

## GENERAL TERMS AND CONDITIONS FOR AFFORDABLE HOUSING PROVIDERS

“WelcomeMat” is an online service operated by WelcomeMat Holdings Pty Limited (ACN 626 360 101) (“WelcomeMat” or the “Company”) at <https://www.welcomemat.com.au> (the “Website”). WelcomeMat makes this service available to approved providers of affordable rental housing via the Website in accordance with these terms and conditions (“Terms”).

### TERMS AND CONDITIONS

#### 1. Definitions and Interpretation

1.1 In these Terms, unless the context otherwise requires or permits:

“**Affordable Rental Housing**” means housing that is leased (or available for lease) at a rent that is at least 20% below market rent, but exclusive any crisis accommodation, transition, public or social housing unless approved by the Company;

“**Authorised Person**” means any person who is authorised or permitted by the Housing Provider to use the Service on behalf of such Housing Provider, including the Housing Provider’s officers, employees and contractors and anyone else who purports to act on behalf of the Housing Provider;

“**Business Day**” means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in NSW, Australia;

“**Business Hours**” means 9:00am to 5:00pm AEDT on a Business Day;

“**Confidential Information**” means, in respect of each party (a **Disclosing Party**), all:

- (a) information which is proprietary to, about or created by the Disclosing Party including, without limitation, any business plans, pitches, marketing, branding, forecasts, staffing, recruitment and all other information which is used or created by the Disclosing Party in relation to its business;
- (b) information which is designated as being Confidential Information by the Disclosing Party;
- (c) information which from all the relevant circumstances could reasonably be assumed by the other party to be confidential and proprietary to the Disclosing Party or to any third party with whose consent or approval the Disclosing Party uses that information;
- (d) any such information which is commercially sensitive or price sensitive; and
- (e) the provisions and subject matter of these Terms;

“**Force Majeure Event**” means strikes, lock-outs, or other labour disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, computer downtime, disruptions to public utilities, nuclear disasters or default of a common carrier;

“**GST**” means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended);

“**Harmful Effects**” means “back door”, “time bomb”, “logic bomb”, “Trojan Horse”, “worm”, “drop dead device”, “DoS attacks”, “DDoS attacks”, “virus” or any other malware, spyware or computer software routine having the effect of permitting unauthorised access to or use of any of the Company’s systems, networks or software or Housing Provider Data, and disabling, damaging, corrupting, interrupting or erasing, or disrupting or impairing the normal operation of any part of the Company’s systems, networks or software or Housing Provider Data;

“**Housing Applicant**” means an individual who registers via the Website to use the Service to search, and submits applications in respect of, Listed Properties.

“**Housing Application**” means an application for a Listed Property made by a Housing Applicant;

“**Housing Provider**” means a provider of properties that has accepted these Terms;

“**Housing Provider Data**” means all data and information (whether or not Confidential Information) that is provided to, or collected by, the Company, or submitted by Housing Providers to the Website and/or the Company in connection with the provision of the Service to the Housing Provider in whatever form such information may exist and which is provided to the Company in relation to these Terms, and includes any:

- (a) data or information relating to the Housing Provider’s services, property portfolio or Listings;
- (b) data or information belonging to the Housing Provider, such as any formulas, algorithms, methodologies, statistics, measurements or notes that are provided by the Housing Provider to the Company;
- (c) data or information relating to Listed Properties, including information about the location, type and description of the housing and any photos, diagrams and images of or relating to the housing;
- (d) such data or information provided by, or collected from, a third party at the Housing Provider’s direction or request;
- (e) database in which such data or information is contained;
- (f) documentation or records related to such data or information; and
- (g) products resulting from the use or manipulation of such data or information,

regardless as to whether such data or information is provided by, or collected from, the Housing Provider;

“**Intellectual Property Rights**” means any and all intellectual and industrial property rights subsisting in any part of the universe in any and all media (whether now known or created in the future) including, without limitation, rights in the nature

of copyright, registered design or other design right, trade mark, patent rights, circuit layout rights, trade secrets and any corresponding proprietary rights (whether registered or common law) under the laws of any jurisdiction;

“**Listed Property**” means property owned, controlled or managed by a Housing Provider and displayed on the Website;

“**Listing**” means an advertisement for a property available for rent on the Website;

“**Pass-Through Provision**” is defined in clause 6.1;

“**Personal Information**” has the same meaning as is defined in the Privacy Act;

“**Privacy Act**” means the *Privacy Act 1988* (Cth);

“**Privacy Policy**” means the WelcomeMat privacy policy (available at [INSERT LINK]), as is updated from time to time;

“**Sales Tax**” means the applicable tax(es) chargeable by the Company in respect of supplies made under these Terms in the relevant jurisdiction, including GST in respect of supplies made in or referable to Australia;

“**Sensitive Information**” has the same meaning as is defined in the Privacy Act;

“**Service**” means the services provided by the Company to Housing Providers via the Website under these Terms as further described in clause 4.1; and

“**Service Fees**” means all fees and charges payable by the Housing Provider to the Company under these Terms as notified by the Company to Housing Provider, and as may be revised by Company from time to time.

