

# COSTA COFFEE CLUB APP END USER LICENCE AGREEMENT

**PLEASE READ CAREFULLY BEFORE DOWNLOADING THE APP.**

This end-user licence agreement (the "**EULA**") is a legal agreement between you (the "**End-user**" or "**you**") and Costa Limited, a company incorporated in England with company number 01270695 whose registered office is at Costa Limited, Costa House, 6 Porz Avenue, Houghton Hall Business Park, Houghton Regis, Dunstable, Beds, LU5 5YG ("**Costa**", "**us**" or "**we**") under which we license use of the Costa Coffee Club mobile application software (the "**App**") to you.

**Operating system requirements** This App requires an Apple or Android Smartphone with, Internet access and iOS or Android operating system (versions iOS 8 and above, Android 4.4 and above).

## **Important notice:**

By downloading the App you agree to the terms of this EULA which will bind you.

## **1. APPLICABLE TERMS**

1.1 The following terms apply to your use of the App and the Costa Coffee Club services available through the App (the "**Services**"):

1.1.1 this EULA, which sets out the terms on which you may download and use the App and the Services (as further detailed in clause 3 below);

1.1.2 our membership **terms and conditions**, which set out the terms on which you may become a Costa Coffee Club member (a "**Member**") and use the benefits provided by the Costa Coffee Club (the "**Membership Terms**"). Please note that you must either have a Costa Coffee Club membership (a "**Membership**") or register for a Membership, in order to use the full Services; and

1.1.3 (i) the "**Additional App Terms**" set out in the Appendix to this EULA; and (ii) any terms and conditions imposed by the Appstore from which you have downloaded the App (together, the "**Appstore Rules**").

1.2 Please note that we only use your personal information in accordance with our **privacy policy**.

## 2. ACKNOWLEDGEMENTS

2.1 We may change the terms of this EULA from time to time and it is important that you check this EULA for any changes that we make, as they are binding on you. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the App and/or the Services.

2.2 From time to time updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded the latest version of the App and accepted any new terms.

2.3 You will be assumed to have obtained permission from the owners of the mobile telephone or handheld devices that are controlled, but not owned, by you (the "**Devices**") and to download a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices. You accept responsibility in accordance with the terms of this EULA for the use of the App or the Services on or in relation to any Device, whether or not it is owned by you.

2.4 The App may contain links to other independent third-party websites ("**Thirdparty Sites**"). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content. You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.

2.5 The App is made available free of charge. We do not guarantee that the App, or any content on it, will always be available or be uninterrupted. Access to the App is permitted on a temporary basis. We may suspend, withdraw, discontinue or change all or any part of the App without notice. We will not be liable to you if for any reason the App is unavailable at any time or for any period. We may update the App and/or change the content on it at any time.

2.6 You are responsible for making all arrangements necessary for you to have access to the App. You are also responsible for ensuring that all persons who access the App through your internet connection are aware of this EULA and that they comply with them.

2.7 The App and the content on it are provided for general information purposes only. They are not intended to amount to advice on which you should rely.

2.8 You may only use the App for your own domestic, private and non-commercial use.

## 3. SERVICES

The following Services are available through the App:

3.1 managing your Membership, including:

- 3.1.1 viewing your Costa Coffee Club card number;
  - 3.1.2 adding your Costa Coffee Club card to Apple Wallet (iOS only) and Google Pay (Android only); and
  - 3.1.3 changing your email and password;
- 3.2 managing and spending the points that you have accrued through your Membership ("**Points**"), including:
- 3.2.1 the ability to scan QR codes at checkout in certain Costa outlets and Express Machines in order to both collect and redeem Points; and
  - 3.2.2 viewing your current Points balance and your Points history;
- 3.3 the Costa Collect functions (currently available on the iOS and Android version of the App. Full details of these functions can be found on our **Costa Collect info page**); and
- 3.4 location services to find your nearest Costa outlet.

#### **4. PASSWORD**

- 4.1 You must select a password as part of the registration process to become a Member (via the Website or the App). This password will be required in order for you to use the App. Your password is non-transferable.
- 4.2 We have the right to disable your password if you have failed to comply with any of the provisions of this EULA.
- 4.3 If you know or suspect that anyone other than you knows your user identification name or password, you must immediately notify us by calling us on 0333 003 5883\* Option 2 (Coffee Club Query) or at **costacoffeeclub@costacoffee.com**.
- 4.4 You are responsible and liable for any use of your password.

