

# **eVOUCH BUSINESS TERMS OF USE**

## **1 APPLICATION OF TERMS**

1.1 If you are a Business, these Terms apply to your use of eVouch (as these terms are defined below). By accessing and using eVouch:

- a you agree to these Terms; and
- b where your access and use is on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

1.2 If you do not agree to these Terms, you are not authorised to access and use eVouch, and you must immediately stop doing so.

## **2 CHANGES**

2.1 We may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use eVouch from the date on which the Terms are changed, you agree to be bound by the changed Terms.

2.2 **These Terms were last updated on 4 November 2019.**

## **3 INTERPRETATION**

In these Terms:

*Business* means a person that establishes an account with eVouch to promote their goods and/or services.

*Commercial Terms* means a document entitled *Commercial Terms* that is governed by these Terms, for the provision of eVouch to you.

*Commission* means the commission set out in the Commercial Terms, being the percentage of the Discount Price retained by us for each Discount redeemed at your business.

*Confidential Information* means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of eVouch. Our Confidential Information includes Intellectual Property owned by us. Your Confidential Information includes Your Data.

*content* includes data, information, text, photos, videos, graphics, music and sound.

*Discount* means the discount from your Retail Price set and provided by you, through eVouch, to a User.

*Discount Price* means the Retail Price less the Discount.

*eVouch* means the Website and/or the eVouch mobile app.

*including* and similar words do not imply any limit.

*Intellectual Property Rights* includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

*Objectionable* includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

*Retail Price* means your standard retail price for the goods or services.

*a party* includes that party's permitted assigns.

*a person* includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

*personal information* means information about an identifiable, living person.

*personnel* includes officers, employees, contractors and agents, but a reference to your personnel does not include us.

*Start Date* means the date set out in the Commercial Terms, or, if no date is set, the date that you first access and use eVouch.

*Terms* means these terms titled eVouch business terms of use.

*Underlying Systems* means the IT solutions, systems and networks (including software and hardware) used to provide eVouch, including any third party solutions, systems and networks.

*User* means a person who has set up a user account with eVouch other than a Business.

*User Content* means the social media content that a User uploads or transmits via eVouch.

*We, us* or *our* means eVouch Limited, company number 7645057.

*Website* means [www.e-vouch.com](http://www.e-vouch.com), or such other site notified to you by us.

*Year* means a 12-month period starting on the Start Date or the anniversary of that date.

*You or your* means you or, if clause 1.1b applies, both you and the other person on whose behalf you are acting.

*Your Data* means all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, eVouch.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

## **4 ABOUT EVOUCH**

- 4.1 eVouch is a mobile application that connects influencers with local businesses and events to provide marketing on social media platforms in exchange for goods and/or services discounts.
- 4.2 We will use reasonable efforts to provide eVouch in accordance with these Terms and New Zealand law.
- 4.3 Our provision of eVouch to you is non-exclusive. Nothing in these Terms prevents us from providing eVouch to any other person.
- 4.4 Subject to clause 4.5, we will use reasonable efforts to ensure eVouch is available on a 24/7 basis. However, it is possible that on occasion eVouch may be unavailable to permit maintenance or other development activity to take place, or due to an event that is beyond our reasonable control. We will use reasonable efforts to publish on the Website and/or notify you by email advance details of any unavailability.
- 4.5 Through the use of web services and APIs, eVouch may interact with a range of third party service features. We do not make any warranty or representation on the availability or performance of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

## **5 YOUR OBLIGATIONS**

- 5.1 In exchange for a User uploading User Content of your business, you agree to permit the User to redeem the Discount, and to supply the goods or services to which the Discount relates, in accordance with these Terms.
- 5.2 If you have a Discount active on eVouch, you must at all times clearly display the QR code provided by us.

- 5.3 You and your personnel must:
- a use eVouch in accordance with these Terms solely for lawful purposes; and
  - b not resell or make available eVouch to any third party, or otherwise commercially exploit eVouch.
- 5.4 When accessing eVouch, you and your personnel must:
- a not impersonate another person or misrepresent authorisation to act on behalf of others or us;
  - b not attempt to undermine the security or integrity of the Underlying Systems;
  - c not use, or misuse, eVouch in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use eVouch;
  - d not attempt to view, access or copy any material or data other than:
    - i that which you are authorised to access; and
    - ii to the extent necessary for you to use eVouch in accordance with these Terms; and
  - e neither use eVouch in a manner, nor transmit, input or store Your Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading.
- 5.5 A breach of any of these Terms by your personnel is deemed to be a breach of these Terms by you.
- 5.6 You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use eVouch, including to use, store and input Your Data into, and process and distribute Your Data through, eVouch.

