

1. **The Parties' Relationship**

Menuria provides an online marketplace platform using web-based technology that connects Merchants and customers ("Platform"), as described in these Terms for Menuria Marketplace. Menuria is not a merchant service; it is an online connection platform. Merchant and Menuria agree they are independent businesses whose relationship is governed by the Sign-Up Sheet and these Terms (together "Agreement"). Nothing in the Parties' Agreement, relationship or transactions shall create or be construed as creating an agency, partnership, fiduciary or joint venture relationship between Menuria and the Merchant (or Merchant's employees, representatives or locations), and/or Menuria and the Customers. Except as expressly set forth in the Sign-Up Sheet and these Terms, each Party shall be responsible for its own expenses, profits and losses.

2. **Marketplace Core Responsibilities**

For Merchants that have agreed to participate in the Menuria Marketplace, Menuria and Merchant shall have the following responsibilities during the Marketplace Term:

2.1 Menuria Core Responsibilities

Menuria will, in a timely manner:

- (a) display Merchant's name, logo, photographs, a listing of the Merchant Stores and a menu of Merchant Products on the Menuria Platform;
- (b) receive Marketplace Orders from Customers;
- (c) forward each Marketplace Order to the relevant Merchant Store; and.
- (d) pay the Merchant in accord with the Parties' agreements, deducting applicable Platform Fees, Subscription Fees and marketing fees.

2.2 Merchant Core Responsibilities

Merchant will, in a timely manner:

- (a) provide Menuria with the Merchant's in-store or take-out menu, including the price of each item on such menu;
- (b) monitor Merchant's menu and Merchant Store information on the Menuria Marketplace, promptly make updates via the Merchant Portal to reflect the most up-to-date products, pricing and other information or immediately notify Menuria of any errors or changes in writing;
- (c) accept all Marketplace Orders placed by Menuria from Merchant's then-current menu;
- (d) confirm all Marketplace Orders from Menuria;
- (e) process Marketplace Orders in the order in which they are received;

- (f) notify Menuria of any changes to the pricing, availability, description, or other characteristics of the Merchant Products;
- (g) notify Menuria of its days and hours of operation, and remain open for business on Menuria the same days and hours of operation as Merchant's in-store business; notify Menuria of any changes to Merchant's hours of operations on holidays; and notify Menuria if Merchant closes earlier than Merchant's standard hours of operation or plans to close earlier than Merchant's standard hours of operation;
- (h) use its standard business practices to prepare the Merchant Products that are the subject of each Marketplace Order; and
- (i) on an ongoing basis, review and confirm the transactions, fees and charges on orders via the Merchant Portal, and promptly communicate to Menuria any inaccuracies.

3. Refunds and Re-Orders

Refunds and re-orders will be addressed as follows:

3.1 Marketplace Refunds.

Menuria is not responsible for any refunds, credit's or re-orders. All refunds, credits or re-orders will be handled by the Merchant directly. In the event that Menuria, in its sole reasonable discretion, has to issue a refund, credit or re-order on an Customer's Marketplace Order, Merchant will prepare the food to the same specifications as the original Marketplace Order (in the case of a re-order) and bear the full cost of that refund, credit or re-order, as applicable, unless the refund, credit or re-order is due to the gross negligence or wilful misconduct of Menuria.

3.2 Complaints

Merchant shall be solely responsible for any customer complaints regarding Merchant Product(s), including without limitation, complaints regarding the nature, quality, content, number, or packaging of Merchant Product(s). Merchant agrees not to refer any Customer complaints directly to Menuria. Any complaints regarding the timeliness or quality of the Menuria Marketplace shall be reported by Merchant to Menuria as soon as possible.

