

## **Welcome to the Heartful.ly, Inc. Website**

Welcome to the Heartful.ly, Inc. (“Us” or “Our” or “We”) Website

– and thank You for visiting. We hope You enjoy the experience!

These Terms of Use (“Terms”) are a legal contract between You and Us (collectively, “Everyone”) and govern Your use of all the text, data, information, software, graphics, photographs and more (all of which We refer to as “Materials”) that We and Our affiliates may make available to You, as well as any services We may provide through any of Our websites (all of which are referred to in these Terms as this “Website”).

READ THESE TERMS CAREFULLY BEFORE BROWSING THIS WEBSITE. USING THIS WEBSITE INDICATES THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS. YOU CANNOT USE THIS WEBSITE IF YOU DO NOT ACCEPT THESE TERMS. ALL SECTIONS OF THESE TERMS ARE APPLICABLE TO BOTH MEMBERS AND GUESTS UNLESS THE SECTION EXPRESSLY STATES OTHERWISE.

NOTE: THESE TERMS CONTAIN A DISPUTE RESOLUTION AND ARBITRATION PROVISION, INCLUDING CLASS ACTION WAIVER THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH US. YOU MAY OPT OUT OF THE BINDING INDIVIDUAL ARBITRATION AND CLASS ACTION WAIVER AS PROVIDED BELOW.

### **KEY TERMS.**

“Gift” means a purchase of an item listed within a Registry by any Member or Guest.

“Guest” means a non-Member who uses or otherwise visits the Website.

“Member” means an individual who completes Our Member account registration process.

“Partner” means an entity or organization who has contracted with Us to offer its Project for affiliation with one or more Member Registries.

“Project” means an infrastructure project in a developing country which is eligible for affiliation with a Member Registry.

“Registry” means a wedding registry or other registry created through the Website by a Member.

“Selected Project” means the Project selected by a Member for affiliation with their Registry.

“Services” means the consultation and Registry services We offer, as well as any other services We offer on or through the Website.

### **CHANGES.**

We may alter the Materials and Services We offer You and/or choose to modify, suspend or discontinue this Website at any time and without notifying You. We may also change, update, add or remove provisions (collectively, “modifications”) of these Terms from time to time. Because Everyone benefits from clarity, We promise to inform You of any modifications to these Terms by posting them on this Website and, if You have registered with Us, by describing the modifications to these Terms in an email that We will send to the address that You provided when registering on this Website. To be sure We properly reach Your email inbox, We just ask that You let Us know if Your preferred email address changes at any time after Your registration.

If You object to any such modifications, Your sole recourse shall be to cease using this Website. Continued use of this Website following notice of any such modifications indicates You acknowledge and agree to be bound by the modifications. Also, please know that these Terms may be superseded by expressly-designated legal notices or terms located on particular pages of this Website. These expressly-designated legal notices or terms are incorporated into these Terms and supersede the provision(s) of these Terms that are designated as being superseded.

## **GENERAL USE.**

We invite You to use this Website for individual, consumer purposes (“Permitted Purposes”) – enjoy!

By using this Website, You represent, acknowledge and agree that You are at least 18 years of age, or if You are under 18 years of age but are at least 13 years old (a “Minor”), that You are using the Website with the consent of Your parent or legal guardian and that You have received Your parent’s or legal guardian’s permission to use the Website and agree to these Terms. If You are a parent or legal guardian of a Minor, You hereby agree to bind the Minor to these Terms and to fully indemnify and hold Us harmless if the Minor breaches any of these Terms. If You are not at least 13 years old, You may not use the Website at any time or in any manner or submit any information to Us.

In these Terms we are granting You a limited, personal, non-exclusive and non-transferable license to use and to display the Materials; Your right to use the Materials is conditioned on Your compliance with these Terms. You have no other rights in this Website or any Materials and You may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of this Website or Materials in any manner. If You make copies of any of this Website while engaging in Permitted Purposes then We ask that You be sure to keep on the copies all of Our copyright and other proprietary notices as they appear on this Website.

