

1. General

- 1.1 These terms and conditions (**Terms of Use**) apply to your use of our Resident App as a resident of one of our managed properties.
- 1.2 In these Terms of Use, the terms **we, our** and **us** refer to:
- (a) if you a resident of an Essence Communities managed property.
- 1.3 The resident mobile app and community website (collectively, the **Service**) offers facilities for our residents to:
- (a) request, book, pay for, buy or use (an **Order**) for activities or events, products or services (collectively, **Products**) offered for sale, hire or purchase by us or by a Seller (as defined in clause 6.1);
 - (b) post personal, non-commercial advertisements to buy, sell or trade goods within the community or post offers that would benefit the community; and
 - (c) optionally, communicate with other residents.
- 1.4 By accessing or using the Service, you agree to be bound by the Terms of Use between you and us.
- 1.5 These Terms of Use apply to the use of the Service by all users.
- 1.6 When using particular services or features on the Service, in addition to these Terms of Use, additional policies or end user license agreements may apply to your use of that feature or service (**Additional Terms**). To the extent there is a conflict between these Terms of Use and any Additional Terms, the Additional Terms will supersede the Terms of Use unless the Additional Terms expressly state otherwise.
- 1.7 We may review and amend these Terms of Use from time to time, by posting the new version on the Service. Your continued use of the Service after we post any changes to these Terms of Use will constitute your agreement to those changes effective from that date.
- 1.8 You must be a current resident of our accommodation in order to use the Service. If you are not (or are no longer) a resident, you must use the Service.

2. Licence

- 2.1 Provided that you comply with the Terms of Use, Additional Terms, and the Community Rules as posted on the Service website from time to time (**Rules**), we grant you a non-exclusive, non-transferable, limited right to access and use the Service in accordance with these Terms of Use, and to use the information, material or other content (**Content**) provided by us in connection with the Service.

- 2.2 The Service may contain links to other websites and content created by people other than us, and (depending on your use of the Service) may rely on data from third party databases. We do not control, endorse, sponsor, approve or accept any responsibility or liability for the content available on any linked website, or the accuracy of any third party database.

3. Your conduct and obligations

- 3.1 You agree:
- (a) to provide and maintain accurate and up-to-date information pertaining to your full name, email address, mobile phone number and payment information (where applicable). You can update your details by visiting reception at your residence;
 - (b) that you are responsible for maintaining the confidentiality of your account credentials, as well as for all activities that occur via your account. As such, you agree to protect your account from unauthorised access or use
 - (c) to comply with these Terms of Use, the Rules, and all applicable laws and regulations; and
 - (d) to use the Service in good faith and for your personal use only.
- 3.2 You must not, in your use of the Service or your participation in the Program:
- (a) add, post or upload or communicate any Content or material to or using the Service:
 - (1) unless you hold all necessary rights, licences and consents to do so;
 - (2) which is misleading or deceptive in nature, constitutes unlawful activity, or infringes the intellectual property or other rights of any person;
 - (b) do anything which is fraudulent or unlawful, offensive, abusive, indecent, defamatory or menacing, or in breach of any rights of others;
 - (c) cause annoyance, inconvenience or needless anxiety to others;
 - (d) post commercial advertisements or promotional material; or
 - (e) collect information (including information about other users) for purposes outside these terms of use. In particular, you must not harvest information from the Service for commercial purposes without our prior consent.

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- 3.3 You must not (and must not allow a third party to) access the Service in a manner that:
- (a) abuses or materially disrupts any aspect of the networks, security systems, Service and/or our websites;
 - (b) interferes with the use of the Service by other users;
 - (c) generates or facilitates unsolicited and unauthorised advertising or marketing communications;
 - (d) violates or facilitates the violation of our legal rights or those of our associates, suppliers or licensors, or of another user of the Service;
 - (e) constitutes data collection or data mining activities on or in respect of the Service without our prior written consent other than as authorised under these Terms of Use for the purpose of utilising the Service;
 - (f) seeks to remove, alter, obscure or otherwise degrade watermarks or similar security measures that appear on images available on the Service;
 - (g) constitutes conduct that is misleading or deceptive, or contravenes any applicable law; or
 - (h) otherwise constitutes abuse or inappropriate use of the Service, in our sole discretion.
- 3.4 You must not use the Service to intentionally distribute malware, viruses or any other computer code, files or programs of a destructive or deceptive nature
- 3.5 We reserve our right to suspend your access to the Service if, in our sole opinion, you breach your obligations or post comments which are abusive to other subscribers.

