

## YIELDIFY SOFTWARE AS A SERVICE TERMS AND CONDITIONS – Effective 11 March 2022

These Software as a Service Terms and Conditions, together with its Schedules (the “**Terms**”) are made and entered into on the Effective Date by and between Zeus Enterprises Australia PTY (d/b/a Yieldify) (ACN 601 736 270) whose registered office is at 3/85 William St, Darlinghurst, NSW, 2010, Sydney (“**Yieldify**”) and the entity signing the Order Form which references these Terms (“**Customer**”). These Terms along with the Order Form constitute the agreement between the parties (collectively referred to as the “**Agreement**”). Customer may be a direct customer or an agency acting on behalf of a client (“**Agency**”).

### 1 Definitions

- 1.1 Capitalised terms not otherwise set out in these Terms shall have the meaning set out in the attached Schedule 1 (Definitions).

### 2 Services

- 2.1 Yieldify will provide to Customer the applicable Services purchased by Customer as set out in the relevant Order Form, which may consist of some or all of the following:
- 2.1.1 provide a Tag to Customer to be placed on the Website by Customer, in accordance with the instructions as provided by Yieldify to Customer in writing, in order to collect certain data from Prospects and track a Prospect’s movements and behaviour on the Website to provide targeted Campaigns to such Prospects;
- 2.1.2 launch on Customer’s Website the number of Campaigns as set out in the Order Form and which are created and launched either by:
- 2.1.2.1 giving Customer access to the applicable Yieldify Technology to enable Customer to create (and where applicable make Modifications) and launch Campaigns itself on its Website;  
or  
2.1.2.2 Yieldify in accordance with clause 2.2 below; and
- In each case for the duration agreed in the applicable Project Brief and in accordance with such Project Brief and the applicable Order Form; and/or
- 2.1.3 access to certain reports regarding the Campaigns and such other information related to the Services, as made available by Yieldify (“**Report(s)**”), which are delivered either through the Yieldify Technology or such other format as Yieldify may provide.
- 2.2 Where it is agreed in the applicable Order Form that Yieldify will create the Campaigns for Customer for each Campaign:
- 2.2.1 Customer will provide to Yieldify all details, requirements and relevant Content for each Campaign, including any required translations of the Content in the format reasonably requested by Yieldify;
- 2.2.2 the parties will mutually agree a Project Brief based on such details, requirements and Content provided by Customer;
- 2.2.3 Yieldify will create Campaigns utilising the Content and in accordance with the applicable Project Brief; and
- 2.2.4 Yieldify will send such created Campaigns to Customer for review and approval. The approval by Customer shall be deemed to include the confirmation by Customer that all legal checks required to run such Campaigns in any jurisdiction contemplated by a Campaign have been performed and Yieldify is permitted to run the Campaign as approved.
- 2.3 Subject to payment of the applicable Fees, the restrictions set out in this clause 2 and the terms and conditions of these Terms and the applicable Order Form, Yieldify hereby grants to Customer a non-

exclusive, non-transferable, non-assignable, non-sublicensable right during the Term to use the Services, the applicable Yieldify Technology and in accordance with the Scope and solely for Customer's internal business operations.

- 2.4 In relation to the Authorised Users, Customer undertakes that each Authorised User shall keep a secure password for its use of the Services, that such password shall be changed frequently and that each Authorised User password shall be kept confidential.
- 2.5 Customer shall permit Yieldify to audit Customer's Use of the Services in order to establish that the use of the Services by Customer is in accordance with the Scope.
- 2.6 Except as expressly permitted in the Agreement or may be permitted by applicable law which is incapable of exclusion by agreement between the parties, Customer shall not and shall procure that its Authorised Users shall not:
  - 2.6.1 make alterations to, or modifications of, the whole or any part of the Services or Yieldify Technology or permit the Services or Yieldify Technology or any part of them to be combined with, or become incorporated in, any other programs;
  - 2.6.2 disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Services or Yieldify Technology or attempt to do any such thing;
  - 2.6.3 provide, commercially exploit or otherwise make available the Services or Yieldify Technology, in any form to any person;
  - 2.6.4 access all or any part of the Services and/or Yieldify Technology in order to build a product or service which competes with the Services and/or Yieldify Technology;
  - 2.6.5 use the Services and/or Yieldify Technology to provide services to third parties; or
  - 2.6.6 access or use the Services or Yieldify Technology for any illegal activities.

### **3 Service Levels and Support Services**

- 3.1 Yieldify will use commercially reasonable endeavours to make the Yieldify Platform available 24 hours a day, seven days a week, except for planned or emergency maintenance and Yieldify will use reasonable endeavours to give Customer prior notice of such maintenance.
- 3.2 Subject to Customer paying the Fees as outlined in the Order Form, Yieldify will, as part of the Services provide to Customer Support Services. Yieldify will provide the Support Services with due skill and care and in accordance with good industry practice.