Unfortunately, if You breach any of these Terms the above license will terminate automatically and You must immediately destroy any downloaded or printed materials (and any copies thereof).

## **USING THIS WEBSITE AND THE WEBSITE’S SERVICES.**

We provide a Registry service that allows Members to select a Project for which You can solicit funding from third parties through Your Registry. We appreciate You visiting this Website and allow You to do just that – stop by and leisurely check it out!

However, in order to access certain password-restricted areas of this Website and to use certain Services and Materials, including but not limited to the Registry service, offered on and through this Website, You must successfully register an account with Us.

## **PASSWORD RESTRICTED AREAS OF THIS WEBSITE.**

If You want an account with Us, You must submit the following information through the account registration page on this Website:

- A working email address;
- First and last name for each person associated with Your Registry;

You may also provide additional, optional information so that We can provide You a more customized experience when using this Website –but, We will leave that decision with You. Once You submit the required registration information, We alone will determine whether or not to approve Your proposed account. If approved, You will be contacted for a consultation and will be given information detailing how to complete Your registration. For so long as You use the account, You agree to provide true, accurate, current, and complete information which can be accomplished by logging into Your account and making relevant changes directly or contacting Us using the below

contact information and We can make the changes for You. And, if You forget Your password – no worries as We will happily send a password update to Your provided email address.

You are responsible for complying with these Terms when You access this Website, whether directly or through any account that You may setup through or on this Website. Because it is Your account, it is Your job to obtain and maintain all equipment and services needed for access to and use of This Website as well as paying related charges. It is also Your responsibility to maintain the confidentiality of Your password(s), including any password of a third-party site that We may allow You to use to access this Website. Should You believe Your password or security for This Website has been breached in any way, You must immediately notify Us.

## **MEMBERSHIPS AND REGISTRIES.**

By registering for an account with Us, You become a “Member” with access to certain password-restricted areas of the Website and to use certain Services and Materials offered on and through the Website (a “Membership”). Each Membership and the rights and privileges provided to a Member is personal and non-transferable.

When You register to become a Member, someone from Our team will contact you for an initial consultation and to assist with setting up Your account, selecting a Project, and creating a Registry for Your Selected Project. Approved Members will receive a personal Registry Page where they can promote their Selected Project and solicit Gifts to benefit the Selected Project. Your Registry may contain line items that Guests can purchase through the Website as a Gift to You for the benefit of Your Selected Project. You will be able to edit and customize Your Registry by logging into the Website, and You will be able to share your Registry with third parties to solicit Gifts.

Members may terminate their Memberships at any time by selecting the option to delete their account on the edit profile page of the Website, or, if Member has already created a Registry for a Selected Project, by consulting with one of Our team members.

We reserve the right to suspend or terminate a Member account, including but not limited to removing Your Registry from the Website, at any time if We, in Our sole and absolute discretion, suspect You may have violated these Terms.

Regardless of whether termination is voluntary or involuntary, Gifts purchased from a Registry prior to the effective date of termination are non-refundable.

## **GIFTS.**

The following section is applicable to any user of the Website who purchases a Gift. Any Guest or Member may purchase a Gift through the Website, and if You do, You authorize Us to perform the following Services. We will: (i) accept and process Your payment for the Gift via a third-party payment processor; (ii) hold the funds received in an escrow account to be released to the Project after the specified wedding date; (iii) remit funds to the applicable Partner for the Selected Project less a service fee of 9% to cover Our processing and handling fees; and, (iv) send payment receipt for Gift to You via e-mail. You agree that payment for Your Gift cannot be cancelled or refunded once purchase is completed. By providing a payment method, You expressly authorize Us to charge the applicable fees on said payment method as well as taxes and other charges incurred thereto for payment in full for the Gift. Should You close Your account, payments already made will be remitted to the Selected Project or a similar Project, in Our discretion.

