

## TERMS AND CONDITIONS

By clicking the 'I accept' button or otherwise submitting the Order, the Customer agrees that they have read, understood and will be bound by these Terms.

### 1 Dictionary

In these Terms, the words below have the following meanings:

**Accommodation** means the PHS Accommodation and Third Party Accommodation.

**Agreement** has the meaning provided to it in clause 2.2.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

**Business Day** means any day except a Saturday, Sunday or public holiday in Victoria.

**Confidential Information** means all information disclosed by PHS to the Customer but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than PHS (otherwise than as a result of a breach of confidentiality by the Customer or any person to whom it has disclosed the information); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of the Agreement.

**Consequential Loss** means:

- (a) any loss beyond the normal measure of damages; and
- (b) indirect loss, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunities.

**Consumer** has the meaning provided to it in section 3 of the Australian Consumer Law.

**COVID** means the pandemic and / or public health emergency arising from the virus and respiratory illness known as COVID and any associated strain, variety or mutation of that virus or illness, including all associated states of emergency, public health directives and other related State or Commonwealth government directions or laws.

**Customer** means the entity or person requesting that Goods and/or Services be supplied to it by PHS.

**Delivery Fee** means the delivery or freight fee set out in the Order or otherwise specified in the Terms.

**Force Majeure Event** means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including but not limited to fire, flood or adverse weather conditions such as high wind or heavy rainfall, and COVID.

**Freedom Wristband** means a wristband issued or supplied by PHS which can be preloaded with funds, or linked with a stored credit card, which can be used to acquire goods or services from PHS at the PHS Premises.

**Gift Certificate** means a prepaid gift certificate which the holder of the certificate can redeem for the goods and / or services set out in the certificate or an alternative good or service of equal or greater value if specific goods or services are no longer or not available at any Peninsula Hot Springs Group location.

**Goods** means the goods specified in the Order which are to be supplied by PHS to the Customer under the Agreement.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

**Guest** means the Customer and any person whom accompanies the Customer onto the PHS Premises or on whose behalf the Customer has acquired any Services.

**Intellectual Property Rights** means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

**Invoice** has the meaning provided to it in clause 4.2.

**Loss** means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

**MAHS** – means Maruia Hot Springs Ltd NZBN 9429041333556

**MEHS** means Metung Hot Springs Pty Ltd ABN 54 636 276 090

**Offer** has the meaning provided to it in clause 2.1.

**Order** means the order submitted:

- (a) at the PHS Premises; or
- (b) through the website located at <https://www.peninsulalahotspings.com>

by the Customer to PHS for PHS to supply to the Customer Goods and/or Services.

**PDH Goods or Services** means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

**PHS** means Peninsula Hot Springs Management Pty Ltd in its capacity as trustee for Peninsula Hot Springs Management Trust (ABN 13 100 134 961)..

**PHS Accommodation** means overnight accommodation operated by PHS at premises located in or around the PHS Premises.

PHS Group Entities includes PHS, MEHS and MAHS

**PHS Premises** means the premises owned or occupied by PHS at 140 Springs Lane, Fingal, 3939, Victoria, Australia.

**Purchase Price** has the meaning provided to it in clause 4.1.

**Services** means the services specified in the Order which are to be supplied by PHS to the Customer under the Agreement, which may include Spa Services or the provision or procurement of Accommodation.

**Spa Services** means bathing, spa, wellness and other services which are provided by or on behalf of PHS at the PHS Premises.

**Terms** means these Terms and Conditions.

**Third Party Accommodation** means overnight accommodation at premises located in or around the Mornington Peninsula that is operated by a third party.

**Third Party Accommodation Terms** means the terms and conditions in respect of any Third Party Accommodation issued by the owner or operator of that Third Party Accommodation.

### 2 Formation of Agreement

- 2.1 The Customer acknowledges and agrees that by submitting the Order the Customer has made an irrevocable offer to PHS for PHS to supply it with the Goods and/or Services on the terms of these Terms and the Order (**Offer**).
- 2.2 An agreement will be formed between PHS and the Customer in respect of the Offer upon the earlier of PHS:
  - (a) notifying the Customer, either verbally or in writing, that it accepts the Customer's Offer;
  - (b) making delivery of the Goods the subject of the Offer to the Customer; or
  - (c) performing the Services the subject of the Offer, (**Agreement**).
- 2.3 The Agreement formed under clause 2.2 will comprise these Terms, the Order and the Invoice.
- 2.4 PHS is not bound to accept any Offer and may not accept any Offer for any reason and in the sole discretion of PHS.

