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# Terms of Service

## 1. Introduction

Welcome to OrderUs, an interactive mobile and website platform that provide customers with a way to order food, beverage and merchandise products from restaurants and venues ("**Platform**"). By signing up for a customer or merchant account or by using any OrderUs Services (as defined below), you are agreeing to be bound by the following terms and conditions (the "Terms of Service").

The Platform is owned by ORDERUS TECHNOLOGIES PTY LTD (ACN 657 929 158) (together "we", "us", "our" and "OrderUs" means the applicable OrderUs Contracting Party) and these terms and conditions explain our obligations as a service provider and your obligations as a venue ("**you**", "**your**", "**Venue**").

You accept that your use or access of our Platform and/or your submission of our Onboarding Form confirms your acceptance of these Terms of Service, Terms of Use and Privacy Policy.

We may change these Terms of Service at any time by notice to you in the manner set out in these Terms of Service, and your continued use of our Services or the Platform following such notice will represent an agreement by you to be bound by the Terms of Service as amended.

OrderUs provides a complete commerce platform that enables merchants to unify their commerce activities. Among other features, this platform includes a range of tools for merchants to build and customize online stores, sell in multiple places (including web, mobile and online marketplaces ("Online Services") and in person ("POS Services")), manage products, inventory, payments, shipping, business operations, marketing and advertising, table booking and staff management, and engage with existing and potential customers. Any such service or services offered by OrderUs are referred to in these Terms of Services as the "Service(s)". Any

new features or tools which are added to the current Services will also be subject to the Terms of Service

By using the Services or accessing the Platform, you acknowledge that you have read and understood and agree to be bound by these Terms of Service between you and OrderUs (“**Agreement**”). In entering into this Agreement, you acknowledge that you have the authority to act on behalf of any person or entity for whom you are using the Services or accessing the Platform, and you agree to this Agreement both personally and on behalf of that person or entity.

Please read these Terms of Service carefully and if you do not agree to them, you must not continue to use the Services or the Platform.

## **2. Definitions**

### **2.1 Dictionary**

Capitalised words and phrases used in this Agreement have the meanings given to them where they are followed by bolded brackets, or otherwise have the meanings given to them:

- (a) in clause 24.2 (Dictionary);
- (b) in the Corporations Act, where they are not listed in clause 24.2 (Dictionary); and
- (c) in the GST Act, where they are not listed in clause 24.2 (Dictionary).

### **2.2 Interpretation**

The interpretation clause in clause 24.2 (Dictionary) sets out the rules of interpretation for this Agreement.

## **3. Term**

(a) The term of the Agreement will commence on the Commencement Date and continue in perpetuity until terminated in accordance with this Agreement.

(b) This Agreement may be terminated by either party for convenience in accordance with clause 17(a), provided that the terms of this Agreement will continue to apply to the parties up to the date of termination.

## **4. Account Terms**

To access and use the Services, you must register for a customer or merchant account (“Account”). To complete your Account registration, you must provide us with your full legal name, business name, business address, phone number, a valid email address, and any other information indicated as required. OrderUs may reject your application for an Account, or cancel an existing Account, for any reason, at our sole discretion.

You must be the older of: (i) 18 years, or (ii) at least the age of majority in the jurisdiction where you reside and from which you use the Services to open an Account.

You confirm that you are receiving any Services provided by OrderUs for the purposes of carrying on a business activity and not for any personal, household or family purpose.

You acknowledge that OrderUs will use the email address or mobile phone number you provide on opening an Account or as updated by you from time to time as the primary method for communication with you (“Primary Email Address”, “Primary Mobile Phone Number”). You must monitor the Primary method of communication you provide to OrderUs and your Primary Email Address must be capable of both sending and receiving messages, your Mobile Phone Number must be capable of receiving messages. Your primary communications with OrderUs can only be authenticated if they come from your Primary Email Address or Mobile Phone Number.

You are responsible for keeping your password secure. OrderUs cannot and will not be liable for any loss or damage from your failure to maintain the security of your Account and password.

Technical support in respect of the Services is only provided to OrderUs Users. Questions about the Terms of Service should be sent to OrderUs Support.

You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Services, or access to the Services without the express written permission by OrderUs.

You agree not to work around, bypass, or circumvent any of the technical limitations of the Services, including to process orders outside OrderUs's Checkout, use any tool to enable features or functionalities that are otherwise disabled in the Services, or decompile, disassemble or otherwise reverse engineer the Services.