## **PARTNERS AND PROJECTS.**

We do not warrant that any Project will actually be completed. Projects are proposed to us by our Partners, but We have no control over the progress or completion of the Project. Further, We reserve the right to cancel a Project if the terms of our agreement with the applicable Partner are violated. Additionally, the applicable Partner may cancel the Project. If Your Selected Project is cancelled by Us or the Partner, for any reason or no reason, We will

promptly notify the Member responsible for the Registry via the contact information We have on file for the Membership. All Gifts purchased prior to the effective cancellation date are non-refundable, but will be reallocated to another Project of the Member's choosing. If a Project is not fully funded, the funds are remitted to the implementing Partner and will be used at their discretion. We will schedule a consultation with the Member to necessitate the selection of an alternative Project. The Member will still receive periodic progress updates on how the funds were used by the Partner.

We serve as an intermediary between donors and beneficiaries. After a Registry has been completed by reaching a predetermined funding goal or deadline (e.g., the wedding date), We will remit payments received for the purchase of Gifts (less any service fees) to the applicable Partner via a predetermined payment method. We do not warrant that funds will be used for any particular purpose and are not responsible for misuse of the funds by the Partner. Please be aware, payments for Gifts are non-refundable. After We transfer the funds to the Partner of the Selected Project, all further dealings are solely between You and the applicable Partner for the Selected Project. In the event of a dispute between users of Our Website (including but not limited to Members, Guests, Partners, and third parties), You agree that We have no liability to any party with respect to such dispute. You hereby release Us and Our employees, agents, affiliates, directors, and representatives from all claims, damages, and demands arising from or related to Your use of the Website or Services that may or may not be known, suspected or related to any such disputes.

## **ELECTRONIC COMMUNICATIONS.**

By using the Website and/or the Services provided on or through the Website, You consent to receiving electronic communications from Us. These electronic communications may include notices about applicable fees and charges, transactional information and other information concerning or related to the Website and/or Services provided on or through the Website. These electronic communications are part of Your relationship with Us. You agree that any notices, agreements, disclosures or other communications that We send You electronically will satisfy any legal communication requirements, including that such communications be in writing.

## **PRIVACY POLICY.**

We respect the information that You provide to Us, and want to be sure You fully understand exactly how We use that information. So, please review Our Privacy Policy ("Privacy Policy") which explains everything.

## **LINKS TO THIRD-PARTY SITES.**

We think links are convenient, and We sometimes provide links on his Website to third-party websites. If You use these links, You will leave this Website. We are not obligated to review any third-party websites that You link to from this Website, We do not control any of the third-party websites, and We are not responsible for any of the third-party websites (or the products, services, or content available through any of them). Thus, We do not endorse or make any representations about such third-party websites, any information, software, products, services, or materials found there or any results that may be obtained from using them. If You decide to access any of the third-party websites linked to from this Website, You do this entirely at Your own risk and You must follow the privacy policies and terms and conditions for those third-party websites. Certain areas of this Website may allow You to interact and/or conduct transactions with one or more third-party websites, and, if applicable, allow you to configure your privacy settings in that third-party website account to permit Your activities on this Website to be shared with Your contacts in your third-party site account.

## **SUBMISSIONS.**

Certain areas of this Website (e.g., blogs) may permit You to submit feedback, information, data, text, software, messages, or other materials (each, a "User Submission"). You agree that You are solely responsible for all of Your

User Submissions and that any such User Submission is considered both non-confidential and non-proprietary. Further, We do not guarantee that You will be able to edit or delete any User Submission You have submitted.

