

## Accommodation Fee Collection Agreement

*Last Updated: August 5, 2021*

This Accommodation Fee Collection Agreement (this “**Agreement**”) is made and entered into between: (1) you or the business entity that you are representing (“**You**” or “**Client**”) and (2) the Vrbo entity in the table below corresponding to the currency in which You select to set your rates and be paid in (“**we**”, “**us**” or “**our**”). (If You select more than one currency, You are entering into separate contracts with each of the respective Vrbo entities).

Your payment currency (each an “Offered Currency”)	Vrbo counterparty
Singapore Dollars	<b>HomeAway Emerging Markets Pte Ltd</b> Incorporated and registered in Singapore with registration number 201114875K of 38, Beach Road, South Beach Tower #09-13, Singapore 189767.
US Dollars	<b>HomeAway.com, Inc.</b> A Delaware corporation, of 11920 Alterra Parkway, Austin TX 78758, USA.
British Pounds, Euros, Canadian Dollars	<b>EG Vacation Rentals Ireland Ltd</b> With registration number 673084 and having its registered office at 25 St. Stephen's Green, 3rd floor, Dublin 2, D02 XF99, Ireland.
Australian Dollars	<b>Stayz Pty Ltd</b> Incorporated and registered in Australia with registration number ABN 41 102 711 599 of Level 17, 1 Martin Place, Sydney, NSW 2011 Australia.
New Zealand Dollars	<b>Bookabach Ltd.</b> Incorporated and registered in New Zealand with company number 2067690 of Suite 18.2, 1 Albert St, Auckland 1010, New Zealand.
Japanese Yen	<b>HomeAway KK</b> Incorporated and registered in Japan of Kamiyacho Trust Tower, Level 24, 4-1-1, Toranomom, Minato-ku, Tokyo Japan 105-6924.

This Agreement is effective as of the date that You indicate your acceptance of this Agreement as described below (the “**Effective Date**”). You should read through all of the terms carefully. The terms constitute a legally binding agreement between You and Us. Any obligations owed to Us under this Agreement are in addition to, and do not limit, any separate contractual obligations to Us or our affiliates or third parties working with us that provide payment services. You are not authorised to use these Services (as defined below) unless You are at least 18 years of age and

able to enter into legally binding contracts, and if applicable, are authorized to do so on behalf of the business entity for which You are accepting these terms and conditions.

BY CLICKING "I HEREBY AGREE TO THE ACCOMMODATION FEE COLLECTON AGREEMENT" OR OTHERWISE SUBMITTING AN ONLINE REGISTRATION FORM, YOU AGREE TO BE BOUND BY THIS AGREEMENT.

## **Background:**

- You own and/or manage the properties that are displayed on the websites of affiliated Vrbo companies (such properties, the "**Property**" or "**Properties**", and each such affiliated Vrbo company, a "**Display Affiliate**");
- Using third-party payment services providers that You have separate and direct agreements with, we provide a service that facilitates the collection of Accommodation Fees (as defined below) from the individuals who desire to book the property (the "**Guests**") through the Guest Display Affiliate Websites (the "**Services Guest**"); and
- You are owed Accommodation Fees by a Guest as a result of a contract entered into between You and the Guest, and You would like Us, through the third-party providers, to collect the Payments owed subject to the terms and conditions set forth in this Agreement.

You agree with Us as follows:

## **1. PAYMENT SERVICES.**

**1.1 Collection of Accommodation Fees due.** During the term of this Agreement, You authorise Us, through the third-party services providers, to collect any Accommodation Fees and any other related transaction amounts, via Credit Card, Debit Card, Electronic Funds Transfer payments, and any other payment forms that We may accept from time to time (together "**Payments**") from Guests to pay to You (such Payments collected us extinguishing any corresponding debt the Guests (and in doing so, agree that such Payments collected by Us extinguish any corresponding debt the Guest might owe to You. "**Accommodation Fee(s)**" are defined as amounts owed to You by a Guest in exchange for that Guest's stay in a Property, including security deposits, fees, insurance, and all other amounts, agreed between You and the Guest and as reflected on the Display Affiliate's website. Vrbo provides the Services in exchange for the fees and charges (including callback charges) due to Us as set forth in this Agreement (each a "**Fee**").

