



## Vamp Client Terms and Conditions

These terms relate to any services provided by Vamp to the Client after 15 May 2023, including the client's use of the Vamp Platform. These are the Terms and Conditions referred to in the Quote and from time to time on the Vamp Platform between Vamp and the Client.

Once you create a Vamp account on the Vamp Platform (**Account**), or once a Quote is signed on behalf of the Client, whichever comes first (**Effective Date**), the Quote, along with these Terms and Conditions together form the Agreement between Vamp and the Client for the provision of the Services set out in these Terms and Conditions.

To the extent of any inconsistency between the Quote and these Terms and Conditions, these Terms and Conditions prevail.

### 1 Definitions and Interpretation

#### 1.1 Definitions

The following terms in these Terms and Conditions have the meanings set out below, unless otherwise indicated:

- (1) **Additional Usage Rights** means any optional additional usage rights in relation to the Services or the Materials sought by the Client where the option for such usage rights is provided in the Quote on the basis that an additional fee is paid for those usage rights;
- (2) **Agreement** means the agreement comprising:
  - (a) these Terms and Conditions; and
  - (b) the Quote;
- (3) **Brief** means a set of instructions posted on the Vamp Platform from which Talent will be sourced and engaged by Vamp to assist in providing the Services;
- (4) **Client** means the client or customer referred to in the Quote;
- (5) **Client Materials** means any documents or information provided by or on behalf of the Client to Vamp and which are to be used for the purpose of providing the Services;
- (6) **Commencement Date** means the date the Client executes a Quote, or any other date agreed between the parties;
- (7) **Confidential Information** means all information disclosed (including inadvertently) by a party (**Discloser**) in connection with the Agreement, all information disclosed by a third party that the Discloser is required to keep confidential, including (without limitation):

- (i) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Discloser or a third party to whom the Discloser owes an obligation of confidentiality;
  - (ii) Information derived partly or wholly from the information, including (without limitation) any calculation, conclusion, summary, computer modelling; and
  - (iii) trade secrets or information that is capable of protection at law or equity as confidential information, and the parties agree that the terms of the Agreement are jointly owned Confidential Information.
- (8) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (9) **Exclusivity** means an agreement by Vamp to ensure that Talent will be exclusive or will not be provided briefs for any competitors of the Client for the Term;
- (10) **Expiry Date** means the ending date indicated under “Date Range” in the Quote or other such date agreed between the parties;
- (11) **Force Majeure Event** means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:
- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
  - (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
  - (c) act of public enemy, sabotage or malicious damage, terrorism or civil unrest;
  - (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
  - (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority (except where such arises out of a failure by a party to comply with any Law); or
  - (f) strikes, blockades, lock out or other industrial disputes other than an industrial dispute that only involves the party’s personnel.
- (12) **Funds** means the amount of money the Client unconditionally agrees with Vamp to spend on the Services via the Vamp Platform, and as appears in the Virtual Wallet from time to time;
- (13) **GST** means Goods and Services Tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

- (14) **Influencer Terms** means the terms and conditions upon which Talent is engaged to assist Vamp in providing Services, available at [[https://vamp-brands.com/talent- terms/](https://vamp-brands.com/talent-terms/)];
- (15) **Insolvent** means, in respect of a person, where:
- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
  - (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller (as defined in the Corporations Act) appointed to its property;
  - (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
  - (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c);
  - (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
  - (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
  - (g) it is otherwise unable to pay its debts when they fall due; or
  - (h) something having a substantially similar effect to any of the things described in sub-paragraphs (a) to (g) happens in connection with that person under the Law of any Jurisdiction.
- (16) **Intended Start Date** means the intended start date of a Brief with respect to a campaign on the Vamp Platform;
- (17) **IPR or Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, design rights, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights of any kind whether registrable or not in any country, including any renewals or extensions thereof;