By submitting any User Submission, You are promising Us that:

- You own all rights in Your User Submissions (including, without limitation, all rights to the reproduction and display of Your User Submissions) or, alternatively, You have acquired all necessary rights in Your User Submissions to enable You to grant to Us the rights in Your User Submissions as described in these Terms;
- You have paid and will pay in full all license fees, clearance fees, and other financial obligations, of any kind, arising from any use or commercial exploitation of Your User Submissions;
- Your User Submissions do not infringe the copyright, trademark, patent, trade secret, or other intellectual property rights, privacy rights, or any other legal or moral rights of any third party;
- You voluntarily agree to waive all “moral rights” that You may have in Your User Submission;
- Any information contained in Your User Submission is not known by You to be false, inaccurate, or misleading;
- Your User Submission does not violate any law (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising);
- Your User Submission is not, and may not reasonably be considered to be, defamatory, libelous, hateful, racially, ethnically, religiously, or otherwise biased or offensive, unlawfully threatening, or unlawfully harassing to any individual, partnership, or corporation, vulgar, pornographic, obscene, or invasive of another’s privacy;
- You were not and will not be compensated or granted any consideration by any third party for submitting Your User Submission;
- Your User Submission does not incorporate materials from a third-party website, or addresses, email addresses, contact information, or phone numbers (other than Your own);
- Your User Submission does not contain any viruses, worms, spyware, adware, or other potentially damaging programs or files;
- Your User Submission does not contain any information that You consider confidential, proprietary, or personal; and
- Your User Submission does not contain or constitute any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

By submitting a User Submission, You grant to Us an irrevocable, perpetual, transferable, non-exclusive, fully-paid, worldwide, royalty-free license (sublicensable through multiple tiers) to:

- Use, distribute, reproduce, modify, adapt, publish, translate, publicly perform, and publicly display Your User Submissions (or any modification thereto), in whole or in part, in any format or medium now known or later developed;
- Use (and permit others to use) Your User Submission in any manner and for any purpose (including, without limitation, commercial purposes) that We deem appropriate in Our sole discretion (including,

without limitation, to incorporate Your User Submission or any modification thereto, in whole or in part, into any technology, product, or service);

- Display advertisements in connection with Your User Submissions and to use Your User Submissions for advertising and promotional purposes.

We may, but are not obligated to, pre-screen User Submissions or monitor any area of this Website through which User Submissions may be submitted. We are not required to host, display, or distribute any User Submissions on or through this Website and may remove at any time or refuse any User Submissions for any reason. We are not responsible for any loss, theft, or damage of any kind to any User Submissions. Further, You agree that We may freely disclose Your User Submission to any third party absent any obligation of confidence on the part of the recipient.

## **UNAUTHORIZED ACTIVITIES.**

To be clear, We authorize Your use of this Website only for Permitted Purposes. Any other use of this Website beyond the Permitted Purposes is prohibited and, therefore, constitutes unauthorized use of this Website. This is because as between You and Us, all rights in this Website remain Our property.

Unauthorized use of this Website may result in violation of various United States and international copyright laws. Because We prefer keeping this relationship drama-free, We want to give You examples of things to avoid. So, unless You have written permission from Us stating otherwise, You are not authorized to use this Website in any of the following ways (these are examples only and the list below is not a complete list of everything that You are not permitted to do):

- For any public or commercial purpose which includes use of this Website on another site or through a networked computer environment;
- In a manner that modifies, publicly displays, publicly performs, reproduces or distributes any of this Website;
- In a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;
- To stalk, harass, or harm another individual;
- To impersonate any person or entity or otherwise misrepresent Your affiliation with a person or entity;
- To interfere with or disrupt this Website or servers or networks connected to this Website;
- To use any data mining, robots, or similar data gathering or extraction methods in connection with this Website; or
- Attempt to gain unauthorized access to any portion of this Website or any other accounts, computer systems, or networks connected to this Website, whether through hacking, password mining, or any other means.

You agree to hire attorneys to defend Us if You violate these Terms and that violation results in a problem for Us. You also agree to pay any damages that We may end up having to pay as a result of Your violation. You alone are responsible for any violation of these Terms by You. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You and, in such case, You agree to cooperate with Our defense of such claim.