In order to use the Services, You must be a member, and bound by the terms and conditions of, our or one of our Display Affiliate's websites.

**1.2 Authorisation for Credits.** You represent that you have the right to authorise, and hereby authorise Us or a third-party service provider working with us to access Your bank account designated on the online registration form (the "Registration Form") to deposit Payments due to You.

**1.3 Right of Off-set.** For any Use Fees owed by You to Us or Our affiliates, or to Guests, You authorise Us to deduct (off-set) such amounts from Accommodation Fee payments. Similarly, We may offset any payment obligation that We have to You under this Agreement against: (i) Fees owed by You; (ii) amounts overpaid to You; and (iii) any other amounts owed by You to Us or Our affiliates under this Agreement or any other agreement. We will, on request,

provide You with details of any amounts off-set. If you wish to dispute the amounts off-set, please do so in writing to us.

**1.4 Processing Errors.** If there is a rejection or an error in the processing of any transaction, You authorise Us or a third-party service provider working on Our behalf to debit or credit Your bank account designated on the Registration Form, as applicable, to correct such error. If We are unable to debit such bank account You select for any reason, You authorise Us to resubmit the debit, plus any applicable fees, to any other bank account or payment instrument that You have on file with Us. If the non-payment issue is unresolved within a reasonable period, You will be required to make payment using another acceptable payment method.

**1.5 Provision of Information.** You agree to provide Us with all information and authorisations required by Us or a third-party service provider working on our behalf to access Your bank account designated on the Registration Form as necessary hereunder. You further agree to keep Your: (i) bank account information current and up-to-date with Us; and (ii) any applicable banking authorisations granted to Us current and up-to-date with Your bank. Failure to do so may result in Payment amounts being misdirected, held by Us pending confirmation, or returned to the Guests. We disclaim all liability for misdirected or returned Payments if Your bank account information is not kept current. We may suspend or terminate this Agreement without notice if You unreasonably fail to keep this information current or block or otherwise inhibit Our ability to enjoy our rights or perform our obligations under this Agreement.

In addition to such bank account information obligations, You shall provide Us with such information as We may lawfully require in order to promptly and accurately perform the Services, including relevant tax forms. You shall promptly notify Us of any and all inaccuracies in, or changes to, the information provided by You on the Registration Form. We shall in no event be liable for any damages directly or indirectly resulting from Your failure to comply with Sections 1.4 and 1.5. You warrant unconditionally that all information You provide to us is true, correct and up to date, and acknowledge that we are relying upon such information in establishing this Agreement and in providing the Services.

**1.6 Fraud and Risk Reviews and Settlement Timeline.** You authorise Us from time to time to collect and verify the information provided by You on the Registration Form or otherwise. We will use this information to perform customer due diligence, verify Your identity, verify Your ownership of the Property, verify You are not subject to trade sanctions, perform various fraud and risk reviews on You, and monitor the transactions through the Services to protect the integrity of Our systems and business. You further authorise Us (or Our affiliate) to request a report on You from a consumer reporting agency. Any such consumer report will be requested and utilised in compliance with applicable law. Based upon these reviews, We will determine whether We are able to offer You the Services, and the manner in which We will settle Payments of Accommodation Fees, at Our sole discretion. Upon successful completion of the required screening, and subject to any fraud or risk holds imposed by us, You will be offered the following settlement timeline:

We will initiate the transfer of the portion of Accommodation Fees due to You to Your bank account in most cases within 1-2 days after the scheduled check-in date for the Guest at Your Property. For the avoidance of doubt, this excludes any amounts that are not ultimately due to You, which may include any Fees (but are not limited to) any commission and other amounts You may owe to the Display Affiliate in connection with the booking, and any applicable stay tax which will be remitted by us or any affiliate to the relevant authority. However, with respect to any

deposit amounts due to You, we will initiate transfer in most cases within 1-2 business days after authorization from the Display Affiliate, in its sole discretion.

Notwithstanding the foregoing, in the event a Guest provides correct notice to the website the Property was booked through within 24 hours of the scheduled check in that the Property is not as described, or there is some other issue with the Property, You authorize us to return the Accommodation Fees to the Guest. You also agree that we may, in accordance with the cancellation policy selected by You and reflected in the relevant Property listing, refund to the Guest the portion of the Accommodation Fees specified in the applicable cancellation policy. If You are enrolled in any automatic refund damage deposit program, You authorize us or our affiliates to initiate a refund of such damage deposit on Your behalf, or to instruct the release of damage deposit funds to You upon receipt of a valid claim, in accordance with the damage deposit program terms.

