

Heartful Terms and Conditions

Welcome to Heartful! We provide a platform where owners (**Hosts**) of properties (each, a **Property**) and customers seeking to book a Property for short-term rental stays (**Guests**) can connect, transact and arrange a booking for Guests to use or stay at a Property (**Platform**).

In these Terms, when we say **you** or **your**, we mean both you and any entity you are authorised to represent (such as your employer). When we say **we**, **us**, or **our**, we mean Heartful Travel Pty Ltd (ACN 409 369 454).

These Terms form our contract with you, and set out our obligations as a service provider and your obligations as a user. You cannot use our Services unless you agree to these Terms. **The obligations in these Terms apply equally to Hosts and Guests, unless we state otherwise.**

Some capitalised words in these Terms have defined meanings, and each time that word is used in these Terms it has the same meaning. You can find a list of the defined words and their meaning at the end of these Terms.

For questions about these Terms, or to get in touch with us, please email support@heartful.travel

These Terms were last updated on 20 June 2024.

OUR DISCLOSURES

Please read these Terms carefully before you accept. We draw your attention to:

- our privacy policy (on our website) which sets out how we will handle your personal information;
- clause 1.10 (Variations) which sets out how we may amend these Terms; and
- clause 17 (Liability) which sets out exclusions and limitations to our liability under these Terms.

We may receive a benefit (which may include a referral fee or a commission) should you visit certain third party websites through a link on our Platform, or for featuring certain goods or services on our Platform.

These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

1. Platform Licence and Term

1.1 These Terms apply from when you sign up for an Account, until the date on which your Account is terminated in accordance with these Terms. We grant you a right to use our Services for this period of time only.

1.2 You must be at least 18 years old to use our Platform.

Platform Licence

1.3 While you have an Account, we grant you a right to use our Platform (which may be suspended or revoked in accordance with these Terms). This right cannot be passed on or transferred to any other person.

1.4 You must not:

- (a) access or use our Platform in any way that is improper or breaches any laws, infringes any person's rights (for example, intellectual property rights and privacy rights), or gives rise to any civil or criminal liability;
- (b) interfere with or interrupt the supply of our Platform, or any other person's access to or use of our Platform;
- (c) introduce any viruses or other malicious software code into our Platform;
- (d) attempt to access any data or log into any server or account that you are not expressly authorised to access;
- (e) use our Platform to send unsolicited electronic messages;
- (f) use dating mining, robots, scraping or other data gathering and extraction tools on our Platform; or
- (g) access or use our Platform to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.

1.5 **Variations:** We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use our Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may close your Account with effect from the date of the change in these Terms by providing written notice to us. If you close your Account, you will no longer be able to access our Services (including our Platform) on and from the date of cancellation.

2. Platform Summary

Heartful Services

2.1 The Platform is a marketplace where Guests and Hosts can find each other, and advertise and hire Properties. We:

- (a) provide the Platform to users (including hosting and maintaining the Platform);
- (b) process payments (through our third party payment processor) between Guests and Hosts;
- (c) provide promotional opportunities for Hosts; and
- (d) arrange bookings of Properties and facilitate communication between Guests and Hosts (together, the **Heartful Services**).

- 2.2 You understand and agree that we only make available the Heartful Services. We are not party to any agreement entered into between a Guest and a Host and we have no control over the conduct of Hosts, Guests or any other users of the Platform. You acknowledge and agree that we have responsibility for the Property, including maintaining, giving access to or collecting money in relation to the Property.
- 2.3 If you require Support Services, you may request these by getting in touch with us through our Platform.
- 2.4 Unless we agree otherwise, Support Services cannot be used to support any other products or services, and does not include training, installation of software or hardware, software development or the modification, deletion or recovery of data or any on-site services.
- 2.5 We will not be responsible for any other services unless expressly set out on in these Terms or on our Platform.
- 2.6 **Additional Services:** If you require additional services, we may, in our sole discretion, provide such additional services (to be scoped and priced in a separate contract provided by us).