## **PROPRIETARY RIGHTS.**

Trademarks, names and logos on this Website are the property of their respective owners.

Unless otherwise specified in these Terms, all Materials, including the arrangement of them on this Website are Our sole property, Heartful.ly, Inc. Copyright © 2015. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

## **INTELLECTUAL PROPERTY INFRINGEMENT.**

We respect the intellectual property rights of others and encourage You to do the same. Accordingly, We have a policy of removing User Submissions that violate intellectual property rights of others, suspending access to this Website (or any portion thereof) to any user who uses this Website in violation of someone's intellectual property rights, and/or terminating in appropriate circumstances the account of any user who uses the this Website in violation of someone's intellectual property rights.

Pursuant to Title 17 of the United States Code, Section 512, We have implemented procedures for receiving written notification of claimed copyright infringement and for processing such claims in accordance with such law. If You believe Your copyright or other intellectual property right is being infringed by a user of this Website, please provide written notice to Our Agent for notice of claims of infringement:

Heartful.ly, Inc.  
Attn: Kate Glantz  
3518 10<sup>th</sup> St NW, Unit A, Washington, D.C. 20010  
Email: [info@heartful.ly](mailto:info@heartful.ly)

To be sure the matter is handled immediately, Your written notice must:

- Contain Your physical or electronic signature;
- Identify the copyrighted work or other intellectual property alleged to have been infringed;
- Identify the allegedly infringing material in a sufficiently precise manner to allow Us to locate that material;
- Contain adequate information by which We can contact You (including postal address, telephone number, and e-mail address);
- Contain a statement that You have a good faith belief that use of the copyrighted material or other intellectual property is not authorized by the owner, the owner's agent or the law;
- Contain a statement that the information in the written notice is accurate; and
- Contain statement, under penalty of perjury, that You are authorized to act on behalf of the copyright or other intellectual property right owner.

Unless the notice pertains to copyright or other intellectual property infringement, the Agent will be unable to address the listed concern.

[Submitting a DMCA Counter-Notification](#)

We will notify You that We have removed or disabled access to copyright-protected material that You provided, if such removal is pursuant to a validly received DMCA take-down notice. In response, You may provide Our Agent with a written counter-notification that includes the following information:

1. Your physical or electronic signature;
2. Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;
3. A statement from You under the penalty of perjury, that You have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and
4. Your name, physical address and telephone number, and a statement that You consent to the jurisdiction of a court for the judicial district in which Your physical address is located, or if Your physical address is outside of the United States, for any judicial district in which We may be located, and that You will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

#### Termination of Repeat Infringers

We reserve the right, in Our sole discretion, to terminate the account or access of any user of this Website or Service who is the subject of repeated DMCA or other infringement notifications.

#### **DISCLAIMER OF WARRANTIES.**

Your use of this Website is at Your own risk. The Materials, including User Submissions, have not been verified or authenticated in whole or in part by Us, and they may include inaccuracies or typographical or other errors. We do not warrant the accuracy or timeliness of the Materials contained on this Site. We have no liability for any errors or omissions in the Materials, whether provided by Us, Our licensors, suppliers or Partners, or other users.

WE MAKE NO EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS, WARRANTIES, OR GUARANTEES IN CONNECTION WITH THIS WEBSITE, THE SERVICES, ANY OTHER USERS OF THE SITE, INCLUDING BUT NOT LIMITED TO MEMBERS, GUESTS, PARTNERS, OR THIRD PARTIES, OR ANY MATERIALS ON THE WEBSITE RELATING TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF ANY INFORMATION OR MATERIAL CONTAINED OR PRESENTED ON THIS WEBSITE, INCLUDING WITHOUT LIMITATION THE MATERIALS. UNLESS OTHERWISE EXPLICITLY STATED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THIS WEBSITE, MATERIALS, AND ANY INFORMATION OR MATERIAL CONTAINED OR PRESENTED ON THIS WEBSITE IS PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE" AND "WHERE-IS" BASIS WITH NO WARRANTY OF IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. WE DO NOT WARRANT THE TIMELINESS, WORKMANSHIP, OR COMPLETION OF ANY PROJECT. WE DO NOT PROVIDE ANY WARRANTIES AGAINST VIRUSES, SPYWARE OR MALWARE THAT MAY BE INSTALLED ON YOUR COMPUTER.