4. Order Equipment.

With respect to the Menuria Marketplace, Merchant will install any equipment reasonably required by Menuria for Merchant to receive and process Marketplace Orders (including, without limitation, a tablet, fax machine, or other automated, electronic means of receiving Orders) ("Order Equipment"). If any Order Equipment is provided by Menuria, Merchant will pay Menuria an Order Equipment Fee, as set forth in the Sign-Up Sheet, in exchange for the right to use the Order Equipment to access the Menuria Platform in order to receive, process, and accept Marketplace Orders. Any Order Equipment provided by Menuria will remain Menuria's sole property and may be used solely for purposes related to fulfilling Merchant's responsibilities under these

Terms. Merchant will inspect all hardware, and shall notify Menuria in writing if any Order Equipment is missing or was damaged as soon as practicable after discovering such damage. Menuria may restrict or rescind Merchant's right to use the Menuria Platform at any time. Merchant will be responsible for any damage to or loss of any Order Equipment provided by Menuria (excluding ordinary wear and tear), which will be promptly reimbursed by Merchant (at the replacement cost thereof). Menuria may recover the replacement cost of damaged or lost Order Equipment by deducting such amount from weekly payments. Merchant agrees to pay all subscription fees and deposits reasonably charged by Menuria for Order Equipment, and agrees Menuria may deduct such fees and deposits from amounts payable by Menuria to Merchant.

5. **Payment, Fees, Title and Taxes.**

Payment, fees, and taxes shall be addressed as follows:

5.1 Menuria Marketplace

Payment for Marketplace Orders fulfilled by Merchant will be settled to the Merchant's "Connect Account" with Stripe (see section 6 below). Menuria will automatically deduct from such settlement payments the Platform Fee, Subscription Fees and any applicable marketing fees. If Merchant has opted for Menuria to provide Order Equipment, Menuria will also deduct a weekly Order Equipment Fee, as set forth on the Sign-Up Sheet or as agreed between the parties, in exchange for the Merchant's right to use the Order Equipment to access the Menuria Platform in order to receive, process, and accept Orders. Merchant agrees Menuria may charge the customer fees, including but not limited to a delivery fee, a service fee, a surcharge fee, and/or small order fee where applicable in Menuria's sole discretion. Merchant shall be responsible for all taxes, duties, and other governmental charges on the sale of Merchant Products under this Agreement and for remitting such taxes, duties, and other governmental charges to the appropriate authorities. In the event that Merchant raises the price for a menu item, Menuria shall not be required to remit the higher price to the Merchant until 3 business days after the Merchant first provides notice to Menuria of such pricing change.

5.2 Subscription Fee

In consideration for the Merchant's use of the Menuria Marketplace, the Merchant will pay Menuria the Subscription Fee by the 25th day of each month for the duration of the Marketplace Term (**Payment Date**). If any fee is not paid in full by the Payment Date, Menuria may assess interest on the unpaid amount for the period beginning on the Payment Date and ending on the date that the amount is paid in full. The amount of interest to be paid shall not exceed the maximum rate under applicable law.

5.3 Review:

Merchant agrees, on an ongoing basis, to review and confirm its transactions, fees and charges on orders and invoices via the Merchant Portal, and to promptly communicate to Menuria in writing any claimed inaccuracies, so that Menuria has the prompt opportunity to address and resolve any issues and so such issues do not persist, which Menuria and Merchant agree is in the best interests of both parties and their commercial relationship. Merchant agrees to communicate to Menuria any disagreement, non-conformity or any issue with any transaction, fee, charge or order within 60 days of

the transaction, fee or order. Merchant shall be deemed to have acquiesced in and ratified, and to have waived any claim or objection regarding, each transaction, fee, charge and order if Merchant does not communicate a written claim or objection to Menuria regarding such transaction, fee, charge or order within such 60-day period.

5.4 Title

Merchant agrees that Merchant holds title to Merchant Products the subject of any Order until the goods are provided from Merchant to the Customer (as applicable), at which point title passes from the Merchant to the Customer. Merchant agrees that Menuria holds no title to or acquires any ownership interest in any Merchant Products that Merchant prepares or provides through the Menuria Platform.

6. **Payment Processing**

6.1 Payment processing services for Merchants on the Menuria Marketplace are provided by Stripe and are subject to [the Stripe Connected Account Agreement](#), which includes the [Stripe Services Agreement](#). By agreeing to these Terms, Merchant agrees to be bound by the [Stripe Connected Account Agreement](#) and the [Stripe Services Agreement](#), as the same may be modified by Stripe from time to time. As a condition of Menuria enabling payment processing services through Stripe, Merchant agrees to provide Menuria accurate and complete information about Merchant's representative and its business, and Merchant authorizes Menuria to share it and transaction information related to Merchant's use of the payment processing services provided by Stripe. Stripe has been audited by a PCI-certified auditor and is certified to PCI Service Provider Level 1.