How to use the Platform

- 2.7 A Host wanting to rent out a Property to a Guest creates an Account on the Platform and posts an accurate and complete description of the Property that they wish to hire out (**Host Listing**), including:
- (a) how the listing fee will be calculated, which includes the rates set by the Host for use of the Property, the cleaning fee, and any other additional add-on fees set by the Host for any additional services;
 - (b) any other relevant details such as images of the Property, the capacity of the Property, the location of the Property, house rules and times that the Property is available for use by a Guest; and
 - (c) any security deposit required to reserve the Property (**Security Deposit**).
- 2.8 A Guest wanting to hire a Property creates an Account on the Platform to view and browse Host Listings.
- 2.9 A Guest may request to hire a Property described in a Host Listing by sending a request through the Platform (**Booking Request**). Upon making the Booking Request, the Guest will be able to view the overall fee for the hire of the Property based on the dates or times chosen (**Listing Fee**). The Booking Request is an offer from the Guest to the Host to book the Property described in the Host Listing.
- 2.10 If the Host accepts the Booking Request through the Platform, it becomes a **Confirmed Booking**.

For Hosts Only

- 2.11 By accepting a Booking Request, the Host confirms that it is legally entitled to and capable of providing the Property and any other services described in the Booking Request.
- 2.12 Hosts must ensure that each Host Listing complies with any requirements as set out on the Platform. We may, at our sole discretion, remove a Host Listing if it does not comply with our requirements.
- 2.13 You must have appropriate insurance to cover the Properties that you offer through our Platform. We may request that you provide us with evidence of your insurance cover. Where we do so, we are not confirming that the insurance you have is sufficient or suitable for the Property. If we do not ask you to provide evidence of insurance, this does not indicate that we believe you do not require insurance. You acknowledge and agree that it is your responsibility to make your own investigations and receive professional advice on the insurance you require.
- 2.14 You grant us a non-exclusive, irrevocable, royalty-free, sublicensable and transferable licence for the duration that your Property is available on our Platform, to host your Properties on our Platform for the purpose of making your Property available to Guests.
- 2.15 Hosts must include all additional terms and conditions relating to their services in the relevant Host Listing or must clearly state that there are additional terms and conditions. By sending a Booking Request, a Guest is accepting the additional terms and conditions of the relevant Host.

For Guests Only

- 2.16 The Guest must pay the Listing Fee, as set out on the Platform. The Listing Fee may be paid upfront or in split payments, with 50% due at the time the Booking Request becomes a Confirmed Booking and 50% due at the time the Confirmed Booking is completed.

Our Service Fee

- 2.17 In consideration for providing our Platform, we will charge a service fee to Hosts as set out on our Platform (**Service Fee**). We will deduct the Service Fee and any third-party payment processing fees from the Listing Fee paid by Guests.

2.18 **Communication:** Hosts and Guests can communicate privately using our private messaging service or outside of the Platform. Hosts and Guests must not use our Platform to obtain each other's contact details for the purpose of circumventing any fees payable to us for the use of our Platform and our Services.

3. Account

3.1 Accounts for Hosts and Guests are different, and you must choose the correct Account based on how you want to use our Platform. Hosts who also want to rent Property's must create a separate Account for that purpose, and vice versa.

3.2 While you have an Account with us, you agree to:

- (a) keep your information up-to-date (and ensure it remains true, accurate and complete);
- (b) keep usernames and passwords secure and confidential, and protect them from misuse or being stolen; and
- (c) notify us if you become aware of, or have reason to suspect, any unauthorised access to your Account or any logins linked to your Account.

4. Payments

4.1 You must pay all amounts due under these Terms in accordance with these Terms or as set out on our Platform (as applicable).

4.2 You must not pay, or attempt to pay, any fees due under these Terms or as a result of your use of our Services by fraudulent or unlawful means. If you make payment by debit or credit card, you must be the authorised card holder. If payment is made by direct debit, by providing your bank account details and accepting these Terms, you authorise our nominated third-party payment processor to debit your bank account, and you confirm that you are either the holder or an authorised signatory of that bank account.