The time it takes for You to receive Payments after they have been initiated may vary. In addition, for risk reasons, Your initial disbursement may be delayed by up to 30 days and, for fraud reasons, Your disbursement could be indefinitely delayed or cancelled. However, in all cases we reserve the right to provide You payment amounts more quickly, for instance, in advance of Guest check-in, at our discretion.

**1.7 Privacy & Data Security.** You agree to act in accordance with the practices set forth in the applicable Display Affiliate's privacy policy for the website the Property was booked through ("**Privacy Policy**") as may be updated by the Display Affiliate from time to time and which is hereby incorporated by reference. You agree that You have in place and will maintain, or will establish and maintain, adequate security procedures and controls to prevent the unintended disclosure of, and the unauthorised access to or misappropriation of, any personal data or information of any Guest. You agree that You will process, store, transmit, and access any Guest information in compliance with applicable laws and regulations. You agree to only utilise Guest's personal data for the purpose of processing such Guest's booking and for no other purpose. We will not be responsible for unauthorised use or access to Guest's personal data or financial data by You, Your employees, or any other party associated with You, except to the extent such use or access is due to Our gross negligence or wilful misconduct. We may use any and all information gathered in the performance of the Services in accordance with its Privacy Policy. In addition, You agree that We may use such information for any lawful purpose including deriving statistics regarding Our Services. **1.8 Proprietary Rights.** As between You and Us, We owns and retains all proprietary rights in and to the Services, the application interface (API), and any other materials that We may use or provide in connection with implementation and operation of the Services. You do not acquire any right, title, or interest in the Services. You agree not to modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from any Vrbo website, the API, or the Services.

**1.9 Suggestions.** If You provide any suggested improvements to Our Services ("**Suggestions**") to Us or Our affiliates or third-party providers, We will own all right, title, and interest in and to the Suggestions, even if You have designated the Suggestions as confidential. We and Our affiliates will be entitled to use the Suggestions without restriction. You hereby irrevocably assign to Us all right, title, and interest in and to the Suggestions and agree to provide us any assistance we may reasonably require to document, perfect, and maintain our rights in the Suggestions. Please do not provide Us with Suggestions if You do not wish to assign these rights to Us.

**1.10 Chargebacks and Reversals.** Any Payment by a Guest is subject to a right of (i) "Reversal"

(the right of a bank account owner to seek the return funds for a transaction that was funded by a bank account – sometimes referred to as an ACH Return – for example, as a result of suspected unauthorized use of a bank account or insufficient funds), or (ii) **“Chargeback”** (the right of credit cardholders to file a claim for a refund with their card issuer, for example, as a result of fraud or dissatisfaction with a purchase). These rights exist between the Guest and their respective bank or credit card issuer or bank. **You acknowledge and agree that You are responsible for any Chargeback or Reversal of a Payment, plus the applicable Chargeback and Reversal fees, regardless of the reason for the Chargeback or Reversal and that we will not have any obligation to pursue any collection action against any Guest.** In the event of a chargeback or reversal of any Payment by a Guest, We will have the right to exercise Our setoff rights outlined in section 1.3. Thereafter, contingent on receiving all requested information from You, We will use commercially reasonable efforts to investigate the validity of the chargeback or reversal. You agree to cooperate with Us and to provide any information that We may reasonably request in our investigation. You acknowledge that chargeback and reversal decisions are made by the applicable issuing bank or Card Networks and all judgments as to the validity of the chargeback or reversal is made at the sole discretion of the applicable issuing bank or Card Networks. **1.11 Modification of the Services and/or Use Fees.** We may from time to time without prior notice to You modify the Services and related websites; provided, however, that We will not modify the Services in a manner that would, in Our sole and reasonable discretion significantly adversely affect Your use thereof, without providing at least ten (10) days prior notice to You of any such modification. In addition, We reserve the right to modify the Fees, in Our sole discretion, but shall not do so without providing at least ten (10) days prior notice to You and any such modified Fees will apply to bookings which are accepted by You at any time immediately after such notice. Such notice may be made by means of email or a posting on, or update to, the applicable Display Affiliate’s website.

