

Hallmark Australia Terms of Use

Effective Date: 27 August 2021

IMPORTANT! PLEASE CAREFULLY READ THESE TERMS & CONDITIONS ("TERMS"), INCLUDING THE MANDATORY ARBITRATION PROVISION, WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS.

These terms constitute a binding agreement between you and Hallmark Cards Australia Limited ("Hallmark Australia," "we" or "us"). e," or "us") governing your use of any website, mobile or other app, product, feature, or other service offered by us that posts a link to or otherwise provides these Terms (collectively, the "Hallmark Australia Properties"), including without limitation, hallmark.com.au. In addition, certain of the Hallmark Australia Properties may be governed by additional, service-specific terms (collectively, "Supplemental Terms"). The Supplemental Terms are incorporated into these Terms by reference. To the extent there is a conflict between these Terms and the Supplemental Terms, the Supplemental Terms will control with respect to the applicable services.

By accessing the Hallmark Australia Properties and/or transacting with the Hallmark Australia Properties, you agree to be bound by these Terms, and where applicable, the Supplemental Terms. Your use of the Hallmark Australia Properties is also governed by our [Privacy Policy](#). IF YOU DO NOT AGREE TO THESE TERMS, ANY APPLICABLE SUPPLEMENTAL TERMS, OR OUR PRIVACY POLICY, DO NOT ACCESS OR USE THE HALLMARK AUSTRALIA PROPERTIES.

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Changes to this Agreement

To the extent allowed by applicable law, we reserve the right to change these Terms and the Supplemental Terms at any time without prior notice. When we make changes, the new Terms will be made available at the Hallmark Australia Properties, and any new Supplemental Terms will be made available from within, or through, the affected services on the applicable Hallmark Australia Properties. We may also provide notice to you in other ways, such as through contact information you have provided. Your continued use of any of the Hallmark Australia Properties after the effective date of the revised Terms and/or Supplemental Terms as applicable (or engaging in such other conduct as we may reasonably specify) will constitute your consent to those changes to the fullest extent allowed by applicable law.

Changes to Services

Hallmark Australia may modify, suspend, or discontinue any aspect of the products or services we offer through the Hallmark Australia Properties (collectively “Services”), at any time for any reason, with or without notice to you, including the availability of any Hallmark Australia Property, or any feature or Content (defined below) of a Hallmark Australia Property.

Intellectual Property

a. Hallmark Ownership

Except with respect to User Content (defined in Section 3(c) below), Hallmark Australia, its licensors, or suppliers own all rights, title, and interest in and to the Hallmark Australia Properties, and all copyrights, trademarks, patents, trade secrets, and other intellectual property rights embodied therein, whether or not applied for or registered, including but not limited to the following: names, logos, text, characters, graphics or other artwork, icons, photos, products, digital downloads, sound recordings, audiovisual materials or effects, titles, themes, objects, animations, musical compositions, moral rights, documentation, data compilations, computer code or software, features, and functionality of the Hallmark Australia Properties, and any compilation of the foregoing (collectively, “Hallmark Content”).

The Hallmark Content is protected by United States and international laws. The Hallmark Content and the User Content are collectively referred to in these Terms as “Content.”

You may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works from, distribute, perform, display, incorporate into another website, app, or other service; or in any way exploit any of the Hallmark Content, in whole or in part, except as set forth in these Terms, without the specific permission of Hallmark.com.au.

b. Hallmark’s License to You

Subject to your compliance with these Terms and any applicable Supplemental Terms, Hallmark Australia grants to you a limited, revocable, non-exclusive, non-transferrable license to engage in the following activities for non-commercial purposes only:

