

MARRIOTT WATERS LOYALTY APP
END USER LICENCE AGREEMENT – TERMS AND CONDITIONS

1. Loyalty Rewards Application

- 1.1 The relationship between the Application Provider ("we", "us", "our") and you in connection with the Loyalty Rewards Application, and any related services is governed by:
- (a) these Terms and Conditions; and
 - (b) where the Loyalty Rewards Application is provided to you via another application (such as Apple's App Store, or Google's Play Store), that platform provider's Application End User Licence Agreement (**General Conditions**),
- (collectively, this **Agreement**).
- 1.2 To the extent there is a conflict between the Terms and Conditions and the General Conditions, the Terms and Conditions prevail to the extent of any inconsistency.

2. Grant of licence

- 2.1 Subject to this Agreement, by accepting your registration as a user, the Application Provider grants you a revocable, personal, non-exclusive and non-transferable licence and right to use the Loyalty Rewards Application in Australia for the Intended Purpose.
- 2.2 Once you have downloaded the Loyalty Rewards Application, you will be required to register your personal details with the Application Provider. You must provide accurate, complete and up to date information as requested. It is your responsibility to inform the Application Provider of any changes to your registration information.

3. Term

- 3.1 This Agreement commences on the date that you download the Loyalty Rewards Application, and will remain in force until terminated by either party in accordance with its terms.

4. Services

- 4.1 The Application Provider and/or stores that form a part of the Marriott Waters shopping centre (**Store**) provide, or may provide, you with the ability to receive and use rewards, discounts, promotional vouchers and coupons from Stores, for example to collect stamps or points from a coffee shop each time you purchase a coffee from that coffee shop to receive a benefit from that coffee shop when you accumulate enough stamps or points, through an interactive, real-time, data collection platform using the Loyalty Rewards Application (**Intended Purpose**).
- 4.2 In providing the Loyalty Rewards Application to you, the Application Provider may allow you to enter User Content into your User Account for the purpose of:
- (a) creating and updating your information on the Loyalty Rewards Application;

- (b) communicating with Stores and the Application Provider; and
- (c) any other purpose at the Application Provider's discretion which is consistent with the Intended Purpose.

5. Conditions of use of the Loyalty Rewards Application

5.1 Unless otherwise stated in writing by the Application Provider, you must only use the Loyalty Rewards Application for purposes that are consistent with the Intended Purpose or as otherwise permitted in writing by the Application Provider.

5.2 You must at all times comply with the terms and conditions of this Agreement.

5.3 You acknowledge and agree that:

- (a) you are responsible for ensuring that no unauthorised persons access your User Account due to your default;
- (b) it will be necessary for the Application Provider to record in a database all data received by it via your use of the Loyalty Rewards Application and such database (including any copyright in the data) will at all times be the property of the Application Provider; and
- (c) the Application Provider may (or may permit relevant Stores to) send you emails, text messages, notifications and any other alerts in connection with your use of the Loyalty Rewards Application.

5.4 You must not directly or indirectly:

- (a) copy, alter, modify, reverse engineer, translate, disassemble or de-compile any part of the Loyalty Rewards Application;
- (b) grant any party a sub-licence to access or use the Loyalty Rewards Application for any purpose;
- (c) distribute or resell access to the Loyalty Rewards Application to any person;
- (d) adapt, create derivative works from, or otherwise modify any part of the Loyalty Rewards Application;
- (e) circumvent the operation of any part of the Loyalty Rewards Application in any way;
- (f) use the Loyalty Rewards Application in any way that:
 - (i) is inconsistent with the Application Provider's Privacy Policy or is a misuse of any person's confidential information;
 - (ii) represents that the Application Provider endorses, has reviewed or in any way agrees with the material communicated by you;
 - (iii) is misleading or deceptive;
 - (iv) infringes any third party's rights, e.g. intellectual property rights;
 - (v) breaches any law;