### 3 Cancellation

- 3.1 PHS may cancel or suspend the Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where PHS believes (for any reason) that it will be unable to supply the Goods or provide the Services to the Customer, provided that if PHS cancels the Agreement under this clause 3.1 it will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject to the cancellation and which are not provided to the Customer. The refund of any such amounts will be the Customer's sole remedy against PHS in respect of any cancellation pursuant to this clause 3.1.
- 3.2 Subject to clauses 11.4 and 14.23, any Offer that has been submitted cannot be cancelled by the Customer except with the prior written consent of PHS and without prejudice to any other rights PHS may have, the Customer indemnifies PHS for any Loss incurred by PHS in connection with such cancellation.

### 4 Price and payment

- 4.1 Unless otherwise agreed by the parties, the price the Customer must pay for the Goods and/or Services under the Agreement will be:
  - (a) the price for the Goods and/or Services specified in the Order; and

(b) the Delivery Fee,  
as may be increased in accordance with clause 11.6 (**Purchase Price**).

- 4.2 PHS may invoice the Customer for the Purchase Price at any time following formation of the Agreement (**Invoice**).
- 4.3 Unless otherwise agreed in writing between the Customer and PHS the due date for payment by the Customer to PHS of the Purchase Price for the Goods and/or Services supplied pursuant to the Agreement is at the time of placing the Order.

## 5 GST

5.1 In this clause, words and expressions which are defined in the *New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act.

5.2 Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by PHS under these Terms, the Customer must pay to PHS, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify PHS for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that PHS will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by PHS in respect of the reimbursement or payment.

## 6 Delivery of Goods and provision of Services

- 6.1 PHS will deliver the Goods and provide the Services to the Customer in the manner:
- (a) determined by PHS; or
  - (b) as otherwise agreed between PHS and the Customer (including collection by the Customer).
- 6.2 PHS will endeavour, but is not obliged, to deliver Goods and provide the Services in a timely manner.
- 6.3 PHS will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by PHS or set out in the Order however such dates are estimates only.
- 6.4 The Customer acknowledges that Goods are not able to be delivered to post office box addresses and the Customer must not provide a post office box address for delivery of any Goods.

## 7 Return of Goods

- 7.1 The terms of this clause 7 are subject to clause 9 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 7.
- 7.2 Subject always to any applicable provisions of the Australian Consumer Law, any claims in respect of a Good must be made by returning the Good (at the Customer's cost) to PHS within 7 days of the purchase of the Goods by the Customer.
- 7.3 The provision to the Customer of any refund or other remedy in respect of any Goods which are returned to PHS and determined by PHS to be damaged or defective will be at PHS's sole discretion.

## 8 Title and risk of Goods

- 8.1 Subject to clause 8.2, title to, and property in, any Goods supplied under the Agreement remain with PHS and will only pass to the Customer once all moneys owing by the Customer to PHS in respect of the Agreement or any other agreement or arrangement between the Customer and PHS have been paid in full.
- 8.2 Title to and property in any Freedom Wristband remains with PHS and does not pass to the Customer at any time.
- 8.3 Risk in the Goods passes to the Customer upon the earlier of the time the Goods are collected by the Customer from PHS's premises (or that of PHS's supplier) or delivered to the Customer.
- 8.4 In the event that the Customer is required to return any Goods to PHS, risk in the Goods passes to PHS on confirmation of receipt of the Goods by PHS.

## 9 Warranties and liability

- 9.1 If the Customer is a Consumer and PHS supplies PDH Goods or Services to the Customer, PHS acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they

apply to the PDH Goods or Services supplied by PHS and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.

- 9.2 If the Customer is a Consumer and any goods or services supplied by PHS to the Customer are non PDH Goods or Services, PHS's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at PHS's discretion) to:
- (a) in the case of Goods:
    - (i) the replacement of the Goods or the supply of equivalent goods;
    - (ii) the repair of the Goods;
    - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the Goods repaired; and
  - (b) in the case of Services:
    - (i) the supplying the Services again; or
    - (ii) the payment of the cost of having the Services supplied again.

9.3 If the Customer makes a claim against PHS which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, PHS expressly excludes all liability in respect of the Goods or Services supplied by PHS to the Customer.

9.4 Subject to the rest of this clause 9, the aggregate liability of PHS to the Customer arising out of or in connection with the Agreement will in no event exceed an amount equal to the amount of the Purchase Price received by PHS under the Agreement.