- i. To browse, access, and view any of the Hallmark Australia Properties and the Hallmark Content therein that is available to the public without registration; and, if you have registered or subscribed as required by the applicable Service, to browse, access, and view Hallmark Content available to such registered or subscribed viewers;
- ii. To use the Hallmark Australia Properties, where applicable, to send personal, non-commercial messages to your family, friends, colleagues, and other individuals who you personally know.
- iii. To link to the Hallmark Australia Properties, provided, however, that your website or any third party websites that link to the Hallmark Properties: (a) must not frame or create a browser or border environment around any of Hallmark Content or otherwise mirror any part of the Hallmark Australia Properties; (b) must not imply that Hallmark is endorsing or sponsoring it or its products or services, unless Hallmark has given it prior written consent; (c) must not present false information about, or disparage, tarnish, or otherwise, in Hallmark’s sole opinion, harm Hallmark Australia or its Services; (d) must not use any Hallmark trademarks without the prior written permission from Hallmark; (e) must not contain content that could be construed as distasteful, offensive or controversial or otherwise objectionable (in Hallmark’s sole opinion); and (f) must be owned and controlled by you or the person or entity placing the link, or otherwise permit you to enable such link subject to these Terms. By linking to a Hallmark Australia Property, you agree that you do and will continue to comply with the above linking requirements. Notwithstanding anything to the contrary contained in these Terms, Hallmark reserves the right to prohibit linking to the Hallmark Properties for any reason in our sole and absolute discretion even if the linking complies with the requirements described above.

The foregoing license does not include any right to modify, publish, participate in the transfer or sale of, reproduction, or creation of derivative works from the Hallmark Content or the Hallmark Australia Properties, except as and only to the extent expressly stated above.

c. User Content

You and other users may have the ability to upload to, transmit through, or otherwise make available (collectively, “Upload”) through the Hallmark Australia Properties personalized messages, audio, video, photographs, files, data, reviews, discussions in community forums, or other materials (collectively, “User

Content"). You are solely and entirely responsible for User Content that you Upload using the Hallmark Australia Properties. You acknowledge that other users of the Hallmark Australia Properties, and not Hallmark Australia, are similarly responsible for all User Content they Upload using the Hallmark Australia Properties. You agree that you have no right, title, or interest in or to any Content that you have not Uploaded that appears on or through the Hallmark Australia Properties.

You acknowledge that Hallmark Australia has no obligation to pre-screen, monitor, or investigate User Content, but that it reserves the right to do so.

d. Your User Content License to Hallmark Australia

Subject to any applicable Account settings that we may choose to make available to you, and which you may then choose to select, you grant to Hallmark Australia a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right (including any moral rights) and license to use, distribute, reproduce, modify, adapt, translate, create derivative works of, publicly perform, and publicly display your User Content, in whole or in part, together (at Hallmark's option) with the names and likenesses of any persons identifiable therein, in any form, media, or technology now known or later developed, for the purposes of operating and providing the Hallmark Australia Properties and their services to you and to other users. Notwithstanding the foregoing, with respect to User Content that is provided to Hallmark Australia solely for the purpose of incorporating such User Content into a product or service ordered by you, you grant such right to Hallmark Australia for the sole purpose of making and delivering products and services ordered by you.

e. No Confidential Relationship/No Unsolicited Materials

Except as otherwise described in our Privacy Policy, any User Content will be treated as non-confidential and non-proprietary and we will not be liable for any use or disclosure of User Content. You acknowledge and agree that your relationship with Hallmark Australia is not a confidential, fiduciary, or other type of special relationship, and that your decision to submit any User Content does not impose any confidentiality obligations on Hallmark Australia.

It is our policy not to accept or consider content, information, ideas, suggestions or other materials other than those we have specifically requested, to which certain specific terms, conditions and requirements may apply. This is to avoid any misunderstandings if your ideas are similar to those we have developed or are developing independently. Accordingly, Hallmark Australia does not accept unsolicited materials or ideas, and takes no responsibility for any materials or ideas so transmitted and you agree that any such ideas transmitted to Hallmark Australia are included in the above license you grant to Hallmark Australia for any User Content.