**1.12 Payment for Services.** In consideration for the Services, You agree to pay us a Fee of 3% of any transaction amounts processed on Your behalf through any payment method offered by us in Offered Currencies other than Australian dollars, New Zealand dollars, and Japanese Yen. Such Fee will become due upon completion of payment processing and regardless of any subsequent cancellation.

Fees due to us are exclusive of any VAT, GST, or other equivalent indirect tax, withholding, or other transaction-based tax in any country, state or locality. Where such tax applies it shall be paid to us by You.

Relevant consumption taxes may be collected, where applicable, on Fees and charges due to us under this Agreement.

You hereby authorise Us to automatically deduct all Fees due from the Payments collected by Us, as well as Fees related to Chargebacks and Non-Sufficient Funds (“NSF”) prior to settlement to Your bank account. In the event We are unable to recover Fees for any reason, You agree to pay all reasonable costs of collection, including reasonable attorneys' fees, incurred by Us. In addition, You are also responsible for any penalties or fines imposed on You or us by any Card Networks, or NACHA resulting from Your use of the Services in a manner not permitted by this Agreement, Operating Regulations, or related rules and regulations. You are solely responsible for monitoring Your account and ensuring timely payment of all amounts You owe to Us. We have the right to impose upon You any penalties We incur due to collection requests which fail due to NSF or Your directive to block the request. You authorise Us to collect such fee as set out in this Agreement.

Except as otherwise provided herein, and to the extent permitted under the Australian Consumer Law, Fees related to Our Services are non-refundable.

**1.13 Taxes.** You are responsible for any and all applicable taxes, including sales, use, personal property, value-added, excise, customs fees, tourist, hotel occupancy, import duties or stamp duties or other taxes and duties imposed by governmental entities of whatever kind and imposed with respect to the transactions under this Agreement, including penalties and interest, but specifically excluding taxes owed by or asserted against Us or any of Our affiliates' net income. We may be required to report any Payments processed made to You to national, state, and/or local tax authorities, including the US Internal Revenue Service and other tax authorities. We are not responsible for, and are not the entity collecting sales or income or other taxes with respect to the Payments. You will promptly provide Us with information and/or documentation as may be required by the applicable governmental entity in order for Us to process payments hereunder (including, without limitation, a valid certificate of Your exemption from obligation to pay taxes as authorised by the appropriate governmental entity), and We may reasonably withhold any Payments, or portion thereof, until You have provided the required documentation. You are responsible for determining any and all taxes and duties assessed, incurred, or required to be collected, paid, or withheld for any reason in connection with the sale or purchase of any products or services for a transaction, or otherwise in connection with any action, inaction, or omission by You or any affiliate of Yours, or any of Your or their respective employees, agents, contractors, or representatives ("**Taxes**"). You also are responsible for collecting, withholding, reporting, and remitting correct Taxes to the appropriate tax authority. If requested by Us, You will promptly provide valid Tax invoices in respect of any transactions entered into under this Agreement, where Taxes are chargeable under applicable law. We, or Our affiliates, may provide You a means for You to determine and apply taxes to Your transactions, but We and Our affiliates are not obligated to determine whether taxes apply and are not responsible for calculating, collecting, reporting, or remitting any taxes to any tax authority arising from any transaction. Notwithstanding the foregoing, We, and any applicable affiliate, reserve the right, in Our sole discretion, to collect and remit Taxes to appropriate government entities on Payments. Should We, or our affiliate, exercise this right, You agree to cooperate with the provision of any information or assistance reasonably requested by Us for such collection and remittance including providing documentation to substantiate transactions with Guests and to substantiate registration with and/or remittance of Taxes to the relevant taxing authorities.

We will process any payments for such Taxes that are collected and remitted by us or an affiliate, in accordance with this Agreement.

The amount of Taxes, if any, collected and remitted will be visible and separately stated to both You and Guests on respective transaction documents. You are not permitted to collect any such Taxes that are otherwise being collected by us.