You agree not to access the Services or monitor any material or information from the Services using any robot, spider, scraper, or other automated means.

You understand that your Materials may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. "Materials" means Your Trademarks, copyright content, any products or services you sell through the Services (including description and price), and any photos, images, videos, graphics, written content, audio files, code, information, or other data provided or made available by you or your affiliates to OrderUs or its affiliates.

## 4. Account Activation

### 4.1 Merchants, venue owners

The person signing up for the Service by opening an Account will be the contracting party - Merchant ("Store Owner", "Venue Owner") for the purposes of our Terms of Service and will be the person who is authorized to use any corresponding Account we may provide to the Merchant in connection with the Service. You are responsible for ensuring that the

name of the Merchant (including the legal name of the company that owns the Store or Venue, if applicable) is clearly visible on the Merchant's website.

If you are signing up for the Services on behalf of your employer, your employer will be the Merchant. If you are signing up for the Services on behalf of your employer, then you must use your employer-issued email address and you represent and warrant that you have the authority to bind your employer to our Terms of Service.

Your OrderUs Store can only be associated with one Merchant. A Merchant may have multiple OrderUs Stores.

## 2.2 Staff Accounts

Based on your OrderUs pricing plan, you can create one or more staff accounts ("Staff Accounts") allowing other people to access the Account. Each Staff Account must include a full legal name and a valid email account. With Staff Accounts, the Merchant can set permissions and let other people access in their Account while determining the level of access by Staff Accounts to specific business information (for example, you can limit Staff Account access to sales information on the Reports page or prevent Staff Accounts from changing general store settings).

The Merchant is responsible for: (a) ensuring its employees, agents and subcontractors, including via Staff Accounts, comply with these Terms of Service; and (b) any breach of these Terms of Service by the Merchant's employees, agents or subcontractors. The Merchant acknowledges and agrees that Store Owner will be responsible for the performance of all of its obligations under the Agreement, regardless of whether it sublicenses or subcontracts any such obligations to any third party, including but not limited to any affiliates or subsidiaries of Merchant.

The Merchant and the users under Staff Accounts are each referred to as a "OrderUs User".

# 5. Set-Up Services

(a) If requested by the Venue, OrderUs will provide the Set-Up Services to the Venue in a timely manner.

(b) The Venue will give OrderUs reasonable assistance to allow OrderUs to provide the Set-Up Services, including by providing OrderUs with access to the Venue's premises, POS system for menu data, as well as copies of the Venue's menu together with such other information and assistance as OrderUs may reasonably require from time to time.

(c) In the event that the Venue does not approve of the Set-Up Material published, it will notify OrderUs within two (2) days. OrderUs will use its commercially reasonable endeavours to address and rectify the Venue's concerns in respect of any Set-Up Material.

(d) The Venue grants to OrderUs a royalty-free, worldwide, non-transferrable licence to use and publish any of the Venue's Intellectual Property Rights in the Set-Up Material, including trademarks and copyright in the menus or in any Set-Up Material provided by the Venue.

## 6. Venue Obligations

### 6.1 Provide Information

You must provide OrderUs with all documentation, information and assistance reasonably required by us to perform the Services, including payment information such as price lists, billing details and other account information (**Financial Information**), to allow the processing of payments for products that the Venue provides to its customers through the use of the Platform.

### 6.2 Compliance with Laws

You agree that by receiving or requesting the Services, you:

(a) will not breach any applicable Laws (including any applicable privacy laws);

(b) have a current and valid:

- (i) ABN/business registration;
  - (ii) Appropriate insurance policies; and
  - (iii) if you sell alcoholic beverages, liquor licence, when applicable base on state legislation; and
- (c) will not infringe the Intellectual Property Rights or other rights of any third party, or breach any duty of confidentiality.

### **6.3 Use of Platform**

You must not:

- (a) use the Platform in any way that could damage the reputation of OrderUs, or the goodwill or other rights associated with the Platform;
- (b) charge any third party to use the Platform.
- (c) provide Customers with any information about OrderUs or the Payment Platforms that is false, misleading or inaccurate. Without limiting this clause 5.3(c), you must not make any warranty, representation or statement to any Customer relating to OrderUs, the Platform or any Payment Platform, other than those:
  - (i) contained in materials provided to you by OrderUs;
  - (ii) set out on a Related Website; or
  - (iii) as otherwise expressly permitted by OrderUs in writing

and if OrderUs is concerned that any content or materials displayed on your Platform, your website or in-store does not comply with this clause, we may request that you modify or delete the relevant content or materials, or remove them from display.

