

# Terms of Use

## 1. Acceptance of terms

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OhBeeHave.com.au (**website**) is owned and operated by Yellow Wellies Pty Ltd ACN 609 099 550 (**we or us**).

By accessing or using this website, subscribing to our Services or signing up to our mailing list, you agree to be bound by the following agreement (**terms of use**) between you and us. These terms of use incorporate the [OhBeeHave Rules](#) and govern your access to and use of this website.

If you do not agree to these terms of use, please exit this website immediately.

We may update these terms of use by posting the new version on the website at any time and without separate notice to you. Your continued use of this website after we post any changes to these terms of use constitutes your agreement to those changes effective from that date.

## 2. Term and termination

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### 2.1 Initial term

The initial term of this agreement:

- (a) starts on the Commencement Date; and
- (b) subject to a further rollover term under clause 2.2, continues until the Expiry Date,

unless otherwise terminated earlier in accordance with clause 2.2 of this agreement (**Initial Term**).

### 2.2 Rollover

Unless:

- (a) Either of us provides written notice to the other that we intend to allow the Term to expire on the Expiry Date or the date of expiration of the Further Term as applicable (**Expiry Notice**); or
- (b) this agreement has been otherwise terminated earlier in accordance with clause 10(d),

this agreement shall automatically renew for a further period equal in length to your nominated subscription period (**Further Term**), on the terms and conditions of this agreement.

### 2.3 Expiry Notice

If either we or you provide an Expiry Notice to the other in accordance with clause 2.2, the Term shall expire on the Expiry Date or the date of expiration of the Further Term (as the context requires).

## 3. Licence

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### 3.1 Grant of licence

In return for your payment of the Subscription Fee and grant of the licence to us under clause 3.4, we

give you a revocable, non-exclusive, non-transferable licence for the Term, to:

- (a) access and use the Members Area in accordance with these terms and conditions and the OhBeeHave Rules; and
- (b) use the Materials provided by us under this agreement,

only for your personal use.

### 3.2 Authorised Use

You must:

- (a) ensure that your access and use of the Members Area is strictly in accordance with the terms of this agreement, including the OhBeeHave Rules;
- (b) your username and password required to access the Members Area is kept secure and confidential;
- (c) promptly tell us of any unauthorised use of your password, and we will reset your password. You must also take all other action that we reasonably deem necessary to maintain or enhance the security of the Members Area or the website.

### 3.3 Limited Licence

You acknowledge and agree that the rights granted to you under the Licence are expressly limited to the rights stated in clause 3.1. To the fullest extent permitted by law, all implied rights in relation to the Licence are excluded.

### 3.4 Content and information you share

- (a) When you publish a post in the Members Area, you are allowing other users to access and use that information, and to associate it with you (that is, to your name and profile).
- (b) By using the website, you warrant that any content that you post or transmit on the website, or otherwise transmit to any other member of the website by any other means, will not infringe the Intellectual Property Rights of any third party.
- (c) By posting or transmitting any content on the website, you:
  - (1) agree that you irrevocably assign to us all of your right, title and interest in and to any text, photos, videos or any other materials (of any type or variety) embodied in your post or transmission; and
  - (2) give us your complete and genuine consent to our use (in any way we deem appropriate) all or any portion of your post or transmission, even if such use would otherwise be an

infringement of your moral rights (having the meaning given to that term in the *Copyright Act 1968* (Cth)).

## 4. Availability and security

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### 4.1 Security

You are solely responsible for your use of the website, and protection of your password.

### 4.2 Suspension

We may temporarily suspend (in part or in whole), and without prior notice to you, your access to the website if:

- (a) there is a malfunction, fault or breakdown of any of our (or our contractors) equipment or if we (or our contractor) needs to do any repairs, maintenance or service on any part of the website;
- (b) we are required by law to do so;
- (c) an event of Exceptional Circumstance occurs, which affects or may affect our ability to provide the website;
- (d) we suspend your access under clause 5.3 for your non-payment;
- (e) if someone claims the website infringes the Intellectual Property Rights of any person;
- (f) if someone brings a Claim that exposes us to liability or prosecution for an offence or liability to a statutory prosecution; or
- (g) if we determine you are in breach of the Agreement, including where we determine you have failed to meet your obligations under clause 6.

A suspension any of these reasons will not affect any right which accrue prior to, or after, suspension of our obligations under these terms.

### 4.3 Downtime and Limitations

You acknowledge and agree that:

- (a) access to the Members Area may occasionally be limited due to scheduled maintenance; and
- (b) access to the Members Area is reliant upon various factors outside our control, including, without limitation, events of Exceptional Circumstance, your internet service provider, telecommunications provider or equipment used to access the Members Area. While we will use reasonable endeavours to ensure you have continuous access to the Members Area, we will not be liable to you or any other person for any Claim or to any other extent for Loss or damage caused by such factors.