**1.14 Limitation on Use of Services/Website.** You may only utilise the Services for the receipt of Fees as defined herein. You may not use, and represent and warrant that You will not use, the Services for any other purpose, including but not limited to the payment for any illegal activity, good, or service. You agree to comply with all Our policies, and any other limits concerning use of its websites and Services, as updated by Us from time to time, including without limitation: (i) Our requirements for data security; and (ii) any operating rules and/or policies of the card associations or networks that are used to process the Payments (as such may be updated from time to time). Notwithstanding any other terms of this Agreement, Us and Our affiliates have the right: (a) to change, suspend or discontinue the Services or Our websites, in whole or in part; and (b) to

impose limits on certain features or restrict access to parts or all of the Services or Our websites without notice and without liability when We, in Our sole discretion, to be exercised reasonably, determines necessary to protect the integrity of Our websites and operations, to avoid harm to others, or for any other such reason. We may decline to process any payment in connection with, among other reasons, fraud prevention activities, applicable law, or Our policies. **Without limiting the foregoing, You may not act as a payment intermediary, aggregator or service bureau or otherwise resell the Service on behalf of any third party, including without limitation the handling, processing or transmission of funds for third parties.**

You may not use the Services except as authorized by laws of the jurisdiction in which You reside, and any other applicable laws. In particular, but without limitation, the Services may not be used to send or receive funds (i) into (or to a resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria or any other country to which the United States has embargoed goods, or (ii) anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders. By using the Site, You represent and warrant that You are not located in, under the control of, or a national or resident of any such country or on any such list.

**1.15 Card Networks; Acquirer.** During the Term of this Agreement, the Services will be provided in conjunction with a merchant acquirer, eCheck or ACH service provider processor, and/or (or PIN debit acquirer) (or equivalent third-party provider) and their respective designated member bank(s). You agree to comply with all Our policies with respect to the Services, and all applicable Visa U.S.A., Inc., Visa International, MasterCard International Incorporated and other applicable card networks, (collectively, "Card Networks") and National Automated Clearing House Association ("NACHA") operating regulations, and other rules (collectively, "Operating Regulations") and all applicable federal, state, or local laws, rules, regulations, and regulatory guidance relating to the conduct of Your business. As of November 1, 2018, the Operating Regulations for the Card Networks and NACHA are available at: (i) Visa: <https://usa.visa.com/support/small-business/regulations-fees.html#3>; (ii) MasterCard: <https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>; (iii) Discover available upon request at <https://www.discover.com/credit-cards/help-center/contact-us/>; (iv) American Express at [www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide) (and American Express Terms and (v) NACHA: <https://www.nacha.org/rules>. You agree and acknowledge that We have no control over and cannot be and is not responsible for the individual Operating Regulations of the Card Networks or NACHA, and that the Card Networks or NACHA may reserve the right to amend the Operating Regulations without notice to You. If You choose to accept only certain types of payment cards, it is Your responsibility to properly indicate which payment cards are accepted.

**1.16 Traveler Selected Currency.** Vrbo allows travellers to display prices on its sites in the currency of their choice and may also allow travellers to pay in the currency of their choice. Travellers' payment currency does not affect the amount you receive for a booking, the amount we charge you, or how a booking appears in the Vrbo partner dash, each of which are determined by the currency you set your rates in.

## **2. DISCLAIMER.**

**2.1.1 Limited Warranties.** If You are a consumer in Australia, You have rights under the Australian Consumer Law. Nothing in this Agreement excludes or restricts those rights. Under the Australian Consumer Law, when a consumer acquires services, the services come with certain consumer guarantees, including that the services will be provided with due care and skill. You can

obtain a remedy from a supplier of services if You are a consumer and the services do not comply with a consumer guarantee. Nothing in this Agreement affects these rights.

**2.1.2** SUBJECT TO CLAUSE 2.1.1, YOU ACKNOWLEDGE THAT YOUR USE OF THE SERVICES AND WEBSITE IS SUBJECT TO THE FOLLOWING DISCLAIMER OF LIABILITY: EXCEPT FOR ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, THE SERVICES AND WEBSITES (INCLUDING ALL CONTENT, SOFTWARE, DATA TRANSMISSION, FUNCTIONS, MATERIALS AND INFORMATION PROVIDED IN CONNECTION WITH OR ACCESSIBLE THROUGH THE SERVICE) ARE PROVIDED "AS IS" AND WE, OUR AFFILIATES, AND OUR SUPPLIERS MAKE NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, REGARDING THE WEBSITES OR SERVICES PROVIDED HEREUNDER, TO THE MAXIMUM EXTENT POSSIBLE BY LAW.