### **4 Charges and Payment Terms**

- 4.1 Customer shall pay to Yieldify the Fees set forth in the applicable Order Form in accordance with this clause 4.
- 4.2 Yieldify will invoice Customer for the applicable Services Fees annually in advance during the Term with the first invoice issued on or after Effective Date by email to the billing contact on the Order Form. Yieldify will provide the Customer or the Agency (as the case may be) with a tax invoice which contains the Fees, Service Fees and any applicable Goods and Services Tax ('GST').
- 4.3 Customer shall pay invoices in full and without deduction by credit card or electronic money transfer to the account details provided in each invoice within thirty (30) days of the date of the invoice in the currency specified in the Order Form.
- 4.4 All amounts and Fees stated or referred to in the Agreement are non-refundable and are exclusive of all Taxes. Customer shall be solely responsible for, and paying all applicable Taxes relating to the Agreement (in addition to all other Fees), and the use or access to the Services and Support Services.

- 4.5 If Yieldify has not received payment for any invoices which are not the subject of a bona fide dispute by the due dates and without prejudice to any other rights and remedies of Yieldify, Yieldify may:
- 4.5.1 by giving thirty (30) Business Days prior written notice to Customer, without liability to Customer, disable Customer's password, account and access to all or part of the Services and/or suspend the provision of Support Services and Yieldify shall be under no obligation to provide any or all of the Services and/or Support Services while the invoice(s) concerned remain unpaid; and
- 4.5.2 charge interest which shall accrue on such due amounts at the higher of (i) an annual rate equal to 4% or (ii) the standard statutory interest rate under applicable law.
- 4.6 If Customer is an Agency, Fees shall be due regardless of whether Agency receives payments from the Agency Client. In addition, Fees shall be due regardless of whether or not targeting criteria results in the targeting of Campaigns to Prospects.

## 5 Customer Obligations

### 5.1 Customer shall:

5.1.1 provide all necessary co-operation and information and where applicable grant Yieldify access to its applicable systems and Website(s) as may be reasonably required by Yieldify in order to provide the Services as applicable including, without limitation, providing suitably qualified staff to attend meetings and review and approve Campaigns prior to their launch;

5.1.2 comply with Yieldify's reasonable instructions from time to time in relation to its implementation and use of the Services, as applicable. Customer acknowledges that failure to comply with any such instructions may affect the performance of the Services, as applicable;

5.1.3 notify Yieldify promptly of any issues relating to the Services, as applicable, and promptly provide all necessary information and co-operation reasonably required by Yieldify to enable it to diagnose and remedy such issues;

5.1.4 and shall procure that its Authorised Users shall: (i) use the Services in accordance with the terms and conditions of the Agreement; (ii) comply with all applicable laws and regulations with respect to its activities under the Agreement; (iii) only use the Services for lawful purposes; and (iv) conduct Customer's business with the highest of ethical standards and fairness. Customer shall be liable for any breach of the Agreement by its Authorised Users;

5.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links and all problems, conditions, delays and delivery failures arising from or relating to such network connections or telecommunications links;

5.1.6 use all reasonable efforts to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Yieldify;

5.1.7 be solely responsible for the accuracy, completeness, design, appropriateness, creation, maintenance, and updating thereof of all Customer Data in the use of the Services. Yieldify shall not be liable for any errors or inaccuracies in (i) any information provided by Customer; (ii) any Customer Data, or (iii) any changes or modifications to any Customer Data by Yieldify upon Customer's written instructions, beyond its responsibility to accurately reproduce such Customer Data on Customer's instruction;

5.1.8 be solely responsible for the creation and maintenance of the technical environment IT infrastructure regarding access to the Services, including, without limitation to the used hardware and operating systems and providing the latest browsing software; and

5.1.9 be responsible for obtaining (and maintaining) all required licenses and consents required for Yieldify to use and process Customer Data in the provision of the Services, including without limitation, all necessary consents (including those required for children aged 13-16 and under 13 in accordance

with CCPA), licenses, approvals and legal checks required for the implementation and running of all Campaigns (whether created by Customer of Yieldify) and for the collection of Prospect Data through the Campaign Services.