### 4.4 Loss of Access

You will have no Claim against us in respect of loss of access or functionality to the website or services referred to in this clause.

## 5. Payment

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### 5.1 Payment of Fees

You acknowledge and agree that:

- (a) we will debit the Subscription Fee attributable to your nominated subscription level and subscription period, less any applicable reduction, to your nominated payment account (under clause 5.2) from time to time, on the later of:
  - (1) the date you create an account, or
  - (2) another date we notify to you from time to time.

the **First Payment Date**;

- (b) The Subscription Fee will become due and payable on the First Payment Date as payment in advance for the next subscription period for licence to the website and provision of the Services granted under this agreement; and
- (c) after the First Payment Date, the Subscription Fee will then become due and payable on the first day of every Further Term (**Payment Date**) thereafter.

### 5.2 Automatic payments

- (a) We will automatically charge the Subscription Fees to your nominated PayPal account on the First Payment Date and every Payment Date thereafter.
- (b) You agree to keep your PayPal account details up-to-date with us at all times.
- (c) If you dispute the amount of the Subscription Fees charged to your PayPal account, you must provide notice in writing to us within seven (7) days of such Fees being charged to your PayPal account.

### 5.3 Late or non-payment of invoices

If you do not pay the Subscription Fee in clause 5.1 (including if your payment is denied due to insufficient funds), we may do any one or more of the following:

- (a) restrict or suspend the Services in accordance with clause 4.2 above;
- (b) terminate the Agreement, in accordance with these terms.

### 5.4 Refund

We will not refund any unused portion of your Subscription Fee.

## 6. Your conduct and obligations

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### 6.1 General obligations

You agree to:

- (a) comply with these terms of use and all applicable laws and regulations; and
- (b) use the website in good faith and for personal use only.

6.2 Prohibited conduct

You must not:

- (a) post or send any material, or do anything which is unlawful, offensive, abusive, indecent, defamatory or menacing, or in breach of any rights of others;
- (b) cause annoyance, inconvenience or needless anxiety to others;
- (c) post commercial advertisements or promotional material; or
- (d) collect information (including information about other users) for purposes outside these terms of use. In particular, you must not harvest information from the website for commercial purposes without our prior consent.

We reserve our right to suspend your access or immediately terminate your subscription if, in our sole opinion, you breach your obligations (including by breaching the [OhBeeHave Rules](#) or posting comments which are abusive to other subscribers).

7. Disclaimer and limitation of liability

7.1 Disclaimers

- (a) You acknowledge and agree that the website contains general information and may include material from many different sources. We make no representation and do not warrant that the information provided on the website is complete, accurate or current.
- (b) The information on this website is not a replacement for medical or other professional advice, and does not take into account your specific circumstances.
- (c) We merely provide the website as a platform, and are not responsible or liable for the actions or inactions of another member in relation to you.
- (d) Neither we nor any of our directors, employees, contractors or other representatives will be liable for any Loss, damage or personal injury whatsoever which may arise out of or in connection with your use of this website, to the extent permitted by law.

7.2 Implied terms

- (a) To the full extent permitted by law:
  - (1) any term which would otherwise be implied into these Terms of Use is excluded. However nothing in these Terms of Use excludes a compulsory consumer guarantee which applies under the Competition and Consumer Act 2010 (Cth) and which cannot be excluded, restricted or modified.
  - (2) you acknowledge that we provide the website and the services on an

‘as is, where is’ basis, and we make no warranties or representations, express or implied, as to the website or services (and any information or documentation provided in connection with them), whether provided by us, third party contractors or other users.

- (b) If any law implies or imposes terms into these terms which cannot be lawfully excluded, such terms will apply, save that our liability for breach of any such term will be limited in accordance with the remainder of this section.

7.3 Limitation of liability

- (a) To the extent we are held liable in connection with these terms (whether in contract, under a right of indemnity, tort or statute), then our cumulative liability will be limited (at our option) to any one or more of the following:
  - (1) re-supplying the services to which the liability relates or the supply of equivalent services; or
  - (2) refunding you (subject to the cap on liability in this clause) the amount of your Subscription Fees under this agreement.
- (b) This limitation of liability extends to Loss, damage or personal injury caused directly or indirectly by your access to or inability to access this website, and your reliance on any information provided in the website, even if we have been advised of the possibility of such damages or injury.
- (c) Irrespective of anything else in these terms, to the extent that we are liable in connection with these terms (whether in contract, under a right of indemnity, tort or statute), then our cumulative liability in the aggregate (to the fullest extent permitted by law) will not exceed the Subscription Fees prepaid by you to us under this agreement in the 6 months before our liability arose.

