

Welcome to Diamond Air Taxis

WHAT PARTS OF THESE TERMS APPLY TO ME?

This agreement governs your use of the our charter aircraft booking service (**Platform**) and any other services made available through the Platform. For the avoidance of doubt, we are **NOT** the aircraft provider. By using the Platform, you (being the **Customer** or **User**) agree to be bound by this agreement which forms a binding contractual agreement between you, the User, and us, Diamond Air Taxis Pty Limited ACN 668 200 351 (**Diamond Air Taxis, Company, we or us**).

When we talk about the “**Carrier**” in this agreement, we are referring to the third-party charter aircraft provider.

When we talk about the “**Services**” in this agreement, we are referring to the ability to book an aircraft Carrier through our Platform and any associated services we offer.

When we talk about the “**Carrier Services**” in this agreement, we are referring to the aircraft services that the Carrier has agreed to provide to the Customer, as booked via our Platform.

1 ELIGIBILITY

- (a) This Platform is not intended for unsupervised use by any person under the age of 18 years old or any person who has previously been suspended or prohibited from using the Platform. By using the Platform, you represent and warrant that you are either:
 - (i) over the age of 18 years and accessing the Platform for personal use; or
 - (ii) accessing the Platform on behalf of someone under the age of 18 years old and consent to that person’s use of the Platform.
- (b) Please do not access the Platform if you are under the age of 18 years old and do not have your parent or guardian’s consent, or if you have previously been suspended or prohibited from using the Platform.
- (c) If you use the Platform on behalf of another person, company or organisation you warrant that you have the necessary authority from that person, company or organisation to do so. If you are using the Platform and procuring the Carrier Services not as an individual but on behalf of your company, your employer, an organisation, government or other legal entity (**Represented Entity**), then “you” or “User” means the Represented Entity and you are binding the Represented Entity to this agreement. If you are accepting this agreement and using our Services on behalf of a Represented Entity, you represent and warrant that you are authorised to do so.

2 ACCOUNTS

- (a) In order to purchase the Carrier Services on the Platform, all Customers are required to sign-up, register and receive an account through the Platform (an **Account**).
- (b) As part of the Account registration, booking process for the purchase of Carrier Services and as part of your continued use of the Platform, you are required to provide personal information and details, such as your email address, first and last name, preferred username, a secure password, billing, postal and physical addresses, mobile phone number, and other information as determined by the Company from time to time.
- (c) You warrant that any information you give to the Company in the course of completing the Account registration process will always be accurate, honest, correct and up to date.
- (d) Once you complete the Account registration process, the Company may, in its absolute discretion, choose to accept you as a registered user within the Platform and provide you with an Account.
- (e) The Company reserves the right to contact you about any concerning behaviour by you, or to seek a resolution with you.

- (f) The Company may, in its absolute discretion, suspend or cancel your Account for any reason, including for any failure to comply with this agreement.