**2.2 World Wide Web Usage.** We, Our affiliates, and Our suppliers make no warranties regarding the quality, reliability, timeliness or security of the world wide web, the internet and other globally linked computer networks, or the web sites established thereon including its websites, will be uninterrupted or error free.

**2.3 Payments.** You acknowledge and agree that: (i) Your Property bookings are transactions solely between You and the relevant Guest and not with Us or any of Our affiliates; (ii) Payments collected by Us extinguish any corresponding debt the Guests might owe to You; (iii) We will not be responsible for, and do not control, if a Guest will make any Payment; (iv) Our obligation to pay You is conditional upon successfully receiving associated Accommodation Fees from Guests; (v) We are not a bank or other chartered depository institution; and (vi) funds processed Us or Our service providers (including any bank service providers) in connection with the collection of Payments are not deposit obligations and are not insured for Your benefit by any governmental agency and you will not earn any interest on such funds.

**Our Role.** Except for our limited role in processing payments that You authorise or initiate, we are not involved in any underlying transaction between You and Your Guests. For the avoidance of doubt, we are not providing or reselling any accommodations or any accommodation related expenses or services. We assume no liability for Your acts or omissions.

**2.4 Unclaimed Property Laws.** We are not responsible as Your third-party payment processor for compliance with any jurisdiction's unclaimed property or escheat laws. You are responsible for determining whether You are holding property for a Guest or other party that is subject to such laws, in which case You acknowledge and agree that You bear full responsibility for compliance with such laws.

### **3. LIMITATION OF LIABILITY/INDEMNITIES.**

**3.1** SUBJECT TO CLAUSES 2.1.1, 3.5 AND 3.6, WE SHALL IN NO WAY BE LIABLE TO YOU DUE TO ANY DISRUPTION OR NON-AVAILABILITY OF THE SERVICES OR WEBSITES DURING WHICH GUESTS ARE UNABLE TO ACCESS OR USE THE SERVICES OR WEBSITES OR ANY FAILURES THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF A PAYMENT OR THE SERVICES. WE BEAR NO RESPONSIBILITY FOR ANY ERRONEOUS STATEMENT, ANY ERROR OR DELAY IN PAYMENT, OR ANY PAYMENT DECLINED BY YOUR BANK CAUSED BY YOUR FAILURE TO PROVIDE ACCURATE AND/OR VALID INFORMATION.

**3.2** IN NO EVENT WILL EITHER PARTY, ITS AFFILIATES OR ITS SUPPLIERS, BE LIABLE TO THE OTHER PARTY, OR TO ANY THIRD PARTY, FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, SPECIAL OR



INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF THE PARTY OTHERWISE LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**3.3** To the extent permitted by law, you agree that Our liability under this Agreement for breach of any legal obligation imposed on Us is limited, in the case of defective services, to either (at Our option): (i) supplying the services again; or (ii) paying the costs of having the services supplied again.

**3.4** IN NO EVENT WILL OUR AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE FEES THAT WE HAVE RECEIVED AND RETAINED UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ARISES. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated in this paragraph and that these limitations are an essential basis of the bargain between the parties.

**3.5** Nothing in this Agreement shall exclude or restrict Our liability for death or personal injury resulting from ours negligence; nor for Our fraud or fraudulent misrepresentation.

**3.6** Nothing in this Agreement affects any rights you may have and which by law cannot be excluded, including under the Competition and Consumer Act 2010 (Cth) (including, without limitation, under the Australian Consumer Law, contained in Schedule 2 of that Act) and under State and Territory consumer protection legislation.