## 10 Intellectual Property

Unless expressly stated by the Agreement, the parties acknowledge and agree that nothing in these Terms shall be construed as a transfer from PHS to the Customer of the ownership of, or title to, any of the Intellectual Property Rights in the Goods, material created as part of, or provided in connection with the provision of, the Services or any other Intellectual Property Rights owned by or licensed to PHS and the Customer agrees that it must not infringe or use the Intellectual Property Rights of PHS or any other third party which exist in the Goods or materials created as part of the Services for anything other than for the sole purpose of using the Goods.

## 11 Spa Services

### General

- 11.1 The provisions in this clause 11 apply to all Spa Services.
- 11.2 PHS reserves the right to change the Spa Services without notice, including because of the closure of certain experiences and facilities at the PHS Premises due to guest capacity considerations, private events and facility maintenance requirements. Please refer to PHS's list of planned maintenance available at <https://www.peninsulahotspots.com/maintenance-schedule/> for more information on currently planned maintenance which may impact on the availability of the Spa Services.
- 11.3 All bookings for Spa Services (and the acceptance of any Offer in respect of Spa Services) are subject to availability of those Spa Services.
- 11.4 The Customer may cancel an Offer in respect of any Spa Services but the Customer agrees that:
- (a) if the Customer cancels the Offer less than 24 hours before the scheduled provision of the Spa Services, PHS is not required to provide a refund of any Purchase Price already paid by the Customer for the Spa Services and the Customer will be liable to pay PHS any unpaid portion of the Purchase Price; and
  - (b) if the Customer cancels the Offer at least 24 hours before the scheduled provision of the Spa Services, PHS will refund in full any Purchase Price already paid by the Customer for those Spa Services.
- 11.5 If a Guest arrives for any Spa Services more than 15 minutes after the scheduled start time they will be considered a 'no show' and:
- (a) PHS is not required to provide the Spa Service; and
  - (b) in consideration for the PHS reserving the allocated time for the Customer, the Customer will still be liable to pay PHS any unpaid portion of the Purchase Price.

- 11.6 If Spa Services are provided on a public holiday in Victoria, the Purchase Price for the Spa Services will be increased by an amount equal to 10% of the Purchase Price.
- 11.7 All Spa Services conclude at least 15 minutes prior to the scheduled public closing time of the PHS Premises.
- 11.8 The Customer acknowledges and agrees that if PHS considers that a Guest is under the influence of alcohol or drugs then PHS may:
- refuse to provide the Spa Services to that Guest; and / or
  - require that the Guest leave the PHS Premises.
- 11.9 The Customer must not, and must ensure that any Guest does not:
- bring alcohol or drugs (other than prescription medication required for a medical condition suffered by the Guest) into the PHS Premises; and
  - bring into any bathing area any alcohol or glass purchased at the PHS Premises.
- 11.10 Guests are required to arrive:
- in respect of Spa Services provided at the Bath House, no less than 15 minutes before the booking time for the relevant Spa Services; and
  - in respect of Spa Services provided at the Spa Dreaming Centre, no less than 30 minutes before the booking time for the relevant Spa Services.
- 11.11 The Customer acknowledges that if a Guest arrives after the time specified in clause 11.10 or any other scheduled start time for other Spa Services, the duration of the Spa Services may be shortened by the amount of time by which the Guest was late.
- 11.12 The Customer acknowledges that the facilities used to provide the Spa Services at the PHS Premises often reach capacity during peak times and Guests may be required to wait until there is availability before they can enter the relevant facility to receive the Spa Services. Alternatively PHS may decide to offer the Spa Service from an alternative location (for example, in a new spa treatment cabana for a more 'in nature' experience).
- 11.13 Spa Services may be provided by either male or female personnel employed or engaged by PHS and PHS will determine in its sole discretion who will provide Guests with any Spa Services.
- 11.14 Spa Services are provided for relaxation purposes only and PHS does not guarantee any results or outcomes arising from the provision of the Spa Services.
- 11.15 If PHS believes that a Guest has engaged in any sexual harassment, innuendo or any inappropriate behavior while at the PHS Premises then PHS may require that the Guest leave the PHS Premises and PHS will not be required to refund any part or all of the Purchase Price.
- 11.16 At the time of making an Offer and again when arriving at the PHS Premises the Customer must advise PHS of any Guests:
- requiring mobility assistance;
  - with allergies;
  - with any medical conditions involving high fever, extreme hypertension, malignant tumours, cancerous conditions, liver disorders, kidney disorders, circulation disorders, conditions with a high risk of haemorrhaging, anaemic conditions, congestive heart failure, who recent suffered a stroke or heart attack, who are pregnant, who have diabetes or otherwise have a medical condition which may be impacted by the provision or receipt of the Spa Services; or
  - that have experienced any COVID symptoms in the 14 days prior to their arrival at the PHS Premises or been in contact with anyone with COVID during the 14 days prior to their arrival at the PHS Premises.
- 11.17 The Customer acknowledges that all Guest may be required to sign a waiver before being allowed to enter the PHS Premises. A copy of the waiver can be obtained from PHS prior to arriving at the PHS Premises by making a request to PHS.
- 11.18 Smoking is prohibited on the PHS Premises and Guests must not smoke on the PHS Premises (other than in designated smoking areas which are located adjacent to the main bathing areas).