- (18) **Jurisdiction** means the jurisdiction applicable to the Agreement, as determined by the Vamp entity listed on the Quote. In the event that the Vamp party contracting is:
- (a) Vamp UK, the Jurisdiction is the United Kingdom;
  - (b) Vamp HK, the Jurisdiction is Hong Kong;
  - (c) Vamp Japan, the Jurisdiction is Japan;
  - (d) Vamp SG, the Jurisdiction is Singapore;
  - (e) Vamp DMCC, the Jurisdiction is the UAE; and
  - (f) Vamp Australia, the Jurisdiction is the state of New South Wales and the Commonwealth of Australia;
- (19) **Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the Jurisdiction applicable to the Agreement and any other relevant jurisdictions;
- (20) **Materials** means material in any form, including drawings, reports, specifications, images, photos, videos and media in any form or type, including proprietary media types (howsoever constituted) and other documents provided by or on behalf of Vamp in connection with the Agreement and the Services;
- (21) **Quote** means the document entitled “Quote T&C’s” executed by the Client, which sets out the Funds to be paid by the Client to Vamp, for the products and/or Services that Vamp or a third party is to provide to the Client;
- (22) **Services** means the services described and as elected by the Client on the Vamp Platform, including as described in a Quote under “Overview & Costings”, “Costings Breakdown” (if applicable) and the “Brief Particulars” and may include (but are not limited to), where specified:
- (a) the creation of content and media;
  - (b) the posting of content on social media channels and websites by the Talent with certain parameters, including the inclusion of hashtags, @mentions, specified links, functionalities (where applicable) and phrases;
  - (c) selection of Talent based on certain parameters requested by the Client;
  - (d) management of an advertising campaign by Vamp; and
  - (e) the provision of content for the Client to post in its own media channels.

- (23) **Schedule** means the Schedule to this document;
- (24) **Talent** has the meaning given in clause 4.1(3) of these Terms and Conditions;
- (25) **Taxes** means GST, VAT or any sales tax that may apply in the Jurisdiction to the provision of the Services under the Agreement;
- (26) **Term** has the meaning given in clause 2(1) of these Terms and Conditions;
- (27) **Terms and Conditions** means this document, including any Schedules;
- (28) **Usage Rights** means the usage rights listed under the “Usage Rights” in the Quote. The Usage Rights are subject to:
- (a) a limited period of time (where a term for the Usage Rights is listed);
  - (b) geographical restriction to the country in which the Client is headquartered unless expressly noted otherwise in the Quote; and
  - (c) any other express restrictions in the Quote, and may include Additional Usage Rights subject to payment of the Additional Usage Right Fees by the Client, where applicable;
- (29) **Vamp** means, any of the following as noted on a Quote:
- (a) **Vamp UK**, being Visual Amplifiers Limited (UK Company No. 10754848 of WeWork, 1 Mark Square, Hackney, London, EC2A 4EG;
  - (b) **Vamp SG**, being Visual Amplifiers Pte. Ltd (201628016K) of 80 Robinson Road #25-00 Singapore, 068898;
  - (c) **Vamp Japan**, being Visual Amplifiers Japan K.K. of 4-3-9 Nihonbashi Muromachi, Chuo-Ku, Tokyo 103-0022, Japan;
  - (d) **Vamp HK**, being Visual Amplifiers (Hong Kong) Limited (Company No. 2410206) of Level 4, Cheung Hing Industrial Building, 12P Smithfield Road, Kennedy Town, Hong Kong;
  - (e) **Vamp DMCC**, being Visual Amplifiers DMCC of Unit No: 310-38, Jumeirah Bay 2, Plot No: JLT-PH2-X2A, Jumeirah Lakes Towers, Dubai, UAE;
  - (f) **Vamp Australia** being Visual Amplifiers Limited ABN 13 601 198 850 of Level 6, 50 King Street, Sydney NSW 2000, Australia;
- (30) **Vamp Platform** means Vamp’s mobile/desktop application;
- (31) **Virtual Wallet** means the feature on the Vamp Platform which holds the Client’s Funds;

(32) **Work Stage** has the meaning given to that term in clause 4.1(2).

