

Passport to Hobart Campaign

Terms and Conditions

Hobart City Council and the Participating Business

SIMMONS WOLFHAGEN

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Our Ref: Terms and Conditions for loyalty voucher program; FINAL

SCHEDULE 1- Agreement Details

Item 1	Council	<p>HOBART CITY COUNCIL ABN 39 055 343 428</p> <p>Town Hall Macquarie Street, Hobart, TAS 7000</p> <p>Contact email:</p>
Item 2	Participating Business	<p>Owner of Participating Business: </p> <p>Trading Name: </p> <p>Address:.....</p> <p>Email:</p>

Parties:

1. The entity specified in **Item 1 (Council)**.
2. The person specified in **Item 2 (Participating Business)**

Recitals:

- A. The Council is undertaking a marketing and promotional campaign known as Passport to Hobart to assist local food and beverage businesses during the Campaign Period (the **Campaign**).
- B. The Campaign involves customers and participating businesses registering and participating in the Campaign through the StampMe App.
- C. The StampMe App will issue Vouchers to eligible customers during the Campaign Period, being the Welcome Voucher and upon the collection of 5 Stamps, the Reward Voucher.
- D. The Participating Business agrees to participate in assisting the customers to collect Stamps and redeem the Vouchers in the Business in relation to the sale of food and/or beverages during the Campaign Period.
- E. The Council agrees to reimburse the Participating Business for the monetary amount of the Vouchers that are redeemed by customers in the Business owned and operated by the Participating Business.

Operative Provisions:

1 The Campaign

The parties agree that the parties will participate in the Campaign and these terms and conditions govern the parties' rights and obligations in relation to the Campaign during the Campaign Period and any Extension Period.

2 Details of the Campaign

2.1 Customer's Rewards and Vouchers

The Participating Business agrees to participate in the Campaign and that during the Campaign Period the Participating Business will:

- (a) issue one Stamp per customer per bill upon the presentation by the customer of the StampMe App when the customer incurs a minimum spend of \$20 including GST on food, beverages, or both food and beverages (after any further applicable discounts are applied) at the Business;
- (b) accept for redemption Vouchers presented by customers on the StampMe App at any time that the Business is open for trade when the customer incurs a minimum spend of \$20 in the Business. The amount of the Voucher must then be applied to reduce the amount due and payable by the customer to the Participating Business; and
- (c) accept for redemption only one (1) Voucher per bill in the Business.

2.2 Minimum Spend on Food and/or Beverages

For the purposes of the Campaign the Participating Business acknowledges and agrees that:

- (a) in relation to the issuing of Stamps to customers in accordance with clause 2.1, the calculation of the minimum spend is only to be applied to food, beverages, or both food and beverages, and does not include any retail goods, products or services sold by the Business to the customer;
- (b) in relation to the redemption of Vouchers presented by customers on the StampMe App in accordance with clause 2.1, the calculation of the minimum spend is only to be applied to food, beverages, or both food and beverages, and does not include any retail goods, products or services sold by the Business to the customer.

2.3 Split Bills

- (a) In the case of a group of customers splitting one bill for payment in the Business, then only one (1) Stamp may be issued by the Participating Business to the first paying customer, and no further Stamps may be issued by the Participating Business to the remaining paying customers relating to the split bill.
- (b) In the case of a group of customers splitting one bill for payment in the Business, then only one (1) Voucher may be redeemed by the first paying customer, and the Participating Business must not allow any further Vouchers to be redeemed in the Business by the remaining paying customers relating to the split bill.

2.4 Redemption from Council

- (a) The Participating Business agrees to provide a valid tax invoice to the Council fortnightly commencing on the Invoicing Date, for the total sum of the Vouchers validly redeemed in the Business by customers pursuant to the StampMe App during the previous 14 day period.
- (b) Subject to subparagraph (c), within 14 days of receipt by Council of a valid tax invoice from the Participating Business the Council will reimburse the Participating Business for the total sum of the Vouchers validly redeemed in the Business in a manner elected by the Council.
- (c) Prior to the Council reimbursing the Participating Business pursuant to this clause 2.4, the Council will verify the total sum of the Vouchers validly redeemed in the Business through the StampMe App. The Council's determination in relation to the sum of validly redeemed Vouchers in the Business and in turn the amount reimbursed to the Participating Business pursuant to this clause is final.

