

Yomp General Terms of Engagement

1. **Term:** This Agreement commences on the Commencement Date specified in the Services Order and will continue until terminated under clause 9.
2. **Services:**
 - (a) Yomp will provide the services specified in the attached Services Order and any Requirements Documents identified in the Services Order (“**the Services**”) in accordance with the terms of this Agreement.
 - (b) Yomp may provide further services to Client if the parties agree upon a further Services Order, or the parties otherwise agree upon any additional services to be provided by Yomp from time to time. Any such further services will be provided subject to all the terms of this Agreement and, upon Yomp’s agreement in writing to provide such services, they will be deemed to be “Services” under this Agreement.
 - (c) Yomp will perform the Services in a proper and workmanlike manner and in accordance with the Services Order, including any Requirements Documents agreed and specified in the Services Order, or as otherwise agreed in writing by the parties from time to time (“**the Directions**”).
3. **Client Obligations:**
 - (a) Client must:
 - (i) promptly carry out any responsibilities it has that are specified in the Services Order and provide responses to Yomp’s queries from time to time and feedback on performance and issues or concerns with the performance of the Services it has from time to time;
 - (ii) provide Yomp with the materials and information which are required by Yomp for the performance of the Services (“**Content**”) including, without limitation, materials and information in relation to any advertising campaign for which Client requires the Services (“**Campaign**”); and
 - (iii) ensure that the Content is complete, accurate and reliable.
 - (b) Client will be responsible for:
 - (i) obtaining all necessary permissions, authorisations, licences and consents required for the use of any Content supplied or specifically required by Client in which (a) any third party owns any intellectual property, (b) there is information which is confidential to any third party or (c) there is information (including any image of any person) regarding or identifying any person (“**Third Party Content**”); and
 - (ii) paying any fees required to use any Third Party Content as required by Client under this Agreement.
 - (c) Client will ensure that its decision makers are available at all reasonable times during office hours to provide any information required by Yomp to provide the Services, and that information and decisions required by it are provided promptly.
- (d) Client will accept the consequences of all instructions given by any of its personnel (whether employees or contractors engaged by it).
- (e) Client must promptly notify Yomp of any problems or dissatisfaction it may have with the performance of the Services or any person performing the Services pursuant to this Agreement.
- (f) Client will indemnify and save Yomp harmless from and against any expense, loss, claim, judgment, award or order (including settlement of any claim entered into upon legal advice) suffered by or made against Yomp arising from or incidental to compliance by Yomp with any instruction, specification or direction of Client, including but not limited to the use of any Content supplied by Client.
- (g) Client will give Yomp such credits in respect of Yomp’s contribution to any Campaign as Yomp reasonably requires.
4. **Variations:**
 - (a) There are two procedures for making changes to the Services:
 - (i) Client may instruct Yomp to alter the Services or provide additional Services, and if Yomp agrees to provide such altered or additional Services it will be entitled to charge Client fees based upon its standard rates for the provision of such Services, unless otherwise agreed in writing; or
 - (ii) either party may request a formal change to a Service Order, and Yomp will prepare and submit a notice of the proposed change (“**Change Notice**”) to Client for its approval.
 - (b) If Client receives a Change Notice, it will within three (3) days:
 - (i) approve it;
 - (ii) reject it; or
 - (iii) request variations to and/or explanations of any aspect of the Change Notice.
 - (c) If Client makes no request within the time specified under clause 4(b) above or, within such time, requests variations to the Change Notice and, in relation to each such request:
 - (i) Client withdraws such request or raises no further request, consequent upon Yomp’s reply;
 - (ii) Client and Yomp agree on the Change Notice; or
 - (iii) Client and Yomp agree on any variation or addition to the Change Notice,then the Change Notice (as modified pursuant to any agreement between the parties) will be deemed to be approved.
 - (d) Upon approval, the terms of the Service Order will be deemed to be varied in accordance with the Change Notice (as modified pursuant to any agreement between the parties).