“**WelcomeMat Account**” means the account set up by Company to enable Housing Provider to access and use the Service after the Company has accepted Housing Provider’s Application.

1.2 In these Terms, unless the context otherwise requires or permits:

- (a) references to the singular includes the plural and vice versa;
- (b) references to a party will include as the context requires that party’s respective agents, representatives, advisors, subcontractors, executors, administrators and successors;
- (c) the words “including” and “includes” and similar words are not words of limitation; and
- (d) a provision of these Terms is not to be construed adversely against a party solely on the ground that the party or its solicitors were responsible for the preparation of these Terms or of a particular provision of these Terms.

## 2. Acceptance of Terms

2.1 In completing and submitting the Application specified in clause 3.1 below to the Company, the Housing Provider:

- (a) represents and warrants that it has authorised the Authorised Person to submit the Application to WelcomeMat on the Housing Provider’s behalf;
- (b) confirms that it has read and understood these Terms and the Privacy Policy; and
- (c) confirms that it agrees to be bound by these Terms and the Privacy Policy.

## 3. Application

3.1 In order to access and use the Service, a prospective Housing Provider must submit an application (“**Application**”) to the Company via the Service.

3.2 The Company’s online application process will require the Housing Provider to provide information in relation to its provision of Affordable Rental Housing and related services, and a copy or link to the Housing Provider’s privacy policy.

3.3 Normally, the Company will only consider Applications from:

- (a) government entities and not-for-profit organisations that provide or manage Affordable Rental Housing, such as community housing providers; and
- (b) National Rental Affordability Scheme (NRAS) approved participants and their appointed property managers.

The Company may, in its absolute discretion, allow a private property owner or developer (and their property managers) to advertise rental properties on the Website (subject always to its right to withdraw the approval at any time thereafter and terminate the agreement after 10 Business Days’ notice and end the Service to that party). For the sake of clarity, a not-for-profit community housing provider that manages Affordable Rental Housing on behalf of a private property owner or developer falls within the description of clause 3.3(a).

3.4 The Company will endeavour to review Applications within two (2) Business Days of receipt of a fully completed Application and as soon as practicable thereafter notify the Housing Provider by email as to whether the Company accepts the Application and approves the Housing Provider to use the Service.

3.5 If the Company accepts the Application, the Company will grant the Housing Provider access to the Service and the Website in accordance with these Terms. The Company will notify the Housing Provider of its acceptance or non-acceptance of its Application via email sent to the email address provided by the Housing Provider in its Application. Key commercial terms that apply to Housing Provider’s use of the Service, such as Listing term and pricing, and information relating to Housing Provider’s WelcomeMat Account will be included in the acceptance email.

3.6 For the sake of clarity, if the Housing Provider was (at the date of approval) a not-for-profit organisation that provides or manages Affordable Rental Housing, or a NRAS approved participant or its appointed property manager, but subsequently

ceases to be any of these, then the Company may, in its absolute discretion, terminate the agreement between the parties and the Housing Provider will thereafter not have access to the Service. The Housing Provider must notify the Company within 10 Business Days of the Housing Provider ceasing to be within the categories listed above.

#### **4. The Service**

4.1 The Service has the following primary features:

- (a) it allows Housing Providers to submit Listings for publication on the Website;
- (b) it allows Housing Applicants and other Website users to search for suitable Listings and to view available details of particular Listed Properties and for Housing Applicants to complete and submit a Housing Application in respect of a particular Listed Property;
- (c) it forwards completed Housing Applications to the relevant Housing Providers for assessment;
- (d) it enables Housing Applicants to monitor the progress of their submitted Housing Applications;
- (e) it enables Housing Providers to manage and shortlist submitted Housing Applications and communicate with Housing Applicants in respect of such Housing Applications; and
- (f) such other capabilities as the Company may make available to the Housing Provider from time to time.

#### **5. Provision of the Service generally**

5.1 The Company shall provide the Service:

- (a) using reasonable skill and care; and
- (b) in accordance with any applicable laws.

5.2 The Housing Provider acknowledges and agrees that:

- (a) the Service is intended to support the Housing Provider's existing business operations only and should not be used, or relied upon, as a replacement or a substitute for any existing services or business operations that are used by the Housing Provider;
- (b) the Company is not responsible for managing the Housing Provider's portfolio of Listed Properties or for assessing Housing Applications;
- (c) it may only use the Service and Website in accordance with these Terms;
- (d) all rights, title and interests in the Service not expressly granted or licensed to the Housing Provider in accordance with these Terms are reserved to the Company;
- (e) it does not have any exclusivity in relation to the listing of properties on the Website;
- (f) it will make its own independent assessment of the eligibility of Housing Applicants that submit Housing Applications for its Listed Properties via the Service and rely on its own enquiries and investigation, and not rely on the data provided by the Company to the Housing Provider as part of the Service when making such assessments;
- (g) the Company is not responsible for verifying information provided by Housing Applicants or for ensuring that Housing Applications are properly or fully completed or that they are completed accurately or truthfully;
- (h) it will delete from its files, records or database any Personal Information and Sensitive Information it has obtained from unsuccessful Housing Applicants via the Service after the Listed Property has been allocated to the successful Housing Applicant. For the sake of clarity, if none of the Housing Applicants referred to the Housing Provider via the Service is allocated the Listed Property during the term of the Listing, then all of them are deemed to be unsuccessful Housing Applicants for the purposes of this clause 5.2.