#### **5. GRANT AND SCOPE OF LICENCE**

We grant you a non-transferable, non-exclusive licence to use the App on the Devices conditional upon your compliance with the terms of this EULA and the documents referred to in it. We reserve all other rights.

#### **6. LICENCE RESTRICTIONS**

- 6.1 Except as expressly set out in this EULA or as permitted by any local law, you agree:

6.1.1 not to copy the App except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security;

6.1.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App;

6.1.3 not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;

6.1.4 not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing except to the extent that such actions cannot be prohibited by applicable law;

6.1.5 to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;

6.1.6 not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and

6.1.7 to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App or the Services (the "**Technology**").

## **7. ACCEPTABLE USE RESTRICTIONS**

### 7.1 You must:

7.1.1 not use the App or the Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, the Services or any operating system;

7.1.2 not infringe our intellectual property rights or those of any third party in relation to your use of the App or the Services (to the extent that such use is not licensed by this EULA);

7.1.3 not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or the Services;

7.1.4 not use the App or the Services in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and

7.1.5 not collect or harvest any information or data from the App or the Services or our systems or attempt to decipher any transmissions to or from the servers running the App or the Services.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 You acknowledge that all intellectual property rights in the App and the Technology anywhere in the world belong to us or our licensors, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App or the Technology other than the right to use each of them in accordance with the terms of this EULA. You acknowledge that you have no right to have access to the App in source-code form.

8.2 Any communications or materials (including, without limitation, any User Generated Content (as defined in clause 9.1) you send to us through the App by electronic mail or other means will be treated as non-proprietary and non-confidential. We are free to publish, display, post, distribute and otherwise use any ideas, suggestions, concepts, designs, know-how and other information contained in such communications or material for any purpose, including, but not limited to, developing, manufacturing, advertising and marketing us and our products.

## **9. USER GENERATED CONTENT**

9.1 If it is the case that you supply/upload any content to the App – whether it be pictures, text, sound recordings or whatever ("**User Generated Content**") – the content you supply must comply with the following rules:

9.1.1 it must not be obscene, abusive, offensive or racist and it must not promote or propose hatred or physical harm against anyone;

9.1.2 it must not harass or bully another person;

9.1.3 it must be true and honest so far as you know;

9.1.4 it must not be defamatory of anyone;

9.1.5 it must not use the material or content or infringe the rights or privacy of anyone else; for example you should not use images of well-known characters, footage or music (unless it is your own);

9.1.6 it must not contain someone else's personal details or confidential information relating to other people; and

9.1.7 it must not promote or condone terrorism, violence or illegal behaviour.

9.2 We reserve the right to refuse to accept or refuse or cease to use any content supplied by any person that we think contravenes these rules.

9.3 In addition, we may from time to time provide interactive services on the App which shall enable you to upload or post comments, postings, contributions, designs,

words, images or other material to the App ("**Contributions**"), including, without limitation:

9.3.1 comment facilities;

9.3.2 chat rooms; and/or

9.3.3 bulletin boards,

(together "**Interactive Services**").

9.4 Where we provide an Interactive Service, we will use reasonable endeavours to provide information to you about the kind of service offered and if it is moderated. However, we are under no obligation to oversee, monitor or moderate any Interactive Service we provide.

9.5 The use of any of our Interactive Services by a minor is subject to the consent of their parent or guardian. We advise parents who permit their children to use an Interactive Service that it is important that they communicate with their children about their safety online. Minors who are using any Interactive Service should be made aware of the potential risks to them.

## **10. LIMITATION OF LIABILITY AND EVENTS OUTSIDE OUR CONTROL**

10.1 Nothing in this EULA excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English law.

10.2 We only supply the App to you for your domestic and private use. You agree not to use the App for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

10.3 Without affecting clauses 10.1 and 10.2, we are only responsible for loss or damage you suffer that is a foreseeable result of our breach of this EULA or our negligence but we are not responsible for any unforeseeable loss or damage. Loss or damage is foreseeable if it is an obvious consequence of our breach or if they were contemplated by you and us at the time we and you entered into this EULA.

10.4 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below.

10.5 An "**Event Outside Our Control**" means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, snow, flood, earthquake, subsidence, epidemic or other natural disaster, failure of public or private telecommunications networks, impossibility of

the use of motor transport or other means of public or private transport, road traffic accidents, road closures or mechanical failure.

10.6 If an Event Outside Our Control takes place that affects the performance of the App:

10.6.1 we will contact you as soon as reasonably possible to notify you;

10.6.2 we shall not be liable to you as a result of any delay or failure by us to perform our obligations under this EULA as a result of an Event Outside Our Control; and

10.6.3 we shall use reasonable endeavours to minimise any disruption to the App.