3 Obligations of Participating Business

The Participating Business must at all times during Campaign Period:

- (a) comply with the terms and conditions of use in relation to the StampMe App including the terms and conditions of the collection of the Stamps and the redemption of Vouchers in relation to the Campaign;
- (b) comply with the reasonable directions of the Council from time to time in relation to the Campaign and the use of the StampMe App;

- (c) comply with all laws and legislative requirements regarding the conduct of the Business;
- (d) comply with the responsible service of alcohol requirements (if applicable to the Business) pursuant to the *Liquor Licensing Act 1990*;
- (e) obtain and keep all policies of insurance in place in relation to the Business including but not limited to a public liability insurance policy, a policy for worker's compensation and anything other insurance policy that the Council reasonably requires;
- (f) not erect any signage or advertising material in relation to the Campaign or the StampMe App without first obtaining the consent of the Council;
- (g) not accept any Voucher in exchange for cash, credit or in exchange for any other payment other than in accordance with the terms of this Agreement and the terms of the StampMe App;
- (h) report any fraudulent use, misuse or error in relation to the StampMe App, the Vouchers or the Campaign to the Council as soon as possible;
- (i) not at any time during the Campaign Period or any Extension Period, permit or suffer to be done any act, matter or thing in respect of the Business, the Campaign or the StampMe App whereby any insurances of the Council may be vitiated or rendered void or voidable;
- (j) ensure that all of its employees, staff or applicable contractors are aware of and comply with the requirements of clause 2 in relation to the operation of the Campaign, the issue of Stamps and the redemption of Vouchers.

4 Extension of Campaign Period

- (a) If the Council determines that there are remaining or additional funds available for the Vouchers and/or the Campaign, the Council may in their sole discretion extend the Campaign Period for a period of time as determined by the Council (**Extension Period**).
- (b) The Council will notify the Participating Business of the Extension Period.
- (c) The Participating Business is permitted to opt out of the Campaign for the Extension Period and elect to terminate this Agreement by providing at least 7 days written notice to the Council with the termination to take effect on the day prior to the commencement of the Extension Period.
- (d) If the Participating Business does not opt out of the Extension Period pursuant to clause 4(c), then the Participating Business and the Council agree that this Agreement will be in force and continue for the duration of the Extension Period.

5 Registration on StampMe App

The Participating Business hereby authorises the Council to register the details of the Participating Business on the StampMe App as a participating business for the purposes of the Campaign. The Participating Business agrees to provide all information to the Council as required so that the Council can register the Business for this purpose.

6 Promotion of Campaign

- (a) The Participating Business hereby authorises the Council to use the trading name and location of the Business and the Participating Business together with any logos for the Business on the Council's Hello Hobart website, facebook page and other social media platforms for the purposes of and in connection with advertising or promoting the Campaign.
- (b) The Participating Business warrants that the trading name and any logos of the Business provided to the Council in relation to the Campaign do not and will not infringe the rights of any third party, including the infringement of any third party's Intellectual Property rights or Confidential Information.

7 Warranties

- (a) The Participating Business warrants and agrees that:
 - (i) it will at all times comply with the responsible service of alcohol pursuant to the terms of the *Liquor Licensing Act* 1990 (if applicable to the Business);
 - (ii) it has the right and ability to enter into this Agreement and that this Agreement will be legally binding on it;
 - (iii) it holds all licences and authorisations from the local government or other authorities which are required to conduct the Business;
 - (iv) all of the information, representations and warranties provided to the Council in relation to the application to participate in the Campaign and addressing the Council's eligibility criteria in relation to the Campaign are in all material aspects true and correct; and
 - (iv) it has and will keep an up to date and current Covid-19 Safety Plan in relation to the operation of the Business.
- (b) The Participating Business has exercised its own judgement in entering into this Agreement and has not relied on any warranty or representation made by the Council, its officers, employees or agents, except as specifically set out in this Agreement.
- (c) The Participating Business acknowledges that the Council does not warrant that there will be any particular outcome for the Participating Business as a result of the Campaign including but not limited to any increase in custom or profits for the Participating Business.
- (d) The Council does not provide any warranty or representation in relation to the use, operation, performance or suitability of the Campaign and the StampMe App and the Participating Business participates in the Campaign and uses the StampMe App at their own risk.

8 Releases and indemnities

8.1 Releases

The Participating Business releases the Council from, and agrees that the Council is not liable for, any claim, liability, damage or loss (including economic loss) in respect of or arising out of any of the following:

- (a) any malfunction, failure to function or interruption to the Campaign or the StampMe App;
- (b) any damage, loss or injury from any cause except to the extent that it is caused or contributed to by the negligence of the Council or by the negligence of an employee or agent of the Council for whom the Council is legally responsible;
- (c) any thing that the Council does in relation to the Campaign and is permitted to do under this Agreement.

