

Touched by Yoga

Contract for Services

Part A Background information

This is a contract

Touched by Yoga Pty Ltd ABN 98 167 749 288 (“**TBY**”) and client agree that all parts of this document are the terms of a contract between them (this “**contract**”). Their full names and contact information are set out in Part B (“**contract details**”). This contract sets out the terms on which TBY agrees to provide, and client agrees to acquire, the services described as TBY services in Part B and elsewhere in this document (“**TBY services**”). TBY and client agree that their legal rights and obligations regarding the questions set out in this document including in Part C and Part D are in the answers which follow those questions.

The parts of this contract are:

Part A: Background;

Part B: Contract details;

Part C: General terms;

Part D: Limitation of liability;

Part E: Additional terms (if any)

Part F: Place to sign and date this contract.

This contract becomes legally binding when TBY and client have signed it or earlier binding on client when client indicates acceptance of its terms or when client has been given reasonable notice of it and makes any use of the TBY services. However, neither TBY nor any supplier of any 3rd party components referred to in this contract as being included in the quoted price is obliged to supply any services or goods to client until both TBY has received a properly completed booking form, either electronically or in handwritten form, along with the agreed deposit no later than 56 days before the start date (see Part B as to this date) and TBY has confirmed client’s booking in writing subject to availability. TBY’s booking confirmation will not occur before receipt of payment from client. Any client booking will be subject to availability and may be declined if at TBY’s or 3rd party suppliers’ sole discretion, client does not meet any of the terms and conditions either of TBY or the 3rd party suppliers. This is in addition to the terms of this contract regarding changes and cancellations.

Issue	Details																																		
TBY details	<p>Name: Touched by Yoga Pty Ltd ABN 98 167 749 288 Address: 50 Rouse Street, PORT MELBOURNE VIC 3207 Contact name: Bettina Freake Contact title: Managing Director Contact phone: 0412 790 880 Contact email: info@touchedbyyoga.com.au</p>																																		
Client details																																			
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<p>When, where and for how long must the TBY services be provided?</p>	<p>The start date is:</p> <p>Details of the TBY activities’/events/location/s and duration are set out in the TBY Information Sheet provided to client.</p>
<p>Quoted price and times for payment</p>	<p>Deposit: USD\$ + taxes</p> <p>Balance USD\$ + taxes</p> <p>Important note about quoted price: this price includes amounts for the included third-party components. The quoted price is the single price that TBY is reasonably able to quantify as at the date of this contract. All quoted prices are based on the official rate of exchange and costs at the time of execution of this contract. TBY will update the quoted price according to the particular circumstances of each client’s contract and the circumstances at the time the contract is accepted. TBY reserves the right to amend these prices in accordance with such changes.</p>
<p>Additional terms</p>	<p>As provided (if at all) in Part E</p>