(d) except as expressly permitted by this Agreement:

- (i) reproduce, make error corrections to or modify or adapt the Platform or create any derivative works based upon the Platform;



(ii) except as permitted by Laws, de-compile, disassemble or otherwise reverse engineer the Platform or directly or indirectly allow, cause or permit any third party to do so; or

(iii) modify, remove or whitewash any copyright or proprietary notices on the Platform.

(e) access, store, distribute or transmit any viruses, or any material during your use of the Platform that:

(i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or discriminatory;

(ii) facilitates illegal activity;

(iii) depicts sexually explicit images;

(iv) causes damage or injury to any person or property;

(v) violates any applicable laws,

OrderUs reserves the right, without liability to the Venue, to disable your access to or remove any material published on the Platform that breaches the provisions of this clause.

#### **6.4 Obligations in respect of Orders**

(a) When a Customer makes an Order using the Platform, you will be issued with a notification (**Order Notification**). For Orders through the Platform, Order Notifications will be issued directly to you.

(b) Where a Customer makes an Order using the Platform, you must use best endeavours to ensure that the Ordered products are provided to the Customer promptly after the Order Notification is received, unless you expressly agree on an alternative timeframe with the Customer such as a pre-order.

(c) You must only provide products to a Customer after you have received the relevant Order Notification. OrderUs will not be liable to you for products provided without an Order Notification.

## **6.5 Additional Venue Obligations**

You will:

- (a) co-operate with OrderUs in any way reasonably required by OrderUs to provide business efficacy to this Agreement;
- (b) carry out your obligations in a timely and efficient manner;
- (c) do all things reasonable to ensure that you and your Customers use the Platform in accordance with the terms and conditions of this Agreement and OrderUs's Terms of Use and Privacy Policy;
- (d) be responsible for customer service relating to all Orders and delivery quality;
- (e) act in good faith when requests are made by OrderUs to promptly resolve disputes with Customers (including where necessary, taking any action reasonably directed by OrderUs as may be required to protect our legitimate business interests;
- (f) notify OrderUs of any intention to commence advertising or offering Restricted Goods for sale;
- (g) obtain and shall maintain all necessary hardware and third-party software licences necessary to be able to access the Platform; and
- (h) be solely responsible for procuring and maintaining network connections and telecommunications links from your systems to the Platform, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Venue's network connections or telecommunications links.

## **6.6 Indemnity**

The Venue shall indemnify, and keep indemnified and hold harmless, OrderUs from and against all Loss suffered or incurred by OrderUs or its Affiliates as a result of a breach of this clause 6.

## **7. Our Obligations**

(a) Subject to the terms of the Agreement, we will provide you with access to the Platform and the Services as specified in the Onboarding Form and Fee Acceptance Form.

(b) Subject to service plans, we agree to provide the Services, including initial set up of the Menu, resolving access issues with the Platform and updating any Venue related information on the Platform to which the Venue does not have access.

(c) We will use commercially reasonable endeavours to make the Services available to you.

(d) We reserve the right to change, suspend, remove, or disable access to any feature of the Platform or Services at any time without notice. We will not be liable for the removal of or disabling of access to any such features of the Platform or Services. We may also impose limits on the use of or access to the Platform if we determine that it is in the interests of our genuine business needs in our sole discretion without any notice or liability.

## **8. Support Services**

(a) OrderUs will provide the Support Services, which includes seeking to resolve access issues with the Platform and updating any Venue related information on the Platform to which the Venue does not have access.

(b) The Venue will promptly give OrderUs such reasonable assistance as OrderUs considers necessary to ensure that it can provide the Support Services.

(c) The Venue will ensure that OrderUs is promptly granted all reasonable access, including necessary security clearances, for the purposes of providing the Support Services.

## 9. OrderUs Rights

The Services have a range of features and functionalities. Not all Services or features will be available to all Merchants at all times and we are under no obligation to make any Services or features available in any jurisdiction. Except where prohibited in these Terms of Service or by applicable law, we reserve the right to modify the Services or any part thereof for any reason, without notice and at any time.

OrderUs does not pre-screen Materials and it is in our sole discretion to refuse or remove any Materials from any part of the Services, including if we determine in our sole discretion that the goods or services that you offer through the Services, or the Materials uploaded or posted to the Services, violate our Terms of Service.