- (vi) may affect the availability of the Loyalty Rewards Application or causes interference to the normal operation of the Loyalty Rewards Application;
 - (vii) is obscene, offensive, amounts to harassment or exploits another person;
 - (viii) is defamatory or may be defamatory; or
 - (ix) is otherwise reasonably considered inappropriate by the Application Provider; or
- (g) encourage, assist, or grant the right or ability to any other party to engage in conduct similar to that in this clause 5.4.
- 5.5** From time to time, the Application Provider may alter or vary the Loyalty Rewards Application. These alterations may, among other things, have the effect of:
- (a) providing a means of using enhanced or added functionality; or
 - (b) removing access to functionality that had previously been available.
- 5.6** This clause 5 survives termination of this Agreement for any reason.

6. User Account

- 6.1** Upon registering for the Loyalty Rewards Application, you will be provided with a User Account. Your User Account will consist of User Content uploaded by yourself, the Application Provider and/or the Stores.
- 6.2** You must ensure that at all times the User Content is accurate, complete and up to date.
- 6.3** You must keep confidential and safeguard from unauthorised use any user names and passwords required to access any facility forming part of, or made available while using, the Loyalty Rewards Application.

7. Intellectual Property

- 7.1** You acknowledge that the Loyalty Rewards Application is the subject of copyright and other intellectual property rights.
- 7.2** You must not at any time do or permit any act to be done that infringes those intellectual property rights.
- 7.3** This clause 7 survives termination of this Agreement for any reason.

8. Support

- 8.1** During the term of this Agreement, the Application Provider will take reasonable steps to ensure the availability of the Loyalty Rewards Application.
- 8.2** The Application Provider is not required to provide support in relation to the Loyalty Rewards Application, however, it may do so at its absolute discretion.
- 8.3** When reporting a problem or issue to the Application Provider, you are responsible for providing such information and doing such things as are reasonably necessary (as

requested by the Application Provider) to assist the Application Provider in identifying or resolving that problem or issue.

9. Privacy

- 9.1** The parties will, in performing their respective obligations under this Agreement, comply with all applicable Privacy Laws, and neither party will (through its default) put the other in breach of any such Privacy Laws.
- 9.2** In performing its obligations under this Agreement, the Application Provider will use reasonable endeavours to comply with the then-current Privacy Policy.
- 9.3** Generally the Application Provider will collect your personal information in order to provide the Loyalty Rewards Application to you.
- 9.4** The Application Provider may disclose your personal information to third parties including our service providers (such as Stamp Media Pty Ltd ABN 90 153 529 616), our business partners and our or your agents. Your personal information may be disclosed overseas where we use a service provider which is based or has offices overseas, for example in the USA, UK or Canada.
- 9.5** The Application Provider may also use your personal information to market the Application Provider's services to you, including via telephone (this consent lasts indefinitely unless you opt out), mail, targeted digital marketing, email, SMS and push notifications.
- 9.6** The Privacy Policy contains information about how you may seek to access information that we hold about you and seek correction of that information. The Privacy Policy also contains information about how you can complain about a privacy breach and how the Application Provider will deal with such a complaint.
- 9.7** You warrant that you have read and understood the Privacy Policy, a copy of which is available on the Loyalty Rewards Application.
- 9.8** The provisions of this clause 9 will survive termination or expiry of this Agreement.

10. Surveillance technology

- 10.1** The Loyalty Rewards Application uses surveillance technology such as iBeacon which means the Application Provider can determine your geographical location when you have the Loyalty Rewards Application open on your mobile device.
- 10.2** By creating a User Account, you agree to the Application Provider collecting information regarding your mobile device's location.
- 10.3** You can withdraw your consent to the Application Provider collecting your location information by turning off the location services on your mobile device.

