    - 1. If we are unable to source a box of doughnuts we reserve the right to choose a suitable alternative.
  - ii. If you are unsatisfied with your Content in your second monthly subscription and beyond within 21 days of your subscription payment, we will refund 100% of your subscription fee. We will cancel your subscription and you will no longer have access to your landing page and Account.
- b. For Done For You Consulting
  - i. Optimiser Digital Pty Ltd will only provide you with a refund in the event they are unable to continue to provide the Services or if the manager of Optimiser Digital Pty Ltd makes a decision, at its absolute discretion, that it is reasonable to do so under the circumstances. Where this occurs, the refund may be in the proportional amount of the fee that remains unused.

## **7. Copyright and Intellectual Property**

- a. The Website, the Services, the Free Content and all of the related products of Optimiser Digital Pty Ltd are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services, Free Content, and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website, code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Optimiser Digital Pty Ltd or its contributors.
- b. All trademarks, service marks and trade names are owned, registered and/or licensed by Optimiser Digital Pty Ltd, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:
  - i. use the Website pursuant to the Terms;
  - ii. copy and store the Website and the material contained in the Website in your device's cache memory; and
  - iii. print pages from the Website for your own personal and non-commercial use.
- c. Optimiser Digital Pty Ltd does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Optimiser Digital Pty Ltd.
- d. Optimiser Digital Pty Ltd retains all rights, title and interest in and to the Website and all related Services. Nothing you do on or in relation to the Website will transfer:
  - i. any business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
  - ii. a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
  - iii. a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),
  - iv. to you.
- e. You may not, without the prior written permission of Optimiser Digital Pty Ltd and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services, Free Content, or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

## **8. Privacy**

- a. Optimiser Digital Pty Ltd takes your privacy seriously and any information provided through your use of the Website and/or Services and/or Free Content are subject to Optimiser Digital Pty Ltd's Privacy Policy, which is available on the Website.

## **9. Performance Disclaimer**

- a. We will provide agreed digital marketing deliverables and services for the agreed price. We hereby declare that no express or implied representations or warranties are provided regarding particular commercial outcomes, except when a distinct and documented performance guarantee has been duly executed and agreed upon.

## 10. General Disclaimer

- a. Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- b. Subject to this clause, and to the extent permitted by law:
  - i. all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
  - ii. Optimiser Digital Pty Ltd will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services, Free Content, or these Terms (including as a result of not being able to use the Services, Free Content, or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- c. Use of the Website, the Services, and the Free Content is at your own risk. Everything on the Website, the Services, and the Free Content is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Optimiser Digital Pty Ltd make any express or implied representation or warranty about the Services, Free Content, or any products or Services (including the products or Services of Optimiser Digital Pty Ltd) referred to on the Website, includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
  - i. failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
  - ii. the accuracy, suitability or currency of any information on the Website, the Services, the Free Content, or any of its Services related products (including third party material and advertisements on the Website);
  - iii. costs incurred as a result of you using the Website, the Services, the Free Content, or any of the products of Optimiser Digital Pty Ltd; and
  - iv. the Services, Free Content, or operation in respect to links which are provided for your convenience.
- d. Optimiser Digital Pty Ltd takes no responsibility for the accuracy, currency, and correctness of any Services or Free Content provided to you. By using the Website, the Services, and the Free Content you agree to verify the accuracy, currency, and correctness of all Content and/or Free Content before use.

## 11. Limitation of liability

- a. Optimiser Digital Pty Ltd's total liability arising out of or in connection with the Services, Free Content, or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services or Free Content to you.
- b. You expressly understand and agree that Optimiser Digital Pty Ltd, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct,

indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

## **12. Termination of Contract**

- a. The Terms will continue to apply until terminated by either you or by Optimiser Digital Pty Ltd as set out below.
- b. If you want to terminate the Terms, you may do so by:
  - i. providing Optimiser Digital Pty Ltd with 3 days' notice of your intention to terminate; and
  - ii. closing your accounts for all of the services which you use, where Optimiser Digital Pty Ltd has made this option available to you.
- c. Your notice should be sent, in writing, to Optimiser Digital Pty Ltd via the 'Contact Us' link on our homepage.
- d. Optimiser Digital Pty Ltd may at any time, terminate the Terms with you if:
  - i. you have breached any provision of the Terms or intend to breach any provision;
  - ii. Optimiser Digital Pty Ltd is required to do so by law;
  - iii. the provision of the Services to you by Optimiser Digital Pty Ltd is, in the opinion of Optimiser Digital Pty Ltd, no longer commercially viable.
- e. Subject to local applicable laws, Optimiser Digital Pty Ltd reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Optimiser Digital Pty Ltd's name or reputation or violates the rights of those of another party.

## **13. Indemnity**

- a. You agree to indemnify Optimiser Digital Pty Ltd, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
  - i. all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with the Services and/or Free Content, including landing page usage;
  - ii. any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or
  - iii. any breach of the Terms.

## **14. Dispute Resolution**

- a. Compulsory:
  - i. If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).



b. Notice:

- i. A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

c. Resolution:

- i. On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties ') must:
- ii. Within 30 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- iii. If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee;
- iv. The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- v. The mediation will be held in Brisbane, Australia.

d. Confidential:

- i. All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

e. Termination of Mediation:

- i. If 90 have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

f. Venue and Jurisdiction

- i. The Services offered by Optimiser Digital Pty Ltd is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Queensland, Australia.

## 15. Governing Law

- a. The Terms are governed by the laws of Queensland, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Queensland, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

## 16. Independent Legal Advice

- a. Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

#### **17. Severance**

- a. If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

**Approved by:**

**Full Name:** Benjamin Sweetlove

**Position:** Managing Director, Optimiser Digital Pty Ltd

**Date:** 10 June 2023

**Signature:**

A handwritten signature in blue ink, appearing to read 'Benjamin Sweetlove', is written over a light blue horizontal line.