- (e) Yomp is under no obligation to vary the Services or provide additional Services unless agreement is reached between the parties in accordance with this clause.
 - (f) Client may reschedule the provision of any Services no later than seven (7) days prior to the commencement of the performance of the Services, for any period up to thirty (30) days from the Services Commencement Date or as otherwise agreed in writing by Yomp. In the event that Client requests rescheduling less than seven (7) days prior to the commencement of the performance of the Services, or for a period longer than thirty (30) days from the Services Commencement Date, Yomp may require payment, and Client will pay on Yomp's invoice, a rescheduling fee of twenty-five percent (25%) of the estimated or fixed fee for the provision of such Services, which is a genuine pre-estimate of Yomp's cost of redeployment of personnel.
5. **Warranty:** During the Warranty Period Yomp will fix any Deliverable which can be demonstrated by Client to the reasonable satisfaction of Yomp not to comply with the Directions, at no cost to Client, provided Yomp will have no obligation to fix any Deliverable if Yomp reasonably determines that its failure to comply with the Directions is caused by:
- (a) Content supplied by Client;
 - (b) any error or omission of Client;
 - (c) improper or unauthorised use of the Deliverable;
 - (d) the operation of any Deliverable or the product of any Service in an environment for which it was not designed, including, without limitation, operation of the Deliverable in connection with computer hardware or software of a non-standard kind, or any change to any environment (or use of an old version) not anticipated at the time of creation;
 - (e) modifications of the Deliverable by anyone other than Yomp or its personnel; or
 - (f) causes external to the Deliverable including, but not limited to, third party products operating in the server or user environment.
6. **Payment:**
- (a) Client will pay Yomp:
 - (i) the fixed fees (if any) set out in any Service Order on completion of such Services provided that, if milestones for performance and delivery of the results of the Services are specified, Client will pay the amount specified for each milestone upon completion of that milestone; and
 - (ii) where fees are not specified or given as estimates only, or work is to be performed on a time and materials basis, Yomp may invoice its actual fees, calculated in accordance with its then current rate for the provision of services of the same type or such rates as are agreed in the Service Order, fortnightly to Client and such invoices will be paid by Client within thirty (30) days of the date of the invoice.
 - (b) Yomp may also invoice Client for any expenses incurred by Yomp as a necessary incident to performance of the Services or as otherwise permitted by this Agreement, and Client will pay such invoiced expenses pursuant to clause 6(a)(ii).
- (c) If payment in full is not made by Client within thirty (30) days of the date for payment specified for payment of any money payable under this Agreement, without prejudice to Yomp's right to terminate this Agreement and at law, Client will, upon demand by Yomp, pay interest on such unpaid amounts at the rate of two percent (2%) over Yomp's bank's overdraft rate for corporate customers. Client acknowledges that such interest is a genuine pre-estimate of Yomp's cost of funding such overdue amounts and is not a penalty. Client will pay the cost of collection and related costs incurred by Yomp for invoices which remain unpaid for thirty (30) days.
7. **GST:**
- (a) Notwithstanding any other provision of this Agreement, if as a result of any party to this Agreement making a supply under or in connection with this Agreement, that party (the "Supplier") becomes liable to remit an amount of GST:
 - (i) the amount otherwise payable by the party providing the consideration for that supply ("Recipient") shall be increased by the amount reasonably determined by the Supplier as the amount of GST for which the Supplier is liable as a result of making that supply ("additional amount");
 - (ii) subject to paragraph (c) below the additional amounts shall be payable at the same time and in the same manner as the consideration otherwise payable under this Agreement;
 - (iii) if the time required by paragraph (b) for payment of the additional amounts is at a time prior to the commencement of the tax period in respect of which the Supplier will be required to include the GST on that supply in the Supplier's GST return, paragraph (b) will not apply to that additional amount and instead the additional amount will be payable not less than 5 business days prior to the date upon which the Supplier is required to lodge its GST return for that tax period;
 - (iv) the Recipient is deemed by this clause to have requested a GST invoice at the time of making any payment of additional amounts under this clause and the Supplier will as soon as possible, and within 7 days, provide to the Recipient a tax invoice which will enable the Recipient, where entitled under the GST law, to claim an input tax credit in respect of the acquisition made by the Recipient.
 - (b) "GST", "GST law" and other terms used in this clause 7 which have definitions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meanings provided in those definitions and any other applicable legislation and any ruling whether binding or non-binding.
8. **Intellectual Property:**
- (a) Upon payment in full of the fees payable under a Services Order, Yomp hereby assigns to Client all of its copyright, the right to seek and be granted any patent,

registered design or trade mark (“**Intellectual Property**”) in respect of any work, subject matter other than work, invention, design or layout created by or for it in the course of the performance of the Services and embodied in the Deliverables and/or results of the Services (“**Material**”).