4. Violations

- 4.1 Please support our community and report any violations of these Terms of Use by contacting us using the Support email address or contact form provided within the Service.
- 4.2 If you breach these terms of use, in addition to any other remedies we may have, you are responsible for all duties, charges and legal fees (on a solicitor/own client basis) we incur in enforcing our rights.

5. Content

- 5.1 When you publish a post in the Service, you are allowing other users to access and use that information, and to associate it with you (that is, to your name and profile).
- 5.2 By using the Service, you warrant that any Content that you post or transmit on the Service, or otherwise transmit to any other member of Service

by any other means, will not infringe the Intellectual Property Rights of any third party.

- 5.3 By posting or transmitting any content on the Service, you:
- (a) agree that you irrevocably assign to us all of your right, title and interest in and to any text, photos, videos or any other materials (of any type or variety) embodied in your post or transmission; and
 - (b) give us your complete and genuine consent to our use (in any way we deem appropriate) all or any portion of your post or transmission, even if such use would otherwise be an infringement of your moral rights (having the meaning given to that term in the Australian *Copyright Act 1968* (Cth) or the New Zealand *Copyright Act 1994* as applicable).

6. Availability of Products and Services

- 6.1 Unless otherwise stated, information displayed on the Service about products or services offered to you is provided by a business who is authorised to use our Service to offer its products or services (**Seller**). This includes (but is not limited to) product or service descriptions, inclusions or exclusions, images and availability. We are not responsible for such information and we rely on the accuracy of the information supplied by our Sellers.
- 6.2 If we become aware that the information provided by a Seller is incorrect or incomplete, we reserve the right to but are not responsible for correcting the information.
- 6.3 A Seller may impose additional terms and conditions on your purchase. Please read such terms and conditions carefully before proceeding. By creating an Order you signify your intention to be bound and abide by those additional terms and conditions.
- 6.4 You acknowledge that Products offered for Order Service may be withdrawn at any time.

7. Fees

- 7.1 Where you use the Service to Order a Product, you agree to pay the applicable fees for your Order (**Fees**) using the payment method you nominate in that transaction.
- 7.2 You understand that, given the nature of the Products you may procure through the Service, in some cases cancellations, refunds or returns will not be available, including for change of mind or where you have made an error or mistake in completing and finalising your Order. Cancellations, refunds or returns are regulated by the Seller's terms and conditions, and we have no control over such terms. We will make reasonable efforts to make you aware of the applicable cancellation, refund or return terms at the time you place your Order.

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- 7.3 To the extent applicable, you agree to comply with any third party payment gateway provider terms and conditions in connection with your Order.
- 7.4 To the extent that payment for any transaction completed by you on the Service is deferred to a later date, you must ensure that sufficient funds are available to debit the Fees from your elected payment method at the time of completing the order or transaction.
- 7.5 If you fail to make any payment of the Fees due, we may (without limitation to its other rights and remedies at law) do one or more of the following:
- (a) cancel the applicable Order, and we will have no liability to you for such cancellation;
 - (b) charge interest on the amount owing at 2 percent per month;
 - (c) restrict or suspend your access to the Service as we see fit; or
 - (d) terminate your account on the Service and prohibit you from creating future accounts.

8. Delivery of Products

- 8.1 Unless otherwise stated, all Products will be delivered to your address nominated by you when submitting your Order via the Service, in accordance with the Seller's shipping or delivery policies.
- 8.2 Subject to the Seller's applicable terms and conditions for the Product, you must not resell on-sell Orders or Products procured through the Site.
- 8.3 If the Product you are procuring is a good (not a service), you acknowledge and agree that, until you have paid for the Product title to the goods remains with the Seller and you are in possession of the Product solely as bailee, and until that time:
- (a) you must not encumber or otherwise charge the Product as security for payment; and
 - (b) you are fully responsible for any loss or damage to the Product whatsoever and howsoever caused following delivery of the goods to you.
- 8.4 Risk of damage to, or loss of, the Product passes to you on proper dispatch of the goods.