11. Confidentiality

- 11.1** You acknowledge the confidentiality and the proprietary nature of the Application Provider's and other users' and the Stores' Confidential Information and that no right, entitlement or interest in that Confidential Information is extended to or conveyed to you other than for the purposes contemplated by this Agreement. You undertake and agree that you will:
- (a) keep all such Confidential Information confidential; and

- (b) only use such Confidential Information for purposes consistent with the Intended Purpose.
- 11.2** You acknowledge that a breach of this clause 11 may cause the Application Provider, a Store or other users irreparable damage for which monetary damages may not be an adequate remedy.
- 11.3** You acknowledge that this clause 11 may be relied upon and enforced by Stores and other users in accordance with its terms, even though those persons are not party to it.
- 11.4** The obligations under this clause 11 survive termination of this Agreement for any reason.

12. Liability

- 12.1** You acknowledge that:
 - (a) access to the Loyalty Rewards Application may not be uninterrupted, and the Loyalty Rewards Application may not be error-free;
 - (b) the performance of the Loyalty Rewards Application (including response times) will depend on factors outside the parties' control including the design and performance of your information technology systems or device, and the state of the relevant telecommunications networks and their interconnections and network status;
 - (c) although the Application Provider will implement reasonable security procedures, it cannot guarantee that unauthorised access to information and data will not occur;
 - (d) you have relied on your own independent assessment and judgment in determining whether the Loyalty Rewards Application meets your needs and requirements; and
 - (e) you are solely responsible for the accuracy, quality, integrity and legality of, and the method of collection of, any data submitted via the Loyalty Rewards Application by you or your agents.
- 12.2** Nothing in this Agreement restricts, excludes or modifies any consumer rights under any statute including the *Competition and Consumer Act 2010* (Cth).
- 12.3** Unless this Agreement provides otherwise, to the extent permitted by law, the Application Provider expressly excludes all guarantees, conditions and warranties whether express or implied, statutory or otherwise.
- 12.4** To the extent permitted by law, in no event will the Application Provider be liable to you or any other party for any indirect, punitive, special, incidental or consequential loss or damage in connection with or arising out of this Agreement or your access to or use of the Loyalty Rewards Application (including for damage to reputation or loss of profits, use, data, or other economic advantage), regardless of how it arises (including if it arises due to the Application Provider's negligence), whether for breach of this Agreement or on any other basis (including in negligence), and even if it has been previously advised of the possibility of such damage.
- 12.5** To the extent permitted by law, the Application Provider will have no liability in respect of any claim, loss or damage arising from:
 - (a) an unauthorised party's access to or use of your User Account (unless that party's access is attributable to the negligence or wilful misconduct of the Application Provider);

- (b) any addition to or modifications to the Loyalty Rewards Application made or procured by you which are not created or supplied by or on behalf of the Application Provider; or
- (c) your use of the Loyalty Rewards Application in any way other than in accordance with this Agreement or as otherwise specified by the Application Provider.

12.6 The Application Provider's liability arising out of or in connection with this Agreement or your access to or use of the Loyalty Rewards Application (whether in contract, equity, negligence, tort or for breach of statute or otherwise) will be reduced by the extent, if any, to which you or any other party associated with you contributed to the loss.

12.7 To the extent permitted by law, the cumulative liability of the Application Provider for any breach of any condition or warranty in this Agreement, or any breach of a consumer guarantee by the Application Provider, and your sole and exclusive remedy in relation to such breaches will be limited to, in the case of the Loyalty Rewards Application, at the Application Provider's option:

- (a) supplying the Loyalty Rewards Application again; or
- (b) paying the cost of having the Loyalty Rewards Application supplied again.

12.8 This clause 12 survives termination of this Agreement for any reason.

13. Suspension

13.1 The Application Provider may suspend the Loyalty Rewards Application or your access to the Loyalty Rewards Application at any time, by providing you notice if:

- (a) the Application Provider reasonably believes that you or your agents are in breach of this Agreement;
- (b) any action taken or required to be taken in accordance with this Agreement contravenes or may contravene any law or code of conduct;
- (c) you use the Loyalty Rewards Application in a manner which is illegal, fraudulent or anti-social, as reasonably determined by the Application Provider; or
- (d) such suspension would assist in achieving the Intended Purpose.