## 1.2 Interpretation

In the Agreement:

- (1) reference to:
  - (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular;
  - (c) a person includes a body corporate;
  - (d) a party includes the party's executors, administrators, successors and permitted assigns;
  - (e) a thing includes the whole and each part of it separately;
  - (f) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (g) dollars means Australian dollars unless otherwise stated in the Quote.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

## 2 Term

- (1) The Agreement commences on the Effective Date and will continue until unless terminated earlier pursuant to the Agreement or otherwise extended by written agreement between the parties (**Term**).
- (2) No subsequent correspondence or document including any order by the Client will modify or vary the Agreement unless that variation is expressly accepted or acknowledged in writing by Vamp.
- (3) In the event that Vamp publishes or has published material in connection with its products or services, including without limitation in relation to the prices of its products or services, anything so published which is inconsistent with the Agreement is expressly excluded.
- (4) If the Services as specified on the Vamp Platform include Exclusivity, Vamp shall ensure that:
  - (a) any Talent engaged to assist in providing the Services agrees to; and
  - (b) it will not engage the Talent to, perform any services similar to the Services for any competitors notified to Vamp by the Client for the Term.

### 3 Payment

#### 3.1 Payment of Funds

- (1) The Client agrees and acknowledges that Vamp will issue a tax invoice to the Client for payment of the Funds on the Commencement Date of the relevant Quote.
- (2) The Client must pay the amount set out in the tax invoice pursuant to clause 3.1(1) within 30 days of Vamp issuing that invoice.

#### 3.2 Funds

- (1) Unless otherwise agreed by Vamp in writing, the Funds for the Services are quoted exclusive of Taxes and all other taxes and are those stated in the Quote under "Budget". Once a Quote is agreed by both of the parties on the Vamp Platform, the Funds will be credited to the Client's Virtual Wallet (**Credit**), and the Credit may be allocated at the Customer's discretion to different Services on the Vamp Platform;
- (2) The Client acknowledges and agrees that the Funds are the committed spend which the Client agrees to spend on the Vamp Platform during the Term for the Services and by agreeing the Quote via the Vamp Platform, agrees to pre-pay for the committed spend in the amount of the Funds.
- (3) All Funds paid by the Client to Vamp are non-refundable, and to the extent unpaid, comprise a debt due and payable by the Client to Vamp.

#### 3.3 Increase of Funds

- (1) The Client may increase the Funds in the Wallet as agreed between the parties in writing, by executing a further Quote for that increase.

#### 3.4 Overdue Amounts

- (1) Where any payment is not made by the due date, Vamp may charge interest on any overdue portion from the date the payment was due until the date payment is made (both dates inclusive) at an interest rate equal to 2% above the RBA Cash Rate Target (as published at the date the payment became overdue ([https:// www.rba.gov.au/statistics/cash-rate/](https://www.rba.gov.au/statistics/cash-rate/))).
- (2) Any payment made by the Client to Vamp may be applied by Vamp to any amounts owing under the Client's account with Vamp in any manner it sees fit.

### 4 Services

#### 4.1 Services under the Agreement

- (1) The Services to be provided during the Term of the Agreement will be set out on the Vamp Platform and can only be modified or extended with the express agreement of the Client and Vamp.
- (2) If agreed on the Vamp Platform, Services may be broken up into different tranches of work (**Work Stages**), where Vamp is to provide or procure the provision of particular Services for a particular Work Stage.
- (3) The Client acknowledges that:
  - (a) Vamp will engage persons, including social media influencers (**Talent**) either directly or on a sub-contract or consultancy basis to assist in the provision of the Services. The Client acknowledges that the Talent will primarily be engaged through providing the Talent with a

Brief under Vamp's Influencer Terms; and

- (b) Vamp has no obligation to perform or procure the performance of any Services not specifically listed in the Quote or Vamp Platform.

#### **4.2 Other matters**

- (1) If the Client becomes aware of any matter which may change the scope or timing of the Services then the Client must give written notice to Vamp of this as soon as practicable after it becomes so aware.
- (2) Vamp will take all reasonable steps to ensure that it and any Talent used to provide the Services will not make any statement or omission or act in any manner which may have a detrimental or negative effect toward the Client, its subsidiaries and affiliates.