3

CARRIER SERVICES

- (a) The Company is a medium that facilitates the introduction of Customers and Carriers for the purposes of booking charter aircraft. The Company simply collects a service fee in consideration for providing this introduction service and does not have any obligations or liabilities to, and is not a party to any contract between, Customers and Carriers in relation to such services or otherwise resulting from the introduction.
- (b) Diamond Air Taxis is not an aircraft provider and is not subject to the *Civil Aviation (Carrier's Liability) Act 1959* (Cth), the *Civil Aviation Act 1988* (Cth) and any other laws that apply to the Carrier Services. It is the sole responsibility of the Carrier to ensure it takes all necessary steps in connection with the provision of the Carrier Services to ensure compliance with its obligations under the relevant laws including but not limited to any actions prior to, during, and after the relevant flights.
- (c) The Customer acknowledges and agrees that the Carrier may, in its absolute discretion (subject to Australian Consumer Law):
 - (i) determine the preparation of the aircraft for flight, the load carried and its distribution, the route and the suitability of flying and landing conditions and all other matters relating to the operation of the aircraft;
 - (ii) vary the proposed route, divert to an alternate destination, postpone or cancel the Carrier Services; and
 - (iii) refuse to carry or continue to carry any of the Customer's passengers or the Customer's freight that might endanger the safety of the aircraft or persons on board (including, but not limited to, carrying any luggage or cargo which may endanger the safety of, or otherwise put at risk, the aircraft or the crew).
- (d) The Customer acknowledges and agrees that it is the sole responsibility of the Carrier to determine:
 - (i) whether or not in the interests of safety, or any other factor, to fly the aircraft;
 - (ii) whether the aircraft can be, or is permitted to be, flown to a particular destination;
 - (iii) where and when in the interests of safety the aircraft should be landed;
 - (iv) the flight path the aircraft should take;
 - (v) loading or carrying or refusing to load or carry any passenger, luggage or cargo; and
 - (vi) any other matter relating to the safety of the aircraft, its passengers or Customers.
- (e) Customer acknowledges and agrees that if the Carrier determines that the aircraft is unserviceable or for any other reason is unavailable, the Carrier may, but is not obliged, to provide a substitute aircraft.
- (f) If any event set out in clause 3(c) or 3(e) occurs, the Carrier Services may be cancelled, deviated or delayed pursuant to clause 5.
- (g) The Customer acknowledges and agrees that the Carrier will ensure that any Customers must not carry, load, consign for carriage or use on the aircraft any dangerous goods (namely any firearms, ammunition, weapons, explosive substances and any substance or thing that, because of its nature or condition, may endanger the safety of the aircraft or persons on board the aircraft, or which is declared to be dangerous goods under the law of any country or which is likely to become dangerous or endanger the safety of the aircraft and includes any goods the possession or use of which is illegal under the laws of Australia or any other country in or over which the aircraft flies or lands).

4 FEES

- (a) Diamond Air Taxi will calculate the fee for the Carrier Services based on a set pricing criteria agreed upon between Diamond Air Taxis and the Carrier (**Carrier Fee**). Upon booking of the Carrier Services and specifying the date and time for the provision of the Service (**Flight Time**) the Customer will be charged the Carrier Fee plus a service fee equal to 10% of the Carrier Fee to be retained by Diamond Air Taxis (**Service Fee**).
- (b) (**Payment obligations**) You must pay for all Carrier Services at the time of placing a Booking via the Platform. The total amount payable by the Customer at the time of Booking is the Carrier Fee plus the Service Fee (**Fees**).
- (c) (**GST**) Unless otherwise indicated, amounts stated on the Platform are inclusive of GST. In relation to any GST payable for a taxable supply by the Company, you must pay the GST subject to the Company providing a tax invoice.
- (d) (**Card surcharges**) The Company reserves the right to charge credit card surcharges in the event that payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).
- (e) (**Online payment partner**) We may use third-party payment providers such as Stripe (**Payment Providers**) to collect payments for Services. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider accessible <https://stripe.com/au> and, to the maximum extent permitted by law, we will not be liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.
- (f) (**Pricing errors**) In the event that we discover an error or inaccuracy in the price at which your Booking was made, we will attempt to contact you and inform you of this as soon as possible. You will then have the option of making your Booking at the correct price or cancelling your Booking. If you choose to cancel your Booking and payment has already been debited, the full amount will be credited back to your original method of payment.
- (g) You acknowledge and agree that:
 - (i) you alone are responsible for making all necessary arrangements for your travel related to the Carrier Services and ensuring that you comply with all laws, regulations and orders of the places you will travel to such as:
 - (A) finding out whether you need a passport, visa or other travel document, health document or evidence of onward travel;
 - (B) obtaining those documents;
 - (C) obtaining inoculations; and
 - (D) finding out about dangers to your health and safety at your destination;
 - (ii) You are responsible for complying with any immigration policies, travel and health documentation requirements, government quarantine restrictions or conditions (including length of stay) that apply to your Carrier Services travel. To the extent permitted by law, you agree to pay for any costs or expenses associated with complying with such policies, restrictions and conditions, and you agree to pay us on demand for any costs or expenses that we incur on your behalf. If we provide assistance or guidance for any of the above aspects of your travel, this does not release you from your personal responsibility in respect of these matters.

