**FOODINI**

**TERMS AND CONDITIONS**

These terms and conditions are between **Foodini Pty Ltd** (**ABN 31643613334**), (**we**, **us** or **our**) and you, together the **Parties** and each a **Party**. These terms and conditions form the entire agreement under which we will provide the Services to you.

In this Agreement, “**you**” means the individual accessing or using the Services. If you are using the Services on behalf of your employer or a business entity, **you**, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity’s personnel to this Agreement.

**Disclaimer: We do not endorse nor guarantee the accuracy of any information provided by you in relation to Food Items, ingredients, allergens or food preparation processes available at your business.**

1. **ACCEPTANCE** 
   1. You have requested the Services, and you accept this Agreement by the earlier of:
2. accepting this Agreement online or sending an email accepting this Agreement (expressly or impliedly);
3. instructing us (whether orally or in writing) to proceed with the Services; or
4. making part or full payment of the Service Fee (including any deposit).
5. **SERVICES**
   1. In consideration of your payment of the Service Fee, we will provide the following services to you (together the **Services**), whether ourselves or through our Personnel:
6. We will provide you with a license to use our partner website platform (**Partner Platform**) on the terms of clause 4 of this Agreement.
7. We will assist you with onboarding onto the Partner Platform.
8. We will separately provide a platform (**User Platform**) to individuals who wish to view information about businesses who can cater to their dietary requirement, including your business (**Users**).
9. Through the User Platform, individuals will have the option to leave a review of their experience of your business.
10. Through the Partner Platform, you will be able to set the food items that are available to purchase from your business (**Food Items**). The Food Items will appear on your businesses’ profile page on the User Platform (**Partner Display Page**). Food Items cannot be purchased through the User Platform.
11. We will provide general support services to you by phone and email.
12. We may include your business in our marketing materials and on our social media platforms.
    1. You acknowledge and agree that we do not provide services in relation to:
13. management of User complaints and communications;
14. providing refunds to Users;
15. delivery or transportation services in connection with any Food Items sold by you; and
16. providing tax invoices and receipts to Users on your behalf.
    1. You agree that we may amend the Services or the Service Fee at any time. We will provide written notice to you of any change to the Service Fee. If you do not agree to any amendment made to the Services or Service Fee, you may terminate this Agreement in accordance with clause 8.2.
    2. We agree to provide you the Services in accordance with this Agreement and all relevant laws.
    3. You acknowledge and agree that any dates for delivery or for completion notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery or milestone date.
    4. We may provide the Services to you using our Personnel, and they are included in this Agreement.
    5. We will notify you of any changes or variations to this Agreement. If you do not agree to the changes or variations, you may terminate the Agreement in accordance with clause 8.2. If we consider that any instruction or direction from you constitutes a variation to the scope of our obligations under this Agreement, or would result in us suffering or incurring any additional cost or delay, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause 2.7.
17. **ACCOUNTS**
    1. We will create an Account for you, in order for you to access and use the Services, including the Partner Platform.
    2. You must ensure that any information you provide to us, or we request from you, for your Account, is complete and accurate and you are authorised to provide this information to us.
    3. You are the Account owner and regardless of any change in any contact details, you will remain responsible for your Account, as set out in this Agreement.  If you wish to change the Account owner, you must provide us with a written request to transfer the ownership of the Account to the incoming party, which must also include the incoming party’s written consent to take over full responsibility for the Account, in a form acceptable to us.
    4. It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, and for ensuring that any activities on your Account comply with this Agreement.
    5. We are not responsible for the management or administration of your Account. If you request assistance with the management or administration of your Account, we may, at our discretion, charge an administration fee.
18. **PARTNER PLATFORM LICENCE**
    1. Subject to the payment of the Service Fee and your compliance with this Agreement, we grant you a non-exclusive, non-transferable, non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use the Partner Platform for the Term, for your use and enjoyment of the Services, as contemplated by this Agreement (**Licence**).
    2. You must not access or use the Partner Platform except as permitted by the Licence and you must not (and must not permit any other person to) use the Partner Platform in any way which is in breach of any applicable laws or which infringes any person's rights, including Intellectual Property Rights, including to;
19. use the Partner Platform to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
20. use the Partner Platform in any way that damages, interferes with or interrupts the supply of the Partner Platform;
21. introduce malicious programs into our software or systems, including viruses, malware worms, trojan horses and e-mail bombs;
22. reveal or allow others access to your Account’s password or authentication details or allow others to use your Account or authentication details;
23. carry out security breaches or disruptions of a network, including accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
24. use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person’s use of the Partner Platform;
25. if applicable, send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages, or use the Partner Platform in breach of any person’s privacy (such as by way of identity theft or “phishing”); or
26. circumvent user authentication or security of any of our services, networks, accounts or hosts or those of our other users.
27. **PRICE AND PAYMENT** 
    1. You agree to pay us the Service Fee in accordance with the Payment Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
    2. If any amounts are unpaid 7 days after the payment date (as set out in the Payment Terms), those amounts will become a debt immediately due and payable to us, and we may:
28. charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum (calculated daily and compounding monthly); and/or
29. suspend the performance of the Services until we receive payment.
30. **YOUR OBLIGATIONS AND WARRANTIES**
    1. You represent, warrant, acknowledge and agree that:
31. there are no legal restrictions preventing you from engaging us, or agreeing to this Agreement;
32. you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
33. you and your Personnel will cooperate with us, will not interfere with our supply of the Services, and will provide us with all documentation, information, instructions and access necessary to enable us to provide the Services, as requested by us, from time to time, and in a timely manner;
34. in the event of an Incident involving your venue, business, account on the Partner Platform or in any other way, and any Foodini Users, you agree to fully co-operate with Foodini to investigate and ascertain the cause of the Incident, to complete an incident report in the form provided to you by us, to take action to rectify the Incident and to inform us of any communications between you and the affected customers;