You agree and understand that we are not obligated to post, keep or use your User Content.

f. Your Warranty to Hallmark Australia

You represent and warrant that you are the owner of all rights, title, and interest in and to the User Content you Upload (or such User Content is in the public domain), or otherwise have all rights necessary to grant the license provided for in these Terms, including without limitation that any other holder of any worldwide intellectual property right, including moral rights (to the extent allowed by applicable law), in the User Content you Upload, has completely and effectively waived all such rights and validly and irrevocably granted to you the right to grant the license stated above. You further warrant that the User

Content you Upload is accurate, does not violate these Terms, and will not cause injury to any person or entity.

If you send a digital or physical card or message to another individual, you represent and warrant that you have the consent of the recipient to send that card or message. You acknowledge and agree that you, not Hallmark Australia, are the sender of such card or message, and that we act merely as a delivery agent.

User Conduct

As a condition of your use of the Hallmark Australia Properties, you agree not to use the Hallmark Australia Properties for any purpose that is prohibited by these Terms, by applicable Supplemental Terms, by applicable law or in any other manner that we deem objectionable (in our sole discretion). You will not, and will not permit or assist any third party to, take any action or Upload any User Content on or through the Hallmark Australia Properties that:

- g. Infringes on any copyright, trademark, patent, trade secret, right of publicity, right of privacy, or any other right of another person or entity;
- h. Is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, profane, or vulgar;
- i. Promotes discrimination, bigotry, racism, hatred, harassment, or harm against any individual or group;
- j. Constitutes unauthorized or unsolicited advertising, junk mail, bulk mail, chain letters, or surveys;
- k. Discloses another person's address, phone number, e-mail address, credit card number, or any information that may be used to track, contact, or impersonate that individual or that is extremely personal in nature;
- l. Involves commercial activities and/or sales, such as contests, sweepstakes, or barter; communicating or facilitating any commercial advertisement or solicitation; marketing any goods or services; reselling, renting, leasing, or providing for payment the Services to any person;
- m. Impersonates any person or entity, including any employee or representative of Hallmark Australia;
- n. Engages in or attempts to engage in any potentially harmful acts that are directed against the Hallmark Australia Properties, including but not limited to violating or attempting to violate any security features of the Hallmark Australia Properties; using manual or automated software or other means to scrape, crawl, spider, or similarly access any portion of the Hallmark Australia Properties (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from our websites for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); introducing or sending viruses, worms, spyware, malware, or any other kind of harmful code into or through the Hallmark Australia Properties; interfering or attempting to interfere with the proper functioning of or use by others of the Hallmark Australia

Properties, including by means of overloading, flooding, spamming, mail bombing, or crashing the Hallmark Australia Properties;

- o. Engages in or attempts to engage in any of the following: disabling, bypassing, modifying, defeating, violating, removing, impairing, circumventing, or otherwise interfering with digital rights-management technology or other features or technology that limits or prevents use of the Hallmark Australia Properties or the Content therein;
- p. Automates the process of sending or viewing Content.

You agree to not engage in the use, copying, or distribution of any of the Content other than expressly permitted in these Terms, including any use, copying, or distribution of User Content of third parties obtained through the Hallmark Australia Properties for any commercial purposes. If you download or print a copy of the Content for personal use, you must retain all copyright and other proprietary notices contained therein.

You agree that digital rights-management technology is an integral and inseparable part of any Hallmark Australia Property that employs it. Tampering with or circumventing such digital rights-management technology or otherwise accessing or using the Hallmark Australia Properties or Content in violation of these Terms and any applicable Supplemental Terms may constitute copyright infringement.

YOU ARE SOLELY RESPONSIBLE FOR YOUR INTERACTIONS WITH ANY OTHER USERS AND THIRD PARTIES WITH WHOM YOU INTERACT. Notwithstanding the foregoing, we reserve the right (but have no obligation) to intercede in any disputes that arise out of those interactions. You agree that Hallmark Australia is not and will not be responsible for any liability incurred as the result of such interactions. We do not approve, endorse, or make any representations or warranties with respect to User Content. You use all User Content and interact with other users at your own risk.