- 5.2 Customer shall not and shall procure that its Authorised Users shall not during the course of its use of the Services, provide, upload, input, access, store, distribute or transmit any Viruses, nor any material, including without limitation Customer Data and/or Content, that:
- 5.2.1 is Inappropriate Content;
- 5.2.2 is unlawful (including breach of Intellectual Property Rights of any other party), harmful, threatening, defamatory,
- 5.2.3 facilitates illegal activity; or is otherwise illegal or causes damage or injury to any person or property; and Yieldify reserves the right, without liability or prejudice to its other rights to Customer, to (i) disable Customer's access to any such material that breach the provisions of this clause, including, but not limited to installing a blocking access program; to (ii) remove any such content where, in Yieldify's sole and reasonable discretion, Yieldify suspects such content to be Inappropriate Content; and/or (iii) to terminate the Agreement for material breach in accordance with clause 11.2.
- 5.3 Customer warrants and represents to Yieldify that it (i) will maintain and abide by a privacy and cookies policy on its Website(s) and/or where data gathering occurs that complies with Applicable Laws and in particular complies with Applicable Data Protection Laws related to data collection by the Yieldify Technology (including without limitation the Tag) and/or the Campaigns, the sharing of any data collected from the Website(s) and/or Campaigns with third parties, such as Yieldify and any further processing or use of the data by such third parties; and (ii) has obtained and maintained all required licenses, authorisations and consents pursuant to clause 5.1.9. Customer shall ensure there is a link to the privacy policy (and where required, a Collection Statement) and cookies policy as well as appropriate opt-out provisions for Prospects in compliance with Applicable Data Protection Laws on each webpage where the Tag is located and/or where data gathering occurs (including without limitation where the Campaigns are implemented). Yieldify will provide (or otherwise make available) to Customer its then current Data Collection Policy to assist Customer with its compliance with this clause and Applicable Data Protection Laws.
- 5.4 To the extent permitted by law, Customer agrees to defend, indemnify and hold harmless Yieldify and its Associated Companies from and against any and all claims, losses, damages, expenses and costs, including without limitation reasonable court costs and legal fees, arising out of or in connection with: (i) Customer's use of the Services in violation of the Agreement; and/or (ii) Customer Data.
- 5.5 Where Customer is an Agency, such Agency enters into the Agreement for and on behalf of its client as set out in the relevant Order Form ("**Agency Client**"), Agency shall ensure that the Agency Client is made aware of and complies with the terms of the Agreement in respect of its use of the Services, and Agency shall be responsible and liable for any breach of the terms of the Agreement by such Agency Clients.

## 6 Affiliates

- 6.1 If the Customer is using an Affiliate and the Fees payable to Yieldify from Customer for Customers use of the Services will be determined by the Affiliate then Customer will pay each invoice it receives from the Affiliate in full and in accordance with the terms stated therein.
- 6.2 If Yieldify does not receive payment from the Affiliate within the applicable due date, then Yieldify will invoice Customer for any outstanding amount owed to Yieldify for the Customers use of the Services.
- 6.3 Customer shall pay invoices from Yieldify in full and without deduction by electronic money transfer to the account details provided in each invoice within thirty (30) days of the date of the invoice.
- 6.4 If Yieldify has not received payment from the Affiliate for any invoices which are not the subject of a bona fide dispute, then without prejudice to any other rights and remedies of Yieldify, Yieldify may:

- 6.4.1 by giving thirty (30) days prior written notice to Customer, without liability to Customer, disable Customer's password, account and access to all or part of the Services and/or suspend the provision of Support Services and Yieldify shall be under no obligation to provide any or all of the Services and/or Support Services while the invoice(s) concerned remain unpaid; and
- 6.4.2 charge interest which shall accrue on such due amounts at the higher of (i) an annual rate equal to 4% or (ii) the standard statutory interest rate under applicable law.

## **7 Customer Data**

- 7.1 Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility and liability for (i) the legality, appropriateness, and integrity of the Customer Data; and (ii) the completeness, reliability, accuracy and quality of the Customer Data.
- 7.2 Customer grants Yieldify and its Associated Companies, a non-exclusive, royalty-free, worldwide, transferable licence:
- 7.2.1 to use, host, transmit, display and create derivative works (copyright in which is assigned to Yieldify upon creation) of the Customer Data (i) in connection with the provision of the Services; and (ii) for the purposes of improving and/or developing the Services; and
- 7.2.2 where necessary, to transfer Customer Data to any third parties used by Yieldify, only as required for the provision of the Services;

provided that Yieldify's use of the Customer Data beyond termination of any Order Form shall not include any personal data of Customer or Prospects. Customer further acknowledges and agrees that Yieldify may use anonymised Customer Data at any time for the purposes of providing its services to its customers (including improving and/or developing such services) and/or providing to third parties for benchmarking and other reports (e.g. performance statistics and vertical level insights).

- 7.3 Customer acknowledges that it has responsibility for all Customer Data and that except as stated otherwise hereunder, Yieldify will not be held responsible in any way for any Intellectual Property Right infringement or violation, the violation of any other person's rights or the violation of any laws, arising or relating to such Customer Data.
- 7.4 Yieldify shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by Yieldify in its sole discretion from time to time, with any such amended version to be made available to Customer. In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be for Yieldify to use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Yieldify in accordance with the archiving procedure described in its Back-Up Policy. Yieldify shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party, (except those third parties sub-contracted by Yieldify to perform services related to Customer Data maintenance and back-up) unless solely caused by Yieldify' negligence or wilful misconduct.
- 7.5 Customer acknowledges that Yieldify is neither obliged nor able to edit Customer Data (including third-party information). However, Yieldify reserves the right to remove any Customer Data (or third-party information) which Yieldify reasonably believes breaches any laws or regulations or any third party's rights or the Agreement and/or is deemed Inappropriate Content. Yieldify will notify Customer if it removes any Customer Data (or third-party information) in accordance with this clause. To the extent permitted by applicable law, Yieldify disclaims all liability of any kind in respect of third party products, services, information and any other material or services which can be accessed using the Services. Yieldify expressly disclaims all liability for any fraud committed in connection with the Services.