- (b) Client acknowledges that Yomp has not assigned to Client its Intellectual Property in any material developed or acquired by Yomp without connection to this Agreement (including, but not limited to, Yomp’s software, documentation, templates and data) which is incorporated into or which has been used in creating the Deliverables in the course of performing the Services (“**Yomp Material**”).
- (c) Yomp grants to Client a non-exclusive, royalty free licence to use the Yomp Material to the extent necessary to use the Deliverables in accordance with this Agreement. This clause will survive termination of this Agreement.
- (d) Client grants Yomp a non-exclusive, royalty free licence to use, modify or adapt the Material for Yomp’s internal business purposes and the purpose of promoting Yomp including, without limitation, in the form of demonstration reels and brochures.
- (e) In relation to any moral rights (as that term is defined in the *Copyright Act 1968* (Cth)) that Yomp directors, employees, contractors or agents (“**Employees**”) may have in respect of any Materials, Yomp will ensure that the Employees consent to the alteration or publication (altered or not) of such Materials in any manner without acknowledgment of the Employees or of any such alteration and to do any other act within the moral rights of the Employees in such Materials.

9. Termination:

- (a) Either party may terminate any of the Services, or this Agreement as a whole, with or without cause, by fourteen (14) days' prior written notice.
- (b) In the event of termination of this Agreement or any of the Services by Client without cause under clause 9(a) or termination or suspension of any of the Services or the whole of this Agreement by Yomp for cause under clause 9(c), Yomp will as soon as possible discontinue the performance of the relevant Services and Client will pay Yomp:
 - (i) Yomp’s charges on a time and materials basis for all of the affected Services performed by it up to the effective date of such termination or suspension; and
 - (ii) a termination fee equal to twenty-five percent (25%) of the estimated or agreed fixed fee for the provision of all remaining such Services not performed (in the case of Services subject to a fixed fee, such percentage will apply to any balance remaining after deduction of the amount invoiced in respect of such Services under paragraph (i) of this clause), which is a genuine pre-estimate of Yomp’s cost of redeployment of its personnel.
- (c) Either party may suspend performance of any of the Services, or this Agreement as a whole, and/or require

delivery up of any item of equipment or documentation remaining upon the other’s premises immediately after:

- (i) failure to comply with any obligation of the other party under this Agreement or any other agreement between the parties and the continuance of such breach for a period of twenty-one (21) days after the due date for performance of that obligation;
- (ii) an order is made for the other party or any holding company of the other party (“the relevant company”) to be wound up otherwise than voluntarily for the purpose of amalgamation or reconstruction, the relevant company becomes insolvent or bankrupt, has a receiver of its property or assets or any of them appointed, has an official manager appointed, makes or offers to make any assignment for the benefit of creditors, enters or offers to enter into a deed or scheme or arrangement of composition with creditors, or any proceedings under any bankruptcy or liquidation or insolvency laws are commenced by or against the relevant company.
- (d) In the event of termination or suspension of performance of any of the Services or of the whole of this Agreement for any reason, Yomp will not be liable to pay any refund or rebate of any fees paid in advance by Client in respect of any Services which have not been performed at the effective date of termination or suspension, but such payment will be credited against any liability of Client under this clause.

10. Exclusion and Limitation of Liability

- (a) Client acknowledges by entry into this Agreement that:
 - (i) it is solely responsible for the correctness and consequences of use of Content provided by Client and which Yomp is required to use in the performance of the Services; and
 - (ii) no promise, representation, warranty or undertaking has been made or given by Yomp or any person on its behalf in relation to the capacity, uses or benefits to be derived from use, profitability of or any other consequences of or benefits to be obtained from the provision of the Services or the supply of any Deliverables, except as set out in the relevant Service Order(s), and that Client has relied on its own skill and judgement in deciding to acquire the Services based on such Service Order (s).
- (b) In the event that this Agreement constitutes a supply of goods or services to a consumer as defined in the *Trade Practices Act 1974*, as amended, or relevant State or Territory legislation (“the Acts”) nothing contained in this Agreement excludes restricts or modifies any condition, warranty or other obligation in relation to this Agreement and the goods and services to be supplied hereunder which pursuant to the Acts or any of them is applicable or is conferred on Client where to do so is unlawful, in which event Yomp’s sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which Client may sustain or incur, is limited to:
 - (i) in relation to goods