4.3 We may pre-authorise or charge your payment method for a nominal amount to verify the payment method.

Security Deposit

4.4 Upon receipt of the Security Deposit from the Guest, our third party payment processor will hold the Security Deposit until 7 days following the date Confirmed Booking is completed.

4.5 The Security Deposit shall be held as a security against any potential damages, losses, or violations caused by the Guest during their stay.

4.6 In the event that the Host suffers any loss or incurs any expenses related to damages or losses caused by the Guest, the Host may request the Platform to deduct the necessary amount from the Security Deposit. The Host shall provide evidence of the damages or losses to us within 7 days following the date the Confirmed Booking is completed, in order to support their claim for deductions from the Security Deposit.

4.7 If we approve the Host's request, the Security Deposit less any deductions approved under clause 9.5, shall be returned to the Guest within a reasonable timeframe after the completion of their stay.

4.8 If we do not approve the Host's request, or no dispute has been raised by the Host within 7 days following the date the Confirmed Booking is completed, the Security Deposit shall be fully refunded to the Guest.

4.9 In the event of a dispute between the Host and the Guest regarding the deductions from the Security Deposit, both parties agree to resolve the matter amicably through good faith negotiations.

4.10 You understand and agree that we act solely as an intermediary for the collection and distribution of the Security Deposit. We shall not be held responsible or liable for any disputes, claims, damages, losses, or violations related to the Security Deposit.

4.11 **Late Payments:** If any fees due to us under these Terms or as a result of your use of our Services are not paid on time, we may:

- (a) suspend your access to our Services (including access to our Platform); and
- (b) charge interest on any overdue payments at a rate equal to the Reserve Bank of Australia's cash rate, from time-to-time, plus 2% per annum, calculated daily and compounding monthly.

4.12 **Taxes:** You are responsible for paying any levies or taxes associated with your use of our Services, for example sales taxes, value-added taxes or withholding taxes (unless we are required by law to collect these on your behalf).

5. Reviews

5.1 Hosts and Guests may review their experiences with each other on our Platform (**Review**). We may remove Hosts and Guests from our Platform (in our sole discretion) who receive a high number of negative Reviews.

5.2 You agree to provide true, fair and accurate information in your Review. If we consider that your Review is untrue, unfair, inaccurate, offensive or inappropriate, we may delete the Review or ban you from posting further Reviews. We do not undertake to review each Review. To the maximum extent permitted by law, we are not responsible for the content of any Review.

5.3 You may only write a Review about your own experience. You must not write a Review about another person's experience.

- 5.4 If you have been offered an incentive (such as a gift, reward, discount or payment) for leaving a Review, you should include information about this in your Review.
- 5.5 You must not disclose any Personal Information in your Review.

6. Availability, Disruption and Downtime

- 6.1 While we strive to always make our Services available to you, we do not make any promises that these will be available 100% of the time. Our Services may be disrupted during certain periods, including, for example, as a result of scheduled or emergency maintenance.
- 6.2 Our Services (including our Platform) may interact with, or be reliant on, products or services provided by third parties, such as cloud hosting service providers. To the maximum extent permitted by law, we are not liable for disruptions or downtime caused or contributed to by these third parties.
- 6.3 We will try to provide you with reasonable notice, where possible, of any disruptions to your access to our Services.

7. Refunds and Cancellation Policy

- 7.1 **Cancellation by the Host:** By creating a Host Listing for their Property, the Host confirms that if they need to cancel a Confirmed Booking for any reason, the Guest will be refunded in full as soon as possible. If a Host cancels a Confirmed Booking with:

- (a) less than 7 days notice, they will be liable to pay the Guest an additional fee equal to 5% of the Listing Fee as compensation. For example, if the cancelled booking was worth \$1000 in total, the Guest must be refunded \$1050; or
- (b) less than 24 hours notice, they will be liable to pay the Guest an additional fee equal to 10% of the Listing Fee as compensation. For example, if the cancelled booking was worth \$1000 in total, the Guest must be refunded \$1100.