5.3 Unless otherwise expressly stated to the contrary in these Terms, the Company may update, upgrade or patch the Website and the Service from time to time without notice or liability to the Housing Provider.

5.4 In relation to the Service, the Housing Provider must not, directly or indirectly:

- (a) use the Service and/or the Website in a way that is, in the opinion of the Company, deemed to be excessive or unreasonable having regard to the purpose for which the Service and/or the Website are provided to the Housing Provider and the Company's other customers;
- (b) reverse-engineer, decompile, translate or disassemble the Service;
- (c) bypass, or attempt to bypass, any security features of the Service and/or the Website, or introduce, upload or transmit any Harmful Effects to the Service;
- (d) copy, reproduce, distribute, publish or otherwise use the Service and/or the Website in any manner or for any purpose not expressly authorised by these Terms;
- (e) provide any third party with access to the Service and/or the Website other than as expressly permitted under these Terms;
- (f) present properties as Listed Properties on the Website which are not owned, controlled or managed by the Housing Provider;
- (g) retain copies of the names and contact details of unsuccessful Housing Applicants that have submitted Housing

Applications via the Service in respect of a Housing Provider's Listing, after such Listing has been successfully tenanted by the Housing Provider, for the purpose of securing tenants for the Housing Provider's other properties. For the avoidance of doubt, Housing Providers are required to submit a new Listing on the Website if they wish to advertise or offer such other properties to Housing Applicants sourced through the Service, and retaining Personal Information and Sensitive Information such as the names and contact details of unsuccessful Housing Applicants for the purpose of offering such applicants alternative rental properties is a breach of the Company's Privacy Policy and contrary to Australian Privacy Principles.

- (h) challenge or repudiate or take any action to impair, prejudice or diminish the Company's Intellectual Property Rights in the Service;
- (i) remove or interfere with any copyright or trade mark notices contained within the Service and/or the Website and/or in any materials made available to the Housing Provider via the Website;
- (j) demonstrate the Service and/or the Website for the purpose of engaging a person to replicate the functionality or features contained in the Service;
- (k) modify any documentation, manuals or other materials provided or made available by the Company in relation to the Service; or

upload anything that is offensive, obscene or defamatory (upon which the Company may remove from the Website by the Company without notice to the Housing Provider).

- 5.5 The Housing Provider must immediately notify the Company in writing of any breach or alleged breach of any rights, including but not limited to the Company's Intellectual Property Rights, in or to the Service and/or the Website by any third party of which the Housing Provider becomes aware and cooperate with the Company in relation to any investigation or action that the Company takes, or seeks to take, to protect or enforce its rights. The Housing Provider must also immediately notify the Company if it becomes aware of a breach or potential breach of security protocols relating to the Service, including the introduction of any Harmful Effects, and promptly follow any instructions from the Company to rectify the relevant breach or introduction of the Harmful Effects and/or to mitigate its effects.
- 5.6 The Housing Provider must comply with the directions and instructions of the Company in relation to the use of the Service, and follow any instructions of the Company to enable the Company to protect against the unauthorised access and use of the Service and/or the Website by a third party.
- 5.7 For the avoidance of doubt, the obligations and restrictions on the Housing Provider under this clause 5 are essential terms of these Terms and entitle the Company to exercise all rights that are available in respect of a breach of an essential term as construed under the general law.

## **6. Housing Provider Obligations**

6.1 The Housing Provider must:

- (a) except as otherwise provided in these Terms, procure or arrange for the provision of goods and services by any affiliates, at its own cost, for the purposes of using the Service, and comply with any technical requirements and instructions given to it by the Company in that respect;
- (b) secure and back-up its Housing Provider Data if it deems that to be necessary or appropriate, regardless of whether such Housing Provider Data has been stored, transmitted or uploaded to the Service and/or the Website or otherwise provided to the Company;
- (c) ensure that usernames and passwords used in relation to the Service are stored in a secured manner at all times and are only disclosed to Authorised Persons;
- (d) provide the Company with sufficient information, including rental property details and Housing Provider Data, within the Housing Provider's possession or control which is reasonably required by the Company for the purpose of the performance of these Terms, including to satisfy the Company that none of the Listings are for a rent that is not at least 20% below market rent;
- (e) make available to the Company, on reasonable notice, for consultation and guidance staff who are familiar with the Housing Provider's organisation, operations and business practices to the extent reasonably necessary for the performance of these Terms;
- (f) ensure that each and every Authorised Person must comply with any and all terms and conditions in these Terms that governs the access to and use of the Service (the "Pass-Through Provisions"), including the matters in clauses 5 (Provision of the Service generally) and 9 (Privacy and Confidentiality); and
- (g) ensure that its Authorised Persons manage its WelcomeMat Account and Listings in a professional manner, including reviewing Housing Applications in a timely manner, responding to questions from Housing Applicants and accepting or not accepting Housing Applicants as successful tenants within reasonable timeframes.