9. Third party products or services

- 9.1 When you use the Service to Order a Product, we may receive a commission from the Seller or third-party provider of that activity, event, product or service.
- 9.2 We do not endorse or recommend any Product that may be offered through the Service. You must use your own judgment when deciding whether a Product is suitable for you, and your selection and use of any Product is at your own risk.

10. Data Collection

- 10.1 You agree that we may collect, use and share aggregated, de-identified information including technical data, usage statistics and related information (collectively, **Data**) that is gathered periodically to facilitate our maintenance, updates, upgrades or changes to the Service or Products. We and our suppliers may monitor, use and store Data to improve the Service or Products offered via the Service.
- 10.2 You acknowledge that we may use and sell to third parties Data and information extrapolated from the Data, and you provide your express consent to us generating, using and commercialising the Data in this way.
- 10.3 You acknowledge that we may be required by law or regulation to provide Data collected from the Service to a government or regulatory authority or to your university (including in connection with clauses **Error! Reference source not found.** or **Error! Reference source not found.**) and you consent to the provision of any such data or information.

11. Privacy

- 11.1 In this clause 11:
- (a) **Privacy Act** means the *Privacy Act 1988* (Cth) or the *Privacy Act 2020* (NZ) as applicable; and
 - (b) **Personal Information** has the meaning given in the Privacy Act.
- 11.2 We maintain a privacy policy that sets out how we handle your personal information. You should read our Privacy Policy at <https://www.essencecommunities.com.au/privacy-policy>. By accepting these Terms of Use, you will be taken to have read our privacy policy.
- 11.3 Our privacy policy is a non-contractual document prescribed by the Privacy Act. It does not impose any contractual obligations on us, and we disclaim any such contractual obligations.
- 11.4 The Privacy Act requires us to take such steps as are reasonable in the circumstances to ensure that any recipients of personal information outside of Australia do not breach the privacy principles contained within Privacy Act.
- 11.5 You consent, acknowledge and agree that:
- (a) any Personal Information disclosed to us via the use of the Service may be disclosed to our associated entities, third party service providers or contractors, and/or stored on infrastructure used by us, outside of Australia or New Zealand; and
 - (b) by creating an account and continuing to use the Service, you expressly agree and consent to the disclosure of any personal information outside of Australia or New Zealand in the manner permitted by this clause.

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11.6 In providing this consent you understand and acknowledge that countries outside Australia or New Zealand do not always have the same privacy protection obligations as Australia or New Zealand in relation to personal information.

11.7 By providing your consent, under the Australian Privacy Act, Australian Privacy Principle 8.1 does not apply to disclosures referred to in clause 11.2.

12. Intellectual Property Rights

12.1 You acknowledge that we or our licensors owns all legal rights, title and interest in and to the Service, the content contained on the Service, and nothing in these Terms of Use constitutes a transfer or assignment of any intellectual property rights by us.

12.2 You must not modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble, scrape, or interface (without our permission), or otherwise attempt to derive source code or data from any component of the Service, or documentation or create or attempt to create a substitute or similar service or product through use of or access to the Service.

12.3 You must not use, register or attempt to register any trade marks or domain names that are derived from, substantially identical or deceptively similar to our own or those otherwise used on the Service.

12.4 You grant to us a perpetual, non-exclusive, royalty-free, irrevocable and worldwide licence to use any Content (including intellectual property) that you upload, or arrange to have uploaded, to the Service in any way (and you permit us to grant any rights to third parties to also use such content) but strictly for the purpose of maintaining, moderating and managing the Service, including making the Order, as well as the administration of the associated business (**Purpose**). For the avoidance of doubt, we will not disclose confidential or commercially sensitive information to a third party other than for the Purpose. You acknowledge and agree that this licence will survive termination of these Terms of Use. You warrant to us that you have all right, title and authority to grant this licence.

13. Availability and support

13.1 We make no warranty, and has no obligation to ensure that, the Service is:

- (a) available for use at any given time;
- (b) compatible with the mobile device or computing platform, third party software or chosen internet browser you choose to access the Service; or
- (c) error-free.

13.2 We and our third party providers do not, and are not obligated to provide any technical or other support for the provision of the Service under the Terms of Use.