## **8 Warranty**

- 8.1 Yieldify warrants for the Term that the Services will be provided with reasonable skill and care.
- 8.2 The warranty provided in clause 8.1 shall not apply to the extent of any non-conformance which is caused by:

- 8.2.1 Customer's implementation or use of the Services contrary to Yieldify's instructions or otherwise in breach of the Agreement; or
- 8.2.2 modification or alteration of the Services by any party other than Yieldify or Yieldify's duly authorised contractors or agents.
- 8.3 If the Services do not conform with the warranty provided in clause 8.1, Yieldify will, at its expense, use commercially reasonable efforts to correct any such non-conformance within a reasonable period of time. This clause sets out the Customer's sole and exclusive remedy and Yieldify's entire liability for breach of clause 8.1.
- 8.4 Notwithstanding the foregoing, Yieldify:
- 8.4.1 does not warrant that Customer's use of the Services will be uninterrupted or error-free, or that the Services and/or the information obtained by Customer through the Services will meet Customer's requirements;
- 8.4.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from Customer's access to and use of the Services and/or third-party applications or the transfer of data over communications networks and facilities, including the Internet, and Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;
- 8.4.3 is not responsible for any Virus which was not detected by Yieldify using reasonable current commercial methods of detection or transmitted through any third-party services;
- 8.4.4 nor its suppliers or third-party service providers or software vendors, shall have any liability whatsoever for the accuracy, completeness, or timeliness of Customer Data, or for any decision made or action taken by Customer, any Authorised User, or any third party in reliance upon any Customer Data.
- 8.5 Except as expressly provided for in this clause 8, Yieldify (and its Associated Companies and suppliers) to the extent permitted by applicable law, disclaims all other warranties, express, implied or statutory, including without limitation warranties, terms and conditions of merchantability, accuracy, correspondence with description, fitness for a particular purpose or use, and satisfactory quality, and non-infringement.
- 8.6 The Agreement shall not prevent Yieldify from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

## **9 Data Protection**

- 9.1 Each party shall, in connection with the exercise of its rights and the performance of its obligations under the Agreement, comply with the Applicable Data Protection Laws. The type of personal data processed by Yieldify under this Agreement and the duration and purpose of such processing is set forth in the Data Collection Policy. In respect of its access to and/or processing of any such personal data of Customer in the provision of the Services, Yieldify shall (to the extent it is consistent with the law to do so):
- 9.1.1 have in place appropriate technical and organisational measures to ensure an appropriate level of security for the processing of such personal data of Customer and to protect such personal data against unauthorised or unlawful processing or accidental loss, destruction or damage;
- 9.1.2 preserve the integrity of such personal data of Customer and prevent the loss or corruption of such personal data;
- 9.1.3 only process such personal data in accordance with the Agreement and any other written instructions and directions of Customer and not for its own purpose, shall not retain, use or disclose the personal information for any purpose other than the specific purpose of performing the services as set out in the Agreement, and shall ensure that anyone in its organisation processing personal data of Customer is subject to the same duties of confidence as set out in this clause 9;

- 9.1.4 notify Customer (and where required file a report with the Office of the Australian Information Commissioner) without undue delay if it becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to Customer's personal data (a "**Security Incident**") and provide sufficient detail of the Security Incident for Customer to take action to remedy the Security Incident - and otherwise comply with the provisions of the *Privacy Act 1988 (Cth)* including with respect to mandatory data breach reporting obligations; and
- 9.1.5 subject to the rights in clause 7.2, upon termination of the Agreement at the direction of Customer either return to Customer or securely destroy such data and delete any copies, except where Yieldify is required by applicable law to retain copies.
- 9.1.6 Where CCPA applies:
- 9.1.6.1 not collect sell or use further personal information (as defined within the CCPA) except as necessary to perform the business purpose;
- 9.1.6.2 will be liable for civil penalties if Yieldify uses personal information received from Customer in violation of CCPA;
- 9.1.6.3 be liable for a civil penalty under the laws relating to unfair competition in an action brought by the Attorney General of California if it fails to cure a CCPA violation within thirty (30) days; and
- 9.1.6.4 Yieldify acknowledges that it is acting as a 'service provider', as such term is defined within CCPA.
- 9.2 Customer consents to Yieldify using sub-processors in relation to the processing of Customer's personal data under the Agreement, provided that Yieldify has entered or (as the case may be) will enter with such third party sub-processors into a written agreement incorporating terms which are the same as or substantially similar to those set out in this clause 9. A list of the current sub-processors is set out in the Data Collection Policy. As between Customer and Yieldify, Yieldify shall remain fully liable for all acts or omissions of any third party sub-processor appointed by Yieldify pursuant to the Agreement and this clause 9;
- 9.3 Nothing in the Agreement shall relieve Yieldify of its own direct responsibilities and liabilities under Applicable Data Protection Laws.
- 9.4 For the purposes of this clause 9 the terms "**data controller**", "**personal data**", "**process**" and "**processing**" shall have the meaning set out in the Applicable Data Protection Laws and "**subprocessor**" means any third party appointed by or on behalf of Yieldify to process Customer's personal data in connection with this Agreement.
- 9.5 Yieldify shall assist Customer meeting its obligations relating to the exercise by a data subject of their rights under Applicable Law, including but not limited to data subject rights access requests, right to be forgotten and rectification of data.