8.2 Indemnities

The Participating Business hereby indemnifies the Council, its officers, employees and agents (**Indemnified Party**) from and against any loss, damage, claim, action or expense (including legal expense) whatsoever (including to or in respect of third parties) which any Indemnified Party suffers as a direct or indirect result of, or which arises or is in connection with, any of the following:

- (a) any breach by the Participating Business of the responsible service of alcohol requirements under the *Liquor Licensing Act 1990* or any other legislative requirements;
- (b) damage, loss or injury caused or contributed to by any act, negligence or default of the Participating Business or any their employees or agents;
- (c) any negligent act or failure to act by the Participating Business or any of the Participating Business' employees, agents, officers or sub-contractors;
- (d) the Participating Business' breach of this Agreement, except to the extent to which it arises out of any breach by the Council of this Agreement or any negligent act or omission by the Council or its agents.

8.3 Independence and survival of indemnities and releases

Each indemnity in clause 7.2 and release in clause 7.1 survives the termination of this Agreement and may be enforced before the Council incurs a loss or makes a payment. An indemnity in this Agreement is not to be limited by reference to any other indemnity.

9 Intellectual Property

- (a) The Council and its licensors own and will retain all proprietary rights, including any and all Intellectual Property Rights, in the Campaign and the Stamp Me App.
- (b) All Intellectual Property rights included in or associated with the Campaign and the StampMe App, including but not limited to patents, copyrights, trademarks and service marks, are owned or licensed by the Council, and all right, title and interest in the Campaign and the associated intellectual property is ours belongs to the Council or its licensors.
- (c) The Participating Business is not authorised to copy, distribute, re-publish, upload, post, modify, reverse engineer or transmit any Intellectual Property except as specifically authorised by the Council.
- (d) The StampMe App and any other mobile applications which may be made available for the Participating Business to download is licensed, not sold. The Participating Business is granted a limited, non-transferable, non-exclusive licence to download, install, use and run for commercial use the StampMe App in relation to the Campaign.

10 Privacy Act

If the Participating Business receives any Confidential Information or deals with any information during the term of this Agreement that is related to or in connection with the Campaign and/or the StampMe App that contains personal information (as defined in the *Privacy Act 1988*), the Participating Business must:

- (a) comply with; and
- (b) do all things necessary to enable the Council to comply with its obligations under, the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (as defined in the *Privacy Act 1988*) in relation to that information.

11 Termination

11.1 Termination by Council

The Council may terminate this Agreement by written notice to the Participating Business if any of the following events has occurred:

- (a) where the Council determines that the full amount of the funding available for the Vouchers and the Campaign has been exhausted;
- (b) where the Council in its sole discretion elects to terminate this Agreement by notifying the Participating Business;
- (c) where there has been a breach of this Agreement which is not remediable or if capable of remedy, where the Participating Business fails to remedy immediately.

11.2 Termination by Participating Business

The Participating Business may terminate this Agreement by written notice to the Council if the Business is no longer open for trade during the Campaign Period.

12 Goods & Services Tax

- (a) The Participating Business warrants that it is registered or required to be registered for GST.
- (b) The parties acknowledge and agree that each Voucher redeemed by a customer through the Participating Business is inclusive of GST.
- (c) The Participating Business will invoice the Council in accordance with clause 2.4 which will be inclusive of any GST Amount if applicable.

13 Notices

13.1 Form and Address

A notice or other communication in connection with this Agreement is to be in writing and:

- (a) may be given by the relevant party or its solicitor or agent; and
- (b) must be:

- (i) left at the address of the party as notified by that party; or
- (ii) sent by prepaid post to the address of the party; or
- (iii) sent by email to the email address of the party.

13.2 When effective

Subject to this clause 13, the notice takes effect from the time it is received unless a later time is specified in the notice.

13.3 Receipt – postal

If sent by ordinary post, the notice is taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia). If sent by registered post and the receipt evidencing the date of receipt and service is earlier than three days after posting then that earlier date shall be treated as the date of service.

13.4 Receipt – email

If sent by email, the notice is taken to be received at the time the email message is sent unless:

- (a) the sender receives automated email notification that the email transmission has failed or has been delayed within 2 hours of sending the notice; or
- (b) the sender receives automated email notification to the effect that the recipient is not likely to receive the notice until a later date, which will then become the deemed date of receipt.