6.2 The Housing Provider must not:

- (a) use the Service in any manner that violates any person's right of privacy or confidentiality, including by way of collecting Personal Information and Sensitive Information about a third party, including Housing Applicants, without obtaining their consent;
- (b) infringe, or risk the infringement of, the Intellectual Property Rights or moral rights of another person;
- (c) erase or falsify any information or data, including Housing Provider Data;

- (d) discriminate against, defame, slander or undermine the good name of another person, including the Company or facilitate, assist or encourage such conduct by a third party;
- (e) discriminate against Housing Applicants on grounds or in a manner that is not legally permitted; or
- (f) compel another person to perform actions or make omissions proscribed by these Terms.

6.3 For the avoidance of doubt, any acts or omissions of an Authorised Person in relation to or in connection with the Service will be deemed to be the acts or omissions of the Housing Provider for the purposes of construing these Terms, and a failure by an Authorised Person to comply with any of the Pass-Through Provisions will be deemed to be a breach of the relevant term or condition of these Terms by the Housing Provider.

## **7. Payments & Invoicing**

7.1 After the Housing Provider has been granted access to the Service pursuant to clause 3.4 above, the commencement of Housing Provider's use of the Service constitutes the Housing Provider's acceptance of, and agreement to pay, the Service Fees as required under these Terms.

7.2 The Housing Provider must pay the Service Fees due to the Company, time being of the essence. The requirement to pay the Service Fees within the time limit(s) as set out in these Terms is an essential term of these Terms and entitles the Company to exercise all rights that are available in respect of a breach of an essential term as construed under the general law. The Company will invoice Housing Provider on a monthly basis and all Service Fees due and payable by the Housing Provider under these Terms must be paid within fourteen (14) days of receipt by the Housing Provider of the Company's invoice.

7.3 The Housing Provider's obligation to pay the full advertising fee set by Company for a Listing arises at the time the Listing is first displayed on the Website. For the avoidance of doubt, if a successful Housing Applicant is identified by the Housing Provider for a Listed Property before the full term of the Listing, Housing Provider is still required to pay the full advertising fee for the Listing.

7.4 If the Housing Provider disputes any invoice (or part thereof), it must provide written notice thereof to the Company within seven (7) days of receipt of the relevant invoice, including an explanation of the dispute, and the parties shall, in good faith, attempt to resolve such dispute as soon as reasonably practicable. Nothing in this clause exempts the Housing Provider from paying the disputed invoice (or the disputed portion of such invoice) during the period of such dispute.

7.5 If an invoice has been issued to the Housing Provider, and the Housing Provider has failed to pay undisputed amounts in such invoice within the relevant date for payment, then in addition to any other rights the Company may have under these Terms, interest shall be chargeable by the Company on such late payment by the Housing Provider, and such interest rate shall be three (3) percent per month above the applicable cash rate for that period as published by the Reserve Bank of Australia from time to time and shall be compounded daily from the date for payment.

7.6 The parties acknowledge and agree that:

- (a) unless otherwise expressly stated in these Terms, the consideration due or payable for any supply of any goods, services or any other things under these Terms, including the Service Fees, has been calculated without regard to, and is exclusive of, any Sales Tax;
- (b) if any Sales Tax is imposed on any supply made under these Terms, the supplying party, the Company, may recover from the recipient party, the Housing Provider, in addition to any consideration payable for the supply, the amount of Sales Tax provided that the supplying party has provided to the recipient party an invoice; and
- (c) if the recipient party is required to pay any amount of Sales Tax in accordance with this clause 7 or in connection with any goods, services or any other things under these Terms, the recipient party will pay the amount of Sales Tax at the same time as the consideration is due for the supply of goods, service or any other thing under these Terms.

7.7 The Housing Provider agrees to pay the Service Fees in Australian Dollars by electronic funds transfer into the Company's bank account as notified by the Company from time to time.

7.8 All amounts due under or in relation to these Terms are non-refundable and shall be paid in full without any deduction, set-off or withholding other than as required by law and the Housing Provider shall not be entitled to assert any credit, set off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.

## **8. Housing Provider Data**

8.1 The Company acknowledges and agrees that as between the Company and the Housing Provider, the Housing Provider is the legal owner of the Housing Provider Data provided by the Housing Provider, and the Company has no rights or interest in the Housing Provider Data other than as set out in these Terms for the purposes of providing the Service to the Housing Provider. The Company will endeavour to protect the security of the Housing Provider Data as required under these Terms to the extent that the protection of the Housing Provider Data is within the control of the Company. Whilst the Company may store and back-up the Housing Provider Data that is transmitted or uploaded onto the Website as part of an incidental process of providing the Service, the Service is not a general data storage or back-up service, and the Company is not required to extract or provide copies of the Housing Provider Data to the Housing Provider merely because of a request from the Housing Provider or it is convenient for the Housing Provider.

