

1. General

During the length of the Merchant Agreement, LYTTY Limited will provide the LYTTY services and/or programs (collectively, "LYTTY Programs") described in this Merchant Agreement. For purposes of clarity, these Terms and Conditions form your Merchant Agreement executed by you, and, govern your use of all LYTTY Programs and services.



2. Intellectual Property Rights.

(i) LYTTY is the sole and exclusive owner of all right, title and interest in and to any data provided to LYTTY by your customers or any end user to LYTTY in connection with the LYTTY Programs, including without limitation all e-mail and/or other contact information ("Customer Data"). As such, LYTTY will provide you with monthly Customer Data relating to your merchant location only. The information to be made available includes; existing and new customer email contact information, reward points totals, reward redemption data, special deals claimed (if applicable) and customer spend (if applicable).

(ii) LYTTY owns all right, title and interest in and to the LYTTY Programs (which include, for purposes of clarity, all software and/or mobile applications related thereto) including, without limitation, any intellectual property rights and any improvements, modifications, enhancements or refinements thereto. Except as set forth in the Agreement, all rights not expressly granted to you are reserved. You agree not to decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any of the LYTTY Programs, intellectual property or ideas, algorithms, file formats, programming, or interoperability interfaces underlying or such intellectual property.

(iii) Without limiting any of LYTTY's rights set forth in the Agreement, LYTTY reserves the right, in its sole discretion but without any obligation on its part, to reject, remove, delete and/or cancel any information or content displayed or posted on the LYTTY website, any portion of the LYTTY Program, and/or within any print materials, including without limitation any information and/or content that, in LYTTY's view, contains content or links which do not meet LYTTY's specifications or requirements. In addition, LYTTY shall be entitled, in its sole discretion and without notice to any party, to redesign and/or modify all or any portion of the LYTTY Program (including without limitation any mobile application and/or software) at any time.

3. Restrictions.

You: (i) will use the LYTTY Programs solely for your internal business purposes; and (ii) will not, for yourself, any of your affiliates or any third party (a) sell, rent, lease, license or sublicense, assign, distribute, or transfer the LYTTY Programs, (b) modify, change, alter, create derivative works of, decipher, decompile, disassemble, reconstruct, translate, reverse engineer, or discover any source code of the underlying ideas, algorithms, file formats, programming, or interoperability interfaces of the LYTTY Programs, (c) copy any tangible versions of the LYTTY Programs, or (d) remove from any of the LYTTY Programs any language or designation indicating the confidential nature thereof or the proprietary rights of LYTTY. In addition, you will not export, re-export or permit any third party to export or re-export, directly or indirectly, the LYTTY Programs where such export or re-export is prohibited by applicable law without appropriate licenses and clearances. LYTTY retains the right, in its sole discretion but without any obligation on the part of LYTTY to monitor or evaluate any communications, to approve, modify or refuse

any LYTTY-related communications or proposed communications or messages to your customers or any LYTTY end users.

4. Fees; Pricing and Payment Terms; Taxes.

(i) LYTTY reserves the right to amend the fees payable for the LYTTY Programs at any time upon thirty (30) days' prior notice to you; provided, however, that such amendment to the fees will not be applicable until the beginning of the next Subscription Period.

(ii) LYTTY Limited payment terms are full payment within twenty one (21) days from date on invoice. Our preferred method of payment is via Stripe. For New Zealand customers our bank account details are listed on invoices sent out.

(iii) You will be responsible for any sales, use, value-added or import taxes, customs duties or similar taxes assessed in accordance with applicable law with respect to the provision of the LYTTY Programs.

(iv) Notwithstanding anything herein to the contrary, LYTTY, in its sole discretion, may suspend or terminate the Agreement and corresponding access and right to use all or any portion of the LYTTY Programs, at any time, upon electronic or other notice to you, if you have not paid all amounts due on or before the payment due date, or for any other breaches of the Merchant Agreement, these Terms and Conditions, or any other exhibits, addenda or attachments to these Terms and Conditions including any links contained in the Merchant Agreement or these Terms and Conditions, which are incorporated by reference herein. You are responsible for amounts that remain outstanding as of the date of such termination including early cancellation fees.

5. Term; Termination; Survival.

The Agreement will remain in full force for 1 year (12 months) from date of your initial invoice. Effective March 1, 2017, new agreements and/or subscriptions will automatically renew for successive 1-year terms upon expiration of the initial term of any Subscription Plan at the then-current standard rates until such time as either party provides written notice of termination to the other party, in accordance with terms below. Current fees will be invoiced to the merchant unless LYTTY is otherwise notified of a cancellation in writing. Although LYTTY will send a reminder email prior to charging a customer for a renewal fee, LYTTY is not responsible for notifying a customer of this automated renewal.

A merchant may cancel its subscription, thereby terminating this Agreement, solely in accordance with the following cancellation policies:

Renewal – At the end of any Subscription Plan, unless you select a new Subscription plan, your Subscription Plan will automatically be renewed on an annual basis at the then-current standard rates. Current fees will be invoiced to the merchant unless LYTTY is otherwise notified of a cancellation in writing. Customers renewed on an annual basis must provide written cancellation notice thirty (30) days prior to or within the first thirty (30) days of their renewal period. Although LYTTY may choose to send a

reminder email prior to charging a customer for a renewal fee, LYTTY is not responsible for notifying a customer of this automated renewal.