Investigations

We reserve the right to investigate User Content, as well as violations of these Terms and any applicable Supplemental Terms, including by requesting evidence of your rights in and to the User Content. Hallmark Australia reserves the right to refuse and/or remove any Content, and to suspend the shipping of any order or service relating to Content, for any reason it deems, in its sole discretion, to be appropriate. By using the Hallmark Australia Properties, you irrevocably consent to such investigations and disclosures.

Security of Your Account

You are responsible for the accuracy of the information included in your account, including updating your information as necessary, maintaining the confidentiality of your password. To the fullest extent allowed by law, all activity conducted in connection with your account will be your responsibility, as you are deemed to be in sole possession and control of the confidential password necessary to access your account. You must immediately notify Hallmark Australia of any unauthorized access or tampering of your account, or suspected breach of security by contacting ausconsumercare@hallmark.com.

Subscriptions and Trial Offers

Hallmark subscriptions (including trial offers) are subject to applicable Hallmark Subscription Service Terms, which are Supplemental Terms.

Purchase Terms

The purchase terms that apply to all online transactions with Hallmark Australia and Hallmark Australia Properties, via hallmarkaustralia.myshopify.com, are available [here](#).

Sweepstakes, Contests, and Promotions

Any sweepstakes, contests or other promotions (any, a "Promotion") that may be offered via the Hallmark Australia Properties may be governed by a separate set of rules that may have eligibility requirements, such as certain age or geographic area restrictions, terms and conditions governing the Promotion, use of User Content, and disclosures about how your personal information may be used. It is your responsibility to read these rules to determine whether or not you want to and are eligible to participate, register and/or enter, and to determine the applicable terms and conditions of the Promotion. By participating in a Promotion, you will be subject to those official rules, and you agree to comply with and abide by such rules and the decisions of the identified sponsor(s).

Third Party Links, Applications, and Content

There may be links from the Hallmark Australia Properties, or communications you receive from the Hallmark Australia Properties, to third party sites or properties. The Hallmark Australia Properties may also include third party content that we do not control, maintain, or endorse. Accessing those third party sites requires you to leave the Hallmark Australia Properties. In addition, to access certain Hallmark Australia Properties, you may be required to use the sites and properties of a third party. We do not control those third party sites or any of the content contained therein and you expressly acknowledge and agree that we are in no way responsible or liable for any of those third party sites or properties, including, without limitation, their content, policies, failures, promotions, products, services, actions and/or any damages, losses, failures or problems caused by, related to or arising from those third parties or their sites. YOUR CORRESPONDENCE AND BUSINESS DEALINGS WITH OTHERS FOUND ON OR THROUGH A HALLMARK AUSTRALIA PROPERTY INCLUDING, WITHOUT LIMITATION, THE PAYMENT AND DELIVERY OF PRODUCTS AND SERVICES, AND ANY TERMS, CONDITIONS, WARRANTIES AND REPRESENTATIONS ASSOCIATED WITH ANY SUCH DEALINGS, ARE SOLELY BETWEEN YOU AND THE THIRD PARTY. HALLMARK ENCOURAGES YOU TO REVIEW ALL POLICIES, RULES, TERMS AND REGULATIONS, INCLUDING THE PRIVACY POLICIES AND TERMS OF USE OF EACH AND EVERY THIRD PARTY SITE THAT YOU VISIT.

International Users

Some of the Hallmark Australia Properties are accessible from countries around the world and may contain references to Services that are not available in your country. These references do not imply that we intend to announce such Services in your country. The Hallmark Australia Properties are controlled and offered by us from its facilities in Australia. Hallmark Australia makes no representations that the Hallmark Australia Properties or our Services are appropriate or available for use in other countries. Those who access the Hallmark Australia Properties or use our Services from other countries do so at their own volition and are responsible for compliance with local law.

Indemnification

To the fullest extent permitted by law, you agree to indemnify and hold Hallmark Australia, its parents, subsidiaries, affiliates, officers, employees, agents, partners and licensors (collectively, the "Hallmark Parties") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of: (a) your User Content; (b) your use of, or inability to use, the Hallmark Australia Properties or our Services; (c) your violation of these Terms or any applicable Supplemental Terms; (d)

your violation of any rights of another party, including other users; or (e) your violation of any applicable laws, rules or regulations.