**3.7 Indemnification** You will indemnify, defend and hold Us and Our affiliates and their respective directors, officers, employees, and agents (“**Vrbo Indemnified Parties**”) harmless from and against any and all third party claims, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees) brought against any of the Vrbo Indemnified Parties, arising out of or related to: (i) Your use of the Services or its websites; and/or (ii) any breach of or non-compliance with this Agreement by You. A Vrbo Indemnified Party may join in defence with counsel of its choice at its own expense. The indemnity obligations set forth in this section will not apply to the extent any claim, loss, liability, demand or expense is the result of the gross negligence or wilful misconduct of any indemnified party. The indemnity obligations set forth in this section are contingent upon: (1) Us providing prompt written notice to You of any such claim(s), loss(es), liability(ies), action(s), demand(s) or expense(s) (except that Your obligation to indemnify hereunder shall only be relieved to the extent it is prejudiced by Our failure to provide such notice); and (2) Your having sole control of the defence or settlement of such claim(s), loss(es), liability(ies), action(s), demand(s) or expense(s); provided that any settlement requiring other than the payment of monetary amounts shall be subject to Our consent, not to be unreasonably withheld. At Your request and expense, We shall cooperate in the investigation, defence and settlement of such claim(s), loss(es), liability(ies), action(s), demand(s) or expense(s).

## **4. TERM AND TERMINATION.**

**4.1 Term.** This Agreement will begin on the Effective Date and shall continue until terminated by either party in accordance with Section 4.2 below.

**4.2 Termination.** Either party may terminate this Agreement at any time for convenience upon written notice, which may be via mail to the address set forth below. For the avoidance of doubt, no such termination of this Agreement by itself will terminate any other agreements between You

and Us or any of Our affiliates.

**4.3 Effect of Termination.** Termination of this Agreement will not relieve either party of any obligation to pay the other party any amounts, Fees or other compensation due and owing to the other party under this Agreement prior to such termination. Any Payments still in process at the time of termination will be completed by us as if the Agreement were still in effect, including following relevant settlement timelines and deduction of any Fees owed to it at that time. However, You will remain liable for Chargebacks, Reversals, charges and any other obligations incurred by You and managed by Us after the expiration or termination of this Agreement and You authorise Us to automatically, without prior notice to You, deduct such amounts from Your bank account. Upon termination, We will disable Your access to the Services (other than such access required to complete any Payments still in process).

**4.4 Survival.** Sections 1.2(b), 1.2(c) 1.3, 1.7, 1.8, 1.10, 1.12, 1.13, 2, 3, 4 and 5 shall survive termination of this Agreement, except where otherwise provided.

## **5. MISCELLANEOUS**

**5.1 Binding Upon Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns. Neither this Agreement nor any right, license, privilege or obligation provided herein may be assigned or transferred by You without Our prior written consent and any attempted assignment or transfer without such consent is void. We may assign this Agreement at anytime but will not do so in such a way as to reduce any guarantees given to You under this Agreement or cause You detriment as determined by us in our reasonable discretion.

**5.2 Force Majeure.** We will not be responsible for any delays, errors, failures to perform, interruptions or disruptions in the Services or its websites caused by or resulting from any act, omission or condition beyond our reasonable control, whether or not foreseeable or identified, including without limitation acts of God, strikes, lockouts, riots, acts of war, terrorist conflict or terrorist attack governmental regulations, fire, explosion, power failure, earthquakes, severe weather, floods, droughts, epidemics, pandemics or other natural disasters or the failure of Your, Guest's or any third party's hardware, software or communications equipment or facilities.

**5.3 Entire Agreement.** The Services are supplied on the terms expressly set out in this Agreement and subject to non-excludable rights under the *Competition and Consumer Act 2010* (Cth). Other representations or statements we make to You, whether in person, over the phone or in advertising or other materials You receive, are not part of this Agreement. However, You may have other legal rights in relation to those representations. For the avoidance of doubt the foregoing does not limit any separate obligations to the Card Networks or other third-party service providers.

**5.4 Severability.** If any provision of this Agreement, or the application thereof, is found invalid or unenforceable, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

**5.5 Amendment and Changes.** You may not change, amend, supplement, discharge, terminate or otherwise alter this Agreement except by a statement in writing signed by Us. We will have the right, at Our sole and absolute discretion, to change, modify, or amend any portion of this

Agreement in accordance with the terms set forth above, including but not limited to payment terms (see clause 1.11 above). If We amend this Agreement and You do not agree to the new terms, You may immediately terminate the Agreement in accordance with clause 4, above.

**5.6 Waiver.** The waiver by either party of any right under this Agreement or the failure to perform or of a breach of any provision of this Agreement will not operate or be construed as a waiver of any other right thereunder or of any other breach or failure whether of a similar nature or otherwise.