Subscription Cancellation within the Contract Term – Customers enrolled in Annual subscription plans shall provide at least thirty (30) days' written cancellation notice. If, prior to the subsequent Subscription Period, you desire to terminate the LYTTY Program, You agree to pay an early cancellation fee equal to six (6) months of your annual subscription fee.

Other Events – Each party shall have the right to terminate the Agreement upon written notice to the other party: (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party that is not otherwise dismissed within sixty (60) days of such institution; (ii) upon the making of an assignment for the benefit of creditors by the other party; or (iii) upon the dissolution of the other party. Notwithstanding the foregoing, LYTTY may terminate the Agreement and/or your access to one or all LYTTY Programs in the event you fail to remain current in all fees due and owing to LYTTY or in the event you breach any of your obligations under the Agreement.

In the event of any termination of the Agreement or any LYTTY Program, LYTTY shall be entitled to send e-mail and/or other communications to some or all of your loyalty program members, notifying each such member of your termination of the LYTTY Program.

6. Representations and Warranties; Disclaimer.

(i) LYTTY Limited warrants that LYTTY has the authority to enter into this Agreement.

(ii) You represent, warrant and covenant to LYTTY that: (a) you have the authority to enter into this Agreement; (b) you will only use the LYTTY Programs for lawful purposes and will not violate any law of any country or the intellectual property rights of any third party; and (c) you will not use any LYTTY Program information to send any e-mail or other communications which violate any applicable regulation, rule, industry protocol or law (including, without limitation, The Unsolicited Electronic Messages Act 2007).

(iii) EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 6, LYTTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN ADDITION, LYTTY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO ANY MINIMUM LEVEL OF UPTIME FOR THE LYTTY PROGRAM OR THE RESULTS THAT YOU MAY ACHIEVE ON ACCOUNT USING ANY LYTTY PROGRAM OR SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOU EXPRESSLY AGREE THAT THE USE OF LYTTY PROGRAMS OR SERVICES AND THE INTERNET IS AT YOUR SOLE RISK. LYTTY PROGRAMS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND UNDER NO CIRCUMSTANCES SHALL LYTTY BE LIABLE TO YOU OR ANY OTHER PARTY ON ACCOUNT OF ANY DOWNTIME WITHIN ANY LYTTY PLATFORM OR APPLICATION.

7. Confidential Information.

Any information that a receiving party knows or has reason to know (either because such information is marked or otherwise identified by the disclosing party orally or in writing as confidential or proprietary, has commercial value, or because it is not generally known in the relevant trade or industry) is “Confidential Information” of the disclosing party and will remain the sole property of the disclosing party. Such Confidential Information includes but is not limited to data, information (including personally identifiable information), ideas, materials, specifications, procedures, schedules, software, technical processes and formulas, source code, product designs, sales, cost and other unpublished financial information, product and business plans, advertising revenues, usage rates, advertising relationships, projections, marketing data and other similar information provided by a party. For avoidance of doubt, Customer Data shall be deemed Confidential Information of LYTTY Limited. Each party agrees that it will not disclose, use, modify, copy, reproduce or otherwise divulge such Confidential Information to any third party without the prior written approval of the disclosing party except that the receiving party shall have the right to disclose such Confidential Information to the extent required by applicable law or to the directors, officers or employees of the receiving party who have a need to know such Confidential Information in order to perform its obligations under the Agreement and to the extent such directors, officers or employees are subject to obligations of confidentiality and non-disclosure that are substantially similar to the obligations set forth in the Agreement. The prohibitions contained in this Section will not apply to information (i) already lawfully known to the receiving party prior to disclosure by the disclosing party; (ii) independently developed by the receiving party without access to or use of the disclosing party’s Confidential Information; (iii) disclosed in published materials; (iv) generally known to the public; or (v) lawfully obtained from any third party. In addition, a party will not be considered to have breached its obligations under the Agreement to the extent Confidential Information is required to be disclosed by any governmental authority, provided that, to the extent legally practicable, the receiving party advises the disclosing party prior to making such disclosure in order that the disclosing party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information.

8. Dispute Resolution; Governing Law.

In the event of a reward dispute or mistake between a Merchant and User, LYTTY Limited may in its sole discretion and without liability of any kind unilaterally make adjustments to User reward points (it being understood that LYTTY shall not be (i) obligated to make any such adjustment or otherwise get involved with or provide any assistance towards resolving any such dispute, or (ii) be liable to any party for any damages, expenses or liabilities arising out of any such dispute). To the extent any disputes arise under the Agreement or otherwise between the parties, the parties will first attempt in good faith to resolve their dispute informally. This Agreement is 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 the Agreement.