#### **Aerial Yoga**

- 11.19 The Customer acknowledges that PHS recommends that persons who have poor balance or a fear of being suspended from ceilings do not participate in any aerial yoga.

- 11.20 The Customer acknowledge that any Guests who are pregnant (or suspect they may be pregnant), weigh more than 100kg, take blood pressure medication, have high or low blood pressure, have heart disease, have glaucoma, have severe arthritis, are recovering from surgery, have osteoporosis or any bone disorder or suffer from vertigo must notify PHS of this fact and must not participate in any aerial yoga.

#### **Day Retreat Experiences**

- 11.21 Day retreats at the PHS Premises can be booked at a set price regardless of the number of Guests which attend the retreat but bookings are always subject to individual retreat capacity.

#### **Damage**

- 11.22 The Customer shall be liable for all damage to property at the PHS Premises caused by the Customer or any Guest of the Customer and the Customer must, upon demand from PHS, pay to PHS the market value for any property at the PHS Premises which is damaged during by the Customer or a Guest of the Customer.

#### **Age restrictions and supervision of Children**

- 11.23 Children under 8 years of age must, at all times when within the PHS Premises, be within arm's reach of a guardian.
- 11.24 Children aged between 8 to 15 years of age must, at all time when within the PHS Premises, be accompanied by guardian and be within close visual line of sight of that guardian.
- 11.25 All guardians are required to pay for entry to the Bath House and are responsible for the children in their care at all times when the children are within the PHS Premises.
- 11.26 Children under 16 years of age are able to access all Bath House bathing areas at the PHS Premises from 7:00am – 10:00am but after 10:00am a number of thermal pools in the bathing gully may be reserved as adult only (16 years and older) bathing areas.
- 11.27 Children under 16 years of age are not able to access the Spa Dreaming Centre (including the café, bathing area, reception, private baths and treatment rooms located at the Spa Dreaming Centre).

#### **Lost Property**

- 11.28 Clauses 11.29 to 11.31 are subject to any obligations which PHS may have under the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.
- 11.29 PHS does not take any responsibility for any items that are lost or stolen at the PHS Premises and recommends that any valuable items are left in a secure place and not brought into the PHS Premises.
- 11.30 PHS does not guarantee that it will be possible to identify or contact the owner of all lost property items that are found within the PHS Premises.
- 11.31 The Customer acknowledges and agrees that PHS may sell or donate any lost property to a charity if that property has not been claimed by the owner of that property within:
- for items with a value of \$5,000 or greater, six months after first identified by PHS;
  - for items with a value of \$200 to \$4,999, three months after first identified by PHS; and
  - for items with a value of less than \$200, two months after first identified by PHS.

#### **12 Gift Certificates**

- 12.1 The provisions in this clause 12 apply to all Gift Certificates issued or supplied by Peninsula Hot Springs Group entities including PHS, MAHS and MEHS
- 12.2 Gift Certificates are a prepaid gift certificate which, depending on the type of Gift Certificate, is redeemable:
- Only for the Goods and / or Services selected in the relevant Order for the Gift Certificate and set out in the Gift Certificate from the designated entity at point of purchase; or
  - for Goods and / or Services up to a value selected in the relevant Order for the Gift Certificate and set out in the Gift Certificate at any Peninsula Hot Springs Group entity.
  - Specified value which can be redeemed for goods or services at a nominated Peninsula Hot Springs Group entity
- 12.3 The Goods and / or Services or value of Goods and / or Services redeemable under a Gift Certificate cannot be changed once the Gift Certificate has been issued.