Exceptions to the Host-Initiated Cancellation policy may apply in extenuating circumstances, as determined by us in our sole discretion, acting reasonably.

- 7.2 **Cancellation by the Guest:** At the time of creating the Host Listing, Hosts must select one of the following guest cancellation policies:

- (a) **Flexible:** The Guest will receive a full refund if they provide more than 24 hours notice of cancellation to the Host. If 24 hours or less notice is given, the Host retains the full booking fee.
- (b) **Moderate:** The Guest will receive a full refund if they provide more than 5 days notice of cancellation to the Host. If 5 days or less notice is given, the Host retains 50% of the booking fee.
- (c) **Firm:** The Guest will receive a full refund if they provide more than 5 days notice of cancellation to the Host. If 5 days or less notice is given, the Host retains the full booking fee.

- 7.3 **Rescheduling by a Guest:** Where, prior to the date of a Confirmed Booking, a Guest would like to reschedule a Confirmed Booking to another date, the Guest must contact the Host directly. Any rescheduling of any Confirmed Bookings will be subject to the Host's cancellation policy contained in the applicable Listing. Where a Host accepts a Guest's request to reschedule, the Host may reschedule the Confirmed Booking to the new proposed date through the Platform.

- 7.4 **Refund Process:** To initiate a refund, the Guest must contact our customer support team via [\[insert email\]](#). The refund request should include the Booking details, reason for the refund, and any supporting evidence, if applicable. We will then notify the Guest if the Listing Fee has been transferred to the Host's bank account, and in the case that:

- (a) **payment of the Listing Fee has not yet been transferred to the Host's bank account:** we will assist in facilitating the refund process. Upon receiving a refund request from the Guest, we will review the claim and may contact both the Guest and the Host for additional information or clarification. We aim to resolve refund requests promptly and fairly. If the refund request is deemed eligible and approved, we will issue the refund of the Listing Fees to the Guest's original form of payment within a reasonable timeframe. Please note that refunds may take several business days to process depending on the payment method and financial institution; or
- (b) **payment of the Listing Fee has been transferred to the Host's bank account:** the Guest must contact the Host directly to request a refund. For any disputes between a Guest and a Host, we encourage parties to attempt to resolve disputes (including claims for returns or refunds) with the other party directly and in good faith, either on the Platform or through external communication methods. In the event that a dispute cannot be resolved through these means, the parties may choose to resolve the dispute in any manner agreed between the Parties or otherwise in accordance with applicable laws.

- 7.5 For disputes between Guests and Hosts, we encourage Parties to attempt to resolve disputes (including claims for returns or refunds) with the other Party directly and in good faith, either on the Platform or through external communication methods. In the event that a dispute cannot be resolved through these means, the Parties may choose to resolve the dispute in any manner agreed between the Parties or otherwise in accordance with applicable laws.

- 7.6 This clause will survive the termination or expiry of these Terms.

8. Code of Conduct

Guests

- 8.1 As a Guest, you understand that you are responsible for leaving the Property (including any personal or other property located at the Property) in the condition it was in when you arrived.
- 8.2 In the event that a Host claims otherwise and provides evidence of damage (Damage Claim), including but not limited to photographs and we deem that you have caused damaged to a Property during your Confirmed Booking, you agree to pay the cost of replacing the damaged items with equivalent items.
- 8.3 As a Guest, you agree to:
- (a) be respectful of the Property and any property or amenities within the Property, including by not taking any of the Host's property, not using the Host's property without permission, not copying the Host's keys and not damaging the Property or any property;
 - (b) not create noise that is offensive to occupiers of neighbouring properties especially between 9pm – 8am. Offensive noise is prohibited and may result in termination of permission to occupy the Property, eviction, and loss of Listing Fees paid under the Terms;
 - (c) dispose of garbage and recycling in the allocated bins. Excess rubbish must not be left at the property or a charge will incur;
 - (d) ensure that you leave the Property at the check-out time specified in the Confirmed Booking. If you stay past the time of your Confirmed Booking, a Host has the right to make you leave the Property in a manner consistent with applicable laws, including by charging you reasonable overstay penalties;
 - (e) whenever you are absent from the property, close all windows and doors to maintain security and prevent rain and water damage; and
 - (f) not smoke in the Property or in the surrounding outdoor living areas;
 - (g) not bring any pets to the Property, except as expressly permitted by the Host.