14 Miscellaneous

14.1 Waivers and Variation

A provision of or a right created under this Agreement may not be:

- (a) waived except in writing, signed by the party with the benefit of that provision or right; or
- (b) varied except in writing signed by the parties.

14.2 Assignment

A party cannot assign or otherwise transfer any of its rights under this Agreement without the prior written consent of each other party.

14.3 Remedies Cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

14.4 Accrued Rights

The termination of this Agreement for any reason does not affect the rights of a party in relation to a breach of this Agreement by another party before termination.

14.5 Costs

Each party will bear its own costs and disbursements of or incidental to the negotiation, preparation and execution of this Agreement, and all other matters and agreement referred to in this Agreement.

14.6 Severance

If any provision of this Agreement or the application of that provision to any person or circumstance is or becomes invalid or unenforceable, then the remaining provisions of this Agreement are not affected and are valid and enforceable.

14.7 Entire agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreement, negotiations and understandings between the parties in relation to its subject matter.

14.8 Governing Law

This Agreement is governed and construed in accordance with the Law of the State of Tasmania.

14.9 Multiple Parties

If a party to this Agreement is made up of more than one person, or a term is used in this document to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by them severally;
- (c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately; and
- (d) a party which is a trustee of a trust is bound in its personal capacity and in its capacity as trustee .

15 Interpretation

15.1 Definitions

In this Agreement, unless the contrary intention appears:

Agreement means this document.

Business means the food and/or beverage business owned and operated by the Participating Business.

Campaign Period means the period from Thursday 7 January 2021 at 10.00am (EST) to Sunday 7 February 2021 at 11.59pm (EST), together with Extension Period (if applicable).

Confidential Information means:

- (a) the terms of this Agreement and its subject matter, including information submitted or disclosed by a party during negotiations and discussions relating to this Agreement;
- (b) information that at the time of disclosure by a disclosing party is identified to the receiving party as being confidential; and
- (c) all other information belonging or relating to a disclosing party that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the receiving party known, or ought reasonably to be expected to know, is confidential to that disclosing party.

Covid-19 Safety Plan means a Covid-19 safety plan that is required by and complies with the requirements of the *Public Health Act 1997*.

Extension Period means any period of extension nominated by the Council pursuant to clause 4.

GST means the prevailing rate of goods and services tax as imposed by the GST Law.

GST Amount means any payment (or the relevant part of that payment) multiplied by the rate of GST, together with any related interest, penalties, fines or other charges.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Intellectual Property means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition, copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the Australia and all other countries in the world and together with all renewals and extensions, from time to time.

Invoicing Date means 21 January 2021 and fortnightly thereafter during the Campaign Period.

Tax Invoice has the meaning given to that term by the GST Law.

Reward Voucher means a valid \$20 rewards voucher issued to a customer for the collection of five (5) Stamps on the StampMe App in relation to the Campaign.

Stamp Me App means the application utilised by the Council in relation to the Campaign where end consumers can access rewards, Stamps and Vouchers.

Stamp mean a valid stamp issue to a customer on the StampMe App in relation to the Campaign.

Vouchers mean any valid voucher including any Welcome Voucher and/or Reward voucher that are issued to customers for redemption at businesses participating in the Campaign on the StampMe App.

Welcome Voucher means a valid \$10 welcome voucher issued to a customer on the StampMe App in relation to the Campaign.

15.2 Rules for interpreting this Agreement

In this Agreement, unless the contrary intention appears:

- (a) A reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a corporation, unincorporated body or authority;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) money is to Australian dollars, unless otherwise stated.
- (b) A reference to an agreement or document (including, without limitation, a reference to this Agreement) is to the agreement or document as amended, novated or replaced.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) An agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally.
- (e) All reference to time is to the time in Hobart, Tasmania, Australia.

Signing:

Executed an Agreement

The Common Seal of the Hobart City Council was hereunto affixed in the presence of:	
_____	_____
Deputy General Manager/Director Corporate Services	Manager Legal & Governance

SIGNED for on behalf of COMPANY PTY LTD, ACN INSERT , in accordance with the <i>Corporations Act 2001</i> (Cth):	
.....
Signature of Director	Signature of Director
.....
Name of Director	Name of Director

SIGNED by PERSON in the presence of:	
.....
Signature of Witness	Signature of Person
.....	
Name of Witness	
.....	
Address of Witness	