Verbal or written abuse of any kind (including threats of abuse or retribution) of any OrderUs employee, member, or officer will result in immediate Account termination.

We reserve the right to provide our Services to your competitors and make no promise of exclusivity. You further acknowledge and agree that OrderUs employees and contractors may also be OrderUs customers or merchants and that they may compete with you, although they may not use your Confidential Information in doing so.

In the event of a dispute regarding Account ownership, we reserve the right to request documentation to determine or confirm Account ownership. Documentation may include, but is not limited to, a scanned copy of your business license, government issued photo ID, the last four digits of the credit card on file, or confirmation of your status as an employee of an entity.

OrderUs reserves the right to determine, in our sole discretion, rightful Account ownership and transfer an Account to the rightful Merchant. If we are unable to reasonably determine the rightful Merchant, without prejudice to our other rights and remedies, OrderUs reserves the right to temporarily suspend or disable an Account until resolution has been determined between the disputing parties.

We reserve the right, in our sole and absolute discretion, to update or change any portion of the Terms of Service at any time. We will provide you with reasonable advance notice of changes to the Terms of Service that materially adversely affect your use of the Services or your rights under the Terms of Service by sending an email to the Primary Email Address, providing notice through the OrderUs administrative console, or by similar means. However, OrderUs may make changes that materially adversely affect your use of the Services or your rights under the Terms of Service at any time and with immediate effect (i) for legal, regulatory, fraud and abuse prevention, or security reasons; or (ii) to restrict products or activities that we deem unsafe, inappropriate, or offensive. Unless we indicate otherwise in our notice (if applicable), any changes to the Terms of Service will be effective immediately upon posting of such updated terms at this location. Your continued access to or use of the Services after we provide such notice, if applicable, or after we post such updated terms, constitutes your acceptance of the changes and consent to be bound by the Terms of Service as amended. If you do not agree to the amended Terms of Service, you must stop accessing and using the Services.

OrderUs may change the Fees for the Services from time-to-time. We will provide you with 30 days advanced notice prior to any changes in Fees by sending an email to the Primary Email Account, providing notice through the OrderUs administrative console, or by similar means. OrderUs will not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Services (or any part thereof).

## **9. Payment Processing**

(a) All financial transactions made through the Platform between the Merchant and Customers will be processed by the Payment Platforms (Stripe, Poli and Paypal).

(b) OrderUs will provide the Financial Information to the Payment Platforms, or may require that the Merchant provides its Financial Information to the Payment Platforms directly.

(c) OrderUs shall not authorise any Payment Platforms to use the Financial Information in any way other than to process payments for Orders.

(d) OrderUs shall not be liable for any losses of the Merchant arising out of or in relation to the processing of payments through the Platform, but will liaise with the Payment Platforms to facilitate a resolution of any issues regarding payment that arise in respect of the Merchant or any Orders.

(e) The Merchant appoints OrderUs as its agent for the purposes of accepting payment from Customers who use the Platform to place Orders (**Customer Payments**).

(f) OrderUs shall remit the Customer Payments (less the Fees) to the Venue on each Remittance Date.

## 10. Payment Of Fees

Unless otherwise set out in this Agreement, all Fees are exclusive of GST and any other similar duties, levies or taxes (if applicable) which shall be added to the Fees by OrderUs at the prevailing rate.

Subject to this clause 10, any amount payable by the Venue to OrderUs under this Agreement is a payment for a taxable supply.

Unless otherwise specified, the party acquiring the taxable supply is liable to pay, at the same time and in the same manner as any other money is payable for the taxable supply, the amount of any GST payable in respect of the taxable supply.

Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

OrderUs's right to payments under this Agreement is subject to a valid Tax Invoice being delivered to the Venue in respect of such payments.

You will pay the Fees applicable to your subscription to Online Service and/or POS Services ("Subscription Fees") and any other applicable fees,

including but not limited to applicable fees relating to the value of sales made through your Store when using all payment providers other than OrderUs Payments (“Transaction Fees”), and any fees relating to your purchase or use of any products or services such as OrderUs Service Subscription Plan, POS Equipment, shipping, apps, Themes, domain names, or Third Party Services (“Additional Fees”). Together, the Subscription Fees, Transaction Fees and the Additional Fees are referred to as the “Fees”.