- A. the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or
 - B. the repair of the goods or payment of the cost of having the goods repaired;
- (ii) in relation to services
- A. the supplying of the services again; or
 - B. the payment of the cost of having the services supplied again
- as in each case Yomp may select.
- (c) Subject only to clause 10(b), all conditions and warranties which would or might otherwise be implied in this Agreement, whether by operation of statute, inference from circumstances, industry practice or otherwise, are hereby excluded.
- (d) Other than set out in clause 10(b) of this Agreement, Yomp will have no liability whatsoever to Client for any loss, damage or injury (including, without limitation, any loss of profit or damage to goodwill, indirect or consequential loss) arising from or incidental to the supply of the Services or any failure by Yomp to perform any obligation or observe any term of this Agreement.
11. **Confidential Information:**
- (a) Each party has given and, during the period of this Agreement, will continue to give to the other party certain technical and commercial information. Each party undertakes:
- (i) to keep confidential all such information as is not freely available to the public including, without limitation, all information in relation to Yomp's prices, business plans, policies, present and future products, customers and related documentation, ideas, concepts, scripts, strategies or any other creative content (regardless of its form or the media on which it is stored) supplied by Yomp to Client in connection with performance of the Services which is not used for a purpose set out in the Requirements Documents or the Campaign and such information as a party may from time to time designate as confidential or a party should reasonably know is confidential ("**the Confidential Information**");
 - (ii) to return to the party which disclosed the Confidential Information on demand in writing all written or machine readable material embodying such technical and commercial information and all copies in the possession of the party receiving the demand, except such materials stored on valuable media, which will be destroyed or erased and such destruction or erasure certified within seven (7) days of the date thereof;
 - (iii) to limit access to the Confidential Information to only those personnel who reasonably require access in order for the recipient of the Confidential Information to perform its obligations under this Agreement;
 - (iv) to ensure that each Employee of the recipient of the Confidential Information requiring access to any Confidential Information makes an undertaking in writing not to access, use, disclose or retain Confidential Information except in performing their duties and is informed that failure to comply with this undertaking may lead the recipient of the Confidential Information to take disciplinary action against the Employee;
 - (v) to take all further reasonable measures to ensure that any Confidential Information held or obtained by it is protected against loss, unauthorised access, use, modification, disclosure or other misuse and that only authorised personnel have access to the Confidential Information; and
 - (vi) to notify the other party immediately where the party the subject of this duty of confidentiality becomes aware of a breach of this clause 11.
- (b) The parties agree that this clause 11 survives the termination of the Agreement.
- (c) Yomp may issue press release or advertising of any kind regarding the Services or this Agreement which includes any name or trade marks or other signs of Client of any related body corporate.
12. **Force Majeure:** Yomp will not be liable in any circumstances whatsoever for any failure to perform any obligations to be performed by Yomp under this Agreement where such failure is due to any cause beyond the reasonable control of Yomp, provided that as soon as such cause has abated Yomp will use its best efforts to resume performance of the obligations frustrated by such cause.
13. **General:**
- (a) To the extent permitted by law, in relation to its subject matter, this Agreement:
 - (i) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
 - (ii) supersedes any prior written or other agreement of the parties
 - (b) Yomp may, at any time, perform any of its obligations under this Agreement by the use of sub-contractors, but will remain responsible for the performance of such subcontractors except and to the extent Client engages any such subcontractor for the provision of any goods or services. Yomp may assign the benefit of this Agreement to any related body corporate.
 - (c) Nothing this Agreement and/or the circumstance associated with the performance of the parties' obligations under this Agreement will give rise to a relationship of employer and employee, partnership, agency or joint venture between Yomp or any of its personnel and Client.
 - (d) This Agreement is governed by and must be construed according to the law applying in the State of Victoria.