## **6 USER CONTENT**

- 6.1 eVouch grants you a non-exclusive, non-transferable licence to use User Content for the marketing and promotion of your business.
- 6.2 To the extent permitted by law, we have no liability or responsibility to you or any other person in connection with User Content in whole or in part.
- 6.3 Except to the extent necessary to use the User Content in the ordinary course of business under clause 6.1, you must not copy, distribute, sell, transfer, licence, sublicense, display, lease, assign or otherwise deal with the User Content.
- 6.4 We may, in our sole discretion, remove User Content if in our reasonable opinion we deem User Content to be Objectionable, incorrect, misleading or otherwise unsuitable.

6.5 If we receive a request to delete, remove, or effect the deletion or removal of, User Content on the grounds that the User Content breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading, we will forward this request to you for you to action. If, following your receipt of a request, you do not delete or remove the User Content, you indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim that the User Content infringes the rights of a third party (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading.

## **7 YOUR DATA**

7.1 You acknowledge that:

- a we may require access to Your Data to exercise our rights and perform our obligations under these Terms; and
- b to the extent that this is necessary but subject to clause 10, we may authorise a member or members of our personnel to access Your Data for this purpose.

7.2 You must arrange all consents and approvals that are necessary for us to access Your Data as described in clause 7.1.

7.3 You acknowledge and agree that:

- a we may:
  - i use Your Data to generate anonymised and aggregated statistical and analytical data (**Analytical Data**);
  - ii use Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
  - iii supply Analytical Data to third parties;
- b our rights under clause 7.3a above will survive termination of expiry of the Agreement; and
- c title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.

7.4 You acknowledge and agree that to the extent Your Data contains personal information, in collecting, holding and processing that information through eVouch, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy law. You must obtain all necessary consents from the relevant individual to enable us to collect, use, hold and process that information in accordance with these Terms.

7.5 While we will take standard industry measures to back up Your Data stored using eVouch, you agree to keep a separate back-up copy of Your Data uploaded by you onto eVouch.

- 7.6 You agree that we may store Your Data (including any personal information) in secure servers outside New Zealand and may access Your Data (including any personal information) both within and outside New Zealand from time to time.
- 7.7 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any of Your Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that Your Data is Objectionable, incorrect or misleading.

## **8 PAYMENT**

- 8.1 Once the Discount is redeemed by the relevant User, we will pay the Discount Price less the Commission to you via our payment service provider in accordance with its standard payment processing timeframes.
- 8.2 We may increase the Commission by giving at least 30 days' notice. If you do not wish to pay the increased Commission, you may terminate these Terms and your right to access and use eVouch on no less than 10 days' notice, provided the notice is received by us before the effective date of the Commission increase. If you do not terminate these Terms and your right to access and use eVouch in accordance with this clause, you are deemed to have accepted the increased Commission.
- 8.3 eVouch uses Braintree, a division of PayPal, Inc. for payment processing services. By using the Braintree payment processing services you agree to the Braintree Payment Services Agreement available at <https://www.braintreepayments.com/legal>, and the applicable bank agreement available at <https://www.braintreepayments.com/legal/bank-agreement>.

## **9 INTELLECTUAL PROPERTY**

- 9.1 Subject to clause 9.2, title to, and all Intellectual Property Rights in, eVouch, and all Underlying Systems is and remains our property. You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 9.2 Title to, and all Intellectual Property Rights in, Your Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate Your Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.
- 9.3 To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of eVouch.

- 9.4 If you provide us with ideas, comments or suggestions relating to eVouch or Underlying Systems (together **feedback**):
- a all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
  - b we may use or disclose the feedback for any purpose.

## **10 CONFIDENTIALITY**

- 10.1 Each party must, unless it has the prior written consent of the other party:
- a keep confidential at all times the Confidential Information of the other party;
  - b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
  - c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 10.1a and 10.1b.
- 10.2 The obligation of confidentiality in clause 10.1 does not apply to any disclosure or use of Confidential Information:
- a for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
  - b required by law (including under the rules of any stock exchange);
  - c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
  - d which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
  - e by us if required as part of a *bona fide* sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 10.