7. **Merchant Content and Trademark; Photographs of Menu Items**

7.1 During the Marketplace Term, as applicable, Merchant grants to Menuria a worldwide, royalty-free, non-exclusive, limited, revocable, non-transferable, non-sublicensable right and license to use, modify, and display the Merchant Content in the provision of providing services to Merchant. As used herein, "Merchant Content" includes, without limitation, menus, photographs (either provided by Merchant or on Merchant's website), trademarks, logos and other materials provided by Merchant to Menuria.

7.2 If photographs of Merchant's menu items are not available or if they do not meet Menuria's requirements, as reasonably determined by Menuria, then Merchant consents to Menuria engaging a professional photographer to take photographs of Merchant's menu items and display such photographs on the Menuria Marketplace as representations of Merchant's menu items; provided that Merchant may contact Menuria support to have such photographs removed from the Merchant's Store listing and, in such event, Menuria will comply in a timely manner.

8. **Confidential Information**

8.1 The term "Confidential Information" shall mean any confidential or proprietary business, technical or financial information or materials of a party ("Disclosing Party") provided to the other party ("Receiving Party") in connection with this Agreement, whether orally or in physical form, and shall include the terms of this Agreement.

- 8.2 Without limiting the foregoing, Menuria Data is the Confidential Information of Menuria (and not the Merchant).
- 8.3 Confidential Information does not include information that:
- (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed to the Receiving Party in connection with this Agreement;
 - (b) was or becomes public domain other than by the fault of the Receiving Party;
 - (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not at the time under any obligation to maintain its confidentiality; or
 - (d) the Receiving Party can demonstrate by documentary records was independently developed by the Receiving Party without access to, use of or reference to any Confidential Information.
- 8.4 The Receiving Party shall:
- (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations in accordance with these Terms;
 - (b) except where otherwise permitted by these Terms, not disclose or permit access to Confidential Information other than to its or any of its employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors and legal advisors ("Representatives") who need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with these Terms, and prior to any such disclosure are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section; and
 - (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most/similarly sensitive information and in no event less than a reasonable degree of care.
- 8.5 Where Menuria is the Receiving Party, Menuria may:
- (a) disclose and permit access to Merchant's and its franchisee's Confidential Information to Menuria's related corporate affiliates; and
 - (b) use, anonymise and/or aggregate Merchant's and its franchisee's Confidential Information for the purpose of providing or improving the Menuria Platform or Menuria Services.
- 8.6 If the Receiving Party is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall promptly notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 11(c) and provide reasonable assistance to the Disclosing Party, at the

Disclosing Party's sole expense, in opposing or seeking protective limitations on disclosure.

9. **Data Privacy and Security**

9.1 General.

9.2 Merchant acknowledges and agrees that

- (a) the rights, title and interest in Menuria Data is owned by Menuria and that Menuria will access, collect, store, retain, transfer, use, disclose or otherwise process in any manner Menuria Data, including without limitation Personal Information (including information about Merchant's franchisees provided by Merchant to Menuria under these terms) in accordance with its [privacy policy](#) and
- (b) Menuria may disclose data and information relating to, or in connection with, transactions between Merchant's franchisees and Customers with Merchant. Merchant agrees not to access, collect, store, retain, transfer, use, disclose or otherwise process in any manner Menuria Data, including without limitation Personal Information, except as required to perform under these terms and in accordance with the *Privacy Act 1988* (Cth). Merchant shall keep Menuria Data secure from unauthorized access and maintain the accuracy and integrity of Menuria Data in Merchant's custody or control by using appropriate organizational, physical and technical safeguards. If Merchant becomes aware of any unauthorized access to Menuria Data, Merchant will immediately notify Menuria, consult and cooperate with investigations and potentially required notices, and provide any information reasonably requested by Menuria. Merchant agrees to implement and use security procedures, protocols or access credentials as reasonably requested by Menuria and will be responsible for damages resulting from Merchant's failure to comply. Merchant will not allow any third party to use the Menuria Platform; copy, modify, rent, lease, sell, distribute, reverse engineer or otherwise attempt to gain access to the source code of the Menuria Platform; damage, destroy or impede the services provided through the Menuria Platform; transmit injurious code; or bypass or breach any security protection on the Menuria Platform. Where Merchant party becomes aware of any "Eligible Data Breach" (as that term is defined in the *Privacy Act 1988* (Cth)) in respect of Personal Information in its possession or control received from Menuria, Merchant must promptly notify Menuria and cooperate with investigations regarding the same.