We reserve the right, at our own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with us in asserting any available defenses.

This provision does not require you to indemnify any of the Hallmark Parties for any unconscionable commercial practice by such party or for such party's fraud, deception, false promise, misrepresentation or concealment, suppression or omission of any material fact in connection with the Services provided under these Terms. You agree that the provisions in this Section 12 will survive any termination of your account, these Terms or any applicable Supplemental Terms, any Subscription Services, or your access to the Hallmark Australia Properties.

Suspension and Termination

We reserve the right to suspend or terminate your access to all or some of our Hallmark Australia Properties, with or without notice, and with or without refund, if we, in our sole discretion, determine that you are in breach of these Terms or any applicable Supplemental Terms or have engaged in conduct that we, in our sole discretion, deem inappropriate.

In the event of suspension or termination by Hallmark Australia, we may delete or change your password(s) associated with any account you may have for Hallmark Australia Properties; delete or change your account for such Hallmark Australia Properties, including deleting your User Content, watchlist information, and/or viewing or transaction history; and bar your further use of such Hallmark Australia Properties, as well as that of anyone sharing your email address, payment information, and/or physical address. You understand that such actions may be taken without any liability whatsoever to you for any suspension or termination, including for deletion of User Content.

All provisions of these Terms and any applicable Supplemental Terms which by their nature should survive termination, will survive termination of your access to the Hallmark Australia Properties, including without limitation, ownership provisions, warranty disclaimers, limitations of liability, and dispute resolution provisions.

If your access to Hallmark Australia Properties is terminated under these Terms, then you agree that you will not attempt to re-register with or access the Hallmark Australia Properties through use of a different username or otherwise, and you acknowledge that you will not be entitled to receive a refund for fees related to those of our Hallmark Australia Properties to which your access has been terminated. In the event that you violate the immediately preceding sentence, we reserve the right, in our sole discretion, to immediately take any or all of the actions set forth in these Terms without any notice or warning to you.

Disclaimer of Warranties and Conditions

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE HALLMARK AUSTRALIA PROPERTIES AND OUR SERVICES IS AT YOUR SOLE RISK, AND THE HALLMARK AUSTRALIA PROPERTIES AND OUR SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. WE RESERVE THE RIGHT TO AMEND ERRORS AND UPDATE PRODUCT AND SERVICE INFORMATION AT ANY TIME WITHOUT PRIOR NOTICE. THE HALLMARK PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR

IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARISING FROM USE OF THE HALLMARK AUSTRALIA PROPERTIES OR OUR SERVICES.

THE HALLMARK PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: OUR SERVICES WILL MEET YOUR REQUIREMENTS; YOUR USE OF OUR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; THAT DEFECTS WILL BE CORRECTED; THAT THE HALLMARK AUSTRALIA PROPERTIES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT THE MATERIALS OF THE HALLMARK AUSTRALIA PROPERTIES ARE CORRECT, ACCURATE, OR RELIABLE.

ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH OUR SERVICES IS ACCESSED AT YOUR OWN RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY, INCLUDING, BUT NOT LIMITED TO, YOUR COMPUTER SYSTEM AND ANY DEVICE YOU USE TO ACCESS THE HALLMARK AUSTRALIA PROPERTIES OR OUR SERVICES, OR ANY OTHER LOSS THAT RESULTS FROM ACCESSING SUCH CONTENT.

OUR SERVICES MAY BE SUBJECT TO DELAYS, CANCELLATIONS AND OTHER DISRUPTIONS. THE HALLMARK PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION WITH RESPECT TO SERVICES, INCLUDING BUT NOT LIMITED TO, THE QUALITY, EFFECTIVENESS, REPUTATION AND OTHER CHARACTERISTICS OF SERVICES.

Limitations on Liability

q. Disclaimer of Certain Damages.