8.2 In relation to Housing Provider Data that is in the possession or control of the Company, the Company agrees, unless otherwise permitted under these Terms, not to:

- (a) use any Housing Provider Data other than for the purposes of fulfilling its obligations under these Terms;

- (b) sell, let for hire, assign rights in or otherwise dispose of or exploit any Housing Provider Data; or
- (c) alter the Housing Provider Data in any way, other than in the course of providing the Service;

provided, however, the Company shall be permitted to use aggregated, anonymised data derived from Housing Provider Data submitted to the Company by Housing Providers to enable the Company to provide the Service, to create, prepare and build reports and databases for internal use by the Company or for external use by third parties for no charge or for fees to be determined at the sole discretion of the Company. For the avoidance of doubt, the use of data under this clause 8.2 includes (i) for purposes of marketing and promotion of the Company, and (ii) the collection and analysis of supply and demand data to assist with advocacy, town planning and increasing the supply of community housing.

8.3 In relation to the Housing Provider Data, the Housing Provider hereby warrants at all times that:

- (a) the Housing Provider has the necessary legal rights, consent, authority or permission in the Housing Provider Data to provide or make available the Housing Provider Data to the Company, to transmit or upload the Housing Provider Data to the Website and/or to use the Housing Provider Data with the Service;
- (b) it will procure from a third party the provision of such Housing Provider Data to the Company as is reasonably necessary for the provision of the Service by the Company;
- (c) the Housing Provider Data is, and will be at all times, accurate, correct, valid, truthful and reliable;
- (d) the Housing Provider Data is suitable to be used with the Service;
- (e) the Housing Provider Data will be provided in a form that is acceptable by the Company and/or as required by the Service; and
- (f) the use of the Housing Provider Data with the Service will not infringe the rights of any third party or otherwise give rise to any liability to, or claims by, a third party.

8.4 The Housing Provider hereby acknowledges and accepts that it must exercise its own judgment in relation to the suitability or appropriateness of the Housing Provider Data that is provided to the Company for use with the Service, especially when using or choosing to rely on those matters.

## 9. Privacy and Confidentiality

### Privacy

9.1 Where the Housing Provider Data contains Personal Information or Sensitive Information (together, "**Protected Information**"), and the Protected Information is created, uploaded, stored, or transmitted to, by or via the Service, or a copy of which is provided to the Company pursuant to these Terms, the parties must each take reasonable steps to protect that information in accordance with the "Australian Privacy Principles" as contained in Schedule 1 to the Privacy Act and any other applicable privacy laws related to the handling of Protected Information. Each party agrees to comply with, and ensure that its personnel (including officers, employees and subcontractors), comply with the requirements of this clause.

9.2 The Housing Provider must:

- (a) only collect, hold, use and disclose Protected Information obtained through the Service for the primary purpose of providing services in relation to the Housing Applicant's Housing Application or as otherwise expressly permitted by the Company or the Housing Applicant or as may be reasonably necessary to assess and respond to the Housing Applicant in relation to the Housing Application;
- (b) as part of Housing Provider's Application, provide a copy of, or link to, the Housing Provider's privacy policy that is compliant with the Australian Privacy Principles to the Company, for the Company to make available to a Housing Applicant at the time that a Housing Applicant submits a Housing Application; and
- (c) notify Company of any updates to its privacy policy and provide Company with a link to the updated privacy policy.

9.3 The Housing Provider undertakes to not use, copy, disclose, remove from the Service, or in any way deal with outside of the Service, Protected Information except as is directly connected with negotiating and facilitating the Housing Applicant entering into a residential lease with a housing manager or housing owner. For the avoidance of doubt the Housing Provider undertakes to not use, copy, disclose, remove from the Service or in any way deal with outside of the Service Protected Information of Housing Applicants who apply for but are not successful in their Housing Application.

9.4 Further in relation to the Privacy Act:

- (a) the Housing Provider must comply with the obligations set out in Part IIIC (Notification of Eligible Data Breaches) of the Privacy Act in relation to the Protected Information, including the obligations to prepare a statement about an **eligible data breach** under Section 26WK of the Privacy Act and the notification requirements under Section 26WL of the Privacy Act, and provide timely reports to the Company in that respect;
- (b) to the extent the Company is aware that there are reasonable grounds to suspect that there may have been an **eligible data breach** (as that term is defined in Section 26WE of the Privacy Act) in relation to the Protected Information or is otherwise aware that there are reasonable grounds to believe that the relevant circumstances amount to an **eligible data breach** in relation to the Protected Information (in either event, being an "**Incident**"), the Company may notify the Housing Provider of the Incident, including by providing any relevant details relating to the Incident, and the Housing Provider must comply with its obligation in relation to the Incident and provide timely reports to the Company in that respect;
- (c) the Housing Provider will assume all obligations in relation to an **eligible data breach** concerning the Protected Information for the purposes of Part IIIC of the Privacy Act and any other obligations that may arise under the