Part C General terms

1. *When, where and for how long must the TBY services be provided by TBY and acquired by client?*
- 1.1 These details are all as set out in Part B: Contract details. The relationship between the parties concerning the TBY services is only one of independent contractor and client, not one of employment, (except only as set out in the following subclause) agency, partnership or otherwise. Upon the execution of this document, client acknowledges that the TBY Information Sheet referred to in Part B: Contract details was made available by TBY to the client and that client is fully aware and understands the extent and implications of the document.
- 1.2 Where the services include acting as client's agent for the 3rd party components, the scope of such agency shall be limited to following:
 - (a) to secure bookings and other arrangements for client so as to assist in bringing about a contract for supply directly between the 3rd party suppliers and client (including to deliver all necessary booking documents). Once the booking arrangements are completed, the client shall address any matter associated to 3rd party components directly with the 3rd party supplier;
 - (b) to forward client's payments for the 3rd party supplier's component to the relevant 3rd party supplier, less amounts agreed between TBY and any 3rd party supplier to be retained by TBY, for example commissions, taxes and expenses, and to assist client in securing a refund of any payments due from the 3rd party supplier to client (subject to client's payment of TBY's reasonable costs incurred in that regard). If client does not pay TBY's fees TBY will not be obligated to help client with any refund; and
 - (c) subject to this and the following subclause, in respect of information actually disclosed (other than in confidence) by a 3rd party supplier to TBY about 3rd party components supplied by that supplier, to promptly disclose such of that information as TBY reasonably considers client should be made aware of in a manner reasonably appropriate in the circumstances. Client agrees that other than for this obligation and to the extent permitted by law, TBY has no obligation to advise client or otherwise to provide any information relevant to TBY services or 3rd party components which is not set out in this agreement or in the relevant TBY Information Sheet and any disclosure of such information by or on behalf of TBY representative is as a personal gesture and not pursuant to, and does not give rise to, any legal obligation and does not render TBY liable for it in any way.
- 1.3 The terms on which a 3rd party supplier supplies its 3rd party components to client will be subject to those 3rd party supplier's terms, not this contract and client acknowledges that it is client's sole responsibility to review and understand 3rd party supplier's terms and conditions and risk warnings. Client agrees to comply with all such 3rd party terms. Client accept that any assistance given by TBY's representative in connection with 3rd party components is given as a personal gesture and not pursuant to, and does not give rise to, any legal obligation and does not render TBY liable for them in any way and any such assistance shall not be interpreted as a formal suggestion or recommendation by TBY.
2. *Can this contract be changed, transferred or cancelled?*
- 2.1 Under the following subclauses, client risks changes to or cancellations of TBY services or 3rd party components without receiving a full, or any, refund and without any right to compensation for loss. Client is strongly advised to take out insurance to reduce these risks at the time of contract. If client declines to participate in relevant TBY activities for any reason after they have commenced, TBY is not obliged to make any refunds.
- 2.2 Client changes and transfers: TBY does not permit client to make changes or to transfer its booking or other rights after this contract has been entered into. TBY may agree to allow changes or transfers in its absolute discretion, but may request certain clients commitments as a condition of doing so, for example payment of reasonable additional costs incurred as a result, releasing TBY from any responsibility and the third party to which booking is transferred accepting all terms. Client acknowledges that TBY will not be responsible and will not be obligated to make any change or transfer regarding the 3rd party components and any such change or transfer shall be subject to the 3rd party suppliers' terms and conditions.
- 2.3 Client cancellations: Client may cancel this contract due to illness or other reasons beyond client's reasonable control, in either case as demonstrated to TBY at TBY's satisfaction, with reasonable supporting materials. If such cancellation occurs more than 56 days before the start date, TBY will retain the deposit and will refund the remaining part of the price paid within the next 20 working days to the account from which payment was made. If the cancellation occurs within 56 days of the start date, all amounts paid by client are forfeited. The date of cancellation is that on which TBY receives written notice of cancellation from client and the supporting materials.
- 2.4 TBY changes and cancellations: occasions may arise where TBY considers it appropriate to make changes (for example to schedules, itineraries, amenities, accommodation and transport) or to cancel this contract. TBY may do this. If TBY makes a major change or cancels, TBY will inform client as soon as reasonably possible. A major change is one adversely affecting at least one day in 5 of the scheduled TBY services. If TBY cancels or makes a major change for its own personal reasons (and not because of, for example, client's or a 3rd party's acts or omissions, circumstances beyond TBY's reasonable control including acts of god or force majeure), TBY shall repay the monies received from client by TBY for TBY's own (versus 3rd party suppliers') services, less amounts of benefits already received by client as of the date of cancellation. TBY's shall calculate the value of these benefits on a pro-rata basis determined by TBY to be commercially appropriate in the circumstances. In that event TBY shall also use reasonable efforts to assist client in securing a refund of any payments made for 3rd party components (subject to client's payment of TBY's reasonable costs incurred in that regard). Client agrees that in no circumstances shall TBY be liable for any incidental expenses incurred as a result of the change or cancellation, for example visas, vaccinations or non-refundable travel arrangements.

- 2.5 Cancellation by either party: a party may cancel this contract where there has been major breach of the other party's obligations. Examples are client's non-payment or failure to observe client's responsibilities and TBY's non-provision of a major portion of the TBY services other than for circumstances beyond TBY's reasonable control, including acts of god or force majeure (a major portion is one affecting at least one day in 5 of the services). To cancel this contract for a major breach, one-week's written notice of the proposed cancellation needs to be given and the party in default must not have taken remedial action in respect of that breach which is reasonable in all of the circumstances;
- 2.6 Cancellation by either party: either party may cancel this contract in the exercise of rights given by applicable law which cannot be excluded or limited by this contract;
- 2.7 Unless otherwise specified in the 3rd party supplier's relevant contract with client, no refund or other amount is payable to client on account of changes to or cancellations of 3rd party components, and client acknowledges that if a relevant 3rd party supplier agrees to a change or cancellation, such agreement may be subject to client's payment of additional amounts and changes and cancellations to 3rd party components may render client liable to change or cancellation charges levied by 3rd party suppliers and by this contract client releases TBY from any responsibility or liability related to changes or cancellation of 3rd party suppliers'.