9. Indemnification.

You will defend, indemnify, and hold LYTTY Limited and its affiliates and their respective directors, officers, employees, agents and representatives harmless from and against any third party suit, proceeding, assertion against any damages, judgments, liability, costs and expenses (including without limitation any reasonable attorneys’ fees) incurred arising from your breach of this Agreement, your

negligence or misconduct, any dispute you may have with any other party in connection with any LYTTY Program or otherwise related in any way to any LYTTY Program, your unauthorized use or misuse of the LYTTY Programs or any unauthorized combination of any LYTTY Program with any hardware, software, products, data or other materials not specified or provided by LYTTY.

10. Limitation of Liability.

LYTTY's aggregate liability for all claims (including claims for indemnification of third party damages) arising out of the Agreement, whether in contract, tort or otherwise, will not exceed the amount of fees paid by you to LYTTY under the Agreement during the twelve (12) months preceding the date on which the applicable claim occurred. To the maximum extent permitted by applicable law, in no event will LYTTY be liable for any loss of business profits, business interruption, loss of data or any special, indirect, exemplary, incidental or consequential damages arising from or in relation to the Agreement or the use of the Services or any LYTTY Program, however caused and regardless of theory of liability.

11. Assignment.

You may not, without the prior written consent of LYTTY Limited, assign the Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so will be a material default of the Agreement and will be void; provided, however, that in the event of a sale of substantially all of your assets or equity to a third party or any merger of your entity with an into a third party, this Agreement shall be deemed, without any further action on the part of any party, to automatically be assigned to and assumed by the acquirer in such transaction and as such, shall be binding on such acquirer. The Agreement will be binding upon and will inure to the benefit of the respective parties hereto, their respective successors in interest, legal representatives, heirs and assigns.

12. No Third Party Beneficiaries.

The Agreement is solely for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or remedies on any other person or entity.

13. Amendment; Waiver.

This Agreement may be changed by LYTTY Limited upon posting an updated version of the Agreement at LYTTY's website and/or within the applicable LYTTY Program, any such change to become effective 10 business days after posting such updated version of the Agreement as described above. The failure of either party to exercise or enforce any of its rights under the Agreement will not act as a waiver of subsequent breaches and the waiver of any breach will not act as a waiver of subsequent breaches.

14. Severability.

If any provision of the Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, that provision will be enforced to the maximum extent permissible under applicable law and the other provisions of the Agreement will remain in full force and effect.

15. Force Majeure.

Neither party shall be liable to the other if such party is prevented from performing any of its obligations under the Agreement (excluding fee payment obligations) due to any cause beyond the party's

reasonable control including, without limitation, an act of God, fire, flood, explosion, terrorism, war, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, or acts of vandals, or hackers. The time for that party's performance will be extended for the period of the delay or failure to perform due to such occurrence, except that you will not be excused from the payment of any sums of money owed by you to LYTTY Limited provided prior to the force majeure event.

16. Independent Contractor.

The Agreement will not be construed as creating or constituting a partnership, joint venture, or agency relationship between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

17. Compliance with Laws.

Each party will comply with all applicable laws, regulations, and ordinances relating to their performance hereunder.

18. Entire Agreement.

The Agreement (including, without limitation, these Merchant Terms) constitute the entire agreement between LYTTY Limited and you with respect to the subject matter hereof and all prior oral or written agreements, representations or statements with respect to such subject matter are superseded hereby.

19. Goal Gradient Loyalty Participation

LYTTY Limited may, at its sole discretion from time to time, elect to make point adjustments for first-time member visits (such as, by way of example, offering members the opportunity to earn extra points in connection with the first visit to a given Merchant location). These adjustments are intended to encourage greater follow-up participation to your program.

20. Customer Contact Terms of Use

The following terms shall, in addition to all of the other terms set forth in this Agreement, govern your use of contacting customers (users), which, generally, have signed up to your business through the LYTTY application.

General Rules

You shall, as a condition of contacting via email your LYTTY customers, be required to follow these rules:

1. You won't send Spam! While you are responsible for making yourself of aware of current anti-SPAM and similar regulations that may be in effect from time to time, as a general rule, you should assume that if you send people mass email without their permission, you're spamming. You are to provide an unsubscribe option on any emails that get sent out by you.

2. You won't violate LYTTY's Acceptable Use guidelines, established below, as they may be in effect from time to time, which is part of this Agreement. If you violate any of these rules, LYTTY, in addition to any other rights or remedies that LYTTY may have hereunder or otherwise, may suspend or terminate your account.

Acceptable Use

You shall refrain from using customer information from LYTTY to send anything offensive, to promote anything illegal, or to harass anyone. Not in limitation of the foregoing, you may not send:

1. Pornography or other sexually explicit Emails
2. Emails offering to sell illegal goods or services
3. Emails that violate The Unsolicited Electronic Messages Act 2007 or any other applicable laws or regulations

Acceptable Use – Prohibited Actions

LYTTY works hard to keep its system clean, but LYTTY also counts on its customers to pitch in. As such, you may not:

1. Send Spam (as noted above).
2. Share your pin code and/or password.
3. Use any part of the LYTTY Platform to create a competing product.
4. Import or incorporate any of this information into any lists, emails or uploads to our servers: Passwords, security credentials, or sensitive personal information of any kind.
5. Send any messages that are not appropriate for its intended use.