YOU AGREE THAT IN NO EVENT WILL THE HALLMARK PARTIES BE LIABLE FOR ANY LOSS OF PROFITS, REVENUE OR DATA, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH OUR SERVICES, OR DAMAGES OR COSTS DUE TO LOSS OF PRODUCTION OR USE, PROCUREMENT OF SUBSTITUTE SERVICES, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE HALLMARK AUSTRALIA PROPERTIES, OR OUR SERVICES, OR FROM ANY COMMUNICATIONS WITH OTHER USERS THEREOF, ON ANY THEORY OF LIABILITY, RESULTING FROM: (1) THE USE OR INABILITY TO USE THE HALLMARK AUSTRALIA PROPERTIES OR OUR SERVICES; (2) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES RESULTING FROM ANY SERVICES PURCHASED OR OBTAINED THROUGH THE HALLMARK AUSTRALIA PROPERTIES; (3) CONDUCT OF ANY THIRD PARTY ON HALLMARK AUSTRALIA PROPERTIES; OR (4) ANY OTHER MATTER RELATED TO THE HALLMARK AUSTRALIA PROPERTIES OR OUR SERVICES, WHETHER BASED ON WARRANTY, COPYRIGHT, CONTRACT, OR ANY OTHER LEGAL THEORY. THE FOREGOING CAP ON LIABILITY WILL NOT APPLY TO LIABILITY OF A HALLMARK PARTY FOR ANY INJURY CAUSED BY A HALLMARK PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

r. Cap on Liability.

UNDER NO CIRCUMSTANCES WILL THE HALLMARK PARTIES BE LIABLE TO YOU FOR MORE THAN THE GREATER OF (A) THE TOTAL AMOUNT PAID TO HALLMARK AUSTRALIA BY YOU DURING THE ONE-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY OR (B) THE REMEDY OR PENALTY IMPOSED BY THE STATUTE UNDER WHICH SUCH CLAIM ARISES. THE FOREGOING CAP ON LIABILITY WILL NOT APPLY TO LIABILITY OF A HALLMARK PARTY FOR ANY INJURY CAUSED BY A HALLMARK PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

s. User Content.

EXCEPT FOR HALLMARK'S OBLIGATIONS TO PROTECT YOUR PERSONAL DATA AS SET FORTH IN THE HALLMARK PRIVACY POLICY, HALLMARK ASSUMES NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MIS-DELIVERY, OR FAILURE TO STORE ANY CONTENT, USER CONTENT, USER COMMUNICATIONS, OR PERSONALIZATION SETTINGS.

t. Basis of the Bargain.

THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN HALLMARK AND YOU.

BINDING ARBITRATION ("Arbitration Agreement").

- u. Applicability of Arbitration Agreement. You agree that any dispute or claim relating in any way to your access or use of the Hallmark Australia Properties, to these Terms or any Supplemental Terms, or to any Services, or to any aspect of your relationship with Hallmark Australia, will be resolved by binding arbitration, rather than in court, except that (1) you may assert claims in the small claims division of a local court or tribunal if your claims qualify, so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis; and (2) you or Hallmark may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). This Arbitration Agreement will apply, without limitation, to all claims that arose or were asserted before the effective date of these Terms or any prior version of this agreement.

IF YOU AGREE TO ARBITRATION WITH HALLMARK AUSTRALIA, YOU ARE AGREEING IN ADVANCE THAT YOU WILL NOT PARTICIPATE IN OR SEEK TO RECOVER MONETARY OR OTHER RELIEF IN ANY LAWSUIT FILED AGAINST HALLMARK ALLEGING CLASS, COLLECTIVE, AND/OR REPRESENTATIVE CLAIMS ON YOUR BEHALF. INSTEAD, BY AGREEING TO ARBITRATION, YOU MAY BRING YOUR CLAIMS AGAINST THE HALLMARK IN AN INDIVIDUAL ARBITRATION PROCEEDING. IF SUCCESSFUL ON SUCH CLAIMS, YOU COULD BE AWARDED MONEY OR OTHER RELIEF BY AN ARBITRATOR. YOU ACKNOWLEDGE THAT YOU HAVE BEEN ADVISED THAT YOU MAY CONSULT WITH AN ATTORNEY IN DECIDING WHETHER TO ACCEPT THIS AGREEMENT, INCLUDING THIS ARBITRATION AGREEMENT.