Hosts

- 8.4 **As a Host, you agree to:**
- (a) ensure that all the Property, all the services it enjoys and all items within the Property that can or may be used by any Guest are in good, effective, clean and safe order;
 - (b) ensure that you act honestly and in good faith in relation to creating Host Listings (including ensuring that any Properties are accurately represented in any Host Listings), any Confirmed Bookings, Guest complaints and any disputes that may arise;
 - (c) be contactable to manage Guests, the Property and neighbourhood complaints between 8am and 5pm, and outside of such hours to deal with emergencies; and
 - (d) ensure that the Property is in habitable, clean and safe condition at the time of a Confirmed Booking.

Reporting Misconduct

- 8.5 If a Guest stays with or a Host hosts anyone who you deem is acting or has acted inappropriately, including but not limited to where any person
- (a) engages in offensive, violent or sexually inappropriate behaviour, harassment or any other disturbing behaviour (including in engaging in verbal or physical abuse, or unwanted solicitation towards another Party); or
 - (b) has stolen from you,
- you should immediately notify us.

9. Confidential Information and Personal Information

- 9.1 While using our Services, you may share confidential information with us, and you may become aware of confidential information about us. You agree not to use our confidential information, and to take reasonable steps to protect our confidential information from being disclosed without our permission, and we agree to do the same for your confidential information. This also means making sure that any employees, contractors, professional advisors or agents of ours or yours only have access to confidential information on a 'need-to-know basis' (in other words, the disclosure is absolutely necessary), and that they also agree to not misuse or disclose such confidential information.
- 9.2 However, either you or we may share confidential information with legal or regulatory authorities if required by law to do so.
- 9.3 We collect, hold and disclose and use any Personal Information you provide to us in accordance with our privacy policy, available on our website, and applicable privacy laws.
- 9.4 You must only disclose Personal Information to us if you have the right to do so (such as having the individual's express consent).

- 9.5 Hosts and Guests must not disclose Personal Information about each other to third parties unless authorised by these Terms or by law.
- 9.6 We may need to disclose Personal Information to third parties, such as our related companies or our service providers (for example, IT and administrative service providers and our professional advisors). As part of our Services, we will also need to disclose information about Guests to Hosts, and vice versa, so that they can connect and transact.
- 9.7 Where we are required by law to report on our activities, you acknowledge that from time to time we may request certain information from you in order to meet our requirements, and you agree to provide us with such information within the timeframes reasonably requested by us.

10. Consumer Law Rights

- 10.1 In some jurisdictions, you may have guarantees, rights or other remedies provided by law (**Consumer Law Rights**), and these Terms do not restrict your Consumer Law Rights. We will only be bound by your Consumer Law Rights and the express wording of these Terms. Our liability for a breach of your Consumer Law Rights is, unless the laws of your jurisdiction state otherwise, limited to either resupplying our Services, or paying the cost of having our Services resupplied.
- 10.2 Subject to your Consumer Law Rights, we do not provide a refund for a change of mind or change in circumstance.
- 10.3 If you accept these Terms in Australia, nothing in these Terms should be interpreted to exclude, restrict or modify the application of, or any rights or remedies you may have under, any part of the Australian Consumer Law (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).
- 10.4 Guests may have Consumer Law Rights in respect of the services received from Hosts.