## 10 Yieldify Intellectual Property Rights

Customer acknowledges and agrees that Yieldify and its licensors and suppliers own all Intellectual Property Rights in the Yieldify Technology, Services, and Yieldify Data, but excluding Customer Data. Except as expressly stated herein, the Agreement does not grant Customer any Intellectual Property Rights or any other rights or licenses in respect of the Yieldify Technology, Services, or Yieldify Data.

## 11 Term and Termination

- 11.1 The Agreement shall, unless otherwise terminated as provided in this clause 10, commence on the Effective Date and shall continue for the Initial Term. Thereafter, the Agreement shall automatically renew for successive periods of 12 months (or such other period as specified in the applicable Order Form) (each a "**Renewal Term**"), unless either party terminates with not less than two (2) months written notice prior to the end of the Initial Term or relevant Renewal Term, or otherwise terminates in

accordance with the provisions of the Agreement. The Initial Term together with any subsequent Renewal Terms shall constitute the "**Term**". Without a Renewal Term in place, Customer's access to and use of the Services, Yieldify Technology shall automatically terminate.

- 11.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability to the other at any time with immediate effect upon written notice if the other party:
- 11.2.1 is in material breach of any of its obligations under the Agreement and/or an Order Form and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days following notice of the breach; or
- 11.2.2 fails to pay money owing under this Agreement within 7 days of written demand;
- 11.3 On termination or expiration of the Agreement for any reason:
- 11.3.1 Customer's rights of use granted under the Agreement shall immediately terminate and Customer shall immediately cease the use of the Services subscribed to under the Agreement, the Yieldify Technology, and the Support Services;
- 11.3.2 Customer shall promptly pay all monies due or to become due under the Agreement through the effective date of termination and for the remainder of the then current Initial Term or Renewal Term as applicable; and
- 11.3.3 the parties shall comply with their respective obligations set out in clause 12.4.

## 12 Confidentiality

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 12.1.2 was in the other party's lawful possession before the disclosure;
- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall (i) hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement; and (ii) take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.3 Customer acknowledges that details of the Yieldify Technology, Services, Yieldify Data, and the results of any performance tests of the Services, constitute Yieldify's Confidential Information.
- 12.4 Subject to clause 12.2 and except where a party is expressly required by law to retain a copy, on termination of the Agreement or when requested to do so in writing by the disclosing party, the receiving party shall promptly:
- 12.4.1 deliver to the disclosing party any documents and other materials in its possession or control that contain any of the Confidential Information;
- 12.4.2 permanently delete, destroy and erase all electronic copies of the Confidential Information from any computer or data storage system into which the Confidential Information was entered (except where a party is required by Applicable Law to keep copies); and



12.4.3 make no further use of the Confidential Information.

12.5 The receiving party, if requested by the disclosing party, shall confirm in writing that the provisions of clause 12.4 have been complied with. The obligations of confidentiality under this clause 12 shall survive any expiration or termination of the Agreement for a period of 2 years from the date of termination, except for any information which is deemed a trade secret of a party in respect of which the obligations of confidentiality shall continue for as long as such information remains a trade secret.