### **5 Limitation of liability**

- (1) The maximum liability of Vamp to the Client arising out of the performance or non- performance of the Services, whether under the law of contract, tort or otherwise, is the lesser of:
  - (a) the Funds under the Agreement; and
  - (b) the cost of rectifying the work which is the subject of performance or non- performance in relation to the Services;
- (2) Vamp does not give any warranty nor accept any liability in relation to the performance or non- performance of the Services except to the extent, if any, required by law or specifically provided for in the Agreement.
- (3) If any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law excluded.
- (4) Vamp will not be liable (whether in contract or tort, including negligence or otherwise) for:
  - (a) loss of profits, business, revenue, goodwill, reputation, opportunity, bargain, or actual or anticipated savings;
  - (b) indirect loss or consequential loss; or
  - (c) any other form of loss or damage which does not arise naturally, or in the usual course of things, as a consequence of a breach of the Agreement.
- (5) Any of the provisions in this agreement which limit the liability of Vamp to the Client will also operate to the same extent to exclude or limit or release, as the case may be, the liability (if any) of each officer, employee, agent and subcontractor of Vamp, for whom the benefit of this provision is held by Vamp as agent.
- (6) Each party will use reasonable endeavours to mitigate its losses arising under and/or in connection with a breach of the Agreement.
- (7) Any liability or loss or damage of any kind from one party to the other in connection with this Agreement is reduced to the extent the party claiming loss or damage contributed to that loss or damage whether directly or indirectly.



## 6 Warranties

- (1) The Client represents and warrants that:
  - (a) it has not entered into the Agreement in reliance on any representation by Vamp that the Services will be fit for purpose or otherwise appropriate, and it has relied upon its own expertise in selecting Vamp to provide the Services or procure provision of the Services;
  - (b) it has power to enter into the Agreement, to comply with its obligations under it and exercise its rights under it;
  - (c) its obligations under the Agreement are valid and binding and are enforceable against it in accordance with its terms; and
  - (d) it is not Insolvent.
- (2) The Client acknowledges that:
  - (a) it has relied upon and will continue to rely upon its own knowledge and expertise in selecting any of the Vamp's products or services for any purpose, and any advice or assistance given for or on behalf of Vamp will be accepted at the Client's sole risk and will not under any circumstances be or be deemed to be given by Vamp as an expert or advisor, or to be relied upon by the Client or any of the Client's officers, employees, agents or contractors; and
  - (b) Vamp gives no warranty or guarantee regarding the Talent except that it will use its best efforts to select appropriate Talent for the provision of Services and will not be liable for the actions of any Talent outside of their engagement by Vamp to provide Services.

## 7 Intellectual Property

### 7.1 IPR the property of Vamp

- (1) The Materials and all IPR in the Materials is the property of Vamp Australia or Vamp unless specifically agreed in writing between the parties in the Usage Rights.
- (2) Subject to clause 7.3, Vamp (on behalf of Vamp Australia) grants the Client a licence to use the Materials and IPR in the Materials referred to in clause 7.1(1) in accordance with the Usage Rights. The Client must not use nor make copies of any Materials or IPR in connection with any work other than work comprised in this Agreement and forming part of the Services unless express written approval is given in advance by Vamp (on behalf of Vamp Australia).
- (3) For the avoidance of any doubt, except as referred to in the Usage Rights, no Materials produced pursuant to the Services may be edited, reproduced, adapted, uploaded to a third party, linked to, framed, performed in public, distributed or transmitted in any form by any process without Vamp's written consent.

**7.2 Additional Usage Rights** For the avoidance of doubt, no Additional Usage Rights in Materials or IPR in the Materials are granted until the relevant Additional Usage Right Fee is paid to Vamp in full by the Client.