5 CHANGES TO YOUR BOOKING

- (a) You acknowledge and agree that Flight Times, duration and arrival times presented on the Platform are estimates and are not guaranteed and do not form part of your contract of carriage. Diamond Air Taxis and its Carriers may need to change or cancel flights.
- (b) You acknowledge and agree that the Company is not responsible for any delay or other consequence that results from the Carrier's failure to perform any of the Carrier Services

or as a result of any reasons outside of the control of the Company including cancellations, deviations or delays caused by the Carrier.

5.2 CANCELLATION

- (a) **(Cancellation by us):** We reserve the right to cancel your Booking for any reason in our absolute discretion, at any time prior to the Flight Time and we will notify you of this as soon as possible. Where payment has already been debited, the full amount will be credited back to your original method of payment.
- (b) **(Cancellation by the Carrier):** The Carrier may cancel your Booking in its absolute discretion, including for circumstances listed in clause 5.5(a). Where payment has already been debited, the Carrier Fee will be credited back to your original method of payment minus the Carrier's pre-estimated genuine losses if such cancellation was caused or contributed to by your act or omission.
- (c) **(Cancellation by you):**
 - (i) You may cancel your Booking at any time prior to the Flight Time.
 - (ii) If you cancel your Booking in accordance with clause 5.2(c)(i), we reserve the right to recover our pre-estimated genuine losses as a result of you ending this agreement. If the cancellation request is provided:
 - (A) more than 7 days' notice prior to the Flight Time, then the Customer will be entitled to a 100% refund of the Carrier Fees and a 100% refund of the Service Fee;
 - (B) less than 7 days' notice but more than 48 hours' notice prior to the Flight Time, then the Customer will be entitled to a 75% refund of the Carrier Fees and a 75% refund of the Service Fee;
 - (C) less than 48 hours prior notice to the Flight Time, then the Customer will be entitled to a 50% refund of the Carrier Fees and a 50% refund of the Service Fee.

5.3 DEVIATION

- (a) In the event that the conditions forecast for the Service, legally or operationally require the Carrier to plan for an alternate destination (**Destination Alternate**), the Carrier will explain this risk to the Customer prior to boarding the aircraft. The Customer may then elect to:
 - (i) cancel the Service pursuant to clause 5.2(c)(ii)(C); or
 - (ii) proceed with the Service on the basis that:
 - (A) In situations where the journey is completed partially due to such deviations, the Carrier retains the right to determine the equitable proportion of the Carrier Fee to be refunded. This amount will be equal to a genuine pre-estimate of loss, and may be zero; and
 - (B) You acknowledge and agree that neither the Carrier nor Company will be liable for any additional costs incurred as a result of such deviations, including, but not limited to, expenses related to missed connecting flights, hotel accommodation, transportation, or alternative travel arrangements to reach your destination.
- (b) In the event that the conditions forecast for the Service, do not legally or operationally require the Carrier to plan for a Destination Alternate, but the Carrier deviates to an alternate destination for any reason, except where the deviation is caused or contributed to by an act or omission by you or your passengers, the Company will facilitate the Carrier to refund the Carrier Fee (excluding the Service Fee) to you.
- (c) In the event that the Carrier deviates to an alternate destination and this deviation is caused or contributed to by an act or omission by you or your passengers, including those circumstances listed in clause 5.5(a), neither the Carrier nor Company will owe you any refund of Fees and you will be liable for any additional costs incurred by you as a

result of such a deviation, including, but not limited to, expenses related to missed connecting flights, hotel accommodation, transportation, or alternative travel arrangements to reach your destination.

5.4 DELAY

- (a) The Carrier may delay your Flight Time in its absolute discretion.
- (b) In the event the Carrier delays the Flight Time because of an act or omission by you or your passengers, including for circumstances listed in clause 5.5(a), you may elect to cancel the Service pursuant to clause 5.2(c)(ii)(C).
- (c) In the event the Carrier delays the Flight Time by more than 60 minutes and this delay is not caused by an act or omission by you or your passengers, you may elect to cancel the Service and the Company will facilitate the Carrier to refund the Carrier Fee (excluding the Service Fee) to you.
- (d) You acknowledge and agree that neither the Company nor the Carrier will be liable for any additional costs incurred as a result of such delays, including, but not limited to, expenses related to missed connecting flights, hotel accommodation, transportation, or alternative travel arrangements.