11. Intellectual Property and Data

- 11.1 We own all intellectual property rights in our Services (including our Platform). This includes how our Platform looks and functions, as well as our copyrighted works, trademarks, inventions, designs and other intellectual property. You agree not to copy or otherwise misuse our intellectual property without our written permission (for example, to reverse engineer or discover the source code of our intellectual property), and you must not alter or remove any confidentiality, copyright or other ownership notice placed on our Platform.
- 11.2 We may use any feedback or suggestions that you give us in any manner which we see fit (for example, to develop new features), and no benefit will be owed to you as a result of any use by us of your feedback or suggestions.

Your Data

- 11.3 We do not own any of Your Data, but when you enter or upload any of Your Data into our Platform, you grant us the right to access, analyse, backup, copy, store, transmit, and otherwise use Your Data while you have an Account with us (and for a reasonable period of time afterwards). We may use Your Data (or disclose it to third party service providers) to:
- (a) supply our Services to you (for example, to enable you to access and use our Services), and otherwise perform our obligations under these Terms;
 - (b) diagnose problems with our Services;
 - (c) improve, develop and protect our Services;
 - (d) send you information we think may be of interest to you based on your marketing preferences;
 - (e) perform analytics for the purpose of remedying bugs or issues with our Platform; or
 - (f) perform our obligations under these Terms (as reasonably required).
- 11.4 You acknowledge and agree that because of the nature of the internet, the processing and transmission of Your Data by us may occur over various networks, and may be transferred unencrypted.
- 11.5 You are responsible for (meaning we are not liable for):
- (a) the integrity of Your Data on your systems, networks or any device controlled by you; and
 - (b) backing up Your Data.
- 11.6 When you use our Services, we may create anonymised statistical data from Your Data and usage of our Services (for example, through aggregation). Once anonymised, we own that data and may use it for our own purposes, such as to provide and improve our Services, to develop new services or product offerings, to identify business trends, and for other uses we communicate to you. This may include making such anonymised data publicly available, provided it is not compiled using a sample size small enough to make underlying portions of Your Data identifiable.
- 11.7 If you do not provide Your Data to us, it may impact your ability to receive our Services.

12. Liability

- 12.1 To the maximum extent permitted by law, we will not be liable for, and you release us from liability for, any Liability caused or contributed to by, arising from or in connection with:

- (a) any aspect of the interactions between Hosts and Guests, including in relation to any Property or Host Listings;
- (b) your computing environment (for example, your hardware, software, information technology and telecommunications services and systems); or
- (c) any use of our Services by a person or entity other than you.

12.2 Regardless of whatever else is stated in these Terms, to the maximum extent permitted by law:

- (a) neither we or you are liable for any Consequential Loss;
- (b) a party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the actions (or inactions) of the other party, including any failure by the other party to mitigate its loss;
- (c) (where our Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
- (d) our aggregate liability to you for any Liability arising from or in connection with these Terms will be limited to AU\$1,000.

13. Suspension and Termination

13.1 We may suspend your access to our Services where we reasonably believe there has been any unauthorised access to or use of our Services (such as the unauthorised sharing of login details for our Platform). If we suspend your access to our Services, we will let you know within a reasonable time of doing so, and we will work with you to resolve the matter, or if it cannot be resolved, then we may terminate your Account and your access to our Services will end.

13.2 We may terminate these Terms (meaning you will lose access to our Services, including access to your Account) if:

- (a) you breach these Terms and do not remedy that breach within 14 days of us notifying you of that breach;
- (b) you breach these Terms and that breach cannot be remedied; or
- (c) you experience an insolvency event (including but not limited to bankruptcy, receivership, voluntary administration, liquidation, or entering into creditors' schemes of arrangement).

13.3 As a Host, if you repeatedly receive reviews below 3 stars, then this will be considered a breach of a material term for the purpose of the above clause.

13.4 You may terminate these Terms if:

- (a) we breach these Terms and do not remedy that breach within 14 days of you notifying us of that breach; or
- (b) we breach these Terms and that breach cannot be remedied.

13.5 You may also terminate these Terms at any time by notifying us through your Account or to our email for notices (as set out in clause 20.9), and termination will take effect immediately.

13.6 Upon termination of these Terms:

- (a) we will retain Your Data (including copies) as required by law or regulatory requirements;
- (b) for Hosts, their existing Host Listings will be removed and any Confirmed Bookings not yet provided will be cancelled (and Guests will be refunded according to the Refund and Cancellation Policy clause); and
- (c) for Guests, their Confirmed Bookings not yet fulfilled will be cancelled and refunded in accordance with the Refund and Cancellation Policy clause.

13.7 Termination of these Terms will not affect any other rights or liabilities that we or you may have.

14. General

14.1 **Assignment:** You may not transfer or assign these Terms (including any benefits or obligations you have under these Terms) to any third party without our prior written consent. We may assign or transfer these Terms to a third party, or transfer any debt owed by you to us to a debt collector or other third party.

14.2 **Disputes between Hosts and Guests:** We encourage Hosts and Guests to attempt to resolve disputes (including claims for refunds or remedies) directly and in good faith, either through our Platform or through external communication methods. In the event that a dispute cannot be resolved through these means, Hosts and Guests may choose to resolve the dispute through other means, such as mediation. We are not responsible for mediating or resolving disputes between Hosts and Guests.

14.3 **Disputes with Heartful:** Neither we or you may commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination)

(Dispute) unless we and you first meet (in good faith) to resolve the Dispute. Nothing in this clause will operate to prevent us or you from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

If the Dispute is not resolved at that initial meeting:

- (a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation; or
- (b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Melbourne, Victoria, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.

- 14.4 **Events Outside Our Control:** We will not be liable for any delay or failure to perform our obligations (including our Services), if such delay or failure is caused or contributed to by an event or circumstance beyond our reasonable control.
- 14.5 **Governing law:** These Terms are governed by the laws of Victoria, and any matter relating to these Terms is to be determined exclusively by the courts in Victoria and any courts entitled to hear appeals from those courts.
- 14.6 **Illegal Requests:** We reserve the right to refuse any request for or in relation to our Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with these Terms.
- 14.7 **Marketing:** You agree that we may send you electronic communications about our products and services. You may opt-out at any time by using the unsubscribe function in our electronic communications.
- 14.8 **Nature of Legal Relationship:** These Terms do not create, and should not be interpreted so as to create, a partnership, joint venture, employment or agency relationship between us and you.
- 14.9 **Notices:** Any notice you send to us must be sent to the email set out at the beginning of these Terms. Any notice we send to you will be sent to the email address registered against your Account.
- 14.10 **Survival:** Clauses 14 to 20 will survive the termination or expiry of these Terms.
- 14.11 **Third Party Sites:** Our Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations in relation to the suitability of those websites. If you purchase goods or services from a third party website linked from our Platform, those goods or services are being provided by that third party, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third party websites through a link on our Platform, or for featuring certain goods or services on our Platform. We will make it clear by notice to you which (if any) goods or services, or website links, we receive a benefit from by featuring them on our Platform.

15. Definitions

- 15.1 In these Terms:

Account means an account accessible to the individual or entity who signed up to our Services.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us any amounts for access to or use of our Services (including our Platform) will not constitute "Consequential Loss".

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or us or you or otherwise.

Personal Information means any information or opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a tangible form or not.

Platform means our cloud-based platform that we provide you with access to as part of the Services.

Services means the services we provide to you, as detailed in clause 3.2.

Your Data means the information, materials, logos, documents, qualifications and other intellectual property or data supplied by you when receiving our Services or stored by or generated by your use of our Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with our Services. Your Data does not include any data or information that is generated as a result of your usage of our Services that is a back-end or internal output or an output otherwise generally not available to users of our Services.