Privacy Act and the general law concerning the Protected Information, and the Housing Provider's obligations under clause 9.4(a) and this clause 9.4(c) apply regardless of whether the Company may have any similar or equivalent obligations under the Privacy Act;

- (d) the Company will provide the Housing Provider with reasonable assistance and cooperation to assist the Housing Provider's compliance with clauses 9.4(a) to 9.4(c) above;
- (e) the Housing Provider is taken to hold, and is treated as holding, the Protected Information for the purposes of the Privacy Act; and
- (f) *Notwithstanding* clauses 9.4(a) to 9.4(c) above, the Company may at its sole discretion decide to assume all of the obligations in relation to the *eligible data breach* for the purposes of Part IIIC of the Privacy Act and any other obligations that may arise under the Privacy Act and / or the general law and in which case the Company will notify the Housing Provider in writing of its decision. The Housing Provider agrees to use all reasonable endeavours to assist and co-operate with the Company in the discharge of the Company's obligations under this clause 9.4(f) including providing information, taking steps or undertaking acts that may be reasonably required by the Company to meet these obligations.

## **Confidentiality**

9.5 The Housing Provider agrees at all times during and for so long as is legally permissible after the Term to keep confidential the Confidential Information of the Company and will not disclose or discuss the same without the prior written approval of the Company, except:

- (a) as specifically provided by these Terms;
- (b) to the extent permitted or required by law;
- (c) to the extent required to perform any of the Housing Provider's obligations under these Terms;
- (d) to the extent required to instruct Housing Provider's professional advisers in relation to the preparation, completion and performance of these Terms;
- (e) where the information is or becomes public knowledge, but not if it is because the Housing Provider has contravened a confidentiality obligation under this clause 9.5, and such public knowledge is notified and agreed in writing by the Company;
- (f) where the information was known to the Housing Provider before the date of these Terms and such prior knowledge is notified and agreed in writing between the parties; or
- (g) where the information becomes known to the Housing Provider after the commencement of the Term other than as the result of a breach of duty of confidentiality to the Company and such subsequent knowledge is notified and agreed in writing between the parties.

9.6 The Housing Provider must not sell, transfer, assign or otherwise dispose of or grant any licence in relation to any Confidential Information or make available copies (whether by photocopying, photographic reproduction or by electronically recorded data) of any Confidential Information to any person other than with the prior written consent of the Company.

## **10. Warranties**

10.1 The Housing Provider hereby warrants, represents and undertakes to the Company that it:

- (a) is aware that it is the Company's intention that the Website only has Listings of Affordable Rental Housing;
- (b) will not knowingly or negligently have a Listing at a rent that is not at least 20% below market rent;
- (c) has the full right, power and authority to enter into and perform these Terms and to grant and license all rights and benefits hereby granted and licensed to the Company;
- (d) will not do anything which violates or infringes the rights, title or interest, including the Intellectual Property Rights, of the Company;
- (e) will not do anything which may embarrass the Company or bring the Company into disrepute; and
- (f) will comply with any laws, regulations, standards and guidelines applicable to the provision or use of the Service as the case may be.

## **11. Limitation of Liability**

11.1 To the maximum extent permitted by law, the Service is provided "as is" and all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise) that are not expressly contained in these Terms are excluded.

11.2 Due to the nature of the Service, the Company cannot warrant or guarantee that the Service will be free from interruption, downtime or error, including downtime caused by scheduled maintenance of any equipment or software. To the extent there is such an interruption, downtime or error, the Housing Provider's sole remedy is, where appropriate, for the Company to rectify the error, investigate and introduce (if reasonable in the circumstances) measures to prevent the occurrence of such an interruption, downtime or error in the future and/or provide the Housing Provider with one or more solutions regarding the prevention or mitigation of the effects of such interruption, downtime or error (whether occurring in the past, present or future).

- 11.3 Subject to clauses 11.4 to 11.7 below, to the maximum extent permitted by law, the liability of the Company to the Housing Provider for all claims under, arising from, or in relation to a term or condition in these Terms or its subject matter, regardless of form of action, whether in contract, tort (including negligence), under product liability and consumer protection legislation, under any other statute or regulation, breach of warranty or other legal or equitable grounds (including in each case negligence) ("**Claims**"), shall be limited as follows:
- (a) the maximum aggregate liability shall under no circumstances exceed the Service Fees paid by the Housing Provider in the twelve (12) months leading up to the date on which the relevant Claim first accrues; and
  - (b) despite sub-paragraph (a) above, in relation to Claims arising in respect of the Housing Provider Data, including the loss, damage or corruption of the Housing Provider Data: the only liability of the Company shall be, at the Company's election, to reconstruct or recover the relevant Housing Provider Data (or so much of it as possible in the circumstances), to provide a copy of the relevant Housing Provider Data to the Housing Provider, to pay to the Housing Provider the reasonable costs required to recover or reconstruct (but not to re-collect) the relevant Housing Provider Data and/or a combination of the aforementioned matters.
- 11.4 The Housing Provider acknowledges and agrees that the Company shall not be liable for any damage or loss suffered by the Housing Provider as a result of the failure or unavailability of the Service as a result of or caused by (although not being the sole cause) any of the following:
- (a) scheduled maintenance outside Business Hours, emergency maintenance during Business Hours or any other scheduled update, upgrade or patching of the Website or the Service;
  - (b) the Company's performance of these Terms in accordance with these Terms;
  - (c) the occurrence of a Force Majeure Event;
  - (d) orders from government or judicial institutions to halt business activities;
  - (e) a breach of these Terms by the Housing Provider (or, and by extension, a breach of the Pass-Through Provisions by any Authorised Persons);
  - (f) use or reliance on the Service in contravention of these Terms; and
  - (g) the use of the Service or the Housing Provider Data by unauthorised third parties not due to a breach by the Company of these Terms.