Without limiting the generality of the foregoing, We make no warranty that this Website will meet Your requirements or that this Website will be uninterrupted, timely, secure, or error free or that defects in this Website will be corrected. We make no warranty as to the results that may be obtained from the use of this Website or as to the accuracy or reliability of any information obtained through this Website. No advice or information, whether oral or written, obtained by You through this Website or from Us or Our subsidiaries/other affiliated companies shall create any warranty. We disclaim all equitable indemnities.

#### **LIMITATION OF LIABILITY.**



WE SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THIS WEBSITE, OR OTHERWISE USING THE WEBSITE OR SERVICES. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF WE KNOW THERE IS A POSSIBILITY OF SUCH DAMAGE.

## **LOCAL LAWS; EXPORT CONTROL.**

We control and operate this Website from Our headquarters in the United States of America and the entirety of this Website may not be appropriate or available for use in other locations. If You use this Website outside the United States of America, You are solely responsible for following applicable local laws.

## **FEEDBACK.**

Any submissions by You to Us (e.g., comments, questions, suggestions, materials – collectively, “Feedback”) through any communication whatsoever (e.g., call, fax, email) will be treated as both non-confidential and non-proprietary. You hereby assign all right, title, and interest in, and We are free to use, without any attribution or compensation to You, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. You understand and agree that We are not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and You have no right to compel such use, display, reproduction, or distribution.

## **DISPUTE RESOLUTION AND ARBITRATION; CLASS ACTION WAIVER.**

### **Please Read This Provision Carefully. It Affects Your Legal Rights.**

This Provision facilitates the prompt and efficient resolution of any dispute (e.g., claim or controversy, whether based in contract, statute, regulation, ordinance, tort – including, but not limited to, fraud, misrepresentation, fraudulent inducement, or negligence – or any other legal or equitable theory, and includes the validity, enforceability or scope of this Provision (with the exception of the enforceability of the Class Action Waiver clause below) that may arise between You and Us. Effectively, then, “dispute” is given the broadest meaning enforceable by law and includes any claims against other parties relating to services or products provided or billed to You (such as Our licensors, suppliers, dealers or third-party vendors) whenever You also assert claims against Us in the same proceeding.

This Provision provides that all disputes between You and Us shall be resolved by binding arbitration because acceptance of These Terms constitutes a waiver of Your right to litigation claims and all opportunity to be heard by a judge or jury. We prefer this because We believe arbitration is less drama-filled than litigation. To be clear, there is no judge or jury in arbitration, and court review of an arbitration award is limited. The arbitrator must follow this agreement and can award the same damages and relief as a court (including attorney’s fees). You may, however, opt-out of this Provision which means You would have a right or opportunity to bring claims in a court, before a judge or jury, and/or to participate in or be represented in a case filed in court by others (including, but not limited to, class actions). EVERYONE AGREES THAT, EXCEPT AS PROVIDED BELOW, ANY AND ALL DISPUTES, AS DEFINED ABOVE, WHETHER PRESENTLY IN EXISTENCE OR BASED ON ACTS OR OMISSIONS IN THE PAST OR IN THE FUTURE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION RATHER THAN IN COURT IN ACCORDANCE WITH THIS PROVISION.