5.5 REFUSAL TO CARRY

- (a) The Carrier may refuse to carry, or continue to carry you, your passengers and/or their associated baggage for any reasonable reason in the Carrier's sole discretion, including but not limited to if any of the following circumstances have occurred:
 - (i) if carrying you or your baggage may put the safety of the aircraft or the safety or health of any person in the aircraft in danger or at risk;
 - (ii) smoking in any non smoking area;
 - (iii) if you have acted in a threatening, abusive, violent, harassing, insulting or aggressive manner towards any staff of the Carrier;
 - (iv) if carrying you or your baggage may materially affect the comfort of any person in the aircraft;
 - (v) if carrying you will break government laws, regulations, orders or an immigration direction from a country or state to which you are travelling or are to depart from, or the Carrier reasonably believes you will not be permitted entry to the country or state to which you are travelling;
 - (vi) if a government body, agency or regulatory authority directs the Carrier not to carry you;
 - (vii) because you have refused to allow a security check, refused to be weighed or refused to comply with any reasonable request of the Carrier;
 - (viii) because you do not appear to have all necessary documents, including those required to enter the country or state to which you are travelling;
 - (ix) if you fail to comply with any applicable law, rule, regulation;
 - (x) if you fail to complete the check-in process prior to the Flight Time or fail to arrive at the boarding location on time;
 - (xi) because you have not obeyed the instructions of the Carrier relating to safety or security;
 - (xii) because you are not fit to fly or have not disclosed relevant medical conditions as advised by the Carrier to you or as displayed on the Platform;
 - (xiii) because you will not or cannot show valid travel or health documents for your entire journey (including, if requested by the Carrier, valid evidence of COVID-19 vaccination status and/or negative COVID-19 test results);
 - (xiv) because you require specific assistance and you have not previously made arrangements for;

- (xv) if you are drunk or under the influence of illicit drugs;
- (xvi) if you are, or the Carrier reasonably believes you are, in unlawful possession of drugs;
- (xvii) if your mental or physical state is a danger or risk to you, the aircraft or any person in it;
- (xviii) if you have used threatening, abusive or insulting words towards the Carrier's ground staff or a member of the crew of the aircraft or otherwise behaved in a threatening manner;
- (xix) if you have committed a criminal offence while at the airport, during the departure, the check-in or boarding processes or on board the aircraft;
- (xx) if you have deliberately interfered with a member of the Carrier's staff while carrying out their duties;
- (xxi) if you have put the safety of either the aircraft or any person in it in danger;
- (xxii) if you are not wearing footwear;
- (xxiii) if you have intentionally damaged the Carrier's property;
- (xxiv) if you have made a threat;
- (xxv) because you have committed misconduct at the airport or on a previous flight and the Carrier is not satisfied that misconduct will not recur;
- (xxvi) because you cannot prove you are the person specified in the booking of the Carrier Service on which you wish to travel;
- (xxvii) because your Booking is not paid for;
- (xxviii) if we believe you will attempt to enter a country in which you have landed as a transit passenger without permission; or
- (xxix) if you have refused to give or show your travel documents, or any documents required to enter a state or country, to a member of our staff, or allowed the Carrier to copy your travel documents, or you have destroyed your travel documents during the flight.