- v. Arbitration Rules and Forum. The Commercial Arbitration Act of the State of Victoria governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered office, Hallmark Cards Australia Limited, Attention Legal Department, 10 Caribbean Drive Scoresby, Victoria, 3179.

(a) Any dispute, controversy or claim arising out of, relating to or in connection with this agreement, including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Australian Disputes Centre (ADC), www.disputescentre.com.au.

(b) The arbitration shall be conducted in Melbourne in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (the Rules).

(c) The terms of the Rules are hereby deemed incorporated into this agreement.

(d) This clause shall survive termination of this agreement.

Authority of Arbitrator. The arbitrator, and not any federal, state or local court or agency will have exclusive authority to resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and Hallmark Australia. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim. The arbitrator will have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum's rules, and these Terms (including the Arbitration Agreement). The arbitrator will issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.

- w. Waiver of Jury Trial. YOU AND HALLMARK HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Hallmark Australia are instead electing that all claims and disputes will be resolved by arbitration under this Arbitration Agreement, except as specified in Section 16(a) above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.
- x. Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. In the event that this subparagraph is deemed invalid or unenforceable neither you nor we are entitled to arbitration and instead claims and disputes will be resolved in a court as set forth in Section 18.
- y. 30-Day Right to Opt Out. You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to the following address: Hallmark Cards Australia Limited, Attention Legal Department, 10 Caribbean Drive Scoresby, Victoria, 3179 or emailing us at ausconsumercare@hallmark.com, within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your Hallmark username (if any), the email address you used to set up your Hallmark account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of these Terms will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

- z. Severability. If any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts will be of no force and effect and will be severed and the remainder of the Arbitration Agreement will continue in full force and effect.
- aa. Survival of Agreement. This Arbitration Agreement will survive the termination of your relationship with Hallmark Australia.
- bb. Modification. Notwithstanding any provision in these Terms to the contrary, we agree that if Hallmark Australia makes any future material change to this Arbitration Agreement, it will not apply to any individual claim(s) that you had already provided notice to Hallmark Australia.

Exclusive Venue.

To the extent the parties are permitted to initiate litigation in a court, both you and Hallmark agree that all claims and disputes arising out of or related to these Terms or any Supplemental Terms will be litigated exclusively in the courts of the State of Victoria.

Governing Law.

These Terms, the Supplemental Terms, and any action related to them will be governed and interpreted by and under the laws of Australia and the State of Victoria, without giving effect to any principles that provide for the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or any Supplemental Terms.

Mobile

The Hallmark Australia Properties may offer features and services that are available to you via your mobile phone or other mobile device. These features and services may include, without limitation, the ability to upload content to the Hallmark Australia Properties, receive messages from the Hallmark Australia Properties (including, without limitation, push messages), download applications to your mobile phone or access Hallmark Australia Properties features (collectively, the "Mobile Features"). We may charge for Mobile Features. Also, standard messaging, data and other fees may be charged by your carrier. Fees and charges will appear on your mobile bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Mobile Features and certain Mobile Features may be incompatible with your carrier or mobile device. Contact your carrier with questions regarding these issues.

If you have registered for Mobile Features that utilize your mobile number, you agree to notify Hallmark Australia of any changes to or deactivation of your mobile number and update your account(s) on the Hallmark Australia Properties to reflect this change.