3. *Are there client obligations to TBY in addition to payment?*

Yes. In addition to those under other provisions of this contract, these are:

- (a) to observe TBY's policies, procedures and practices notified to client prior to this contract or, where reasonable, following this contract becoming legally binding on the parties;
- (b) warranting to TBY that client will act reasonably to have regard to the safety of client and to those for whom client is responsible (including, if applicable, client's own officers, contractors, employees and customers);
- (c) warranting TBY that client is in good physical and mental condition to participate in the activities forming part of TBY services and the 3rd party components and that, unless informed in writing by client, there are no particular health or medical conditions that TBY should be aware of as regards client. Without limiting this warranty, client shall, prior to the commencement of delivery of any of the TBY services, bring to the attention of TBY, in writing, any pre-existing conditions (including medical) which TBY and its officers, contractors and employees (including instructors) should reasonably be made aware of, the management plan proposed by client for the condition any implications for client's suitability to acquire the TBY services. Without limiting but subject to Part D, TBY will not be responsible or liable in any event and will have the right to immediately cancel this contract if the client provides in any manner whatsoever false or inaccurate information;
- (d) to obtain the insurance covering all aspects of client's participation in TBY services and otherwise to act as a reasonably prudent person would act to obtain and maintain sufficient insurance cover with regards to client's acquisition of (including participation in) the TBY services. Such insurance must provide cover against personal accident, death, medical expenses and emergency repatriation with a recommended minimum coverage of AU\$200,000 for each of the categories of cover. TBY also strongly recommends such insurance cover cancellation, curtailment, personal liability and loss of luggage and personal effects. Client agrees to provide proof of the insurance as part of the client's booking;
- (e) to furnish client's own equipment, data and other facilities notified to client by TBY. TBY shall endeavour to do this at or around the time of entering this contract and in any event within a reasonable time in advance of them being required or sought;
- (f) to treat all information which client learns about TBY as TBY's confidential information other than information which is at the time of client learning it, or which has since become, public knowledge other than because of client's wrongdoing;
- (g) to abide by the decision of TBY's designated group leader on all matters likely to affect the safety or well-being of any participant or staff member participating in TBY activities or 3rd party components acquired in connection with such activities. If client does not comply with such decisions, or does anything which TBY considers might adversely affect other participants, client agrees to abide by the group leader's direction to cease being involved in any or all such activities and components, with no right of refund and without responsibility or liability to TBY or the 3rd party supplier, always subject to Part D; and
- (h) to comply with the laws, customs, foreign exchange and drug regulations of all countries visited as part of any TBY activities and any responsible travel guidelines notified to client by TBY.

4. *What payment arrangements apply?*

Amounts and times for payment by client are described in the contract details. In addition, client will pay TBY an amount equal to any GST for any supply by TBY under this contract.

5. *What happens if a welfare issue arises?*

Client authorises TBY to take all steps which TBY considers reasonably necessary to protect the welfare of client and client's officers, contractors, employees clients and any other person TBY reasonably considers client has responsibility for. Such steps include those in circumstances involving actual or potential personal injury and may include the administration of emergency medical treatment and ambulance transportation. Client agrees to pay all costs reasonably incurred by TBY in taking such steps.

6. *What is the position of children?*

Children are not permitted to make use of the TBY services or otherwise use any TBY facilities, unless approved in writing by TBY and also supervised by a responsible adult. Where client is such a person in respect of the child, client agrees to directly

supervise the child and to their sole responsibility for making decisions for the child at all times. Client agrees to indemnify TBY against all consequences (including damages and whether direct, indirect or otherwise) of acts or omissions relevant to such supervision and to such decisions.