6 IDENTITY VERIFICATION

- (a) **(Verification)** We may offer or require Users to verify their details (including name, address, passport number etc) using our processes or an external identity verification service as applicable **(Verification Service)**.
- (b) **(Your personal information and privacy)** We will collect your personal information in accordance with our Privacy Policy as set out in clause 16. Where a Verification Service is used, you acknowledge and agree that:
 - (i) we may contact and share your personal information with a Verification Service to verify your details;
 - (ii) you consent to us receiving, sharing and using this information to enable us to carry out the Verification Service.
- (c) **(Fees)** We may charge non-refundable fees for the Verification Service, as specified by the Company from time to time.
- (d) **(Warranty and Indemnity)** You acknowledge and agree that:
 - (i) we are reliant on the information provided by the Verification Service to verify your identity and to the extent permitted by law, we disclaim all warranties that the Verification Service will be accurate or guarantee that the Verification Service will ensure you contract with a suitable User;
 - (ii) you should make your own inquiries as to other Users' identities before engaging in contracts with those Users; and
 - (iii) we do not endorse any User, Carrier Services or Verification Service.

7 USER OBLIGATIONS

As a User on the Platform, you agree:

- (a) not to intimidate, harass, impersonate, stalk, threaten, bully or endanger any other User or distribute unsolicited commercial content, junk mail, spam, bulk content or harassment;
- (b) to not share your Account with any other person and that any use of your Account by any other person is strictly prohibited. You must immediately notify the Company of any unauthorised use of your Account, password or email, or any other breach or potential breach of the Platform's security;
- (c) to not use the Platform for any purpose other than for the purpose of making arrangements to provide or receive services, including by not using the Platform:
 - (i) in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity (including requesting or accepting a job which includes illegal activities or purposes); and
 - (ii) in connection with any commercial or money making or other promotional or marketing endeavours except those that are endorsed herein, or as approved in writing by the Company;
- (d) not to act in any way that may harm the reputation of the Company or associated or interested parties or do anything at all contrary to the interests of the Company or the Platform;
- (e) not to make any automated use of the Platform and you must not copy, reproduce, translate, adapt, vary or modify the Platform without the express written consent of the Company;
- (f) that the Company may change any features of the Platform or Services offered through the Platform at any time without notice to you;
- (g) that information given to you through the Platform, or by the Company (including Flight Times, flight durations, arrival times, aircraft information, destination information, event information, etc.) is general in nature and we take no responsibility for anything caused by any actions you take in reliance on that information; and
- (h) that the Company may cancel your account and any associated Carrier Services at any time if it considers, in its absolute discretion, that you are in breach or are likely to breach this clause.

8 POSTED MATERIALS

8.1 WARRANTIES

By providing or posting any information, materials or other content on the Platform (**Posted Material**), you represent and warrant that:

- (a) you are authorised to provide the Posted Material (including by being authorised to provide any services that you represent you provide);
- (b) the Posted Material is accurate and true at the time it is provided;
- (c) any Posted Material which is in the form of a review or feedback is honest, accurate and presents a fair view of the relevant person and/or your experience;
- (d) the Posted Material is free from any harmful, discriminatory, defamatory or maliciously false implications and does not contain any offensive or explicit material;
- (e) the Posted Material is not "passing off" of any product or service and does not constitute unfair competition;
- (f) the Posted Material does not infringe any Intellectual Property Rights, including copyright, trademarks, business names, patents, confidential information or any other similar proprietary rights, whether registered or unregistered, anywhere in the world;
- (g) the Posted Material does not contain any viruses or other harmful code, or otherwise compromise the security or integrity of the Platform or any network or system; and

- (h) the Posted Material does not breach or infringe any applicable laws.

8.2 LICENCE

- (a) You grant to the Company a perpetual, irrevocable, transferable, worldwide and royalty-free licence (including the right to sublicense) to use, copy, modify, reproduce and adapt any Intellectual Property Rights in any Posted Material in order for the Company to use, exploit or otherwise enjoy the benefit of such Posted Material.
- (b) If it is determined that you retain moral rights (including rights of attribution or integrity) in any Posted Material, you forever release the Company from any and all claims that you could assert against the Company by virtue of any such moral rights.
- (c) You indemnify the Company against all damages, losses, costs and expenses incurred by the Company arising out of any third party claim that your Posted Material infringes any third party's Intellectual Property Rights.