14. Termination

14.1 This Agreement and your User Account may be terminated by the Application Provider by providing notice to you if:

- (a) you breach this Agreement and do not remedy the breach within 14 days of receiving a written notice of the breach from the Application Provider; or
- (b) you become bankrupt, unable to pay your debts or subject to any other form of insolvency-related administration.

14.2 You may terminate this Agreement by uninstalling and deleting all copies of the Loyalty Rewards Application provided to you pursuant to this Agreement.

14.3 On termination of this Agreement for any reason:

- (a) you will cease to have any rights to access or use the Loyalty Rewards Application through your User Account or otherwise; and
- (b) the Application Provider may, at its discretion and subject to applicable laws, either delete or retain copies of any or all data (including any personal information) that you have provided to the Application Provider in connection with your User Account until it is no longer required in relation to the Application Provider's relationship with you.

14.4 Termination of this Agreement is without prejudice to any other rights or remedies that a party may have under this Agreement or at law, and will not affect any accrued rights or liabilities of either party.

15. Electronic transactions and verification

15.1 You acknowledge and agree that:

- (a) any consent, agreement or authority that you provide via the Loyalty Rewards Application may be made as an electronic transaction and, in those circumstances, such transaction will be binding on you; and
- (b) the Application Provider may send you communications through the Loyalty Rewards Application and any such communication will be taken to be received by you 1 hour after it is sent.

16. General provisions

16.1 Amendments

The Application Provider reserves the right to amend the terms and conditions of this Agreement from time to time. Amendments will be effective immediately upon notification on the Loyalty Rewards Application. Your continued use of the Loyalty Rewards Application following such notification will represent an agreement by you to be bound by the terms and conditions as amended.

16.2 Assignment and subcontracting

You must not transfer any right or liability under this Agreement without the Application Provider's prior written consent, except where this Agreement provides otherwise. The Application Provider may subcontract, novate or assign any of its rights or obligations under this Agreement and you must provide all reasonable co-operation requested by the Application Provider.

16.3 Waiver

Failure, delay or neglect by a party to enforce a term of this Agreement is not to be construed as a waiver of that term or the party's rights, or a consent to, waiver of, or excuse for any other, continuing, or subsequent breach.

16.4 Governing law

This Agreement and the licence granted under it, will be governed and construed in accordance with the laws of Victoria, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

16.5 Severability

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

16.6 Entire agreement

This Agreement sets out the entire agreement between you and the Application Provider in relation to the Loyalty Rewards Application.

16.7 Survival

Any provision of this Agreement that is expressed to survive, or by its nature survives, termination of this Agreement will continue in effect beyond termination.

17. Definitions and interpretation

In this Agreement, unless the context otherwise requires:

Agreement has the meaning given to that term in clause 1.1;

Application Provider means CHP Management Pty Ltd ACN 168 793 253;

Confidential Information means all information of or relating to the Application Provider, any Related Corporation of the Application Provider, any Store or any other user of the Loyalty Rewards Application, and includes the source and object code for the Loyalty Rewards Application, except to the extent that such information:

- (a) is in, or comes into, the public domain other than as a result of your default;
- (b) is already known to you at the date this Agreement is formed and you can prove that it was already known to you at that time; or
- (c) is independently developed by you and you can prove that it was independently developed by you;

Intended Purpose has the meaning given to that term in clause 4.1;

Loyalty Rewards Application means the loyalty rewards software and services provided by the Application Provider in connection with the delivery of the Loyalty Rewards Application mobile application accessible from mobile application marketplaces;

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) any other statute, regulation or law in Australia or elsewhere which relates to the protection of personal information and which you or the Application Provider must observe;

Privacy Policy means the Application Provider's privacy policy available on the Loyalty Rewards Application;

Related Corporation means a "related body corporate" as defined in the *Corporations Act 2001* (Cth);

Store has the meaning given in clause 4.1;

User Account means the account referred to in clause 6 of this Agreement; and

User Content means data uploaded onto a User Account.