### **Pre-Arbitration Claim Resolution**

For all Disputes, whether pursued in court or arbitration, You must first give Us an opportunity to resolve the Dispute which is first done by emailing to Us at [info@heartful.ly](mailto:info@heartful.ly) the following information: (1) Your name, (2) Your address, (3) A written description of Your Claim, and (4) A description of the specific relief You seek. If We do not resolve the Dispute within 45 days after receiving Your notification, then You may pursue Your Dispute in arbitration. You may pursue Your dispute in a court only under the circumstances described below.

#### Exclusions from Arbitration/Right to Opt Out

Notwithstanding the above, You or We may choose to pursue a Dispute in court and not by arbitration if: (a) The dispute qualifies for initiation in small claims court; or (b) YOU OPT-OUT OF THESE ARBITRATION PROCEDURES WITHIN 30 DAYS FROM THE DATE THAT YOU FIRST CONSENT TO THIS AGREEMENT (the “Opt-Out Deadline”). You may opt-out of this Provision by emailing Us at [info@heartful.ly](mailto:info@heartful.ly) the following information: (1) Your name; (2) Your address; (3) A clear statement that You do not wish to resolve disputes with Us through arbitration. Either way, We will not take any decision You make personally. In fact, We promise that Your decision to opt-out of this Arbitration Provision will have no adverse effect on Your relationship with Us. But, We do have to enforce the Opt-Out Deadline so keep in mind that **any opt-out request received after the Opt-Out Deadline will not be valid and You must pursue Your dispute in arbitration or small claims court.**

#### Arbitration Procedures

If this Provision applies and the dispute is not resolved as provided above (Pre-Arbitration Claim Resolution) either You or We may initiate arbitration proceedings. The American Arbitration Association (“AAA”), [www.adr.org](http://www.adr.org), or JAMS, [www.jamsadr.com](http://www.jamsadr.com), will arbitrate all disputes, and the arbitration will be conducted before a single arbitrator. The arbitration shall be commenced as an individual arbitration, and shall in no event be commenced as a class arbitration. All issues shall be for the arbitrator to decide, including the scope of this Provision.

For arbitration before AAA, for Disputes of less than \$75,000, the AAA’s Supplementary Procedures for Consumer-Related Disputes will apply; for Disputes involving \$75,000 or more, the AAA’s Commercial Arbitration Rules will apply. In either instance, the AAA’s Optional Rules For Emergency Measures Of Protection shall apply. The AAA rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. For arbitration before JAMS, the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Recommended Arbitration Discovery Protocols For Domestic, Commercial Cases will apply. The JAMS rules are available at [www.jamsadr.com](http://www.jamsadr.com) or by calling 1-800-352-5267. This Provision governs in the event it conflicts with the applicable arbitration rules. Under no circumstances will class action procedures or rules apply to the arbitration.

Because this Website and these Terms concern interstate commerce, the Federal Arbitration Act (“FAA”) governs the arbitrability of all disputes. However, the arbitrator will apply applicable substantive law consistent with the FAA and the applicable statute of limitations or condition precedent to suit.

*Arbitration Award* – The arbitrator may award on an individual basis any relief that would be available pursuant to applicable law, and will not have the power to award relief to, against or for the benefit of any person who is not a party to the proceeding. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. Such award will be final and binding on the parties, except for any right of appeal provided by the FAA, and may be entered in any court having jurisdiction over the parties for purposes of enforcement.

*Location of Arbitration* – You or We may initiate arbitration in either Washington, D.C. or the federal judicial district that includes Your billing address. In the event that You select the latter, We may transfer the arbitration to Washington, D.C. so long as We agree to pay any additional fees or costs which the arbitrator determines You incur as a result of the transfer.

*Payment of Arbitration Fees and Costs* – So long as You place a request in writing prior to commencement of the arbitration, We will pay all arbitration fees and associated costs and expenses. But, You will still be responsible for all additional fees and costs that You incur in the arbitration which include but are not limited to attorneys’ fees or

expert witnesses. In addition to any fees and costs recoverable under applicable law, if You provide notice and negotiate in good faith with Us as provided in the section above titled “Pre-Arbitration Claim Resolution” and the arbitrator concludes that You are the prevailing party in the arbitration, You will be entitled to recover reasonable attorney’s fees and costs as determined by the arbitrator.