**7.3 Revocation for breach** Notwithstanding any other provision of the Agreement, in the event that the Client is in breach of any of the provisions of the Agreement, Vamp may in its absolute discretion by notice in writing to the Client revoke the licence referred to in clause 7.1(2) whereupon the Client must return, or cause to be returned, to Vamp all Materials and delete any and all copies of all Materials.

**7.4 Provision and confidentiality of Client Materials** The Client acknowledges that:

- (1) it is solely responsible for ensuring that any Client Materials provided to Vamp do not breach the IPR of any person when they are used for the Services;
- (2) it provides the Client Materials to Vamp on the basis that:
  - (a) the Client Materials are only to be used for the provision of the Services under the Agreement and for no other purpose;
  - (b) Vamp agrees that it will keep the Client Materials strictly confidential and only disclose Client Materials:
    - (i) to its advisers (including legal counsel) for the purpose of assessing and complying with its obligations under this clause 7.4;
    - (ii) to the Talent, on the basis set out in sub-clause (3);
    - (iii) when compelled by any Law, at which point it will advise the Client promptly of such obligation;
  - (c) it will take all reasonable steps to keep the Client Materials secure; and
  - (d) it will destroy or return all materials when requested by the Client following the Expiry Date.
- (3) Client Materials may be disclosed by Vamp to any Talent for the purpose of providing the Services on the basis that the Talent agrees to keep the Client Materials confidential on the same terms that apply to Vamp as per sub-clause (2).

**7.5 Vamp acknowledgement in relation to the Client Materials** Subject to this clause 7, nothing in the Agreement permits or grants any rights to Vamp to use the IPR of the Client, its holding company, subsidiaries and/or affiliates except in order to perform the Services, unless otherwise agreed in writing by the Client.

**7.6 No IPR transferred** Unless expressly stated in the Quote, the Client receives no IPR except as set out in clause 7.1(2).

**7.7 Survival** This clause 7 survives termination of the Agreement.

## **8 Confidentiality**

- (1) Neither party shall, without prior written approval of the other party, disclose the other party's Confidential Information
- (2) Each party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement (including the Talent), do not make public or disclose the other party's Confidential Information.
- (3) A party may disclose the terms of the Agreement to their related companies, solicitors, auditors, insurers and accountants on a confidential basis.

- (4) This clause survives the termination of the Agreement.

## **9 Right to promote**

- 9.1** Notwithstanding any other provision of the Agreement, Vamp may disclose the existence of this Agreement including any outcomes of its provision of the Services under the Agreement (including reach and engagement, but not the Funds or other sensitive commercial details) for the purpose of promotion. For the avoidance of doubt, this does not include disclosure of Confidential Information or any Client Materials.

## **10 No solicitation and circumvention**

### **10.1 Non-Solicitation**

- (1) During the term of the Agreement and for a period of 12 months after the termination or expiry of the Agreement, the Client shall not solicit for employment, either directly or indirectly, any person who is employed or contracted by Vamp (including the Talent).
- (2) The Client will promptly advise Vamp if a person who is employed or contracted by Vamp seeks to be employed or contracted by the Client during the period referred to in clause 10.1(1).
- (3) The Client undertakes that it will not compete with, or establish a business which is in competition with Vamp or a business which provides services similar to the Services.
- (4) This clause survives the termination of the Agreement.

### **10.2 No Circumvention**

The Client agrees that it will not:

- (1) attempt to negotiate directly with the Talent; and
- (2) coerce, manipulate or pressure the Talent to perform services outside of the scope of the agreed Services, without the prior consent of Vamp. For the avoidance of doubt the Client may not contact any Talent (whether actual or proposed in relation to a Quote) except through Vamp. In the event that the Client contacts the Talent in circumvention of this clause 10.2, the Client will be liable to Vamp for the full amount of the Funds.

## **11 Termination**

- (1) Without prejudice to any of its other rights, powers or remedies, Vamp may terminate the Agreement and cancel any order for the supply of Services if:
  - (a) any amount due to be paid to Vamp under the Agreement is not paid by the relevant due date;
  - (b) the Client breaches any provision of the Agreement; or
  - (c) the Client becomes Insolvent.