9.3 Delivery API

9.4 During the Marketplace Term, Menuria grants to Merchant a non-exclusive, royalty-free, non-assignable, non-transferable, non-sublicensable, revocable, limited, fully paid-up license to access the Delivery API solely to transmit information to facilitate the Menuria Services.

9.5 Merchant will not and will not permit or authorize any third party to:

- (a) sell, license, rent, resell, lease, assign (except as permitted herein), transfer, or otherwise commercially exploit the Delivery API;
- (b) circumvent or disable any security or other technological features or measures of, or otherwise gain or attempt to gain unauthorized access to the Delivery API;
- (c) reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code or the underlying ideas, algorithms, structure, or organization of the Delivery API; or
- (d) use the Delivery API in any manner or for any purpose that violates any law or regulation; and (v) use the Delivery API for a reason other than as specifically provided or intended under this Agreement. Each Party agrees not to perform any action with the intent of introducing to the other Party's systems, products, or services (including the Delivery API) any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature.

10. Termination

Merchant may terminate this Agreement for any reason at any time upon 7 days prior written notice. Menuria may terminate this Agreement or any promotion under this Agreement for any reason at any time upon written notice. Email shall suffice for written notice. Neither Merchant nor Menuria will be required to pay any fee in connection with a termination by either party except for those fees and charges due at the date of termination under this Agreement, or be liable to the other as a result of termination of this Agreement for any damages, for the loss of goodwill, prospective profits or anticipated income, or for any expenditures, investments, leases or commitments made by either Merchant or Menuria.

11. Modifications

Menuria reserves the right, at its sole discretion, to change, suspend, or discontinue the Menuria Platform (including without limitation, the availability of any feature or content) at any time. Menuria may, at its sole discretion, remove Merchant Products or Merchant Stores from the Menuria Marketplace if Menuria determines that such Merchant Product or Merchant Store could subject Menuria to undue regulatory risk, health and safety risk, or other liability. Menuria also may revise these Terms from time to time. The changes will not be retroactive, and the most current version of the terms will be at [Menuria's Merchant Terms of Use](#). Menuria will notify Merchants of material revisions via a service notification or an email to the email address associated with Merchant's accounts. By continuing to access or use Menuria's Service after those revisions become effective, you agree to be bound by the revised Terms. If you do not agree to the revised Terms, you may terminate this Agreement by notice to Menuria.

12. Representations and Warranties; Additional Responsibilities; Warranty Disclaimer.

- 12.1 Each party represents and warrants that it has the full right, power, and authority to enter into and perform its obligations under these terms without breaching any obligation to any third party.

- 12.2 Each party represents and warrants that it will comply with all applicable laws and regulations in its performance of these Terms, including without limitation:
- (a) all applicable data protection and privacy laws, and
 - (b) all applicable Laws related to third party intellectual property and other proprietary rights.
- 12.3 Merchant further represents, warrants and agrees that:
- (a) it will comply with all applicable Laws, rules, standards and regulations relating to licenses, health (including Proposition 65 in California), food packaging and accessory items (including but not limited to foodware, plasticware, and other disposable restaurant supplies), and food safety and sanitation,
 - (b) it has informed Menuria of any required consumer-facing warnings, charges, opt-in requirements, and instructions associated with Merchant Product(s) and it will inform Menuria of any such warnings, charges, opt-ins, and instructions that become required in the future,
 - (c) it will disclose common allergens in any Merchant's menu items listed on the Menuria Marketplace,
 - (d) it will not include any age-restricted products (including but not limited to alcohol and tobacco) in Merchant's menus on the Menuria Marketplace without first entering into a separate agreement with Menuria memorializing the promotion, sale and delivery of such products in compliance with the laws of the applicable state in which such products will be sold,
 - (e) it will not disclose any information related to Menuria or a consumer to a third party (except as required to comply with law or pursuant to a court order) and
 - (f) it will comply with its obligations under this Agreement.
- 12.4 EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, MENURIA HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE MENURIA PLATFORM, THE DELIVERY API, EQUIPMENT OR MENURIA SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, SATISFACTORY QUALITY OR RESULTS, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY RIGHT OR REMEDY, OR ANY GUARANTEE, WARRANTY OR OTHER TERM OR CONDITION, IMPLIED OR IMPOSED BY ANY LEGISLATION WHICH CANNOT LAWFULLY BE EXCLUDED OR LIMITED.
- 12.5 IF ANY GUARANTEE, WARRANTY, TERM OR CONDITION IS IMPLIED OR IMPOSED IN RELATION TO THIS AGREEMENT UNDER THE AUSTRALIAN CONSUMER LAW OR ANY OTHER APPLICABLE LEGISLATION AND CANNOT BE EXCLUDED (A **NON-EXCLUDABLE PROVISION**), AND A PARTY IS ABLE TO LIMIT ITS LIABILITY FOR A BREACH OF THE NON-EXCLUDABLE PROVISIONS, THEN

THE LIABILITY OF THAT PARTY FOR BREACH OF THE NON-EXCLUDABLE PROVISIONS IS LIMITED TO ONE OR MORE OF THE FOLLOWING AT THAT PARTY'S OPTION:

- (a) IN THE CASE OF GOODS,
 - (i) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS,
 - (ii) THE REPAIR OF THE GOODS,
 - (iii) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS, OR
 - (iv) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED;
OR
- (b) IN THE CASE OF SERVICES,
 - (i) THE SUPPLYING OF THE SERVICES AGAIN, OR
 - (ii) THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

12.6 Merchant acknowledges that the operation of the Menuria Platform may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors and, subject to the Non-Excludable Provisions, Menuria shall not be responsible to Merchant or others for any such interruptions, errors, or problems or an outright discontinuance of the Menuria Platform nor for any guarantee of results with respect to the Menuria Services or Menuria Platform contemplated herein. Both Parties acknowledge that neither party has any expectation or has received any assurances for future business or that any investment by a party will be recovered or recouped or that such party will obtain any anticipated amount of profits by virtue of these Terms.

13. Indemnification

13.1 Merchant will defend, indemnify, and hold harmless Menuria, its subsidiaries and affiliates, and their respective officers, directors, shareholders, employees, and agents from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) (collectively "Losses") with respect to any third-party claims arising out of or related to:

- (a) any bodily injury (including death) or damage to tangible or real property to the extent caused by Merchant's personnel and/or the Merchant Products);
- (b) any claims that the Merchant breached its representations, warranties or covenants set forth in Section 9 and Section 12 of this Agreement;
- (c) the violation of the intellectual property of the third party by Merchant's logos, trademarks, trade names, menus, documentation, or other intellectual property. In addition, Merchant will defend, indemnify and hold harmless Menuria from

any and all Losses related to any violation or alleged violation of any applicable retail food or other health and safety code, rule, or regulation related to Merchant Product(s), except to the extent such Losses were caused directly by the gross negligence or wilful misconduct of Menuria. In each case Merchant shall provide Menuria with

- (i) prompt notice of any claims such that Menuria is not prejudiced by any delay of such notification,
- (ii) the option to assume sole control over defence and settlement of any claim, and
- (iii) reasonable assistance in connection with such defence and settlement (at the Merchant's expense). Menuria may participate in the defence or settlement of such a claim with counsel of its own choice and at its own expense; however, the Merchant shall not enter into any settlement agreement that imposes any obligation on Menuria without Menuria's express prior written consent. Menuria assumes no liability, and shall have no liability, for any infringement claim pursuant to section 13.1(c) above based on Merchant's access to and/or use of the Menuria Platform following notice of such an infringement claim; any unauthorized modification of the Menuria Platform by Merchant; or Merchant's combination of the Menuria Platform with third party programs, services, data, hardware, or other materials which otherwise would not result in such infringement claim.

14. Limitation of Liability

14.1 SUBJECT TO THE NON-EXCLUDABLE PROVISIONS IN CLAUSE 12.5 AND EXCEPT WITH RESPECT TO DAMAGES ARISING FROM VIOLATIONS OF LAW OR WILFUL MISCONDUCT, UNPAID FEES OWED TO MENURIA BY MERCHANT IN EXCESS OF THE BELOW LIMIT, AND AMOUNTS PAYABLE TO THIRD PARTIES UNDER SECTION 13 (INDEMNIFICATION), TO THE EXTENT PERMITTED BY APPLICABLE LAW,

- (a) MENURIA WILL NOT BE LIABLE TO THE MERCHANT UNDER THIS AGREEMENT, FOR INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, LOST REVENUES, HARM TO GOODWILL, OR THE COSTS FOR PROCURING REPLACEMENT SERVICES, WHETHER BASED ON TORT, CONTRACT OR ANY OTHER LEGAL THEORY (INCLUDING NEGLIGENCE), AND WHETHER OR EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND
- (b) MENURIA'S MAXIMUM AGGREGATE LIABILITIES RELATED TO OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY MENURIA TO THE MERCHANT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY, WHETHER BASED ON TORT, CONTRACT OR ANY OTHER LEGAL THEORY (INCLUDING NEGLIGENCE). THE

FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

15. Dispute Resolution

- 15.1 The parties must do all things necessary to resolve a dispute. If the parties are unable to resolve a dispute, they must enter into a mediation before initiating any legal proceedings. Mediation must be administered by the Australian Disputes Centre (**ADC**) unless otherwise agreed between the parties. The mediation must be conducted in accordance with ADC Mediation Guidelines which set out the procedures to be adopted for the mediation, the process of selection of the mediator and the costs involved. The terms of the ADC Mediation Guidelines are deemed to be incorporated into this Agreement.
- 15.2 If the dispute is not resolved on completion of the mediation under this clause either party may initiate proceedings in the appropriate jurisdiction.
- 15.3 Despite the existence of a dispute, both parties must continue to perform their obligations under this Agreement.

16. Franchisees

- 16.1 Franchisees operating a restaurant concept licensed by Merchant may participate in the Menuria Marketplace pursuant to the terms and conditions of these Terms provided that
- 16.2 the individual franchisee:
- (a) is in compliance with its franchise agreement; and
 - (i) enters into a separate Agreement with Menuria (including the Sign-Up Sheet and these Terms; or
 - (ii) if agreed in writing by Menuria, enters into a supplemental agreement in substantially the same form this Agreement provided by Menuria to the Franchisee.

17. Partner Code of Conduct

- 17.1 Merchant agrees to comply with the [Partner Code of Conduct](#) which may be updated by Menuria from time to time. If Merchant does not agree with those amendments, Merchant may immediately terminate these Terms.

18. Communications from Menuria.

- 18.1 Merchant agrees to accept and receive communications from Menuria and/or its affiliated companies, including via email, text message, calls, and push notifications to the mobile telephone number Merchant provides to Menuria. Merchant acknowledges that Merchant may receive communications generated by automatic telephone dialling systems and/or which will deliver pre-recorded messages sent by or on behalf of Menuria and/or its affiliated companies. Merchant may opt out of such communications in Merchant's Account Settings, by following the instructions set up in the communication, (for example, by replying "STOP" from the mobile device receiving such

messages), or where that communication has been sent by, or on behalf of, Menuria, by emailing Menuria at info@menu-ria.com.au.

19. General Provisions

- 19.1 As set forth on the Sign-Up Sheet between Merchant and Menuria, the Sign-Up Sheet and these Terms constitute an integrated Agreement between the parties, which supersedes all prior agreements and communications of the parties, oral or written, with respect to the subject matter hereof.
- 19.2 The rights and obligations set forth in these Terms, which by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of these Terms shall so survive and extend.
- 19.3 This Agreement is governed by and interpreted in accordance with the laws of the state of New South Wales, Australia without regard to the conflicts of laws principles thereof. Merchant agrees that, except as set forth above in Section 19 ("Dispute Resolution"), the parties hereby consent to non-exclusive jurisdiction in the courts of New South Wales, Australia.
- 19.4 Merchant may not assign this Agreement in whole or in part without Menuria's prior written consent, which Menuria will not unreasonably withhold. Menuria may freely assign this Agreement.
- 19.5 This Agreement is binding upon, and inure to the benefit of the permitted successors and assigns of each party, but shall not confer any rights or remedies upon any other third party.
- 19.6 All notices, requests, consents and other communications under the Parties' agreements must be in writing, and delivered by overnight courier to the addresses set forth on the Sign-Up Sheet (or any updated address properly noticed hereunder). Menuria's address is info@menu-ria.com.au.
- 19.7 If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained here.

20. Definitions

- 20.1 **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010*.
- 20.2 **Customer** means the customer who places an order for Merchant Products through the Menuria Marketplace.
- 20.3 **Delivery API** means the Menuria application programming interface (API) that allows the Merchant to exchange information with Menuria.
- 20.4 **Law** means all legislation, regulations, notices, ordinances, ministerial directives and government guidelines in all Australian States and Territories and the Commonwealth.

- 20.5 **Marketplace Orders** means orders for Merchant Products through the Menuria Marketplace from Customers
- 20.6 **Marketplace Term** means the date on which the parties enter into this Agreement and the date of termination.
- 20.7 **Menuria Data** means any data or information that Menuria generates or collects in connection with the provision or operation of the Menuria Platform or the Menuria Services provided under this Agreement, including transaction data and customer data, and any information or data it provides or makes accessible to Merchant through the Menuria Platform, including without limitation Personal Information.
- 20.8 **Menuria** means Moon-i Pty Ltd ABN: 28 634 993 829 trading as Menuria.
- 20.9 **Menuria Marketplace** means Menuria's proprietary online communication platform where Customers can view and search for the menus of Merchants and/or place an order for Merchant Products via the Menuria website or mobile application. This is also referred to herein as the Menuria Platform.
- 20.10 **Menuria Services** means the Menuria Marketplace, Menuria Platform or other services provided by Menuria from time to time.
- 20.11 **Merchant** means the restaurant or other entity that has agreed to participate in the Menuria Services.
- 20.12 **Merchant Content** has the meaning given to it in clause 7.1.
- 20.13 **Merchant Portal** means the [web application](#) and [mobile application](#), through which Merchant may and regularly should review and confirm its transactions, fees and charges and account on the Menuria Platform.
- 20.14 **Merchant Products** includes all products offered for eat in, take-out or delivery orders at Merchant Stores.
- 20.15 **Merchant Store** means the Merchant restaurant locations that participate in the Menuria Services.
- 20.16 **Order Equipment Fee** has the meaning given to it in clause 4.
- 20.17 **Order Equipment** means and includes any equipment reasonably required by Menuria for Merchant to receive and process Marketplace Orders, including, without limitation, a tablet, fax machine, or other automated, electronic means of receiving Marketplace Orders.
- 20.18 **Payment Date** has the meaning given to it in clause 5.2.
- 20.19 **Personal Information** means any information exchanged under this Agreement that
- (a) identifies or can be used to identify an individual (including without limitation, names, telephone numbers, addresses, signatures, email addresses or other unique identifiers); or

- (b) that can reasonably be used to authenticate an individual (including without limitation, name, contact information, precise location information, access credentials, persistent identifiers and any information that may be considered 'personal data' or 'personal information' under applicable law).

20.20 **Platform Fee** means the fees collected by Menuria as a commission in exchange for promoting and featuring the Merchant and Merchant Store(s) on the Menuria Platform, which is charged as a percentage of revenues transacted on the Menuria Platform as per the following rates:

- (a) Domestic bank or transaction cards: 2.25% + \$0.30 AUD per Marketplace Order;
- (b) International bank or transaction cards: 3.4% + \$0.30 AUD per Marketplace Order

or as otherwise determined by Menuria.

20.21 **Sign-Up Sheet** means the sign-up sheet completed by the Merchant.

20.22 **Subscription Fee** means the fee payable to Menuria in line with clause 5.2 to the amount of \$25.00 AUD per month subject to change.