**5.7 Notices.** All notices and other communications required or permitted under this Agreement will be in writing. Notices to You will be delivered to the email address provided on the Registration Form. Notices to Us may be directed to Vrbo, Attn: Legal Department, Stayz Pty Ltd, Level 17, 1 Martin Place, Sydney, NSW 2000.

**5.8 Updating Your Information.** It is Your responsibility to ensure that Your banking information, including Your legal name and Your address and country of residence, is accurate and remains current. It is also Your responsibility to ensure that any information or documentation requested with respect to Taxes in Section 1.13 above is accurate and remains current.

**5.9 Third Party Service Providers.** In connection with Our provision of Services, we may utilise third-party service providers to facilitate and process Payments. Any obligations owed to Us under this Agreement are in addition to, and do not limit, any separate contractual obligations You owe to third-party service providers, including any obligation relating to additional fees which may be imposed by such third-party service providers. Please note that related third-party providers may impose or deduct foreign currency processing costs on or from any payments or payouts involving currency conversion.

**5.10 Governing Law and Venue.** This Agreement and the performance of the Parties hereunder shall be governed and construed in accordance with the substantive laws of New South Wales, Australia, without regard to any law, statute, rule, or precedent that would apply the law of any other jurisdiction. Additionally, if You do not reside in the United States, each Party irrevocably consents to the exclusive jurisdiction and venue of the courts of New South Wales, Australia with respect to any claim, action or proceeding arising out of or in connection with this Agreement.

#### **5.11 Disputes; Arbitration.**

We are committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you may pursue claims as explained in this section.

You agree to first give Us an opportunity to resolve any disputes or claims relating in any way to this Agreement, any dealings with Our customer service agents, any services or products provided, any representations made by us ("**Claims**") by contacting Us. If We are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

You acknowledge and agree that any and all Claims will be resolved by binding arbitration, rather than in court, except that: (i) you may assert Claims on an individual basis in small claims court or tribunal if they qualify; and (ii) either party may seek injunctive or other urgent equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or breach of a party's intellectual property rights (including, without limitation,

copyright or trade marks), or in other exigent circumstances (such as any actual or threatened crime or cyber-attack). This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement). This also includes any Claims that arose before you accepted these Terms of Use, regardless of whether prior versions of the Terms of Use required arbitration.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including statutory damages, attorneys' fees and costs), and must follow and enforce these Terms of Use as a court would.

The obligation to resolve a Claim by binding arbitration will not apply if you provide us with written notice (including by email) that you reject the arbitration provisions of these Terms of Use within thirty (30) days following the date you first accept these provisions. If you don't provide us with such notice within the thirty (30) day period, you will be deemed to have waived in full (and without modification) your right to resolve any Claim or to seek any other relief by commencing proceedings in a court (except as set out in paragraphs (i) and (ii) above).

Arbitrations will be conducted by the Australian Centre for International Commercial Arbitration (ACICA) under its rules, as adopted or amended from time to time. The seat of arbitration shall be Sydney (or, if you notify us in writing, your nearest state or territory capital city of Australia). The language of the arbitration shall be English. Payment of all filing, administration and arbitrator fees will be governed by the ACICA's rules, except as provided in this section. If your total Claims seek less than \$75,000, we will reimburse you for filing fees you pay to the ACICA and will pay arbitrator's fees unless the arbitrator finds that either the substance of your Claim or the relief sought was frivolous or was brought for an improper purpose. We will not seek, and hereby waive, all rights we may have under applicable law to recover attorneys' fees and expenses unless the arbitrator finds that either the substance of your Claim or the relief sought was frivolous or was brought for an improper purpose.

You may choose to have an arbitration conducted by telephone, based on written submissions, or in person in the state where you live or at another mutually agreed location.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your Claims to "Vrbo Legal: Arbitration Claim Manager," at Level 17, 1 Martin Place, Sydney NSW 2000 Australia. If we request arbitration against you, we will give you notice at the email address or street address you have provided. The ACICA's rules and filing instructions are available at <https://acica.org.au/> or by calling +61 (0) 2 9223 1099.

Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a Claim proceeds in court rather than in arbitration we each waive any right to a jury trial. The Commercial Arbitration Act 2010 (NSW) applies to this agreement. An arbitration decision may be confirmed by any court of competent jurisdiction.