

## **SELF SERVICE TERMS OF SERVICE**

**Effective: 1 September 2019**

These Terms of Service (Self Serve Customer and User Terms) describe your rights and responsibilities when using our online platform (Services). Please read them carefully. These do not supersede any current unexpired signed contracts or agreements between Young and Shand Inc and Clients, Customers or Users. These terms are effective as ongoing contract between any Customers or Users of the self serve Nudge services.

1. **Services**. Client has retained Young and Shand Inc (Y&S) to perform services as defined in Exhibit A, which is annexed to this Terms and is incorporated herein. The term of this Terms of Service shall commence on immediately upon sign up and shall end upon either Party's cancellation of this Terms of Service pursuant to Paragraph 13.
2. **Fees**. The Fees that Y&S will charge the Client are defined in Exhibit B, which is annexed to this Terms of Service and is incorporated herein. Payment obligations are non-cancelable and, except as expressly stated in the Terms of Service, fees paid are non-refundable. For clarity, in the event client downgrades any subscriptions from a paid plan to a free plan, client will remain responsible for any unpaid fees under the paid plan, and Services under the paid plan will be deemed fully performed and delivered upon expiration of the initial paid plan subscription term. Fees are stated exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "Taxes"). Client will be responsible for paying all Taxes associated with its purchases, except for those taxes based on our net income. Should any payment for the Services be subject to withholding tax by any government, client will reimburse us for such withholding tax.
3. **Additional Work**. Client understands additional work beyond the scope of this Terms of Service must be negotiated separately and will require a separate Terms of Service ("Additional Work"). If, however, the Parties agree that negotiation and execution of a separate Agreement is not practicable, the Client agrees to provide a rough order of magnitude ("ROM"), within four (4) days of the Client's request, to perform the Additional Work. If the Client agrees to the ROM's terms, Y&S will proceed with Additional Work as soon as practicable and at a rate the Parties agree on.
4. **Client Responsibilities**. Client understands that Y&S is not an employee, and that this will be a collaborative, professional relationship of equals where mutual professional respect, courtesy and consideration are expected. Due to the virtual nature of the relationship, Client understands the importance of communication, especially via email, and agrees to respond to questions, requests and communications from Y&S within 48 hours. Client understands that Y&S is a business with other clients to serve, and requires

fair, realistic notice in order to attend to requests and projects. Client understands that Y&S may require detailed clarification of projects in order to meet expectations and provide the best support and highest quality work. The client will provide a working credit card for the duration of this Terms of Service to be charged billed as defined in Exhibit B.

5. **Ownership of Intellectual Property (“IP”)**. Y&S retains absolute IP rights of ownership and use for all work performed pursuant to Exhibit A unless the Parties agree otherwise by separate agreement. Upon any cancellation or termination of this Terms of Service, Y&S shall retain and hold a first-priority, perfected lien on all of the work as described in Exhibit A and Client agrees to grant Y&S an absolute and irrevocable right to use, utilize and modify any work produced pursuant to this Terms of Service for to develop, conceive, produce or sell any derivative works for its own purposes provided that Y&S does not reveal Client’s identity as the entity having ownership of such Final Product without the Client’s written consent.

6. **Warranties and Period to Cure**. Y&S warrants, and agrees to use best efforts to fix, repair, rework, recode, etc. any of the work produced pursuant to Exhibit A (and any additional work the parties agree to in addition to Exhibit A) for the duration of this Terms of Service. In accordance with this Paragraph 6, Y&S has an absolute right to commence to cure any problems pursuant to or resulting from work performed under Exhibit A within a reasonable time after receipt of notice of such problem. The Client shall send notice to Y&S at the contact information articulated in Paragraph 6.

7. **Disclaimer**. If, however, any third party the Client retains or hires (or the Client itself) (“Third Party or Client”) alters, changes or modifies any work produced pursuant to Exhibit A, Y&S shall be under no obligation to perform any work to fix, repair, rework, recode, etc. pursuant to Paragraph 6. Further, if Third Party or Client performs any work that invokes this Paragraph 7, Client agrees to hold Y&S and its all employees, officers, directors, subcontractors, accountants, attorneys, agents, relatives, family members, estates and all of their successors and assigns, harmless from all fees, judgments, costs, determinations or orders arising out of any action at law or equity for damages or injunctive relief before any judicial body, tribunal, administrative body, quasi-judicial, quasi-tribunal, quasi-administrative body or arbitration panel.

Further, Y&S will conduct periodic maintenance of its servers and updates to work performed pursuant to this Terms of Service, and will endeavor to make such maintenance and updates at a time at which least disruptive to all clients. Y&S will, to the extent practicable, give the Client at least 24 hours notice prior thereto. During the time that Y&S conducts maintenance, Y&S will not be responsible for any issues, such as reporting deficiencies or problems posting to third-party social media sites or services, as a result of such maintenance.