7. *How is client's personal information managed by TBY?*

For TBY's management of client's personal information, client acknowledges and agrees to TBY's privacy policy available at www.touchedbyyoga.com.au. Without limitation, in order for TBY to confirm client arrangements, client agrees to provide any details reasonably requested by TBY, including details regarding passport, date of birth and medical certificates. For privacy law purposes, TBY will process client's personal information according to TBY's privacy policy (which includes information for client and about marketing purposes, noting that client has the option to reject the processing for marketing purposes).

8. *What law and legal system applies to this contract?*

This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws in force in the State of Victoria, Australia. TBY and client irrevocably agree that the courts of the State of Victoria shall have sole and exclusive jurisdiction to deal with any dispute or claim that arises out of or in connection with this contract (including non-contractual claims). Client hereby irrevocably waives its right to any other jurisdiction or governing law due to client's nationality or present or future domicile.

9. *Can this contract be read down?*

Yes, if any provision of this contract is determined by a court to be invalid or unenforceable it shall be read down or severed (with reference to the former) to the minimum extent reasonably possible to give this contract legal enforceability and in any event all other provisions of this contract shall remain of legal force and effect.

Part D LIMITATION OF LIABILITY

1. *What is this Part about?*

This Part is about **RISKS** and **WARNINGS**.

The provisions of this Part are to make it clear that client's agreement to acquire TBY services and 3rd party components involves client accepting some foreseeable risks which, if they eventuate, may cause significant harm to client. For example, and without limit, the safety standards of accommodation, transport and activity providers in many countries may not be at the same standard as in client's home country and in any event may fall well below the standard of care and skill to be expected of prudent and careful suppliers. Due to political and cultural differences, as well as tough physical conditions, participation in activities in many areas of the world involve risks other than those which client may take in client's daily life.

TBY places extreme importance on client's safety, but client must realise that client is responsible to make themselves aware of risks and be responsible for client's participation decisions.

There are many online resources which provide information regarding possible dangers of international destinations. These online resources include those available via the Australian Department of Foreign Affairs and Trade's website: <https://www.smarttraveller.gov.au>.

2. In the following clauses:

"Australian Consumer Law and Fair Trading Act 2012" means *Australian Consumer Law and Fair Trading Act 2012* (Vic);

"Australian Consumer Law" means the *Australian Consumer Law* in Schedule 2 of the *Australian Competition and Consumer Act 2010* (Cth);

"recreational services" means services that consist of participation in:

- (a) a sporting activity or a similar leisure time pursuit; or
- (b) any other activity that:
 - (i) involves a significant degree of physical exertion or physical risk; and
 - (ii) is undertaken for the purposes of recreation, enjoyment or leisure.

"recreational-related liability" means liability for death or personal injury, with personal injury having the same meaning as under section 22 of the *Australian Consumer Law and Fair Trading Act 2012*.

3. TBY and client agree that:

- (a) to the extent this is a contract of supply of recreational services;
- (b) only in respect of TBY's liability for recreational-related liability;
- (c) in respect of the recreational-related liability arising because of a failure to comply with a guarantee under the *Australian Consumer Law and Fair Trading Act 2012*, only to the extent of, in accordance with and subject to the particulars and form set out in clause 4 of this Part headed **WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012**; and
- (d) other than if client establishes that it is not fair or reasonable for TBY to rely on the following paragraphs 3(e) - 3(g) (in this regard a court may have regard to the matters set out in section 64A(4) of the *Australian Consumer Law*),

this clause 3 excludes:

- (e) the application of any and all of the provisions of Subdivision B of Division 1 of Part 3-2 of *Australian Consumer Law and Fair Trading Act 2012* and Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law* to the supply of recreational services under this contract; and
- (f) the exercise of a right conferred by those provisions in relation to the supply of recreational services under this contract; and
- (g) any recreational-related liability of TBY for a failure to comply with a guarantee under such provisions in relation to the supply of the recreational services under this contract.

4. The form referred to at clause 3(c) of this Part is as set out in the following table. The supplier named on this form is TBY. Signing this form is done at the place for signing in Part F.

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

Under the *Australian Consumer Law (Victoria)* several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you:

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any results you have made known to the supplier.

Under section 22 of the *Australian Consumer Law and Fair Trading Act 2012*, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the *Australian Consumer Law and Fair Trading Act 2012* if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the ways set out in this form.

NOTE: the change to your rights, as set out in this form, does not apply if your death or personal injury is due to gross negligence on TBY's part. **Gross negligence**, in relation to an act or omission, means the doing or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the *Australian Consumer Law and Fair Trading Regulations 2012* and section 22(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012*.

5. Subject to clause 6 of this Part:
- if TBY becomes liable to client for or in any way relating to any or all services (including TBY services), TBY's liability shall be limited to:
 - supplying them again; or
 - the payment of the cost of having them supplied again; and
 - clause 5(a) of this Part applies regardless of:
 - the nature of the act or omission which gave rise to the liability;
 - the cause of action which gave rise to the liability, whether a breach of contract, negligence, failure to comply with a guarantee under Subdivision B of Division 1 of Part 3-2 of *Australian Consumer Law and Fair Trading Act 2012* or Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law* or otherwise;
 - the nature of the harm, whether death, personal injury, property damage or otherwise; and
 - the characterisation of the liability, whether "consequential", "direct", "indirect", "special", "loss of profits", "loss of anticipated profits", loss of use of capital or revenue", "punitive", "exemplary" or loss of enjoyment, and whether for disappointment, inconvenience or discomfort, or otherwise; and
 - where the services are recreational services, the limitation of liability under clause 5(a) of this Part is in addition to any exclusion of liability under clause 3 of this Part.
6. To the extent TBY's liability referred to in clause 5(a) of this Part is for failure to comply with a guarantee given by Subdivision B of Division 1 of Part 3-2 of *Australian Consumer Law and Fair Trading Act 2012* or Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law*, then the limitation in that clause 5(a):
- does not apply to the extent this contract is for the supply by TBY of services of a kind ordinarily acquired for personal, domestic or household use or consumption; and
 - in any event, does not apply if client establishes that it is not fair or reasonable for TBY to rely on that term. In determining whether such reliance is fair all reasonable, the parties agree that a court shall have regard to the matters set out in section 64A of the *Australian Consumer Law*.
7. All terms (including all TBY obligations) which are not expressly stated in this contract relating to the TBY services are excluded, whether those terms are conditions or warranties, express or implied, oral, in writing or otherwise. For example, there is no express or implied term of this contract that TBY will supply the TBY services with care or skill, will ensure that they are fit for any purpose or that they might achieve any results which client has made known to TBY and regardless of TBY's limited agency referred to in this contract, TBY owes no fiduciary obligations to client. Such a reference to terms of this contract do not include a reference to any guarantee under Subdivision B of Division 1 of Part 3-2 of *Australian Consumer Law and Fair Trading Act 2012* or Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law*.
8. Client agrees that in respect of an act or omission of any 3rd party supplier, client's sole recourse, if any, is against the 3rd party supplier, not against TBY. It is strongly recommended that that client obtain independent legal advice regarding the limitations of liability under this contract and under client's contracts with 3rd party suppliers (refer also to clauses 2.1 and 3(d) of Part C regarding insurance), considering that TBY does not grant any warranties, express or implied, relating to the operation, safety, condition, or service of the 3rd party suppliers'. For example (and without limitation), client's recourse for death, personal injury or property damage caused by a 3rd party supplier may be limited in accordance with the provisions under contracts and other arrangements for 3rd party components, such as those applicable under the Geneva Convention 1973, the Warsaw Convention (as

amended by the Hague Protocol 1955), the 1961 Berne Convention, the 1974 Athens Convention and the 1962 Paris Convention. Except to the extent TBY is liable to client, having regard to the limitations and exclusions of liability set out in the previous clauses of this Part, client shall indemnify TBY against the consequences of all claims against TBY referable to the goods and services of 3rd party suppliers, whether those consequences be liability for the payment of money or relate to death, personal injury, property damage or otherwise and regardless of their legal bases.

Part E Additional terms

Part F Place to sign and date this contract

**SIGNED for and on behalf of TOUCHED BY YOGA PTY
LTD ABN 98 167 749 288**

SIGNED for and on behalf of client

Signature of Bettina Freake, Managing Director

Signature

[If client is other than individual person signing, for example if client is a company, please print name and title. In that event, the person signing warrants that they have authority to bind client]

Date

Date