- 12.4 Any bookings for Goods or Services by redeeming a Gift Certificate are subject to availability at nominated Peninsula Hot Springs entity.
- 12.5 It may take up to 24 hours from the date of the Order of the Gift Certificate for the Gift Certificate to be activated and able to be used to redeem for Goods and / or Services.
- 12.6 Unless otherwise specified, Gift Certificates may be redeemed on any day of the week.
- 12.7 Gift Certificates cannot be used to withdraw or redeem cash, reloaded, returned for a refund, consolidated with another Gift Certificate or use to acquire another Gift Certificate.
- 12.8 Gift Certificates expire on the date specified on the Gift Certificate, which will not be earlier than three years from the date of supply of the Gift Certificate by Peninsula Hot Springs Group entities to the Customer (**Certificate Expiry Date**). A Gift Certificate may not be used to purchase Goods or Services or otherwise redeemed after the Certificate Expiry Date and any Goods or Services or value not redeemed and remaining available on the Gift Certificate after the Certificate Expiry Date will be forfeited. Once a gift certificate is activated at a nominated entity it must be redeemed in full at the same location and cannot be transferred to another.
- 12.9 Peninsula Hot Springs Group is under no obligation to replace, and is not otherwise liable or responsible for, any Gift Certificate which is defaced, mutilated, altered, lost or stolen.
- 12.10 Gift Certificates can only be used for personal use and must not be used in connection with any marketing, advertising or other promotional activities without the prior written approval of Peninsula Hot Springs Group.
- 12.11 The Customer is responsible for ensuring that the Gift Certificate, where redeemable for Goods or Services which can be acquired by persons of a specified age, is only redeemed for use by a person who is of that specified age.
- 12.12 Peninsula Hot Springs Group may refuse to redeem any Gift Certificate if fraud is suspected or until they are satisfied that there has been no fraud involved in the redemption.
- 12.13 Use of a Gift Certificate is subject to all of Peninsula Hot Springs Group's policies regarding the Goods and Services made available by any Peninsula Hot Springs Group entity from time to time, including any COVID related policy under clause 23.
- 12.14 If the Customer acknowledges that if they have requested that the Gift Certificate be delivered by express post service:
- The Customer must pay the Delivery Fee for express post; and
  - delivery of the Gift Certificate may take 2-3 Business Days
- 12.15 The Customer acknowledges that postage of Gift Certificates is managed by Australia Post and PHS takes no responsibility for late delivery of any Gift Certificates.
- ### 13 Freedom Wristbands
- #### General
- 13.1 The provisions in this clause 13 apply to all Freedom Wristbands issued or supplied by PHS.
- 13.2 Funds can be loaded onto a Freedom Wristband by the Customer at a point of sale terminal at the PHS Premises using a credit card, debit card or cash.
- 13.3 Freedom Wristbands can be linked to a stored customer credit card. There's no limit on spend via Freedom Wristband. Any use of the Freedom Wristband is deemed to be made by the Customer who acquired the Freedom Wristband.
- 13.4 Freedom wristbands are linked to a guest profile, and upon spending must be verified in that guest name. But remain the property of PHS. All credit cards will be unlinked to the freedom wristbands after departure from the PHS Premises.
- 13.5 Freedom Wristbands cannot be used to withdraw or redeem cash however the funds loaded onto the Freedom Wristband can be refunded in accordance with clause 14.17.
- 13.6 Interest does not accrue on, or in respect of, any balance or amount on a Freedom Wristband.
- 13.7 Details of the transactions made using a Freedom Wristband can be provided to the Customer upon request to PHS at the PHS Premises.
- 13.8 The balance of funds remaining on pre-loaded Freedom Wristband and/or transaction details can be confirmed by:
- requesting a receipt showing the balance and scanning of the Freedom Wristband at a point of sale terminal at the PHS Premises for pre-loaded Freed Wristband; or
  - the invoice received when the Freedom Wristband is used to make a purchase at a point of sale terminal at the PHS Premises
- 13.9 Each Freedom Wristband remains the property of PHS and must be returned to PHS prior to departure from the PHS Premises.
- #### Expiry of funds
- 13.10 Funds loaded onto a Freedom Wristband will expire on the day which is 12 months after the day those funds were loaded onto the Freedom Wristband (**Expiration Date**).
- 13.11 If funds have not been used or refunded by their Expiration Date, those funds will be transferred to the Victorian State Government as unclaimed money.
- 13.12 Credit card linked Freedom Wristbands will be 'un-linked' after departure from the PHS Premises. All payments will be charged at time of purchase
- #### Lost, stolen or damaged Freedom Wristbands
- 13.13 PHS is under no obligation to replace, and is not otherwise liable or responsible for, any Freedom Wristband which is lost or stolen and the Customer is responsible for the security of their Freedom Wristband and any purchases made by any third party using their Freedom Wristband.
- 13.14 The Customer must immediately notify PHS if their Freedom Wristband is lost or stolen or if they become aware of any unauthorised transactions made using their Freedom Wristband.
- 13.15 If a Freedom Wristband is lost, stolen or damaged then PHS may, subject to clause 13.16, issue a new Freedom Wristband to the Customer and transfer the balance of any remaining funds from the old Freedom Wristband to the new Freedom Wristband provided the Customer has the original receipt received when the Customer acquired the Freedom Wristband.
- 13.16 Subject to clause 9 and any rights the Customer may have at law, the Customer must pay PHS a \$10 replacement fee for any new Freedom Wristband issued under clause 13.15.
- #### Refunds
- 13.17 Any unused funds loaded onto a Customer's Freedom Wristband which have not exceeded the Expiration Date may be refunded in full to the Customer:
- if the Customer is at the PHS Premises, by providing PHS with the Freedom Wristband or original receipt received when the Customer acquired the Freedom Wristband; or
  - if the Customer is not at the PHS Premises, by making a request in writing to PHS's reservations team and returning the Freedom Wristband to PHS.
- 13.18 If a refund is requested under clause 13.17(b) but the Customer does not return the Freedom Wristband, PHS may refund the funds on the Freedom Wristband less \$10 as payment for the Freedom Wristband.
- 13.19 Refunds made under clause 13.17 or 13.18 will be to the last payment method which the Customer used to load funds onto the Freedom Wristband.
- ### 14 Accommodation
- #### PHS Accommodation
- 14.1 The Customer must pay to PHS the Purchase Price for the PHS Accommodation at the time of placing the Order for the PHS Accommodation in accordance with clause 4.3.
- 14.2 The Customer may cancel an Offer in respect of any PHS Accommodation but the Customer agrees that:
- if the Customer cancels the Offer less than 7 days before the scheduled provision of the PHS Accommodation, PHS is not required to provide a refund of any Purchase Price already paid by the Customer for the PHS Accommodation; and
  - if the Customer cancels the Offer at least 7 days before the scheduled provision of the PHS Accommodation, PHS will refund in full any Purchase Price already paid by the Customer for that PHS Accommodation.
- 14.3 Without limiting clause 14.2, if the Customer does not arrive at the PHS Accommodation at the scheduled time of the start of their stay or if the Customer wishes to cancel their booking for the PHS Accommodation after having arrived at the PHS Accommodation, PHS will be entitled to retain 100% of the Purchase Price.