- (2) If the Agreement is terminated by Vamp under clause 11(1) :
  - (a) Vamp will be released from all liability under the Agreement and without limiting any of its other rights it will be entitled to immediate payment for all Funds from the Client under the Agreement;
  - (b) any Funds paid by the Client to Vamp, and any Credit, (whether allocated or used on the Vamp Platform), will be forfeited to Vamp;
  - (c) at Vamp's election, Vamp may deduct all Funds held in the Virtual Wallet.
- (3) The Client shall have the right to terminate this Agreement or the supply of Services on the Vamp Platform, without cause, on 1 months' written notice.
- (4) If the Client terminates this Agreement in accordance with clause 11(3):
  - (a) all Credit and Funds in the Client's Virtual Wallet will be forfeited to Vamp;
  - (b) any and all Funds not paid to Vamp by the termination date will be immediately due and payable by the Client to Vamp;
  - (c) at Vamp's election, Vamp may deduct all Funds held in the Virtual Wallet.
- (5) If the Client terminates particular Services pursuant to a Brief, in accordance with clause 11(3), the Client is required to pay a fee (**Termination Fee**) in consideration of the Services performed by Vamp and costs incurred by Vamp up to the date the Client gives notice under clause 11(3) (**Notice Date**). The Termination Fee payable by the Client within 30 days of the Notice Date is:
  - (a) if the Notice Date is within 4 weeks prior to the Intended Start Date for the relevant Brief, 25% of the Funds allocated to that Brief; or
  - (b) if a Brief is submitted and is live within the Vamp Platform, 50% of the Funds allocated to that Brief; or
  - (c) if content or media is created for the purpose of providing Services, or the Client specifically agrees to any Talent assisting Vamp in providing Services, 100% of the Funds under the Brief, whichever is the higher. If none of the above circumstances apply, the Termination Fee is 10% of the Funds. The Client agrees and acknowledges that the Termination Fees are paid on account of Vamp's work done and costs incurred in respect of the Agreement
- (6) Vamp may deduct the Termination Fee from the Credit in a Client's Virtual Wallet at any time.
- (7) This clause survives termination of the Agreement.

## 12 General

**12.1 Currency conversion** To the extent that any Funds are paid in a currency which is required to be converted to another currency for any reason, including at the Client's election to transfer currencies in their Virtual Wallet, the Client will incur a fee on any currency conversion, payable in accordance with the terms of the Quote or at Vamp's sole discretion, by way of deduction from the balance in the Client's Virtual Wallet. The Client will incur the following fees:

- (1) A transfer fee equal to 10% of the Funds being converted, in the pre-transfer currency, to be deducted prior to conversion in the pre-transfer currency; and

- (2) Any foreign exchange fee incurred on the conversion at the exchange rate at mid-day in Australia on the day of conversion.

**12.2 Force Majeure** Despite any other provision of this agreement, if a party is unable to perform or is delayed in performing an obligation under this agreement by reason of a Force Majeure Event:

- (1) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event; and
- (2) the affected party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event.

**12.3 No waiver** No forbearance or delay by Vamp in exercising or enforcing its rights under the Agreement shall prejudice or restrict the rights of Vamp to exercise or enforce its rights at a later time and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach. Vamp may only waive a right under the Agreement by doing so in writing.

**12.4 Assignment** The Client may not assign this Agreement without the express written consent of Vamp. Vamp may assign its rights under the Agreement on notice to the Client.

**12.5 No derogation** The rights and remedies provided in this Agreement will not affect any other rights or remedies available to either party.

**12.6 Severability** If any provision of the Agreement is unenforceable, illegal or void, that provision is severed and the other provisions of this Agreement remain in force.

**12.7 No relationship** Nothing contained or implied in this agreement constitutes a party the partner, agent or legal representative of another party for any purpose or creates any partnership, agency or trust. No party has any authority to bind another party in any way.