### **13 Limitation of Liability**

- 13.1 The exclusions in this clause 13 shall apply to the fullest extent permissible at law but neither party excludes liability for (i) death or personal injury caused by its negligence or that of its officers, employees, contractors or agents; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded by law.
- 13.2 Except for Consumer Guarantees under the Australian Consumer Law (where they apply) we exclude all representations, warranties or terms (whether express or implied) other than those expressly set out in these terms.
- 13.3 Except with respect to amounts owed by Customer to Yieldify hereunder and subject to clause 13.1 and 13.7, the aggregate liability of each party for or in respect of any loss or damage suffered by the other party (whether due to breach of contract, tort (including negligence) or otherwise) under or in connection with the Agreement in any Claim Year shall be limited to the total amount of Fees paid by Customer during the Claim Year in which the claim arose.
- 13.4 To the maximum extent permitted by applicable law, in no event will either party be liable to the other for special, consequential, incidental or other indirect damages, or for loss of profits, anticipated savings, business opportunity, goodwill, or loss of revenue, loss of use or loss of data (including corruption of data), or costs of procurement of substitute goods or services arising of the Agreement, howsoever caused and under any theory of liability (including contract, tort, negligence or otherwise) even if the other party has been advised of the possibility of such damages. The parties acknowledge that the amounts payable hereunder are based in part on these limitations and further agree that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. Yieldify accepts no liability for failure to maintain any level of availability of the Services other than where it is in breach of its obligations under the Agreement.
- 13.5 In addition to the other exclusions set out in this clause 13 and to the extent permitted by law, Yieldify has no liability:
- 13.5.1 for any third party products or services accessed and/or used by Customer through the Services;
  - 13.5.2 where any failure to provide the Services is caused by a network, hardware or software fault in equipment which is not under the control of Yieldify;
  - 13.5.3 any act or omission of Customer;
  - 13.5.4 use of the Services in breach of the Agreement;
  - 13.5.5 any unauthorised access to the Services including a malicious security breach; or
  - 13.5.6 loss or damage caused by Customer's delay or failure to timely provide any required information or co-operation or to fulfil its obligations under the Agreement.
- 13.6 In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy shall be

as set out in clause 7.4.

- 13.7 If the *Competition and Consumer Act 2010 (Cth)* / Australian Consumer Law or any other legislation implies a condition or warranty into this Agreement in respect of the Services supplied, and Yieldify's liability for breach of that condition or warranty may not be excluded but may be limited, Yieldify's liability for any breach of that statutorily implied condition or warranty is limited to Yieldify doing either or both of the following (at its election): (i) supplying the Services again; or (ii) paying the cost of having the Services supplied again.
- 13.8 Customer assumes sole responsibility for results obtained from the use of the Services by Customer, and for conclusions drawn from such use. Yieldify shall have no liability for any damage caused by errors or omissions in any information, data or instructions provided to Yieldify by Customer in connection with the Services or any actions taken by Yieldify at Customer's direction.
- 13.9 Yieldify does not and cannot control the flow of data to or from the network where the Services reside and other portions of the internet including denial of service attacks (an attack which send a flood of incoming messages to the target system forcing the system to shut down, thereby denying service to legitimate users). Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Customer's connections to the internet (or portions thereof). Yieldify cannot guarantee that such events will not occur. Accordingly, Yieldify, its suppliers and subcontractors, if any, disclaim any and all liability resulting from or related to such events and Customer shall have no claim in respect thereof.
- 13.10 Yieldify shall have no liability to Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement due to a Force Majeure Event. Yieldify shall provide Customer with notice of a Force Majeure Event and its expected duration. Either party may terminate an Agreement if a Force Majeure Event continues for 30 days or more.

## 14 General

- 14.1 **Marketing.** Customer agrees that the Yieldify Brand may publish Customer's name and logo in its customer lists and promotional materials. Any other use of Customer name or logo will require Customer's prior written consent.
- 14.2 **Entire Agreement.** The Agreement together with its Schedules and Order Form(s) sets out the entire agreement and understanding between the parties and supersedes any previous agreement between the parties relating to its subject matter. Unless otherwise expressly agreed in writing the Agreement applies in place of and prevails over any terms or conditions contained in or referred to in any correspondence or elsewhere or implied by trade custom or course of dealing. Any general terms of business or other terms and conditions of any order or other document issued by the Customer in connection with the Agreement shall not be binding on Yieldify. In entering into the Agreement each party acknowledges and agrees that it has not relied on any representations made by the other. Any such representations are excluded. Nothing in this clause shall limit liability for any representations made fraudulently.
- 14.3 **Warranty of Authority.** Each party represents and warrants to the other that it is duly organised, validly existing and in good standing under the laws of the jurisdiction of its organisation, and has the requisite power and authority to execute, deliver and perform its obligations under the Agreement. Each party represents and warrants to the other that the Agreement has been duly authorised, executed and delivered by such party and constitutes a valid and binding obligations of such party enforceable against such party according to its terms.
- 14.4 **Governing Law and Jurisdiction.** The Agreement (including its Schedules) and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

14.5 **Subcontracting and Assignment.** Yieldify may at any time use subcontractors to fulfil its obligations under this Agreement; provided that it shall at all times remain liable for the performance of its obligations under this Agreement and for any breach of this Agreement by such subcontractors. Yieldify may, at any time by notice in writing to the Customer, assign or otherwise transfer its rights and obligations under the Agreement to any of its Associated Companies, successors or assigns. Yieldify shall have the right to sub-contract any of its obligations hereunder to a third party, provided that Yieldify shall continue to remain responsible for the performance of the Services hereunder. Customer may by notice in writing to Yieldify assign, or otherwise transfer its rights and obligations under the Agreement in full (but not in part) to an Associated Company provided that such Associated Company is at least of the same financial standing as Customer. Any attempted assignment, sub-contracting or other transfer in violation of the Agreement shall be null and void.