14.4 All Guests at any PHS Accommodation must be at least 18 years of age unless otherwise approved by PHS in writing.

14.5 A maximum of two adults are permitted to occupy PHS Accommodation which is classified by PHS as 'glamping accommodation'.

#### **Check In and Check Out**

14.6 The check-in time for Guests at PHS Accommodation is 2.00pm on the date shown for the Guests' arrival and PHS may refuse to check in guests to the PHS Accommodation if they arrive before this time.

14.7 The check-out time for Guests at the PHS Accommodation is 10.00am on the date shown for the Guests' departure and Guests must have vacated their PHS Accommodation by this time.

14.8 Any change in the check-in or check-out time is at PHS's discretion (and which may not be provided if PHS has to satisfy any COVID cleaning or other requirements) and PHS may, as a condition of agreeing to any change in the check-in or check-out time, require the payment of an additional fee.

#### **Code of Conduct**

14.9 The Guests agree to respect the privacy and peace of all other guests, neighbours and staff at all times. Any Guests who breach this clause 14.9 or are otherwise, in the reasonable opinion of PHS, causing a disturbance or nuisance to other guests, neighbours or the staff must, if required by PHS, immediately leave the PHS Accommodation.

14.10 Physical, verbal or sexual abuse or harassment of any kind towards staff or other guests will not be tolerated and, if required by PHS, any Guests which PHS reasonably believes is involved in such conduct must immediately leave the PHS Accommodation.

14.11 Guests must maintain low or moderate noise levels.

14.12 Smoking is prohibited on the PHS Premises and in any PHS Accommodation and Guests must not smoke in on the PHS Premises or any PHS Accommodation (other than in designated smoking areas which are located adjacent to the main bathing areas).

14.13 With the exception of service or guide dogs, Guests are not permitted to bring pets or other animals onto the PHS Premises or any PHS Accommodation at any time. Prior notice must be provided to PHS if a Guest wishes to bring a service or guide dog onto the PHS Premises.