Save for the exception provided below, in no event will the Company have any liability to the Housing Provider in contract, tort (including negligence) or otherwise arising under in connection with this agreement, and the Housing Provider hereby waives and releases any claims it might otherwise have to be compensated for in respect of any of the following:

- (a) loss of revenue, loss of profit, loss of goodwill, loss of reputation, loss of anticipated savings, loss of business, loss of contracts;
  - (b) any indirect, special or consequential loss or damage; and
  - (c) to the extent any loss or damage is caused or contributed to by the Housing Provider, even if the Company on whose part liability is alleged has been advised of the possibility of such losses or damages.
- 11.5 The Housing Provider shall use its reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by it under or arising out of these Terms.
- 11.6 Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the *Competition and Consumer Act 2010* (Cth) and corresponding provisions of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the purchasers of goods and services in various circumstances.
- 11.7 If any condition, statutory guarantee or warranty is implied into these Terms or applies by operation of law (which may include the *Competition and Consumer Act 2010* (Cth) and corresponding provisions of State or Territory legislation) and cannot be excluded but the Company is able to limit its liability for a breach of such condition, statutory guarantee or warranty, the liability of the Company for breach of that condition, statutory guarantee or warranty is limited, to the extent permitted by law, at the Company's discretion, to:
- (a) in the case of goods: the replacement or repair of goods; or the supply of equivalent goods; or the payment of the cost of replacing the goods or having the goods repaired or of acquiring equivalent goods; and
  - (b) in the case of services: the supply of the services again or the payment of the cost of having the services supplied again.

## 12. Term and Termination

- 12.1 The agreement between the Company and the Housing Provider governed by these Terms will commence on the date that the Company accepts Housing Provider's Application, and, subject to earlier termination pursuant to this clause 12, will continue in force unless and until terminated by one party giving to the other party not less than six (6) week's written notice to that effect pursuant to clause 12.6 (the "**Term**").
- 12.2 The Company may, by written notice to the Housing Provider, terminate these Terms and suspend provision of the Service (or part of the Service) to the Housing Provider if:



- (a) the Housing Provider breaches these Terms and such breach is either incapable of remedy or the Housing Provider fails to remedy such breach (and provide satisfactory evidence of such remedy to the Company) within ten (10) Business Days of receiving a notice in writing from the Company party specifying the action required of the Housing Provider to remedy the breach;
- (b) the Housing Provider has not made a payment due under these Terms by the relevant due date or time for payment, the Housing Provider is given notice of such failure to pay, and fails to make the due payment within seven (7) days of receipt of such notice;
- (c) the Housing Provider has a liquidator or provisional liquidator appointed to it;
- (d) the Housing Provider resolves to wind up or is subject to an order to wind up (other than for voluntary reconstruction);
- (e) the Housing Provider has a receiver appointed to it or in respect of a substantial proportion of its assets or undertakings; or
- (f) a court or tribunal makes an order that the Housing Provider be wound up in insolvency, unless the Housing Provider successfully appeals such order,

and such termination becomes effective on the date that it is given to or served on the Housing Provider.

12.3 For the avoidance of doubt, the rights of termination under clause 12.1 above are in addition to any other rights remedies (including a right to terminate) the parties may have under the general law which are not expressly excluded by these Terms.

12.4 We reserve the right to suspend or terminate your access to the Website, to remove any or all of your Listings from the Website, and to terminate this agreement at any time for any reason (or for no reason).

12.5 Upon termination or expiration of these Terms for whatever reason:

- (a) the Housing Provider must cease using the Service immediately;
- (b) the Company shall be entitled to take all action as will result in the Housing Provider no longer being able to use or access the Service;
- (c) the Housing Provider must do all things necessary, and as directed by the Company, to stop using the Service;
- (d) the Company may retain the Housing Provider Data to the extent required by any law, regulation or an industry code of practice;
- (e) the Company will, upon request by the Housing Provider, supply a copy of any Housing Provider Data that is in the Company's possession in a format which is reasonably convenient to the Company;
- (f) the Company will not have any further obligations to the Housing Provider under these Terms and is not otherwise required to provide any assistance to the Housing Provider for the purposes of migrating or transitioning to another service, system or software; and
- (g) the Housing Provider must pay to the Company any Service Fees that are due and payable by the Housing Provider up to the day that notice referred to in clause 12.2 above is given by the Company to the Housing Provider.