#### 14.6 **Notices.**

14.6.1 All notices to be given under the Agreement shall be given in English in writing.

14.6.2 Notices regarding renewal or termination of the Agreement:

14.6.2.1 by Customer must be sent by email to: [renewals@yieldify.com](mailto:renewals@yieldify.com); and

14.6.2.2 by Yieldify will be sent by email to both the contact email address and billing contact email address given on the Order Form,

any notice given under this Section 14.6.2 will be deemed to be received at the time of sending unless an undeliverable or similar notification is received by the sender. If Customer wishes to amend either the contact email address or billing contact email address then this must be sent by email to [renewals@yieldify.com](mailto:renewals@yieldify.com)

14.6.3 All other notices not referred to elsewhere in this clause 14.6 may be sent to the Legal Department at the address stated at the beginning of the Agreement, or to such other address as shall be given by either Party to the other in writing and shall be sent by (i) recognised overnight courier or (ii) e-mail to the email address set out in clause 14.6.2 and confirmed by first class mail. All notices shall be deemed to have been given and received on the earlier of actual receipt or three (3) days from the date of postmark or in the case of email 1 hour after it is sent.

14.7 **Variations.** Save as otherwise expressly stated in the Agreement, the Agreement may only be modified or varied in writing executed by duly authorised representatives of both parties.

14.8 **Independent Contractor.** The parties to the Agreement are independent contractors. Customer bears all risk and cost of operating its own business, including risk of loss. Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind or employment relationship between the parties, not constitute any party an employee or agent of another party for any purpose. No party shall have authority to act as employee or agent for, or to bind, the other party in any way.

14.9 **Severability.** Should parts of the Agreement be or become invalid, this shall not affect the validity of the remaining provisions of the Agreement, which shall remain unaffected. The invalid provision shall be replaced by the parties with such term which comes as close as possible, in a legally permitted manner, to the commercial terms intended by the invalid provision.

14.10 **Waiver.** The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The headings are for convenience and shall not be used to construe the Agreement.

14.11 **Survival.** In addition to those provisions which by their nature are intended to survive any termination of the Agreement, clauses 7.1, 7.2 7.3, 10, 11, 12, 13 and 14 of the Agreement shall survive such

termination or expiration of the Agreement.

## **15 List of Schedules**

### 15.1 Schedule 1 – Definitions

## SCHEDULE 1 - Definitions

The following definitions apply to the Agreement and its Schedules (including the Order Form(s) attached as Schedules)). Any capitalised terms not otherwise defined in the Agreement or its Schedules have the meanings set out below:

1. **Affiliate:** the party(s) named as Affiliate pursuant to the Order Form
2. **Agency Client:** has meaning given in clause 5.5;
3. **Applicable Laws:** all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Services, including those related to advertising, the Applicable Data Protection Laws, international communications and the transmission of technical or personal data, and all compulsory industry self-regulations;
4. **Applicable Data Protection Laws:** the *Privacy Act 1988 (Cth)* and applicable regulations or any other applicable similar laws relating to the protection of personal data in other applicable jurisdictions including the General Data Protection Regulation (EU) 2016/679 and the California Consumer Protection Act 2018 (the "CCPA");
5. **Associated Companies:** an entity that is directly or indirectly controlled by, or is under common control with, a party to the Agreement, and includes a Related Entity as defined by the *Corporations Act 2001 (Cth)*. For purposes of the foregoing, "control" means the ownership of (i) greater than fifty per cent (50%) of the voting power to elect directors of the entity, or (ii) greater than fifty per cent (50%) of the ownership interest in the entity;
6. **Authorised Users:** those employees, agents and independent contractors of Customer who are authorised by Customer to access and use the Services;
7. **Back Up Policy:** Yieldify's policy for archiving and backing up of Customer Data hosted on the Yieldify Platform through the use of the Services;
8. **Business Days:** Mondays to Fridays except for statutory public holidays in New South Wales, Australia;
9. **Campaign(s):** marketing campaigns (such as for example, overlays displaying targeted short term incentives) created by either (i) Yieldify based on the Content and online offer details provided by Customer to Yieldify and as agreed in the relevant Project Briefs; or (ii) by Customer through its use of the Yieldify Technology, and in each case as permitted in and subject to the limitations (such as the permitted number of Campaigns per month, types of Devices upon which the Campaigns may be used, as applicable) set out in applicable Order Form;
10. **Claim Year:** means each successive period of twelve (12) months commencing on the Effective Date of the Agreement;
11. **Confidential Information:** information of a party concerning its business and/or affairs, including without limitation to information relating to a party's operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents (including for Yieldify its Software, and Services), data and information which, when provided by a party to the other: a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 days; or c) a reasonable person would understand to be confidential or proprietary at the time of disclosure;
12. **Content:** the imagery and such other content (such as copy and coupon codes) of Customer provided to Yieldify for use in and generating and running the Campaigns;