8.3 REMOVAL

- (a) The Company acts as a passive conduit for the online distribution of Posted Material and has no obligation to screen Posted Material in advance of it being posted. However, the Company may, in its absolute discretion, review and remove any Posted Material (including links to you, your profile or listings you have posted on the Platform) at any time without giving any explanation or justification for removing the Posted Material.
- (b) You agree that you are responsible for keeping and maintaining records of Posted Material.

9 SERVICE LIMITATIONS

While we make every effort to ensure that the information on the Platform is as up-to-date and accurate as possible, you acknowledge and agree that from time to time, you may encounter the following issues:

- (a) the Platform may have errors or defects (or both, as the case may be);
- (b) the Platform may not be accessible at times;
- (c) messages sent through the Platform may not be delivered promptly, or delivered at all; and
- (d) information you receive or supply through the Platform may not be secure or confidential.

10 INTELLECTUAL PROPERTY

- (a) The Company retains ownership of all materials developed or provided (or both, as the case may be) in connection with the Services (including text, graphics, logos, design, icons, images, sound and video recordings, pricing, downloads and software) (**Service Content**) and reserves all rights in any Intellectual Property Rights owned or licensed by it not expressly granted to you.
- (b) You may make a temporary electronic copy of all or part of the Service Content for the sole purpose of viewing it and adapting it for the purpose of receiving the benefit of the Services. You must not otherwise reproduce, transmit, adapt, distribute, sell, modify or publish the Service Content without prior written consent from the Company or as permitted by law.
- (c) In this clause 10, "**Intellectual Property Rights**" means all copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.

11 THIRD PARTY CONTENT

The Platform may contain text, images, data and other content provided by a third party and displayed on the Platform (**Third Party Content**). The Company accepts no responsibility for Third

Party Content and makes no representation, warranty or guarantee about the quality, suitability, accuracy, reliability, currency or completeness of Third Party Content.

12 THIRD PARTY TERMS

- (a) If we need to acquire goods or services supplied by a third party, you may be subject to the terms and conditions of that third party (**Third Party Terms**).
- (b) Provided that we have notified you of such Third Party Terms and provided you with a copy of those terms (for example, a link on our Platform or otherwise set out in these terms), you agree to any Third Party Terms applicable to any goods or services supplied by a third party that we use to provide you with the Platform or any services related to Platform and we will not be liable for any loss or damage suffered by you in connection with such Third Party Terms.

13 DISPUTES BETWEEN USERS

- (a) You should direct any complaint relating to another User to that User. Users must take all reasonable steps to resolve any dispute with another User with that User.
- (b) If any issue or problem relating to the Platform remains unresolved after directing a complaint to a relevant User, or if the complaint does not relate to another User, you must report it to the Company via feedback@diamondairtaxi.com. We will assess the complaint and attempt to quickly and satisfactorily resolve it.
- (c) Any costs you incur in relation to a complaint or dispute will be your responsibility.
- (d) The Company has the option to appoint an independent mediator or arbitrator if needed. The cost of any mediator or arbitrator must be shared equally between each of the parties to the dispute.
- (e) The Company reserves the right to hold funds in relation to a dispute until the dispute is resolved by the relevant parties or by a mediator or arbitrator.
- (f) If you have a dispute with the Company, you agree to notify us first and enter into discussion, mediation or arbitration with us for a minimum of a 120-day period before pursuing any other proceedings.
- (g) Notwithstanding any other provision of this clause 13, you or the Company may at any time cancel your Account or discontinue your use of the Platform.

14 DISCLAIMER

- (a) (**Limitation of Liability**) To the maximum extent permitted by law the total liability of each party (being you, the User and us, the Company) in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by you on the Platform in the 3 months preceding the date of the event giving rise to the relevant liability.
- (b) (**Disclaimer**) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (c) (**Damage to baggage**) The Company will not be liable for any damage to baggage, including but not limited to loss, theft, or destruction, incurred during transportation. Customers acknowledge and agree that they assume all risks associated with the transportation of their baggage. The Company will not be responsible for any consequential or incidental damages arising from such damage to baggage. Customers are encouraged to procure appropriate insurance coverage for their baggage prior to travel.
- (d) (**Consumer Law**) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, you may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.
- (e) (**Consequential Loss**) To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of

data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by the Company, except:

- (i) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (ii) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

15 **CONFIDENTIALITY**

You agree that:

- (a) no information owned by the Company, including system operations, documents, marketing strategies, staff information and client information, may be disclosed or made available to any third parties; and
- (b) all communications involving the details of other users on this Platform and of the Carrier are confidential, and must be kept as such by you and must not be distributed nor disclosed to any third party.