App Stores

- cc. General. You acknowledge and agree that the availability of any apps we may offer ("Apps") are dependent on the third party from whom you received the App license (e.g., Apple App Store, Google Play, Roku, or Samsung Smart) ("App Store"). You acknowledge that these Terms are an agreement between you and us, and not with the App Store. We, not the App Store, are solely responsible for the Hallmark Properties and our Services, including the Apps, the content thereof, maintenance, support services, and warranty therefor, and addressing any claims relating thereto (e.g., product liability, legal

compliance or intellectual property infringement). In order to use the Apps, you must have Internet access, including in some cases, wireless network services. You agree to pay all fees associated with such access. You also agree to pay all fees (if any) charged by the App Store in connection with the Hallmark Australia Properties, including the Apps. You agree to comply with, and your license to use the Apps is conditioned upon your compliance with, all applicable third-party terms of agreement (e.g., the App Store's terms and policies) when using our Services, including the Apps. You acknowledge that the App Store (and its subsidiaries) are third-party beneficiaries of this Agreement and will have the right to enforce it.

- dd. Accessing and Downloading Apps from Apple. The following applies to any App accessed through or downloaded from the Apple App Store (an "Apple-Sourced App"):
- i. Acknowledgment. You acknowledge and agree that (i) these Terms are between you and Hallmark (or any third party developer that may own or operate the App) only, and not Apple, and (ii) Hallmark, not Apple, is solely responsible for the Apple Store Sourced App and content thereof.
 - ii. Scope of License. Your license to use the Apple Store Sourced App is non-transferable and limited to use on an Apple-branded product that you own or control, and as permitted by the "Usage Rules" set forth in the Apple Media Services Terms and Conditions.
 - iii. Maintenance and Support. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple Store Sourced App.
 - iv. Warranty. In the event of any failure of the Apple Store Sourced App to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple Store Sourced App to you and to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple Store Sourced App. As between Hallmark and Apple, any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Hallmark.
 - v. Product Claims. You and Hallmark Australia acknowledge that, as between Hallmark Australia and Apple, Apple is not responsible for addressing any claims you have or any claims of any third party relating to the Apple Store Sourced App or your possession and use of the Apple Store Sourced App, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple Store Sourced App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
 - vi. Intellectual Property Rights. You and Hallmark Australia acknowledge that, in the event of any third-party claim that the Apple Store Sourced App or your possession and use of that Apple Store Sourced App infringes that third party's intellectual property rights, as between Hallmark and Apple, Hallmark Australia, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by the Agreement.

- vii. Legal Compliance. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.
- viii. Third Party Terms. You must comply with any applicable third party terms of agreement when using the Apple Store Sourced App (e.g., your wireless data service agreement).
- ix. Third Party Beneficiary. You and Hallmark acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Agreement as related to your license of the Apple Store Sourced App, and that, upon your acceptance of the terms and conditions of the Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce the Agreement as related to your license of the Apple Store Sourced App against you as a third-party beneficiary thereof.
- x. Without limiting any other terms of the Agreement, you must comply with all applicable third-party terms of agreement when using the Apple Store Sourced App.

General Provisions

- ee. Electronic Communications. The communications between you and us use electronic means, whether you visit the Hallmark Australia Properties or send us emails or other electronic communications, or whether we post notices on the Hallmark Australia Properties or communicate with you via email or other electronic communications. You (1) consent to receive communications from us in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Hallmark provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.
- ff. Assignment. These Terms and any applicable Supplemental Terms, and your rights and obligations under each, may not be assigned, subcontracted, delegated or otherwise transferred by you without our prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. Hallmark may assign its rights and duties under these Terms or any Supplemental Terms to any party at any time without any notice to you.
- gg. Force Majeure. Hallmark Australia will not be liable for any delay or failure to perform, including failure to deliver purchased Services, resulting from causes outside its reasonable control, including, but not limited to, acts of God, epidemic, pandemic, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.
- hh. Questions, Complaints, Claims. If you have any questions, complaints or claims with respect to the Hallmark Australia Properties or our Services, please contact us at:
 - ii. Waiver. Any waiver or failure to enforce any provision of these Terms or any applicable Supplemental Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

- jj. Severability. If any portion of these Terms or any applicable Supplemental Terms is held invalid or unenforceable, that portion will be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions will remain in full force and effect.
- kk. Entire Agreement. These Terms together with any applicable Supplemental Terms are the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter. As used in these Terms, "including" means "including without limitation."