35. the information you provide to us is true, correct and complete, including any allergen and ingredient information relating to Food Items;
36. you will not infringe any third party rights in working with us and receiving the Services; and
37. you are responsible for obtaining, and providing to us if necessary, any access, consents, licences, approvals and permissions from other parties necessary for the Services to be provided, at your cost.
38. **YOUR STATUTORY RIGHTS**
    1. Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL.
    2. You agree that our Liability for the Services is governed solely by the ACL and this Agreement.
    3. Subject to your Statutory Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Services) are provided to you without warranties, representations and guarantees of any kind, unless expressly stipulated in this Agreement.
    4. Subject to your Statutory Rights, all amounts paid by you for the Services are non-refundable.
    5. This clause 7 will survive the termination or expiry of this Agreement.
39. **TERM AND TERMINATION**
    1. This Agreement will commence on the Start Date and will continue on a rolling monthly basis, unless earlier terminated in accordance with this clause 8.
    2. Either Party may terminate this Agreement, by providing the other Party with 5 Business Days’ written notice.
    3. Either Party may terminate this Agreement if the other Party breaches a material term of this Agreement, and that breach has not been remedied within 10 Business Days of the Party in breach being notified by the other Party of the breach and the steps required to remedy the breach.
    4. We may suspend, freeze or terminate your account immediately and without notice at any stage if we have reason to believe it contains incorrect or misleading information as a result of an Incident, customer complaint or as a result of an internal review.
    5. On termination or expiry of this Agreement, and without limiting our rights under this Agreement or at law, you agree:
40. that any amounts you have paid for Services are non-refundable;
41. to pay us our additional costs arising from, or in connection with, termination if we terminate this Agreement under clause 8.3;
42. to pay us all amounts due and payable to us under this Agreement (including for all Services provided by us) up to the date of termination, as a debt immediately due and payable; and
43. to return or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and to give us or our Personnel such rights of access necessary to exercise our rights under this clause.
    1. The accrued rights, obligations and remedies of the Parties are not affected by termination of this Agreement.
    2. This clause 8 will survive the termination or expiry of this Agreement.
44. **LIABILITY, INDEMNITY AND EXCLUSIONS**
    1. **Exclusions:** Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by (whether directly or indirectly):
45. acts or omissions of you or your Personnel (including any works, goods or services provided by you or your Personnel, or information contained on your profile in the Partner Platform);
46. any personal injury arising from your use of the Services or arising from a User’s interaction with, or purchase from, your business;
47. any reputational damage that arises from your use of the Services or the Platform;
48. breach of this Agreement, any law or third party rights by you or your Personnel;
49. loss or damage which is the inevitable part of providing the Services;
50. the Services being unavailable, or any delay in us providing the Services to you, for whatever reason;
51. any information, documentation, specifications or directions given by you or your Personnel; and/or
52. any event or circumstance beyond our reasonable control, including a Force Majeure Event (whether known or unknown at the Start Date).
    1. **Indemnity:** Despite anything to the contrary, to the maximum extent permitted by law, you are liable for, and agree to make good, indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:
53. acts or omissions of you or your Personnel; or
54. any information, documentation, specifications or directions given by you or your Personnel, including in relation to the ingredients or allergens of the Food Items.
    1. **Limitation of Liability:** Despite anything to the contrary, to the maximum extent permitted by law:
55. we will not be liable for any Consequential Loss;
56. our liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of you (or any of your Personnel); and
57. our maximum aggregate Liability in relation to the performance of the Services or this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Service Fee paid by you to us in respect of the relevant performance of the Services to which the Liability relates.
    1. This clause 9 will survive the termination or expiry of this Agreement.
58. **INTELLECTUAL PROPERTY** 
    1. As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of us or our Personnel (including in connection with this Agreement, the performance of the Services and/or developed by us or our Personnel independently of this Agreement), will at all times vest, or remain vested, in us. Nothing in this Agreement constitutes a transfer or assignment of any of our Intellectual Property Rights unless expressly stated.
    2. You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of this Agreement, to use your and your Personnel’s Intellectual Property for the performance of our obligations under this Agreement.
    3. This clause 10 will survive the termination or expiry of this Agreement.
59. **CONFIDENTIALITY** 
    1. Subject to clause 11.2, you must (and must ensure that your Personnel do) keep confidential, and not use or permit any unauthorised use of, all Confidential Information.
    2. Clause 11.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that you ensure the adviser complies with the terms of clause 11.1.
    3. This clause 11 will survive the termination or expiry of this Agreement.
60. **GENERAL** 
    1. **Amendment:** This Agreement may be amended by us at any time and we will notify you of the amendment.
    2. **Assignment:** A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
    3. **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction, or will operate to prevent a Party from taking steps to recover any debt. This clause will survive the termination or expiry of this Agreement.
    4. **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
    5. **Force majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control, including a Force Majeure Event, whether known or unknown at the Start Date.
    6. **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.
    7. **Governing law:** This Agreement is governed by the laws of NSW. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in NSW and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
    8. **GST:** If and when applicable, GST payable on the Service Fee will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Service Fee.
    9. **Joint and several Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under this Agreement.
    10. **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
    11. **Online execution:** This Agreement may be executed by means of such third party online document execution service as we nominate, subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
    12. **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
    13. **Severance:** If any provision (or part of it) under this Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of this Agreement is valid and enforceable.
61. **INTERPRETATION & DEFINITIONS** 
    1. In this Agreement, unless the context otherwise requires:

**Account** means an account accessible to you to use the Services, including the Partner Platform.

**Agreement** means these terms and conditions and any documents attached to, or referred to in, each of them.

**Business Days** means a day on which banks are open for general banking business in NSW, excluding Saturdays, Sundays and public holidays.

**Confidential Information** includes information which:

1. is disclosed to you in connection with this Agreement at any time;
2. is prepared or produced under or in connection with this Agreement at any time;
3. relates to our business, assets or affairs; or
4. relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever you receive that information.

**Consequential Loss** includes any consequential, special or indirect loss, damage or expense, or any real or anticipated loss of revenue, loss of profit, loss of use, loss of occupation, loss of benefit, loss of financial opportunity, or economic loss (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise, and howsoever arising, including when arising from the Partner Platform or the User Platform).

**End Date** means the date this Agreement expires or is terminated in accordance with its terms.

**Force Majeure Event** means any one, or combination of law or government regulation which comes into force or any act of God, flood, war, revolution, civil commotion, political disturbance, fire explosion, ionizing radiation, contamination by radioactivity, nuclear, chemical or biological contamination, disease, epidemic, pandemic (including in relation to the coronavirus, severe acute respiratory syndrome coronavirus 2, or any mutation thereof), government sanctioned shutdown, global economic downturn or any other cause whatsoever over which a Party has no control.

**GST** has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Incident** means any event, condition, occurrence or situation involving you which:

1. Causes disruption or interference to Foodini;
2. Causes significant risks that could affect Foodini Users, including but not limited to errors relating to the provision of Food Items or incorrect information relating to the Food Items;
3. Impacts on the systems and operation of the Foodini Platform or User Platform;
4. Attracts negative attention or a negative profile for Foodini; and/or
5. Prevents, inhibits or interferes with the free use and enjoyment of the Foodini app by users.

**Intellectual Property** means any copyright, registered or unregistered designs, patents or trade mark rights, domain names, know-how, inventions, processes, trade secrets or Confidential Information, circuit layouts, software, computer programs, databases or source codes (including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing).

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

**Payment Terms** means the Service Fee, method and timing of payment set out on the Partner Platform, or as otherwise agreed between the Parties.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

**Service Fee** means the price set out on the Partner Platform or as may be agreed separately between the Parties for the performance of the Services and includes any deposit.

**Services** has the meaning set out in clause 2.1.

**Start Date** means the date this Agreement is accepted in accordance with clause 1.1.

**Term** means the term of this Agreement, commencing on the Start Date and ending on the earlier of the End Date or the date on which this Agreement is terminated in accordance with its terms.