## **11. TERMINATION**

11.1 Either you or we may terminate this EULA at any time for any reason.

11.2 If you breach any of the terms of this EULA, we may immediately do any or all of the following (without limitation):

11.2.1 issue a warning to you;

11.2.2 temporarily or permanently remove any User Generated Content uploaded by you to the App;

11.2.3 temporarily or permanently withdraw your right to use the App;

11.2.4 suspend or terminate your Membership;

11.2.5 issue legal proceedings against you for reimbursement of all costs resulting from the breach (including, but not limited to, reasonable administrative and legal costs);

11.2.6 take further legal action against you; and/or

11.2.7 disclose such information to law enforcement authorities as we reasonably feel is necessary to do so.

11.3 If we withdraw your right to use the App, then:

11.3.1 all rights granted to you under this EULA shall cease;

11.3.2 you must immediately cease all activities authorised by this EULA, including your use of any services provided through the App; and

11.3.3 you must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App then in your possession, custody or control and certify to use that you have done so.

## **12. COMMUNICATION BETWEEN US**

12.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail or by prepaid post to Customer Services, Costa Limited, Costa House, 6 Porz Avenue, Houghton Hall Business Park, Houghton Regis, Dunstable, Beds, LU5 5YG and **costacoffeeclub@costacoffee.com**. We will confirm receipt of this by contacting you in writing, normally by e-mail.

12.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address stated in your Membership.

## **13. OTHER IMPORTANT TERMS**

13.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.

13.2 You may only transfer your rights or obligations under this EULA to another person if we agree in writing.

13.3 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

13.4 You have legal rights in relation to services not carried out with reasonable care and skill and goods not of a satisfactory quality. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards Office. Nothing in this EULA will affect these legal rights.

13.5 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

13.6 Conditional upon clause 13.7 below, any dispute or claim arising out of or in connection with this EULA or its subject matter or formation (including noncontractual disputes or claims) will be governed by English law.

13.7 As a consumer, you will benefit from any mandatory provisions of the law of the country in which you are resident. Nothing in this EULA, including clause 13.6, affects your rights as a consumer to rely on such mandatory provisions of local law.

13.8 Any dispute or claim arising out of or in connection with this EULA or its formation (including non-contractual disputes or claims) shall be subject to the jurisdiction of the courts of England. If you are a consumer resident in Northern



Ireland, you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

13.9 If you wish to have more information on online dispute resolution, please follow this link to the website of the European Commission: <http://ec.europa.eu/consumers/odr/>. This link is provided as required by Regulation (EU) No 524/2013 of the European Parliament and of the Council, for information purposes only. We are not obliged to participate in online dispute resolution.

## ANNEX

### Additional App Terms

The following terms and conditions shall apply to your use of the App in addition to those set out in the EULA.

For the purpose of this Appendix, "**Appstore Provider**" means the provider of the app store through which you have downloaded the App (for example, Apple is the Appstore Provider if you have downloaded the App from the Apple App Store, Google is the Appstore Provider if you have downloaded the App from Google Play, etc).

1. You acknowledge and agree that this EULA has been concluded between you and Costa, and not with the Appstore Provider. You acknowledge and agree that the Appstore Provider is not responsible for the App and its content.
2. You acknowledge and agree that the Appstore Provider has no obligation to provide any maintenance or support in respect of the App. Should you have any problems in using the App, please contact Costa at [costacoffeeclub@costacoffee.com](mailto:costacoffeeclub@costacoffee.com).
3. In the event that the App does not conform with any product warranty provided for by this EULA, the Appstore Provider may provide you with a refund of the price that you paid to purchase the App (if any). The Appstore Provider shall, to the maximum extent permitted by law, have no obligation to you whatsoever with respect to the App.
4. You acknowledge and agree that the Appstore Provider shall not be responsible for addressing any claims that you might have relating to the App, including (without limitation): product liability claims; any claim that the App fails to conform to any applicable legal or regulatory requirement; and claims arising under consumer protection or similar legislation.
5. In the event that a third party claims that the App infringes its intellectual property rights, Costa (and not the Appstore Provider) shall be solely responsible for the investigation, defence, settlement and discharge of such claim.
6. You warrant and represent that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S.

Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

7. If the Appstore Provider is Apple, you acknowledge and agree that Apple and its subsidiaries are third party beneficiaries to this EULA. Upon your acceptance of this EULA, Apple will have the right to enforce the EULA against you as a third party beneficiary.