13.3 We may temporarily suspend (in part or in whole), and without prior notice to you, your access to the website if:

- (a) there is a malfunction, fault or breakdown of any of our (or our contractors) equipment or if we (or our contractor) needs to do any repairs, maintenance or service on any part of the Service;
- (b) we are required by law to do so;
- (c) an event of Exceptional Circumstance occurs, which affects or may affect our ability to provide the Service;
- (d) we suspend your access under clause 7.5 for your non-payment;
- (e) if someone claims the Service (or our provision of the Service) infringes the Intellectual Property Rights of any person;
- (f) if someone brings a Claim that exposes us to liability or prosecution for an offence or liability to a statutory prosecution; or
- (g) if we determine you are in breach of the Agreement, including where we determine you have failed to meet your obligations under clause 3.

A suspension any of these reasons will not affect any right which accrue prior to, or after, suspension of our obligations under these terms.

13.4 You acknowledge and agree that:

- (a) access to the Service may occasionally be limited due to scheduled maintenance; and
- (b) access to the Service is reliant upon various factors outside our control, including, without limitation, events of Exceptional Circumstance, your internet service provider, telecommunications provider or equipment used to access the Service. While we will use reasonable endeavours to ensure you have continuous access to the Service, we will not be liable to you or any other person for any Claim or to any other extent for Loss or damage caused by such factors.

13.5 You will have no Claim against us in respect of loss of access or functionality to the Service.

14. Special terms for Apple iOS users

14.1 Notwithstanding any other provision within these Terms of Use, the following additional terms apply if you use the Service on an Apple iOS device.

14.2 You understand that these Terms of Use are between you and us only and not Apple, Inc. (**Apple**) and that we or our licensors are responsible for the Service and the content thereof, but that Apple and its subsidiaries are third-party beneficiaries of these Terms of Use and have the right to enforce them against you.

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14.3 You understand that, should the Service fail to conform to any applicable warranty not disclaimed above, you may notify Apple and Apple will refund the purchase price (if any), but that Apple has no maintenance, support, or (to the maximum extent permitted by applicable law) other warranty obligations to you with regard to the Service. Apple is not responsible for any product liability claims or claims that the Service or your use thereof fails to conform to any applicable legal or regulatory requirement or infringes a third party's intellectual property rights. If you have any questions or concerns regarding the Service, please contact us as described below.

15. Warranties

You warrant to us that:

- (a) you have full power and authority to enter into these Terms of Use;
- (b) all information that you provide to us whether directly or through the Service is true, accurate and complete;
- (c) you will not allow any unauthorised access to the Service, and you will notify us immediately upon becoming aware of any unauthorised access or use of the Service or your account credentials; and
- (d) you will comply with any applicable laws, standard or regulations in respect of your access to or use of the Service.

16. Limitation of Liability

- 16.1 You acknowledge and agree that the Service contains general information and may include material from many different sources. We make no representation and do not warrant that the information provided on the Service is complete, accurate or current. You must take reasonable steps to verify any information about Products (including fitness for purpose) that you may see on the Service.
- 16.2 You agree that we provide the Service only, and we are not responsible or Liable to you or any third party for the actions or inactions of the Seller or another member in relation to you.
- 16.3 You acknowledge and agree that, where your Order involves procuring a Product from a third party Seller (other than us or our related entities) we are not liable for the acts or omissions of the Seller.
- 16.4 You acknowledge and agree that our ability to provide any Service is subject to:
- (a) you complying with your obligations under the Terms of Use, and any other limitation or exclusion set out in same; and
 - (b) your third party hardware and software (including browser of choice) meeting the minimum operating requirements for the Service, as may be detailed on the

Service's website or mobile app and updated from time to time.