16 **PRIVACY**

You agree to be bound by the clauses outlined in the Company's Privacy Policy, which can be accessed here <https://diamondairtaxi.com/terms>.

17 **COLLECTION NOTICE**

- (a) We collect personal information about you in order to to enable you to access and use the Platform, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy.
- (b) Our Privacy Policy contains more information about how we use, disclose and store your information and details how you can access and correct your personal information.

18 **TERMINATION**

- (a) Either the Company or the User may terminate the User's account at any time (including any listings, memberships or Accounts) for any reason.
- (b) If a User wants to terminate their account (and/or any other membership they hold in connection with the Platform), they can do so by using the Platform's functionality where available. Where such functionality is not available, the Company will effect such termination within a reasonable time after receiving written notice from the User.
- (c) In the event that a User's Account is terminated:
 - (i) the User's access to all posting tools on the Platform will be revoked;
 - (ii) the User will be unable to view the details of all other Users (including contact details, geographic details, any other personal details and service listings or requests); and
 - (iii) the User may be unable to view the details of other Carriers (including contact details, geographic details and any other details), and all service listings previously posted by the respective User will also be removed from the Platform.
- (d) Notwithstanding termination or expiry of your Account, this agreement, or any other membership you hold in connection with the Platform, the provisions of Part A and any other provision in this agreement which by its nature would reasonably be expected to be complied with after termination or expiry, will continue to apply.

19 **NOTICES**

- (a) A notice or other communication to a party under this agreement must be:

- (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
- (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
 - (ii) when replied to by the other party,
- whichever is earlier.

20 **FORCE MAJEURE**

- (a) A '**Force Majeure Event**' means any occurrence beyond the control of the Affected Party which prevents the Affected Party from performing an obligation under this agreement (other than an obligation to pay money), including any:
- (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strike or other industrial action;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) decision of a government authority in relation to COVID-19, or other epidemic or pandemic,
- to the extent the occurrence affects the Affected Party's ability to perform the obligation.
- (b) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
- (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (c) Subject to compliance with clause 20(b), the relevant obligation will be suspended during the Force Majeure Event to the extent that the obligation is affected by the Force Majeure Event.
- (d) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible and resume performing the relevant obligation.

21 **IF THE PARTIES HAVE A DISPUTE**

- (a) If an issue between the parties arises under this agreement that cannot be resolved day-to-day, the parties will make genuine efforts in good faith to participate cooperatively in mediation, at equal shared expense of the parties.
- (b) The parties will conduct mediation through the Australian Disputes Centre (**ADC**) and in accordance with the ADC's Guidelines for Commercial Mediation (as current at the time of the dispute).
- (c) The parties will follow the mediator's recommendations on the extent of mediation required, and when to stop mediation if the issue cannot be resolved.
- (d) If mediation does not resolve the issue, the parties must:

- (i) if they haven't already done so, engage independent legal representation at their own expense to understand the strength of their arguments; and
 - (ii) based on that advice, if settlement is not achieved, participate in arbitration (or other dispute resolution mechanism agreed in mediation) through the ADC at equal shared expense.
- (e) The parties will follow the binding outcome of arbitration (or other agreed mechanism).
- (f) Either party may at any time during this process make an offer for settlement. The parties acknowledge and agree it is in their best interests to properly consider all genuine settlement offers. The parties will use best endeavours to avoid litigation and reach a prompt settlement.
- (g) The process in this clause does not apply where a party requires an urgent injunction.

22 GENERAL

22.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

22.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

22.3 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

22.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

22.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

22.6 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

22.7 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

22.8 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.