14.14 Campfires are strictly prohibited on PHS Premises and in or around any PHS Accommodation and Guests must not start any campfire or allow any campfire to burn at the PHS Premises or in or around any PHS Accommodation.

14.15 Guests must only use cooking equipment at the PHS Accommodation if it has been provided by PHS.

#### **Damage to Property and Theft**

14.16 The Customer shall be liable for all damage to property at the PHS Accommodation during the stay of any Guest, including breakages, spillages, stains, damage to furniture or fixtures and fittings and the Customer must, upon demand from PHS, pay to PHS the market value for any property at the PHS Accommodation which is lost, damaged or consumed during a Guest's stay and the Customer acknowledges that PHS may, and is authorised to, deduct such amount from any credit card which the Customer has provided to PHS.

14.17 The Customer agrees to maintain the PHS Accommodation during a Guest's stay and agrees that, should PHS reasonably determine that excessive cleaning will be required of the PHS Accommodation as a result of the Guest's stay, the Customer must pay to PHS an additional \$100 in consideration of the additional cleaning to be undertaken by or on behalf of PHS.

14.18 Any monies or other valuables, goods or vehicles that belong to a Guest and which are brought into any PHS Accommodation (including any surrounding areas or car park) remain the responsibility of the Guest and PHS is not responsible for their safekeeping.

14.19 Parking is available on PHS Premises for Guests. PHS accepts no responsibility for loss or damage to any Guest's vehicle and the Customer acknowledges that each Guest uses any car park at their own risk, including the risk of any injury, death, theft, loss or damage which may be occasioned by the Guest or their property and the Customer agrees to release, and will procure a release from each Guest, of PHS from all claims, demands,

actions or suits relating to or in any way arising out of their use of the car park.

14.20 Any lost property at the PHS Accommodation will be dealt with by PHS in accordance with clauses 11.28 to 11.31.

14.21 PHS strongly recommends that at the time of placing an Order for PHS Accommodation the Customer acquire comprehensive travel insurance to cover items including but not limited to loss of booking amount through cancellation, loss or damage to personal baggage, loss of money and medical expenses.

#### **Third Party Accommodation**

14.22 The Customer acknowledges and agrees that:

- (a) PHS is only responsible for booking the Third Party Accommodation and is not responsible for the provision of the Third Party Accommodation;
- (b) the Third Party Accommodation is provided by a third party; and
- (c) by placing an Order for any Third Party Accommodation the Customer also agrees to be bound by, and comply with, the Third Party Accommodation Terms.

14.23 The Customer may cancel an Offer in respect of any Third Party Accommodation but the Customer agrees that:

- (a) if the Customer cancels the Offer less than 30 days before the scheduled provision of the Third Party Accommodation, PHS is not required to provide a refund of any Purchase Price already paid by the Customer for the Third Party Accommodation and the Customer will be liable to pay PHS any unpaid portion of the Purchase Price; and
- (b) if the Customer cancels the Offer at least 30 days before the scheduled provision of the Third Party Accommodation, PHS will refund in full any Purchase Price already paid by the Customer for that Third Party Accommodation.

14.24 Acceptance of an Offer in respect of any Third Party Accommodation may be subject to minimum age requirements.

#### **General**

14.25 The provisions in clauses 14.26 to 14.27 apply to all Accommodation which is booked through PHS.

14.26 If requested by PHS, Guests must present a credit card upon check in at reception of the Accommodation as a deposit for the duration of their stay at the Accommodation.

14.27 All bookings for Accommodation (and the acceptance of any Offer in respect of Accommodation) are subject to availability.

#### **15 Indemnity**

The Customer indemnifies PHS and holds PHS harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which PHS incurs as a direct or indirect result of:

- (a) any amounts the Customer owes to PHS (including any fees paid to a debt collector, mercantile agent or similar);
- (b) any breach of the Agreement by the Customer (including any breach of the warranties provided by the Customer or any Accommodation Terms); and
- (c) any negligent or wilful act or omission by the Customer or others for whom the Customer is legally responsible.

#### **16 No representations**

Subject to clause 9, the Customer acknowledges and agrees that it has not relied on any representations, inducements or statements made to it by PHS regarding the supply of the Goods or Services and it has satisfied itself that the Goods and Services are fit for the purpose it requires them for.

#### **17 Confidentiality**

17.1 The Customer:

- (a) may use Confidential Information solely for the purposes of the Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by PHS, or (ii) as required by law or securities exchange regulation.