13. **Customer Data:** the (i) data and information and Content provided by Customer to Yieldify and/or imported, inputted, uploaded and/or shared by Customer, Authorised Users or Yieldify on Customer's behalf, for the purpose of using the Services or facilitating Customer's use of the Services; or (ii) data collected and processed by or for Customer through Customer's use of the Services (including without limitation Prospect Data), but excluding Yieldify Data;
14. **Data Collection Policy:** Yieldify's then current data collection policy located at <https://support.yieldify.com> detailing the types of personal data (as defined under Applicable Data Protection Laws) Yieldify collects and processes under this Agreement, how such data is processed by Yieldify, the purposes of such processing and how long it is processed by Yieldify;
15. **Device:** the medium on which the Campaign is launched which may include desktop, tablet and/or mobile as specified in the applicable Project Brief;
16. **Effective Date:** the effective date of the Order Form as set out in such Order Form;
17. **Fees:** the Services Fees and any other fees payable under the Agreement pursuant to the Order Form;
18. **Force Majeure Event:** acts, events, omissions or accidents beyond a party's reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, fire, flood or storm;
19. **Inappropriate Content:** content which is (i) unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) is unlawful or facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory on the grounds of race, gender, colour, religious belief, sexual orientation, disability or any other illegal activity; or (vi) causes damage or injury to any person or property;
20. **Initial Term:** the initial term of Customer's access to and use of the Services as set forth in the Order Form;
21. **Intellectual Property Rights:** intellectual property rights including without limitation rights in patents, trademarks, service marks, trade names, other trade-identifying symbols and inventions, copyrights, design rights, database rights, rights in know-how, trade secrets and any other intellectual property rights arising anywhere in the world, whether registered or unregistered, and including applications for the grant of any such rights;
22. **Order Form:** the Order Form executed by both parties which references these Terms and details the Services ordered by Customer, the Scope, the Initial Term and the Fees payable by Customer and any other additional terms in respect of Customer's access to and use of the Services;
23. **Prospects:** any third party who visits the Website(s) and/or responds to Campaigns run by or on behalf of Customer;
24. **Prospect Data:** data of Prospects collected by Yieldify (for example through use of the Tag on the Websites);
25. **Project Brief:** the details of each Campaign as mutually agreed by the parties, including without limitation the start date and duration, as set out in (i) the Order Form where only 1 Campaign is purchased or (ii) the separate document entitled Project Brief agreed by the parties where multiple Campaigns will be provided (such document may be agreed by the parties in the form of an email);
26. **Renewal Term:** has the meaning given in clause 11.1 of these Terms;
27. **Reports:** has the meaning given in clause 2.1.3 of these Terms;

28. **Scope:** means the limits (in addition to those set forth in these Terms) within which Customer may use the Services as set forth in the applicable Order Form.
29. **Services:** the Services described in clause 2.1 and purchased by Customer as set forth in the applicable Order Form and provided in accordance with the Agreement and the Project Brief , including access to the applicable Yieldify Technology for such Services;
30. **Standard Contractual Clauses:** set of Standard Contractual Clauses adopted by the European Commission governing the transfer of personal data to countries that are not recognized as providing adequate protection measures for such personal data processing;
31. **Support Services:** the provision by Yieldify to Customer of technical advice, basic training and such other assistance and support related to the use of the Services;
32. **Taxes:** any applicable taxes, including without limitation, GST (as defined in the *A New Tax System (Goods and Services) Act 1999 (Cth)*), withholding, sales, use, excise, , duties and assessments and similar taxes based on this Agreement but shall not include taxes based on Yieldify's gross income;
33. **Term:** the Initial Term and any subsequent Renewal Term;
34. **Virus:** anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the access to or operation, reliability or user experience of any computer software, hardware or network, telecommunications service, equipment or network or any other service or device, including worms, trojan horses, viruses and other similar things or devices;
35. **Website(s):** Customer's websites as identified in the Order Form;
36. **Yieldify Brand:** the companies trading under the brand name of Yieldify throughout the world;
37. **Yieldify Data:** any information or data provided by Yieldify to Customer as part of the Services and any feedback or suggestions on the Services provided by Customer to Yieldify;
38. **Yieldify Marks:** the Yieldify name, logo, and any of the product names associated with the Services, all of which are trademarks of Yieldify;
39. **Yieldify Platform:** means the Yieldify platform upon which the Services and Customer Data are hosted; and
40. **Yieldify Technology:** any technology or software used by Yieldify to provide the Services, including without limitation, the Tags, the Yieldify Platform and/or any other underlying technology, trade secrets, data, content or information.