### **Termination for convenience**

12.6 Either party may terminate these Terms by giving six (6) weeks ("Notice Period") written notice to the other party and such termination will take effect from the end of the Notice Period, but subject always to, upon service of a written notice to terminate these Terms under this clause 12.6, the Company shall continue providing the Service and the Housing Provider shall continue paying the Service Fees for the duration of the Notice Period.

### **13. Dispute Resolution**

13.1 In the event of a dispute, controversy or claim ("**Dispute**"), arising out of or in connection with these Terms, including any question regarding its existence, validity or termination, but not a dispute relating to the Company's invoices and/or as referred to in clause 7.4 (disputed invoices) above, the party raising such Dispute must immediately notify the other party of the existence and nature of the Dispute by serving a notice on the other party setting out detailed particulars of the Dispute including, if appropriate, references to documents and provisions which relate to the Dispute, and the parties shall use their best endeavours to immediately resolve the Dispute amicably.

13.2 The parties agree that in the event of a Dispute, a party must not commence any court or arbitration proceedings relating to the Dispute until it has made reasonable attempts to resolve the Dispute with the other party as per clause 13.1 above, and not, in any case, before the expiration of twenty-one (21) days after the Dispute was notified to the other party.

13.3 Nothing in this clause prejudices the right of either party to seek urgent injunctive, interlocutory or declaratory relief from a court in connection with the Dispute without first having to attempt to resolve the Dispute in accordance with this clause 13.

13.4 For the avoidance of doubt, this clause 13 does not apply in relation to the payment or non-payment of any Service Fees under these Terms.

### **14. Marketing and promotion**

The Company may refer to, and use materials relating to, the Service provided by the Company to the Housing Provider

in the Company's marketing and promotional materials, including creating a brief overview or case study of the Service and/or listing the Housing Provider on the Company's website as a customer of the Company.

#### **15. Relationship of Parties**

The Company's relationship with Housing Provider will be that of independent contractors and suppliers. Neither the Company nor Housing Provider will have (and will not represent that it has) any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name. Nothing stated in these Terms will be construed as constituting the Company and Housing Provider as partners, or as creating the relationship of employer and employee, master and servant or principal and agent between the Company and Housing Provider.

#### **16. Force Majeure**

If a Force Majeure Event occurs which prevents or delays the performance by either party of any of its obligations pursuant to these Terms, such prevented or delayed performance will not be considered a breach of these Terms. In such event, the time for performance under these Terms will be extended for a reasonable period commensurate with the delay (and where applicable the parties will negotiate in good faith regarding additional compensation due to the Company based on increased costs, if any, incurred due to such Force Majeure Event).

#### **17. Notices**

All notices and consents required or permitted to be given under these Terms must be in writing and given by personal service, mail (postage prepaid) or facsimile (for which proof of sending is retained) to the parties at their address as follows or to such other address as either party may designate to the other by written notice:

- (a) WelcomeMat, at: Level 2, 11 York Street, Sydney NSW 2000; and
- (b) the Housing Provider, at the address provided in connection with the Application.

#### **18. Assignment**

The Housing Provider may not assign or otherwise transfer its rights or obligations under these Terms without prior written consent of the Company, such consent not to be unreasonably withheld. These Terms, including without limitation the rights, consents and waivers granted in these Terms, will ensure to the benefit each party and the successors, licensees and permitted assignees of each party.

#### **19. General**

- 19.1 These Terms may be amended, supplemented or updated by the Company from time to time, provided the Company gives five (5) business day's notice of such amendments, supplements or updates to the Housing Provider.
- 19.2 Any failure or delay by one party to compel performance by another party of any of the terms and conditions of these Terms does not constitute a waiver of those terms or conditions, nor does it affect or impair the right of the first party to enforce them against the other party at a later time or to pursue remedies it may have for any subsequent breach of those terms or conditions.
- 19.3 A waiver by a party of a provision or of a right under these Terms is only binding on the party granting the waiver if it is given in writing signed by that party and is only effective in the specific instance and for the specific purpose for which it is given.
- 19.4 A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of any other right.
- 19.5 A party may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless these Terms expressly provides otherwise.
- 19.6 These Terms constitute the full and complete agreement between the parties relating to the subject matter contained in these Terms and supersedes any and all previous agreements, understandings, negotiations and representations between the parties in respect of all matters dealt with in these Terms.
- 19.7 Any provision of these Terms which is prohibited, unenforceable or invalid in whole or in part is only ineffective to the extent of the prohibition, unenforceability or invalidity and this does not affect the remaining part of that provision or the other provisions of these Terms, which will continue in full force and effect.
- 19.8 The terms of these Terms are governed by and construed in accordance with the laws of the State of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia.