

FOODHUBTM

RETAILER GENERAL TERMS AND CONDITIONS

1. OPERATIVE PROVISIONS/INTERPRETATION

- 1.1 This Agreement is entered into by and between Food Hub Ltd, a company registered in England & Wales (Co No: 10619783) whose registered office is situated at 55a, Duke Street, Stoke-On-Trent, ST4 3NR (the "Company or Foodhub") and the retailer identified in the accompanying contract order form (the "Order") (with the "Retailer") and shall constitute a legally binding agreement between the Parties. "We, us or our" shall mean the Company and "you or your" shall mean the Retailer. The "Parties" shall mean the Company and the Retailer.
- 1.2 The Company shall be construed as including any person to whom the business of the Company (or any rights appertaining thereto) has been transferred or licensed or otherwise disposed of. The words 'we' and 'our' and 'us' shall be interpreted as including reference to such purchaser, transferee, licensee, or assign as if they were original Parties and signatories to this Agreement.
- 1.3 This Agreement solely and exclusively governs the supply of Goods and provision of Services by us to you under the Order.
- 1.4 Save and except as otherwise expressly stated herein, no person other than the Parties has any rights or obligations under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect the right or remedy of a third party which exists or is available at law apart from, and independently of, that Act.
- 1.5 This Agreement shall be read in conjunction with and shall be subject to the Customer Terms and Conditions which are available to review on our Website.
- 1.6 This Agreement shall solely and exclusively apply to the exclusion of all and any other terms and conditions which were, or may be, proposed or tendered by you, unless we have expressly agreed in writing signed to the unequivocal effect that they shall be applicable, in whole or in part, or additionally, to your Order in respect of any dealings between us.
- 1.7 Any variation, amendment, or addition to, or substitution of, the provisions of this Agreement, shall only be valid and effective where they have been agreed in writing and signed by the party to be bound.
- 1.8 Subject to Clause 2, this Agreement (and any document referred to in the Contractual Documents in so far as such reference shall be necessary to better explain provisions contained herein) shall constitute the entire agreement between the Parties, and shall supersede, be in substitution of and for, any previous arrangement, understanding or

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agreement.

- 1.9 Subject to Clause 2, the Parties otherwise confirm that they have not entered into this Agreement based on any representations not expressly restated in the Contractual Documents nor do they rely upon any pre-contractual statement or warranty of any person (whether a party to this agreement or not) other than as expressly set out in the Contractual Documents (other than fraudulent representations).
- 1.10 Any advertising literature published in a descriptive matter, whether in hard copy or electronic format or online and any descriptions or illustrations contained in catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Software systems, Goods and the Services which we provide. They are not intended by the Parties to expressly or impliedly constitute part of this Agreement and shall not have any contractual or legal force.
- 1.11 Our relationship with you is non-exclusive and, other than as expressly stated to the contrary in Contractual Documents, we shall not be precluded, prevented or restricted from entering into similar agreement with any other person for the provision of the Goods and Services.
- 1.12 Nothing in this Agreement or otherwise shall be deemed or construed to create any partnership or joint venture between the Parties.
- 1.13 In these Terms and Conditions, the following words and expressions shall mean:

Addendum	any addendum referenced in the Order which is intended to supplement the General Terms and Conditions (GTC)
Agreement	the Contractual Documents
Applicable Laws	as applying from time to time: (a) laws of England and Wales; (b) any laws of a territory in which a Location is situated; and (c) any policies, guidelines or industry codes made by any regulatory body in a jurisdiction over a party or any of their assets, resources, or business (in each case whether or not legally binding) which apply to the provision of Goods or the performance of the Services or to which either party is subject.
Applications ("App")	online food ordering applications which Customers have download without charge via the App Store, Google Play or accessed via a downloadable the link on our Website.
Business Day	a day other than a Saturday, Sunday or bank or public holiday in England and Wales.
Business Information	all data or information (whether technical, commercial, financial or of any other type) in any form acquired under, pursuant to or in

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	connection with this Agreement and any information used in or relating to a business (including information relating to services (bought or supplied), operations, processes, formulae, methods, strategy, product information, know-how, design rights, trade secrets, market opportunities, customer lists, relationships, marketing, sales materials and general business affairs.
Charges	the Installation/Set Up Charges, the Rental Charges, Transaction Fees, SMS, and Communication Charges (each as stated in the accompanying Order and subject to any Addendum), fees, costs. and expenses payable by you to us hereunder.
Confidential Information	Business Information or other confidential information or data conveyed by a disclosing party, together with all information derived by the receiving party from such information and any other information designated by a party as being confidential to it (whether or not it is marked 'confidential'), or which ought reasonably be considered as confidential.
Contractual Documentations	The Order, the GTC together with any Addendum, and use of the term Agreement means the combined legal effect of them taken together.
Commencement Date	The date of the Parties signature of the Order.
Customer	an end customer of the Company who has visited the Website or downloaded the App onto their mobile or tablet.
Customer Terms & Conditions	The terms and conditions (the current edition of which is stated on our Website) which apply to the use of the Website and Application (App) by the Customer.
Data Protection Laws	any Applicable Laws relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the services provided by them which shall include: (a) the GDPR; (b) the Data Protection Act 2018; or (c) or equivalent applicable laws in Location is situated; (d) any laws which implement any such laws; (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (f) all guidance, guidelines and codes of practice issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding).
Data Subject	any information collected in relation to Personal Data which is collected and processed and disclosed by one party to the other.
EPOS system	electronic point of sale system (EPOS), which enables customers to order from your Localities via the Website and over the telephone and for the orders to be printed out in the Locality where the order is placed.
Equipment	EPOS system, point of sale system (POS) and any other equipment provided by us that comprises of the Hardware, Software and use of the Website or App.

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GDPR	General Data Protection Regulation, Regulation (EU) 2016/679.
Goods	the Software and any Hardware which we have provided to operate Software on, as stated in the Order.
Hardware	any keyboard, computer or laptop or other physical Goods which we have agreed to supply you with as stated in the Order.
Intellectual Property Rights (IPR)	patents, any extensions of the exclusivity granted in connection with patents, utility models, registered designs, trademarks, service marks, applications for any of the foregoing, the right to apply for and be granted any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs, copyrights, design rights, rights in inventions, rights in know-how, rights in databases, trade secrets and any other intellectual property rights which subsist in documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature and all other forms of intellectual property right which may exist anywhere in the world.
Interest	the statutory rate of 8% per annum or as stated in the Combined Court Practice Rules (CPR) at the date of claim hereunder against you.
Locality	the outlets which you operate from as stated in the Order. Any undeclared/ additional location must be confirmed to us upon opening or acquisition and will be subject to the Charges.
Material	the content provided by you to use from time to time for inclusion on the Website including photographs, menus, price lists and other information.
Native Website	A website that is either owned, managed, or associated to the Retailer directly and does not receive Goods and Services from Foodhub.
Order	the processed order form which accompanies these Terms and Conditions signed by the Parties.
Payments	the Charges confirmed in the Order together with legal or administrative costs and Interest applicable and due upon deferred or late payment of such Charges under this Agreement.
Personal Data	any personal information relating to an identified or identifiable natural person (whether an End Client, Contracting party or otherwise) and shall have the same meaning as afforded by the Data Protection Act 2018 and GDPR.
Processing of Personal Data	any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, accessing, use, disclosure by transmission, dissemination or otherwise making available, alignment or

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	combination, blocking, erasure or destruction.
Protected Personal Data	received from or on behalf of a Customer, or otherwise obtained by a party (or anyone acting on its behalf) in connection with the performance a arty's obligations under this Agreement.
Retailer	The takeaway business or restaurant entering into this Agreement.
Services	the services which we have agreed to supply you with as stated in the Order under Clause 3 of this Agreement.
Software	the Equipment or other system and any companion software that facilitates the promotion of your business and the taking of point of sale orders from Customers.
Stipulated Minimum Period	Shall be 4 months initial trial period with a 12-month rolling contract thereafter (4 months plus 12 months), unless otherwise terminated subject to clause 11.1 and 11.2 of this Agreement.
Term	as defined by Clause 11 herein.
VAT	Value added tax imposed in any member state of the European Union or any similar tax which may be substituted for or levied in addition to it, or any value added, sales, turnover or similar tax imposed in any country that is not a member of the European Union from time to time. We shall be entitled to charge you the rate of VAT applicable at the invoiced date.
Website	the online Website domain "Foodhub.co.uk" and its associated App.

- 1.14 Any descriptive following the words including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those words.
- 1.15 Any reference to a "person" herein shall mean individual, corporation, partnership, unincorporated association, public body, or combination of them (as applicable).
- 1.16 The expressions "writing" and "in writing" shall include email save and except for notices.
- 1.17 The headings to clauses and paragraphs are for convenience of description only and shall have no legal meaning or otherwise have any effect upon the interpretation of the Clauses and Paragraphs which they purport to describe.
- 1.18 Reference to any statute or statutory provisions or to any regulatory provisions includes reference to any amendment, extension, re-enactment, or consolidation thereof, including all orders, regulations, instruments, or other subordinate legislation (as defined by section 21(1)

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of the Interpretation Act 1978).

- 1.19 Each of the Parties shall use all reasonable and effective efforts to procure that any other person shall do, execute, and perform all such further deeds, documents, assurances, acts or things as may be required to give effect to this Agreement.
- 1.20 Neither the single nor partial exercise or temporary or partial waiver by any party of any right, nor the failure by such party to exercise in whole or in part any right or to insist upon the strict performance of any provision of this Agreement, nor the discontinuance, abandonment, or adverse determination of any proceedings taken by the party to enforce any right or any such provision shall (except for the period or to the extent covered by any such temporary or partial waiver) operate as a waiver of, or preclude any exercise or enforcement of (as the case may be) any further or other exercise or enforcement by the party of, that or any other right or provision.
- 1.21 This Agreement and all other agreements and documents referred to within it are strictly confidential to the Parties and shall not be disclosed to any other person save for the Parties' professional advisers except under authority of law, and their content shall not be adopted or adapted and used, in whole or in part, for any other purpose without the prior written permission of the Company.

2. BASIS OF AGREEMENT WITH RETAILER

- 2.1 By entering into this Agreement, you warrant that you are ready, willing, and able to reasonably satisfy Customer orders, and have the facilities and shall deploy sufficient personnel to provide and deliver such orders within a reasonably acceptable period of time from the nominated Localities.
- 2.2 You also agree to give Foodhub access to your Google My Business page and pin to enable Foodhub to provide you with the optimum services and benefits available for the duration of this Agreement.
- 2.3 You further represent and warrant you comply with all Applicable Laws regarding food hygiene and health and safety standards, licences, trading standards and similar, and if requested shall provide us with evidence of such compliance.
- 2.4 You shall maintain public liability insurance and all recommended related insurances in respect

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of the operation of your business and shall provide us with evidence of the same upon request.

- 2.5 You expressly acknowledge that any breach of Clauses 2.1 to 2.4 may cause loss and damage to our reputation and business, shall recompense us in respect thereof without specific attributable proof of any such consequential loss or damage.
- 2.6 The provision of Goods and Services by us shall be subject at our discretion to, and contingent upon, satisfactory assessment by us, or our authorised representative, of your retail provision to customers at our discretion.
- 2.7 You shall be liable for any representations made, prior to entering into this Agreement (whether in writing or verbally), or any inaccuracy contained in any document provided to us or customers by you relating to your business and the services which you provide, upon all of which we shall be entitled to rely without further enquiry.

3. PROVISION OF GOODS & SERVICES

- 3.1 Foodhub provide Goods, Services, Hardware and Software to subscribing Retailers, which allows them to provide an online food ordering and delivery service to their Customers.
- 3.2 By signing the Contractual Documents, you hereby agree Foodhub shall provide you with the Goods for installation and Services within 14 days of the Commencement Date and you hereby agree to these terms and conditions.
- 3.3 The Retailer agrees that Foodhub shall retain control over the Retailer's listing on its Website, which shall include the application of a discount to the Customer at Foodhub's discretion. The amount of the discount shall be stated on the Order or otherwise as agreed between Foodhub and the Retailer. Foodhub shall have no involvement or discretion over the prices, offers or discounts that may be applied by the Retailer through its own Native Website.
- 3.4 Subject to Clause 3.3, Foodhub reserves the right to terminate this Agreement, at its discretion and without further notice, should the Retailer decide not to apply, remove, or otherwise disable the agreed level of discount to be applied to their listing on the Foodhub Website.
- 3.5 Goods shall be provided in a manner that is suitable for purposes and are of satisfactory quality, and Services shall be delivered in a timely manner and in accordance with all Applicable Laws.

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- 3.6 Software and related services provided shall include, subject to confirmation in the Order:
- 3.6.1 personal online ordering website;
 - 3.6.2 ordering management App;
 - 3.6.3 listing on Foodhub online ordering portal;
 - 3.6.4 entering into partner network;
 - 3.6.5 driver tracking solutions;
 - 3.6.6 Android POS or BYO device;
 - 3.6.7 own Landing page on our website which directs Customers to your own website; and
 - 3.6.8 24/7 technical and Customer support.
- 3.7 The Hardware which has been provided and bailed to you is specified in the Order. We shall pack and supply the Hardware to you, without any additional cost, but the Hardware must be returned to us (together with our Software) at the end of the Term. You shall remain responsible for:
- 3.7.1 Returning the Hardware, Software or Equipment fully functioning and in good condition (subject to fair wear and tear).
 - 3.7.2 Returning the Hardware, Software or Equipment in its original packaging provided by us within fourteen (14) days.
 - 3.7.3 Any loss, theft or damage caused to the Hardware, Software or Equipment; and
 - 3.7.4 A £500 fee to repair or replace any of our Hardware, Software or Equipment that is lost, damaged, not functioning properly or returned absent of its original packaging.
- Foodhub does not sell EPOS systems separately, but we do charge a rental or subscription charge for their use.
- 3.8 We advertise and carry out other above-the-line and below-line marketing and promotional activities, both nationally and locally where we have retail partners, as we have indicated to you. The nature and extent of such advertising and activities shall be entirely at our discretion.
- 3.9 Transfer of Customer payments in respect of an order is through our nominated transaction partners as stated in the Order, and they shall be entitled to levy such transaction fees as are applicable at the time of the Customer order.
- 3.10 You are required to ensure that your banking details as stated in the Order are complete,

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correct, and current. You shall promptly notify us in writing of any updates to such details, and neither we nor our nominated transaction partners, under sub-Clause 3.6, shall be liable for any misdirected or delayed transaction payments in consequence of any error in such details or your failure to update us.

- 3.11 You shall solely be responsible for ensuring that each Locality has adequate and reliable internet connections, and any information or advice which we may provide in such regard shall only be given on the understanding that it is without legal liability of whatsoever nature.
- 3.12 You shall solely be responsible without recourse against us, for any delays in, or aborted, Customer orders, loss of payments or any other adverse consequence resulting from your failure to adhere to sub-Clause 3.11.
- 3.13 You acknowledge and accept under this Agreement that Foodhub cannot in any way guarantee the validity or non-fraudulent use of its Goods and Services by either the Retailer or the Customer. Fraudulent or invalid use of our Goods and Services cannot be exhaustively checked and Foodhub expressly excludes any liability for invalid or fraudulent use of its Goods and Services, to the maximum extent permitted under the law.
- 3.14 Foodhub reserves the right to terminate or suspend its Goods and Services provided to you and without notice, where we reasonably believe there are concerns, suggestions or indications of fraud or other illegal activities occurring across your account.

4. THIRD PARTY INTEGRATION (“TPI”)

- 4.1 Where agreed, Foodhub shall provide the Retailer with a TPI service to enable the consolidation of all their Customer online food orders that are placed using other service providers, so they can be centrally managed by the Retailer using the TPI service, instead of multiple devices.
- 4.2 With effect from 1st February 2023, Foodhub shall charge all Retailers to use our TPI service. The option for using the TPI service shall be at an additional cost, which shall be disclosed and agreed between Foodhub and the Retailer before any charges are incurred for services provided.
- 4.3 The charge for the TPI service is based on the volume of Customer orders that have been integrated (higher the volume of orders, the lower the fee for each of the orders integrated). The billing shall be for Customer orders integrated from the previous calendar month and be subject to a minimum fee, calculated on the 1st of each month, effective from 1st March 2023.
- 4.4 The Retailer may opt out of the TPI service by cancelling at any time, in writing, to Foodhub directly at Hello@Foodhub.com. Any TPI service provided to the Retailer at the time of

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cancellation will still be charged in accordance with Clauses 4.2 and 4.3.

- 4.5 Foodhub cannot be held responsible for any downtime or interruptions with the TPI service resulting from outages or problems caused by outside connections, third party software limitations, utilities or other reasons that are not managed by us or beyond our control.
- 4.6 Foodhub uses the services of a third party to support the provision of its TPI service to the Retailer. Foodhub shall ensure the service provided by the third party provider is uninterrupted and fit for purposes using reasonable endeavours, but cannot be held responsible for any limitations, errors or failures with the service provided to Foodhub by the third party and any effect this may have on the provision of the TPI service to the Retailer.

5. FOOD HYGIENE AND SAFETY

- 5.1 Foodhub requires our Retailers to meet their minimum legal obligations allowing them to trade and to ensure the sale of food and any associated products is safe and compliant with the applicable food hygiene and safety standard laws.
- 5.2 Foodhub is not responsible for any failures by our Retailers to meet their legal and statutory obligations. It is the Retailer's responsibility to adhere to these obligations, if you are unsure what these are then please consult with organisations such as the Food Standards Agency (www.food.gov.uk) or seek specific professional advice.
- 5.3 You confirm to us your business has been the subject of a food hygiene and safety inspection, can legally operate, has been issued with and retains a minimum food hygiene rating of at least one star, as publicly displayed on the Foods Standard Agency website (www.food.gov.uk).
- 5.4 As a Retailer you will inform us, as soon as is practicable, if you have not yet been inspected or cannot display the minimum food hygiene rating or the food hygiene rating has fallen below the minimum of one star. In such circumstances, Foodhub reserves the right, in its sole discretion, to withdraw the provision of its Goods and Services to you without notice.
- 5.5 Foodhub reserves the right to terminate or suspend its Goods and Services with you and without notice, where it reasonably believes you are the subject of an ongoing enquiry, action or concern around your adherence to food hygiene or safety standards.

6. CHARGES AND PAYMENTS

- 6.1 We shall charge you the monthly payments which have been stipulated in the Order, which shall be due and payable on sign-up of the Order and thereafter during the Term on the last Business Day of each month by standing order which you will be obliged to have arranged on sign-up.

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- 6.2 All charges are stated as exclusive of VAT at the applicable rate.
- 6.3 All Payments due are calculated in sterling and, where we receive payment in another currency, we shall be entitled to additionally levy any conversion, transaction or similar charges incurred by us in consequence.
- 6.4 We shall deliver a statement of account with regard to the payments which we have received on a quarterly basis and a summary statement of account in respect of each financial year.
- 6.5 We shall be entitled to charge you interest on any sums outstanding to us at an annual rate of 8% per annum (or such other rate as shall be stated at the relevant time as the statutory rate of interest on judgement debts) from the due date, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and you shall pay the interest immediately on demand.
- 6.6 You shall indemnify us against all costs, charges and expenses (including reasonable legal costs) incurred by us in enforcing our rights against you under this Contract and will be entitled to do so notwithstanding any allocation to the small claims jurisdiction of any claim issued by us in the County Court for that purpose and so that any such costs will be summarily assessed and added to the judgment debt.
- 6.7 All sums payable under this agreement, or otherwise payable by any party to any other party under this agreement are exclusive of any VAT chargeable on the supplies for which such sums (or any part of them) are the whole or part of the consideration for VAT purposes.
- 6.8 Where, under this agreement, any party makes a supply to any other party (Recipient) for VAT purposes and VAT is or becomes chargeable on that supply for which the supplying party is required to account to the relevant tax authority, the Recipient shall, subject to the receipt of a valid VAT invoice, pay the supplying party (in addition to, and at the same time as, any other consideration for that supply) the amount of such VAT.
- 6.9 Where any party is required by this agreement to reimburse or indemnify any other party for any cost or expense, that first party shall reimburse or indemnify the other party for the full amount of the cost or expense, including any VAT on that amount, except to the extent that the other party is entitled to credit or repayment for that VAT from any relevant tax authority.
- 6.10 The Parties shall each be responsible for the payment of any Taxation or similar which may be personally due from them by virtue of the provisions of this Agreement and shall be fully

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responsible for and shall indemnify the others for and in respect of any Taxation or any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provisions of this agreement, where the recovery is not prohibited by law. The Parties shall further indemnify the others against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by them in connection with or in consequence of any such liability, deduction, contribution, assessment or claim.

7. WARRANTIES

7.1 Each party warrants and represents that:

7.1.1 it has full capacity and authority to enter into and perform this Agreement;

7.1.2 this Agreement is executed by a duly authorised representative of that party;

7.1.3 All marketing materials, including without limitation, the ownership and use of all intellectual property rights, are and will remain the sole and exclusive property of each party. You hereby grant Foodhub non-exclusive, royalty free right to use, reproduce, adapt, represent, and display such marketing materials and intellectual property rights on their Website and App during the term of this Agreement, without restriction;

7.1.4 Foodhub reserves the right, in its sole discretion, to withdraw any Good and Services being provided to you, without notice, where it is found you do not own, have infringed or may lack the required consent to use any trademarks, copyrights, marketing materials or intellectual property rights. You will remain liable to Foodhub to settle, in full, any costs or damages incurred through unauthorised use of another party's design, logo, name, marketing material or intellectual property rights;

7.1.5 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement;

7.1.6 shall perform its obligations hereunder in strict accordance with the provisions of this Agreement.

7.1.7 it will perform and procure the performance of its obligations under this Agreement

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in compliance with all Applicable Laws; and

7.1.8 shall discharge its obligations under this Agreement using personnel of required skill, experience, and qualifications and with all due skill, care and diligence including in accordance with good industry practice and use all services necessary to provide the Services efficiently and cost effectively.

8. CONFIDENTIALITY

8.1 The Parties each undertake to keep confidential and not to disclose to any third party, or to use for his own purposes, or other than for the purposes of, or as permitted under or in accordance with, this Agreement, Business Information or Confidential Information.

8.2 The obligations contained in this Clause 8 shall survive the expiry or determination of this Agreement for any reason but shall not apply to any information which becomes publicly known otherwise than through a breach of this Agreement by the other party or their employees, agents or contractors.

8.3 No party shall use any other party's other Confidential Information for any purpose other than to perform its obligations under this Agreement.

8.4 Without prejudice to any common law or statutory duties incumbent upon a party, each party undertakes not (nor to permit or allow any other person engaged by them) either during the subsistence of, or after the expiry or determination, of this Agreement, to:

8.4.1 Use any Confidential Information for their own purposes (other than in the performance of their obligations hereunder) or for, or to, the benefit of any third party; or

8.4.2 Disclose any Confidential Information to any other person (otherwise than as permitted hereunder).

8.5 Each party shall be responsible for protecting the confidentiality of any Confidential Information which may be disclosed to them during the course of their relationship and shall:

8.5.1 use their best endeavours, and take all reasonable recommended steps to ensure the security and protection of such information, and to prevent the use or communication of any Confidential Information by any person (except in the proper course of their

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duties, as required by law to any third party; and

- 8.5.2 inform the Contractor of any breach of confidentiality immediately upon becoming aware, or suspecting, that any such person or third party has come into the possession of, or used, Confidential Information.
- 8.6 All Confidential Information and copies thereof, in whatsoever format, shall be the Intellectual Property of the respective Parties who have divulged such information or the intellectual property of their sub-contractors (whichever may be the case) and shall be handed over to that party upon expiry or determination of the relationship between the Parties.
- 8.7 Nothing in this Clause shall prevent a party from disclosing information which they are entitled to disclose under the Public Interest Disclosure Act 1998 and/or under the Money Laundering Regulations or similar provisions, provided that the disclosure is made in accordance with the provisions of the relevant legislation.
- 8.8 All drafts, agreements, documented procedures and pro forma supplied are the Intellectual Property of the providing party or their sub-contractors (whichever may be the case) and may not be divulged, disclosed or copied, in whole or in part, to any person or used, or permitted to be used, by you for any purpose other than, and within the remit and provisions of, the relationship between the Parties.
- 8.9 Sub-Clause 8.8 shall not apply to the extent that such information is:
- 8.9.1 already known to or in possession of the receiving party prior to its disclosure;
 - 8.9.2 publicly available at the time of its disclosure or becomes publicly available through no wrongful act of the receiving party;
 - 8.9.3 rightfully received from a third party without obligation of confidentiality;
 - 8.9.4 independently developed by the receiving party without breach of this Agreement or access to the applicable Confidential Information of the other party; or
 - 8.9.5 required to be disclosed by Applicable Law (provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any such disclosure).
- 8.10 On the termination or expiry of this Agreement for any reason each party shall forthwith

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return or, at the other's designation, forthwith destroy all Confidential Information (and all copies thereof whether held by them by computer, paper or other means) in its possession or control on the date of termination (including, if required, by way of electronic data transfer) and certify to the other that it has done so.

- 8.11 For the purposes of this Agreement, the Confidential Information of the Company shall be deemed to include all Personal and Protected Data.

9. DATA PROTECTION

- 9.1 The Parties agree that we are a Controller and you are a Processor for the purposes of processing Personal and Protected Data pursuant to this Agreement. The Parties shall each ensure, and shall ensure its Sub-processors shall, at all times comply with all Data Protection Laws in connection with the processing of Personal and Protected Data and shall not by any act or omission cause the other (or any other person) to be in breach of any of the Data Protection Laws.
- 9.2 The Parties shall only process (and shall ensure personnel only process) the Personal and Protected Data in accordance with this Agreement except where otherwise required by Applicable Laws (and in such a case shall inform the other of that legal requirement before processing, unless Applicable Laws prevent it doing so on important grounds of public interest). A party shall immediately inform the other if any instruction relating to the Personal and Protected Data infringes or may infringe any Data Protection Law.
- 9.3 The Parties shall at all times implement and maintain appropriate technical and organisational measures to protect Personal and Protected Data against accidental, unauthorised, or unlawful destruction, loss, alteration, disclosure, or access. Such technical and organisational measures shall be at least equivalent to the technical and organisational measures set which shall reflect the nature of the Personal and Protected Data.
- 9.4 Foodhub shall be permitted to contract with Sub-Processors, Sub-Contractors and other third Parties to allow access to some or all of the Retailers Personal and Protected Data for the specific function of its business, Goods and Services. Where access is required by a Sub-Processor, Sub-Contractor or other third party, Foodhub will take all reasonable steps to ensure the Retailers Personal and Protected Data is being handled safely, securely, confidentially and in accordance with your rights, our obligations, and the obligations of the third party under the Data Protection Laws and GDPR.
- 9.5 The Parties shall ensure that access to Personal and Protected Data is limited to the authorised

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persons who need access to it for the purposes of this Agreement only.

- 9.6 The Parties shall prior to the relevant Sub-processor carrying out any processing activities in respect of the Personal and Protected Data, appoint each Sub-processor under a binding written contract containing the same obligations as under this Clause 9 in respect of Personal and Protected Data that (without prejudice to, or limitation of, the above):
- 9.6.1 includes providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing of the Personal and Protected Data will meet the requirements of all Data Protection Laws; and
- 9.6.2 is enforceable by the other party and ensure each such Sub-processor complies with all such obligations.
- 9.7 The Parties shall each remain fully liable to the other under this Agreement for all the acts and omissions of each Sub-processor and each of their personnel as if they were its own.
- 9.8 The Parties shall each ensure that all persons authorised by them or any Sub-processor to process Personal and Protected Data are reliable and:
- 9.8.1 adequately trained on compliance with this Clause 9 as applicable to the processing;
- 9.8.2 informed of the confidential nature of the Personal and Protected Data and that they must not disclose Personal and Protected Data;
- 9.8.3 subject to a binding and enforceable written contractual obligation to keep the Personal and Protected Data confidential; and
- 9.8.4 provide relevant details and a copy of each agreement with a Sub-processor to the Customer on request.
- 9.9 The Parties shall (at its own cost and expense) promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as the other as they may require in relation to the fulfilment of the other's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws).
- 9.10 The Supplier shall (at its own cost and expense) provide such information, co-operation, and other assistance to the other as they reasonably require (taking into account the nature of

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processing and the information available to the Supplier) to ensure compliance with obligations under Data Protection Laws, including:

- 9.10.1 security of processing;
 - 9.10.2 data protection impact assessments (as such term is defined in Data Protection Laws);
 - 9.10.3 prior consultation with a Data Protection Supervisory Authority regarding high risk processing; and
 - 9.10.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or any complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including (subject in each case to the Customer's prior written authorisation) regarding any notification of the Personal Data Breach to Data Protection Supervisory Authorities and/or communication to any affected Data Subjects.
- 9.11 The parties shall (at no cost to the other) record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the other which relate (or which may relate) to any Personal and Protected Data promptly (and in any event within [three days] of receipt) and shall not respond to any without the other's express written approval and strictly in accordance with the other's instructions unless and to the extent required by Applicable Laws.
- 9.12 The Parties shall not process and/or transfer, or otherwise directly or indirectly disclose, any Personal and Protected Data in or to countries outside the United Kingdom or the EEC or to any International Organisation without the prior written authorisation (which may be refused or granted subject to such conditions as the Company deems necessary).
- 9.13 The Parties shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the other. Such records shall include all information necessary to demonstrate its and the Company's compliance with this Clause 9, the information referred to in Articles 30(1) and 30(2) of the GDPR and such other information as the Company may reasonably require from time to time. The Parties shall make copies of such records available to the other promptly on request from time to time.
- 9.14 The Parties shall each (and shall ensure all Sub-processors shall) promptly make available to the other such information as is required to demonstrate their compliance with their respective obligations under this Clause 9 and the Data Protection Laws, and allow for, permit,

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and contribute to audits, including inspections, by the other (or another auditor mandated by that other) for this purpose at their request from time to time. The Parties shall provide (or procure) access to all relevant premises, systems, personnel, and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice and provide and procure all further reasonable co-operation, access, and assistance in relation to any such audit or inspection.

- 9.15 The Parties shall each promptly notify the other if it (or any of its Sub-processors or the Supplier Personnel) suspects or becomes aware of any suspected, actual, or threatened occurrence of any Personal Data Breach in respect of any Personal and Protected Data.
- 9.16 The Parties shall each promptly provide all information as the Company requires to report the circumstances referred to in Clause 9.15 to a Data Protection Supervisory Authority and within 72 hours to notify affected Data Subjects under Data Protection Laws.
- 9.17 The Parties shall (and shall ensure that each of their Sub-processors and personnel shall), upon written request, either securely delete or securely return all the Personal and Protected Data to the Company in such form as the Customer reasonably requests after the earlier of:
- 9.17.1 the end of the provision of the relevant Services related to processing of such Personal and Protected Data; or
- 9.17.2 once processing by the Supplier of any Personal and Protected Data is no longer required for the purpose of the Supplier's performance of its relevant obligations under this Agreement, and securely delete existing copies (except to the extent that storage of any such data is required by Applicable Laws and, if so, the Supplier shall inform the Customer of any such requirement).
- 9.18 The Parties shall each indemnify and keep indemnified the Company against:
- 9.18.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Supplier of its obligations under Clause 9; and
- 9.18.2 all amounts paid or payable by the other to a third party which would not have been

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paid or payable if the party's breach of Clause 9 had not occurred.

- 9.19 Unless otherwise expressly stated in this Agreement the party's obligations and the Customer's rights and remedies under this Clause 9 is cumulative with, and additional to, any other provisions of this Agreement.
- 9.20 Nothing in this Agreement affects the rights of Data Subjects under Data Protection Laws (including those in Articles 79 and 82 of the GDPR or in any similar Data Protection Laws) against the Customer, the Supplier, or any Sub-Processor.
- 9.21 This Clause 9 shall survive termination or expiry of this Agreement for any reason.

10. PRIVACY

- 10.1 Your privacy and our use of your personal and protected data under this Agreement is governed under the terms of Clause 9 and our privacy policy, which is available **HERE** and through a link on our Website. Our privacy policy is incorporated into these terms and conditions by reference hereto.

11. DURATION AND TERMINATION

- 11.1 The Commencement Date, duration, notice and Stipulated Minimum Period of this Agreement will be stated in the Order with you. This Agreement shall take legal effect on the Commencement Date and, subject to any Stipulated Minimum Period and the remaining terms of this Clause, shall continue in full force and effect unless and until otherwise terminated by either party by giving to the other no less than 30 Business Days' prior written notice.
- 11.2 Subject to Clause 11.1 and for the avoidance of any doubt, if you wish to terminate this Agreement during the initial 4-month trial period, then 30 Business Day's prior written notice is required. If you do not terminate the Agreement after this initial 4-month trial period, you will be entered into a 12-month rolling contract with us. The set-up fee will be non-refundable.
- 11.3 Either party shall be entitled to terminate this Agreement at any time by 30 Business Days' prior written notice to the other if they are in material breach of this Agreement which is irremediable or, if remediable, not remedied by the defaulting party within 30 days of being requested to do so by the other.
- 11.4 Without prejudice to any other rights or remedies available to us, we shall be entitled to

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terminate this Agreement with immediate effect, by notice, if at any time:

- 11.4.1 You are in breach of any of your obligations under this Agreement regarding Confidential Information; or
 - 11.4.2 You are in breach any Applicable Laws, or provision herein, relating to data protection; or
 - 11.4.3 You infringe, challenge, or dispute our Intellectual Property Rights (IPR); and
 - 11.4.4 Foodhub learns, or has a reasonable suspicion, a transaction may be fraudulent or be involved with any illegal activity.
- 11.5 You hereby acknowledge that damages may not be an adequate remedy if we are entitled to terminate this Agreement under sub-clause 11.3 and shall be further automatically entitled to apply to the courts for injunctive relief in respect of such breach.
- 11.6 Subject to Clause 11.4.4, Foodhub reserves the right to recover from the Retailer any administrative costs, charges or business losses incurred by the business for the processing of suspected fraudulent transactions or illegal activity.

12. CONSEQUENCES OF TERMINATION

- 12.1 Any provision of the Agreement that expressly or by implication is intended to come into, or continue, in force on, or upon, termination of this Agreement shall remain in full force and effect.
- 12.2 Termination of this Agreement shall not affect rights, remedies, obligations, or liabilities of the Parties that have accrued prior date of termination including the right to claim damages in respect of any breach of the Agreement which existed at, or before, the date of termination.
- 12.3 On termination in accordance with Clause 11, the Parties shall each return to the other all Equipment, including Hardware, Software, materials, or documentation then in their possession, custody or control belonging to, or provided by, the other, and uninstall and remove all Applications, links and attributions to the other, and, if required, shall provide a signed undertaking and warrant they have complied with this sub-Clause 11.3.
- 12.4 Subject to Clauses 3.7, 11 and 12.3, upon termination of this Agreement the Retailer shall

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return all Hardware, Software or Equipment belonging to Foodhub within fourteen (14) days or within an acceptable time period agreed separately with Foodhub.

- 12.5 The Retailer will be liable for the costs of replacing any Hardware, Software or Equipment returned to Foodhub that is not fully functioning, in good condition or outside of the agreed time period specified in Clause 12.4. Food hub will arrange for collection of its Hardware, Software or Equipment directly from the Retailer if organised by prior agreement with us.

13. DISPUTES AND ARBITRATION

- 13.1 If you fail to make any Payments under this Agreement, we may at our election instigate and commence proceedings against you without first complying with this Clause 13.

- 13.2 Either party may seek urgent interlocutory relief in relation to the actions of the offending party under this Agreement without first complying with Clause 13.

- 13.3 This Clause 13 shall not apply to any breaches by you of Clause 11.3.

- 13.4 Unless sub-Clauses 13.1 to 13.3 apply, if a dispute arises out of, or in relation to, this Agreement (including any dispute as to breach or termination of this Agreement) a party may not commence court proceedings relating to such dispute unless:

13.4.1 the party claiming the dispute has arisen has given written notice to the other party specifying the nature of the dispute (a "Dispute Notice"); and

13.4.2 the Parties first endeavour in good faith to resolve the matters stated in the Dispute Notice expeditiously using the mediation process, applying the procedures, and within the timeframes, which have been stipulated in sub-Clauses 13.5 to 13.7.

- 13.5 Upon service of a Dispute Notice the Parties shall jointly agree upon a mediator and the mediator's remuneration within the jurisdiction under Clause 13.6. If the Parties fail to agree and appoint a mediator within 14 days of the service of a Dispute Notice (or such other further extension agreed by the Parties in writing) either party may ask the President of the Law Society of England and Wales to appoint an independent mediator on behalf of the Parties.

- 13.6 Mediation shall be conducted in accordance with, and under, this Clause 13 by reference to the provisions of this Agreement.

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- 13.7 The Parties shall observe the instructions of the appointed mediator regarding the agreed terms of, and conduct of the mediation, and seek to resolve the dispute with the assistance of the mediator within the time-frame proposed by the mediator, or in the absence of any such proposed and agreed time-frame, within a period of 30 Business Days of appointment of the mediator (or such other period from appointment as shall be agreed in writing by the Parties) (the "Agreed Time-frame").
- 13.8 If no terms are agreed regarding the appointment of the mediator under sub-Clause 13.5, or the Dispute is not resolved within the Agreed Timeframe, then the non-offending party may commence court proceedings.
- 13.9 The costs of the mediator will be borne equally by the Parties (unless agreed in writing otherwise between them).
- 13.10 The outcome, and terms, of settlement of the dispute, which is arrived at, and agreed by and between, the Parties, shall be confirmed in writing between them within 5 Business Days of the conclusion of the mediation, and shall be formally confirmed by means of an executed and delivered settlement agreement between them (the "Settlement Agreement").
- 13.11 Where the Parties fail to agree, or execute and deliver, of a Settlement Agreement, under sub-Clause 13.10, either party may request the mediator to provide a statement confirming what was agreed between the Parties at mediation (the "Settlement Statement").
- 13.12 Either of the Parties may bring proceedings and sue upon the terms and basis of the Settlement Agreement or Settlement Statement, and enforce them, as if they were, for all intent and purpose, a judgment of the courts.

14. ASSIGNMENT OF AGREEMENT

- 14.1 Subject to any statutory rights you may have, this Agreement may be novated or assigned in furtherance or consequence of the re-organisation of our business or the transfer of any part of it.
- 14.2 For the avoidance of any doubt, you shall have no express or implied entitlement to novate, assign or otherwise transfer this Agreement to any third party without our express written consent, whether upon sale or transfer of your business or otherwise and such purchaser/transferee shall be required to enter a novation of these Terms and Conditions (as

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updated by us at the time of purchase/transfer) with us, which novation shall be entirely at our discretion but shall not be unreasonably refused subject to credit reference and other checks. We may stipulate advanced payments from the purchaser/transferee.

- 14.3 Novation shall only be entered into by us upon the condition precedent that all Payments which are historically outstanding to us under this Agreement have been paid prior to such novation, assignment, or transfer. Novation or transfer shall not entitle the assignee/novatee/transferee to the benefit of any Addendum relating to introductory offers, discounts or otherwise.

15. CHANGES TO TERMS AND CONDITIONS

- 15.1 We will periodically review our charges and these terms and conditions. We shall inform you of any changes to them which shall be applicable during the Term.

16. APPLICABLE LAW AND JURISDICTION

- 16.1 Foodhub reserves the right to make updates or revise our terms and conditions as we deem fit. Where we make changes to our charging structure and / or terms and conditions we shall inform you of these to include which will become applicable during the Term of your existing Agreement with us.
- 16.2 Each party irrevocably agrees, subject only to Clause 13, that the courts of England and Wales have exclusive jurisdiction to settle disputes/claims.

17. SAVING PROVISIONS

- 17.1 If any provision of this agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this agreement.

18. SURVIVAL

- 18.1 Provisions of this agreement which are either expressed to survive its termination or, from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.

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19. FORCE MAJEURE

19.1 We shall not be liable to provide Goods or Services, nor shall we be responsible for our failure to do so in consequence of:

19.1.1 of war, invasion, act of foreign enemies or other hostilities (whether war is declared or not);

19.1.2 act of terrorism, rebellion, riot, demonstration, or civil disturbance; 19.1.3 strike or industrial action (whether official or otherwise);

19.1.3 pandemic or widespread public infection or any restrictions imposed in consequence;

19.1.4 contamination by radioactivity from any nuclear fuel or waste or combustion of such fuel, or from other environmental pollution or contamination;

19.1.5 adverse weather or other disruptive natural events;

19.1.6 interruption of communications or transport links due to whatsoever cause; or

19.1.7 interruption/compromise of the web, email, social media platforms or similar or integrity and functioning of any of them by virtue of whatsoever cause.

20. NOTICES

20.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

20.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or principal place of business; or

20.1.2 sent by fax to its main fax number; or

20.1.3 sent by email to the most recent email address notified or used by the other party (but only so long as it shall constitute "in writing" within the meaning of Clause 1 of this Agreement).

20.2 This Clause does not apply to the service of any proceedings or other documents in any legal

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action or, where applicable, any arbitration or other method of dispute resolution.