#### Class Action Waiver

Except as otherwise provided in this Provision, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a class or representative proceeding or claims (such as a class action, consolidated action or private attorney general action) unless both You and We specifically agree to do so following initiation of the arbitration. **If You choose to pursue Your Dispute in court by opting out of the Arbitration Provision, as specified above, this Class Action Waiver will not apply to You.** Neither You, nor any other user of this Website can be a class representative, class member, or otherwise participate in a class, consolidated, or representative proceeding without having complied with the opt-out requirements above.

#### Jury Waiver

You understand and agree that by accepting this Provision in these Terms, You and We are each waiving the right to a jury trial or a trial before a judge in a public court. In the absence of this Provision, You and We might otherwise have had a right or opportunity to bring disputes in a court, before a judge or jury, and/or to participate or be represented in a case filed in court by others (including class actions). Except as otherwise provided below, those rights are waived. Other rights that You would have if You went to court (e.g., the rights to both appeal and certain types of discovery) may be more limited or may also be waived.

#### Severability

If any clause within this Provision (other than the Class Action Waiver clause above) is found to be illegal or unenforceable, that clause will be severed from this Provision whose remainder will be given full force and effect. If the Class Action Waiver clause is found to be illegal or unenforceable, this entire Provision will be unenforceable and the dispute will be decided by a court.

#### Continuation

This Provision shall survive the termination of Your account with Us or Our affiliates and Your discontinued use of this Website. Notwithstanding any provision in this Agreement to the contrary, We agree that if We make any change to this Provision (other than a change to the Notice Address), You may reject any such change and require Us to adhere to the language in this Provision if a dispute between Us arises.

### **GENERAL.**

We think direct communication resolves most issues – if We feel that You are not complying with these Terms, We will tell You. We will even provide You with recommended necessary corrective action(s) because We value this relationship.

However, certain violations of these Terms, as determined by Us, may require immediate termination of Your access to this Website without prior notice to You. The Federal Arbitration Act, Washington, D.C. state law and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern these Terms. Foreign laws do not apply. Except for disputes subject to arbitration as described above, any disputes relating to these Terms or this Website will be heard in the courts located in Washington, D.C.. If any of these Terms are deemed inconsistent with applicable law, then such term(s) shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. By choosing not to enforce any of these Terms, We are not waiving Our rights. These Terms are the entire agreement between You and Us and, therefore, supersede all prior or contemporaneous negotiations, discussions or agreements between Everyone about this Website. The proprietary rights, disclaimer of warranties,

representations made by You, indemnities, limitations of liability and general provisions shall survive any termination of these Terms.

## **CALIFORNIA CONSUMER NOTICE.**

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: This Website and Service are provided by Heartful.ly, Inc., 3518 10<sup>th</sup> St NW, Unit A

Washington, D.C. 20010. If You have a question or complaint regarding the Website or Service, please contact Customer Service at [info@heartful.ly](mailto:info@heartful.ly). You may also contact Us by writing Heartful.ly, Inc., 3518 10<sup>th</sup> St NW, Unit A, Washington, D.C. 20010. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by post at 1625 North Market Blvd., Sacramento, CA 95834 or by telephone at (916) 445-1254 or (800) 952-5210 or Hearing Impaired at TDD (800) 326-2297 or TDD (916) 322-1700.

## **CONTACT US.**

If You have any questions about these Terms or otherwise need to contact Us for any reason, You can reach Us at [info@heartful.ly](mailto:info@heartful.ly) or by writing Heartful.ly, Inc., 3518 10<sup>th</sup> St NW, Unit A, Washington, D.C. 20010.