- 16.5 We will not be liable for any virus, malware, trojan or similar malicious software program or code infecting your software or hardware as a result of interactions with third parties on the Service.
- 16.6 Subject to clause 17 below and to the full extent permitted by law:
- (a) we exclude all liability in respect of any loss of data, interruption of business or any indirect or consequential loss, loss of profits, loss of opportunity or incidental damages; and
 - (b) we exclude all warranties and representations (express and implied) unless otherwise stated to the contrary in these Terms of Use.
- 16.7 To the extent any legislation prohibits the exclusion of any implied warranties and subject to clauses 16.8 and 17, you agree that our liability in respect of any claim is limited (at our option) to:
- (a) in the case of services:
 - (1) the supply of the services again; or
 - (2) the payment of the costs of having the services supplied again; or
 - (b) In the case of goods (including any downloadable apps):
 - (1) the resupply of the goods; or
 - (2) the payment of the costs of having the goods resupplied.
- 16.8 To the fullest extent permitted by law, in no event will our total aggregate liability under the Terms of Use (whether in contract, under a right of indemnity, tort or statute) exceed will not exceed the lesser of \$10 or the aggregate fees (excluding Fees to Sellers) paid by you to us under the Terms of Use in the 6 months before our liability arose.
- ## 17. Australian Consumer Law
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- 17.1 To the extent you purchase any Product through the Service, the Product will be supplied by the Seller with all non-excludable consumer warranties under the *Australian Consumer Law*. We do not provide any consumer guarantees itself, or on behalf of the Seller.
- 17.2 To the extent the Australian Consumer Law applies to our supply of goods or services to you under the Terms of Use:
- (a) we acknowledge the application of the *Competition and Consumer Act 2010 (Cth)* to the provision of goods or services to the you, and will comply with all Non-Excludable Conditions; and

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(b) the following applies where we offer to you a warranty against defects under the Terms of Use:

(1) our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law.

(2) For major failures with the goods or services, you are entitled:

- (a) to cancel your agreement with us; and
- (b) to a refund for the unused portion of, or to compensation for its reduced value.

(c) You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

17.3 In this clause 17, the following terms have the meanings ascribed to them:

- (a) **“Australian Consumer Law”** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (b) **“Non-Excludable Condition”** means an implied condition, warranty or guarantee, including under the *Competition and Consumer Act 2010* (Cth) as applicable from time to time, the exclusion of which from a contract would contravene any applicable laws or cause any part of the Terms of Use to be void.

18. Indemnity

18.1 You agree to indemnify us, our officers and employees or agents from and against any loss, claim, liability, cost or expense incurred by us in respect of a third party claim arising from or in any way related to:

- (a) your breach of the Terms of Use;
- (b) your infringement or alleged infringement of a third party’s intellectual property rights;
- (c) your use of the Service; or
- (d) your violation of applicable laws, rules or regulations in connection with your use of the Service, Order or Product.

18.2 We reserve the right, at our own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by you,

in which event you will cooperate with us in asserting any available defences.

19. Termination

- 19.1 We may (temporarily or permanently) suspend, cancel or edit details of your account, or any Content, at any time in its sole discretion without notice.
- 19.2 You may delete your account on the Service at any time, at which point you release us from our obligations under the Terms of Use unless otherwise provided and we are free (but not required) to delete your account and related data Content from our systems.
- 19.3 The Terms of Use terminate automatically if, for any reason, we cease operating the Service.
- 19.4 Any termination of the Terms of Use (or any component thereof) under clause 19 will be without prejudice to the rights of the party terminating to seek and obtain damages for any breach of the Terms of Use by the other party.
- 19.5 We have no obligation to backup or otherwise retain data or Content on the Service relating to your account and your interactions with us or other parties via the Service after termination or cancellation under this clause 19.

20. Currency

- 20.1 The Fees and any other amount payable by you under these Terms of Use will be payable in the currency stipulated on the Service or corresponding to the region in which you access or will use the relevant Order or Product.
- 20.2 If the applicable currency is not stipulated, the price for Products to be sold, held or used (as applicable) events to be held in New Zealand will be charged and payable in New Zealand Dollars, and the price for Products to be sold, held or used in Australia will be charged and payable in Australian Dollars.

21. Miscellaneous

- 21.1 Unless expressly stated to the contrary all amounts expressed in this agreement are inclusive of applicable indirect taxes, such as the goods and services tax (GST) in Australia or New Zealand as applicable.
- 21.2 The Terms of Use are governed by and construed in accordance with the laws of Queensland, Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- 21.3 You must not assign, transfer or novate any of your rights or obligations (including your account) under or relating to the Terms of Use.

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- 21.4 We may assign, transfer or novate any of its benefits, rights or obligations under or relating to the Terms of Use by notice in writing to you.
- 21.5 If a provision of the Terms of Use is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of the Terms of Use have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.