8. Indemnity

- (a) You agree to indemnify, and hold harmless us and our directors, employees, contractors or other representatives from all liabilities, claims and expenses, including legal fees that arise from your use or misuse of this website.
- (b) We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defences.

## 9. Links to third party websites

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The website may provide links or references to other websites for your convenience. We do not control or endorse these websites, and are not responsible or liable for the accuracy, legality, or any other aspect of the content of such websites or for any damage or injury arising in connection with your access to such websites.

## 10. Intellectual property rights

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- (a) The Material, Members Area and website is protected under Australian and international copyright and other laws governing protection of Intellectual Property Rights.
- (b) Intellectual Property Rights in images, trade marks and other content on the website are owned by us or our licensors. You must not sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, create derivative works from, adapt, or edit such materials.
- (c) Feel free to post links to public article pages on social media or other sites, but please do not deep-link to the Members Area, embedded frames or images. Please contact us if you wish to re-post articles or images from this website on another site, as some such materials (including images) are subject to third party licences.
- (d) You may copy (either electronically or in hard copy) material on the website (other than images) for your non-commercial personal use only.
- (e) You agree that if you print an article from the website or the Members Area, you will only use the Print feature provided on the website—and not your web browser's native print feature. The Print feature will provide a simplified version of the page suitable for printing.

## 11. Termination of access

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If in our absolute discretion we determine that you have committed a breach of these terms of use—in particular the OhBeeHave Rules and the user warranties and obligations—we may immediately and without further notice to you, suspend your use of the website by technical or other means.

## 12. Violations

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### 12.1 Reporting

Please support the OhBeeHave community and report any violations of these terms of use by contacting us by email at [info@ohbeehave.com.au](mailto:info@ohbeehave.com.au).

### 12.2 Costs

If you breach these terms of use, in addition to any other remedies we may have, you are responsible for all duties, charges and legal fees (on a solicitor/own client basis) we incur in enforcing our rights.

## 13. General

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### 13.1 No assignment

You must have our prior written consent before you assign, transfer or novate all or any part of your rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it.

### 13.2 Jurisdiction

These terms of use shall be governed by and construed in accordance with the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

### 13.3 Severability

If any provision of these terms of use is ruled by a court to be illegal, invalid, unenforceable or in conflict with any law, it will not affect the validity and enforceability of the remaining provisions.

### 13.4 Further assurance

We and you must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

### 13.5 Notices

You can give us notice under this agreement by email at [info@ohbeehave.com.au](mailto:info@ohbeehave.com.au).

We can give you notice under this agreement by email at the address you provide in your personal profile on the website.

## 14. Definitions and interpretation

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### 14.1 Definitions

**Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this agreement.

**Consequential Loss** means any of the following: loss of revenue; loss of profits; loss of opportunity to make profits; loss of business; loss of business opportunity; loss of use or amenity, or loss of anticipated savings; special, exemplary or punitive damages; and any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the above types of loss arising from an interruption to a business or activity.

**Exceptional Circumstance** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

- (d) adverse changes in government regulations;
- (e) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (f) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (g) strikes or industrial disputes;
- (h) materials or labour shortage; and
- (i) acts or omissions of any third party network providers (such as internet, telephony or power provider).

**Expiry Date** means the last day of your nominated subscription period.

**Expiry Notice** means a written notice to the other party of an intention to allow the Term to expire prior to the expiration of the Term or the Further Term.

**Further Term** has the meaning given to that term in clause 2.2.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Initial Term** has the meaning given to that term in clause 2.1.

**Licence** means the licence set out in clause 3.1, as limited by clauses 3.2 and 3.3.

**Login** means the username and password individually used by authorised End Users to access the Members Area.

**Loss** means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

**Material** means property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

**Members Area** means the OhBeeHave online forums provided by us from time to time. The

Members Area will be provided as a service and made accessible by the website.

**Our Technology** means all Intellectual Property Rights created, owned or licensed by us, including the Members Area functionality and the algorithms and software used by (or comprised in) the website.

**Scheduled Maintenance** means preventative or emergency maintenance in relation to any software used, or relied upon, to provide the website.

**Services** means services provided by us to you, including the website and Members Area.

**Term** means the total duration of this agreement, including the Initial Term and any Further Term in accordance with clause 2.

**Website** means the portal accessible via the website OhBeeHave.com.au.

## 14.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
  - (1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
  - (2) one gender includes the others;
  - (3) the singular includes the plural and the plural includes the singular;
  - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
  - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
  - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
  - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
  - (8) money is to Australian dollars, unless otherwise stated; and
  - (9) a time is a reference to Perth, Western Australia time unless otherwise specified.

- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) 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.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

#### 14.3 **Business Days**

- (a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

#### 14.4 **Parties**

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.