17.2 The Customer must notify PHS immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps

necessary to prevent further unauthorised use or disclosure of the Confidential Information.

## 18 Privacy

The Customer acknowledges and agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) regarding the Customer, may be collected, held, used and disclosed by PHS for the purposes set out in PHS's privacy policy (which privacy policy is available on PHS's website or on request from PHS). The Customer consents to PHS collecting, holding, using and disclosing any such personal information for all purposes specified in PHS's privacy policy.

## 19 Force Majeure

19.1 PHS will not be liable for any failure to perform or delay in performing its obligations under the Agreement if that failure or delay is due to a Force Majeure Event.

19.2 If a Force Majeure Event under clause 19.1 occurs, PHS may immediately terminate the Agreement by written notice to the Customer without penalty.

## 20 Termination

20.1 Without limiting PHS's other rights under these Terms, PHS may terminate the Agreement with immediate effect by written notice to the Customer if:

- (a) the Customer is the subject of an insolvency event;
- (b) the Customer has breached any term of the Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied; or
- (c) in accordance with clause 19.2.

20.2 Each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

## 21 Acknowledgements and representations

21.1 If an Offer has been accepted by PHS, the Customer acknowledges that the Offer was accepted by PHS on the basis of, and in reliance upon, any information, specifications, data, representations, statements and documents provided by the Customer.

21.2 By making an Offer, the Customer warrants and represents to PHS that it has read and understood these Terms prior to making the Offer, and agrees to be bound by them in full.

21.3 Any price list, goods lists or other similar documents or catalogues issued by or on behalf of PHS do not constitute an offer by PHS to supply Goods appearing in those lists or catalogues or an offer by PHS to supply Goods at the prices set out in those lists or catalogues. PHS's price lists and catalogues may be changed by PHS at any time without notice.

21.4 Where any instructions or material in whatever form (including documents, specifications, designs, plans, processes, information and data) are required to be provided by the Customer to PHS before PHS can proceed with or complete the provision of the Goods or Services such instructions or materials must be supplied by the Customer to PHS within a reasonable time (as determined by PHS) so as to enable PHS to deliver the Goods or Services within any agreed time frame.

## 22 Inconsistency

22.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 2.3, the following order of precedence shall apply to the extent of the inconsistency:

- (a) the prices and quantity of Goods and/or Services set out in the Order;
- (b) these Terms;
- (c) the Invoice; and
- (d) without limiting clause 22.2, any terms in the Order which are accepted by PHS in writing.

22.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by PHS in writing and any terms or conditions included in the Order or other document provided or issued by the Customer will only be binding on PHS if expressly agreed by PHS in writing.

## 23 COVID Regulations and Policies

The Customer agrees that:

- (a) the acquisition and use of each Gift Certificate, Freedom Wristband, Good and Service is subject to; and

- (b) when at the PHS Premises the Customer and all Guests must comply with,

all relevant government laws, restrictions, regulations and directions and any PHS policy in respect of COVID (including without limitation COVID test and vaccination requirements and capacity limits).

## 24 Miscellaneous

24.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
- (g) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

24.2 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without PHS's prior written consent. PHS may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time where the assignment will not adversely affect the rights of the Customer.

24.3 PHS may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as PHS provides the Customer notice of the variation (**Variation Date**). Any variation to these Terms will only apply to any Offer made after the Variation Date.

24.4 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any of these Terms must be in writing and is only effective to the extent set out in that written waiver.

24.5 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

24.6 These Terms and the accepted Agreement constitute the entire agreement between the Customer and PHS in respect of the supply of the relevant Goods or Services the subject of the Agreement and supersede all previous communications, representations, understandings or agreements.

24.7 These Terms are governed by the laws in force in Victoria, and the Customer and PHS submit to the non-exclusive jurisdiction of the courts of Victoria.

24.8 The termination or expiry of these Terms or an Agreement does not operate to terminate any rights or obligations that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 7, 8, 9, 10, 15, 17 and 24.

24.9 Each party must:

- (a) do all acts necessary or desirable to give full effect to the Agreement; and
- (b) refrain from doing anything which might prevent full effect being given to the Agreement.

24.10 The relationship between the parties is and will remain that of independent contractors, and nothing in the Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

24.11 Notices by a party must be delivered by hand, prepaid post, facsimile or email and sent to the address of the receiving party specified in the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending, by facsimile upon receipt of a successful transmission report and by email one hour after the email (unless the sender knows that email has failed to send).