8. **Accuracy of Information.** Client agrees that the accuracy of information supplied to Y&S is the sole responsibility of Client, and that Y&S is not responsible and shall not be held liable for the results of services performed on the basis of inaccurate, incomplete or untruthful information furnished by Client.

9. **Indemnification/Release of Liability.** To the maximum extent allowable at law, the Client shall indemnify, defend and hold Y&S and its employees, officers, directors, subcontractors, accountants, attorneys, agents, relatives, family members, estates and all of their successors and assigns harmless from any and all suits or proceedings, including, but not limited to, any proceedings before any judicial body, tribunal, administrative body, quasi-judicial, quasi-tribunal, quasi-administrative body or arbitration panel arising out of or relating to this Terms of Service or any work produced or performed pursuant to this Terms of Service wherein Y&S or any of its employees, officers, directors, subcontractors, accountants, attorneys, agents, relatives, family members, estates and all of their successors and assigns is/are named a party to such proceedings whether or not Client is a party to such proceeding. Client shall pay all expenses incurred by Y&S including, but not limited too, all attorneys' fees, costs and expenses incurred pursuant to the foregoing.

Y&S will not be held liable for any incidental, consequential or indirect damages, including without limitation, damages for loss of profits, business interruption, loss of information, plagiarism, etc. Y&S will not be held liable for typographical omissions or errors.

Further, if Y&S receives any subpoena, order or other directive of any judicial, tribunal, administrative, quasi-judicial, quasi-tribunal, quasi-administrative body or arbitration panel relating to or arising out of this Terms of Service, Client agrees to cooperate fully and completely with Y&S in the location, identification and production of any documents or other items pursuant to such subpoena, order or other directive and to equally share in all costs and charges related to the location, identification and production as articulated herein.

All reasonable precautions will be taken to safeguard the property entrusted to Y&S. In the absence of negligence, however, Y&S will not be held liable for loss, destruction or damage of any kind resulting from items which are lost or delayed in transit, whether such transit is electronic, fax, mail or otherwise, nor for unauthorized use by others of such property.

10. **Disputes & Disagreements.** In the event that the Parties come to a substantive disagreement ("Disagreement") about any vital aspect of this Terms of Service, this Terms of Service shall be governed by and construed according to the laws of the State of New York without regard to its conflict of laws provisions and shall not be construed against the drafter. See paragraph 11 for further details.

11. **Choice of Law and Venue.** This Terms of Service shall be governed by and construed according to the laws of the State of New York without regard to its conflict of laws provisions and shall not be construed against the drafter. The Parties agree that any suit or action relating to or arising out of this Terms of Service shall be instituted and commenced exclusively within the City, State and County of New York whether by arbitration or the federal or state courts, and the Parties hereby waive the right to change such venue and hereby consent to the jurisdiction of such courts, as applicable. If Y&S must bring suit or other action to collect on unpaid invoices or seek remedy of any other breach of contract, Y&S shall be entitled to an award of costs, reasonable attorney's fees and interest at the maximum rate permitted by law in addition to any other relief awarded.

12. **Modification.** The terms and conditions of this Terms of Service may be modified or amended as necessary at any time.

13. **Cancellation.** Client is required to provide 30 days notice for cancellation, either Party may terminate this Terms of Service ("Notice of Cancellation"). In either instance of cancellation, Y&S agrees to present to the Client invoices for all outstanding work, pursuant to Exhibit A or other modifications agreed to but not included in Exhibit A, as of the 10th day (or 30th day as the case may be) after the other Party receives such cancellation. The Client agrees to remit payment immediately after receipt of the invoice, in keeping with payment required in Exhibit B.

14. **Severability.** The Parties agree that if a court of competent jurisdiction or arbitration panel declares any term or provision of this contract to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

15. **Merger Clause.** This Terms of Service constitutes the entire Terms of Service between the Parties. No waiver, consent, modification or change of terms of this Terms of Service shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Terms of Service. The Parties, by their signatures below, hereby acknowledge that they have read this Terms of Service, understand it, and agree to be bound by its terms and conditions.

17. **Notifications**. Notifications to either Party are to those representatives as follows:

Nudge (Young & Shand Inc)

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support@giveitanudge.com

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Client/Customer details provided upon  
sign up

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Exhibit A  
Scope of Work

Access to the Nudge Dashboard from sign up - Ongoing

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Measurement and tracking clients' content on a CPV basis

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Human traffic

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Shares

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Earned Impressions + Impressions

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Virality + Engagement

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Attention Minutes

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Traffic Sources

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Location

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Demographics

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Insights

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Exhibit B  
Fee Structure

**Terms**

Payment due 1st of of each month via automatic credit card chargers. Should the initial charge fail to process Young & Shand, Inc will automatically try until successful payment is processed. Should payment not be received by the 20th of the month the clients platform access will automatically be suspended. Any extra charges incurred by failed payments will be passed directly onto the client.