## **11 WARRANTIES**

- 11.1 Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.
- 11.2 To the maximum extent permitted by law:
- a our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including

any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded; and

- b we make no representation concerning the quality of eVouch and do not promise that eVouch will:
  - i meet your requirements or be suitable for a particular purpose; or
  - ii be secure, free of viruses or other harmful code, uninterrupted or error free.

11.3 You agree and represent that you are accessing eVouch, and accepting these Terms, for the purpose of trade. The parties agree that:

- a to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the provision of eVouch or these Terms; and
- b it is fair and reasonable that the parties are bound by this clause 11.3.

11.4 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited to the amount set out in clause 12.2.

## **12 LIABILITY**

12.1 You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party in connection with the goods and/or services you provide.

12.2 Our maximum aggregate liability under or in connection with these Terms or relating to eVouch, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not exceed an amount equal to the Commission received by us in the 1 month preceding the date of the first event giving rise to liability). The cap in this clause 12.2 includes the cap set out in clause 11.4.

12.3 Neither party is liable to the other under or in connection with these Terms or eVouch for any:

- a loss of profit, revenue, savings, business, use, data (including Your Data and User Content), and/or goodwill; or
- b consequential, indirect, incidental or special damage or loss of any kind.

12.4 Clauses 12.2 and 12.3 do not apply to limit our liability under or in connection with these Terms for:

- a the amount payable under clause 8;
- b personal injury or death;

- c fraud or wilful misconduct; or
- d a breach of clause 10.

12.5 Clause 12.3 does not apply to limit your liability:

- a under the indemnity in clause 7.7; or
- b for those matters stated in clause 12.4a to 12.4d.

12.6 Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

12.7 Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms.

### **13 TERM, TERMINATION AND SUSPENSION**

13.1 Unless terminated under this clause 13, these Terms and your right to access and use eVouch:

- a starts on the Start Date; and
- b continues until a party gives at least 30 days' notice that these Terms and your access to and use of eVouch will terminate on the expiry of that notice.

13.2 Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use eVouch if the other party:

- a breaches any material provision of these Terms and the breach is not:
  - i remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
  - ii capable of being remedied; or
- b becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

13.3 You may terminate these Terms and your right to access and use eVouch in accordance with clause 8.2.

13.4 On termination of these Terms under this clause 13, you must remove the QR code provided by us.

- 13.5 Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
- 13.6 No compensation (other than the payment due and payable under clause 8.1) is payable by us to you as a result of termination of these Terms for whatever reason.
- 13.7 Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to clause 13.8, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- 13.8 At any time prior to one month after the date of termination, you may request:
- a a copy of Your Data stored using eVouch, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of Your Data in a common electronic form. We do not warrant that the format of Your Data will be compatible with any software; and/or
  - b deletion of Your Data stored using eVouch, in which case we must use reasonable efforts to promptly delete Your Data.

To avoid doubt, we are not required to comply with clause 13.8a to the extent that you have previously requested deletion of Your Data.

- 13.9 Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of eVouch and/or delete, edit or remove Your Data if we consider that you or any of your personnel have:
- a undermined, or attempted to undermine, the security or integrity of eVouch or any Underlying Systems;
  - b used, or attempted to use, eVouch:
    - i for improper purposes; or
    - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of eVouch;
  - c transmitted, inputted or stored Your Data that breaches or may breach these Terms or any third party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
  - d otherwise materially breached these Terms.

## **14 GENERAL**

- 14.1 Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.

- 14.2 No person other than you and us has any right to a benefit under, or to enforce, these Terms.
- 14.3 For us to waive a right under these Terms, that waiver must be in writing and signed by us.
- 14.4 Subject to clause 7.4, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.
- 14.5 If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these Terms by emailing [eugene@e-vouch.com](mailto:eugene@e-vouch.com).
- 14.6 These Terms, and any dispute relating to these Terms or eVouch, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or eVouch.
- 14.7 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 7.7, 9, 10, 12, 13.5 to 13.8 and 14.6, continue in force.
- 14.8 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.
- 14.9 Subject to clauses 2.1 and 8.2, any variation to these Terms must be in writing and signed by both parties.
- 14.10 These Terms set out everything agreed by the parties relating to eVouch, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to eVouch that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 14.10.
- 14.11 You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.