**12.8 Notices** All notices to Vamp may be given by email to Vamp at the email address notified to the Client before or at the time of the Quote. All notices to the Client may be given by email to the Client's email address notified to Vamp at any time.

**12.9 Jurisdiction** The Agreement shall be governed by and construed in accordance the laws of the relevant Jurisdiction. Each party irrevocably agrees to submit to the exclusive jurisdiction of the court of the Jurisdiction over any claim or matter arising under or in connection with the Agreement (whether in contract or in tort).

## Schedule

### Schedule 1 – Additional Provisions for Australia

This clause 13 and clause 14 apply where the Jurisdiction applicable to the Agreement is Australia.

#### 13 Australia – Privacy and Data Protection

**Definitions** The following words have the meanings set out below, when used in this clause 14, unless context requires otherwise:

- (1) **Privacy Law** means the *Privacy Act 1988* (Cth);
- (2) **Privacy Policy** means Vamp's privacy policy found at [http:// visualamplifiers.com/ privacy-policy/](http://visualamplifiers.com/privacy-policy/); and
- (3) **Personal Information** has the meaning given to that term in the Privacy Law.

**13.1 Vamp's Privacy Policy** Vamp may collect Personal Information in connection with the Provision of the Services. Where Vamp collects Personal Information, it adheres to the Privacy Policy.

**13.2 Data Protection** Vamp will implement appropriate technical and organisational measures against the unauthorised or unlawful disclosure or processing of data received by it in connection with the Services and against accidental loss or destruction of or damage.

#### 14 Australia – TGA and Code

**Definitions** The following words have the meanings set out below, when used in this clause 15, unless context requires otherwise:

- (1) **Code** means the Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021, and as amended from time to time;
- (2) **TGA means the** *Therapeutic Goods Act 1989* (Cth) as amended from time to time.

**14.1 TGA provisions** - to the extent that the TGA and/or Code applies to any of the Services delivered under this Agreement, including but not limited to:

- (1) the posting by Talent of content on social media channels and websites;
- (2) the provision of content by us for the Client to post in its own social media channels; or
- (3) the provision of content by Talent for the Client pursuant to a Brief

You warrant and agree that any Services provided by you under this Agreement comply with the TGA and the Code.

**14.2** Vamp will not be liable (whether in contract or tort, including negligence or otherwise) for any damages of any kind arising out of any parties breach of the TGA or Code, whether such damage arises directly or indirectly, including but not limited to any direction, penalty, notification, actions, claim or infringement notices issued by the Secretary (as defined by the TGA and the Code) to any parties under this Agreement, including Talent.

**14.3** The Client will indemnify, and keep indemnified Vamp, its employees, Talent, personnel and agents from

and against all claims, liabilities, losses, expenses, including costs payable by Vamp arising directly or indirectly or in any way connected with:

- (1) content or Services which are, or could potentially be considered, a “therapeutic good” as defined in the TGA or Code;
- (2) the breach of your warranty under clause 14.1;
- (3) any direction, penalty, notification, actions, claim or infringement notices issued by the Secretary (as defined by the TGA and the Code) to any parties under this Agreement, including Talent; and
- (4) any breach of the TGA or Code pursuant to the Services under this Agreement.

## Schedule 2 – Additional Provisions for United Kingdom

This clause 15 applies where the Jurisdiction applicable to the Agreement is the United Kingdom.

### 15 United Kingdom – EU GDPR

**Definitions** The following words have the meanings set out below, when used in this clause 15, unless context requires otherwise:

- (1) **GDPR** means EU Regulation 2016/679 also known as the *European Union General Data Protection Regulation*;
- (2) **Privacy Policy** means Vamp’s privacy policy found at [http:// visualamplifiers.com/ privacy-policy/](http://visualamplifiers.com/privacy-policy/); and
- (3) **Personal Information** has the meaning given to the term “personal data” in the GDPR.

**15.1 Vamp’s Privacy Policy** Vamp may collect Personal Information in connection with the Provision of the Services. Where Vamp collects Personal Information, it adheres to the Privacy Policy.