You must keep a valid payment method on file with us to pay for all incurred and recurring Fees. OrderUs will charge applicable Fees to any valid payment method that you authorize (“Authorized Payment Method”), and OrderUs will continue to charge the Authorized Payment Method for applicable Fees until the Services are terminated, and any and all outstanding Fees have been paid in full. Unless otherwise indicated, all Fees and other charges are in Australian dollars, and all payments will be in AUD currency.

Subscription Fees are paid in advance and will be billed in 30 day intervals (each such date, a “Billing Date”). Transaction Fees and Additional Fees will be charged from time to time at OrderUs’s discretion. You will be charged on each Billing Date for all outstanding Fees that have not previously been charged. Fees will appear on an invoice, which will be sent to the Merchant via the Primary Email Address provided. As well, an invoice will appear on the Account page of your Store’s Dashboard. Users have approximately two weeks to bring up and settle any issues with the billing of Subscription Fees.

If we are not able to process payment of Fees using an Authorized Payment Method, we may make subsequent attempts to process payment using any Authorized Payment Method. If we are unable to successfully process payment of Fees using an Authorized Payment Method within 28 days of our initial attempt, we may suspend and revoke access to your Account and the Services. Your Account will be reactivated upon your payment of any outstanding Fees, plus the Fees applicable to your next billing cycle. You may not be able to access your Account or your storefront during any period of suspension. If the outstanding Fees remain unpaid for 60 days following the date of suspension, OrderUs reserves the right to terminate your Account.

All Fees are tax inclusive of governmental sales, goods and services tax. You are responsible for all applicable Taxes that arise from or as a result of your subscription to or purchase of OrderUs's products and services. To the extent that OrderUs charges these Taxes, they are calculated using the tax rates that apply based on the billing address you provide to us. Such amounts are in addition to the Fees for such products and services and will be billed to your Authorized Payment Method. If you are exempt from payment of such Taxes, you must provide us with evidence of your exemption, which in some jurisdictions includes an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive evidence satisfactory to OrderUs of your exemption. If you are not charged Taxes by OrderUs, you are responsible for determining if Taxes are payable, and if so, self-remitting Taxes to the appropriate tax authorities in your jurisdiction.

For the avoidance of doubt, all sums payable by you to OrderUs under these Terms of Service will be paid free and clear of any deductions or withholdings whatsoever. Other than Taxes charged by OrderUs to you and remitted to the appropriate tax authorities on your behalf, any deductions or withholdings that are required by law will be borne by you and paid separately to the relevant taxation authority. OrderUs will be entitled to charge the full amount of Fees stipulated under these Terms of Service to your Authorized Payment Method ignoring any such deduction or withholding that may be required.

You are solely responsible for determining, collecting, withholding, reporting, and remitting applicable taxes, duties, fees, surcharges and additional charges that arise from or as a result of any sale on your OrderUs Store or your use of the Services. Any contract of sale made through the Services is directly between you and the customer.

You must maintain an accurate location in the administrative console of your OrderUs Store. If you change jurisdictions you must promptly update your location in the administrative dashboard.

OrderUs does not provide refunds.

## **11. Confidentiality**



“Confidential Information” will include, but will not be limited to, any and all information associated with a party’s business and not publicly known, including specific business information, technical processes and formulas, software, customer lists, prospective customer lists, names, addresses and other information regarding customers and prospective customers, product designs, sales, costs (including any relevant processing fees), price lists, and other unpublished financial information, business plans and marketing data, and any other confidential and proprietary information, whether or not marked as confidential or proprietary. OrderUs’s Confidential Information includes all information that you receive relating to us, or to the Services, that is not known to the general public including information related to our security program and practices.

Each party agrees to use the other party’s Confidential Information solely as necessary for performing its obligations under these Terms of Service and in accordance with any other obligations in these Terms of Service. Each party agrees that it will take all reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to prevent the duplication, disclosure or use of any such Confidential Information, other than (i) by or to its employees, agents and subcontractors who must have access to such Confidential Information to perform such party’s obligations hereunder, who each will treat such Confidential Information as provided herein, and who are each subject to obligations of confidentiality to such party that are at least as stringent as those contained herein; or (ii) as required by any law, regulation, or order of any court of proper jurisdiction over the parties and the subject matter contained in these Terms of Service, provided that, if legally permitted, the receiving party will give the disclosing party prompt written notice and use commercially reasonable efforts to ensure that such disclosure is accorded confidential treatment. Confidential Information will not include any information that the receiving party can prove: (A) was already in the public domain, or was already known by or in the possession of the receiving party, at the time of disclosure of such information; (B) is independently developed by the receiving party without use of or reference to the other party’s Confidential Information, and without breaching any provisions of these Terms of Service; or (C) is thereafter rightly obtained by the receiving party from a source other than the disclosing party without breaching any provision of these Terms of Service.

(a) Each party acknowledges that during the course of this Agreement they may convey to the other party Confidential Information. If any Confidential Information is received by a party, then that party agrees to keep it confidential and use it only for the purposes of performing its rights and obligations under this Agreement (**Permitted Purpose**).

(b) Each party shall not disclose the other party's Confidential Information in whole or in part to any third party, except to those of its or its Affiliates employees, officers, representatives or advisers who need to know such Confidential Information for the Permitted Purpose. Each party shall inform its and its Affiliates employees, officers, representatives or advisers who need to know such Confidential Information for the Permitted Purpose of the confidential nature of the Confidential Information prior to disclosure and at all times is responsible for such persons' compliance with the confidentiality obligations set out in this clause.

(c) Each party may disclose the other party's Confidential Information to the extent required by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, the receiving party gives the Disclosing Party as much notice of such disclosure as reasonably possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, the receiving party takes into account the reasonable requests of the disclosing party in relation to the content of such disclosure.

(d) This clause continues even after termination of this Agreement

## **12. Limitation of Liability and Indemnification**

You expressly understand and agree that, to the extent permitted by applicable laws, OrderUs and its suppliers will not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses arising out of or relating to the use of or inability to use the Service or these Terms of Service (however arising, including negligence).

You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, OrderUs partners, officers, directors, agents, employees, and suppliers harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of (a) your breach of these Terms of Service or the documents it incorporates (b) or your violation of any law or the rights of a third party; or (c) any aspect of the transaction between you and your Customer, including but not limited to refunds, fraudulent transactions, alleged or actual violation of applicable laws (including but not limited to Federal and State consumer protection laws), or your breach of the Terms of Service.

You will be responsible for any breach of the Terms of Service by your affiliates, agents or subcontractors and will be liable as if it were your own breach.

Your use of the Services is at your sole risk. The Services are provided on an "as is" and "as available" basis without any warranty or condition, express, implied or statutory.

OrderUs does not warrant that the Services will be uninterrupted, timely, secure, or error-free.

OrderUs does not warrant that the results that may be obtained from the use of the Services will be accurate or reliable.

OrderUs is not responsible for any of your tax obligations or liabilities related to the use of OrderUs's Services.

OrderUs does not warrant that the quality of any products, services, information, or other materials purchased or obtained by you through the Services will meet your expectations, or that any errors in the Services will be corrected.

## **13. Intellectual Property and Your Materials**

We do not claim ownership of the Materials you provide to OrderUs; however, we do require a license to those Materials. You grant OrderUs a non-exclusive, transferable, sub-licensable, royalty-free, worldwide right

and license to host, use, distribute, expose, modify, run, copy, store, publicly perform, communicate to the public (including by telecommunication), broadcast, reproduce, make available, display, and translate, and create derivative works of any Materials provided by you in connection with the Services. We may use our rights under this license to operate, provide, and promote the Services and to perform our obligations and exercise our rights under the Terms of Service. You represent, warrant, and agree that you have all necessary rights in the Materials to grant this license. You irrevocably waive any and all moral rights you may have in the Materials in favour of OrderUs and agree that this waiver may be invoked by anyone who obtains rights in the materials through OrderUs, including anyone to whom OrderUs may transfer or grant (including by way of license or sublicense) any rights in the Materials.

If you owned the Materials before providing them to OrderUs then, despite uploading them to your OrderUs Store they remain yours, subject to any rights or licenses granted in the Terms of Service or elsewhere. You can remove your OrderUs Store at any time by deleting your Account. Removing your OrderUs Store does not terminate any rights or licenses granted to the Materials that OrderUs requires to exercise any rights or perform any obligations that arose during the Term.

You agree that OrderUs can, at any time, review and delete any or all of the Materials submitted to the Services, although OrderUs is not obligated to do so.

You grant OrderUs a non-exclusive, transferable, sub-licensable, royalty-free, worldwide right and license to use the names, trademarks, service marks and logos associated with your Store (“Your Trademarks”) to operate, provide, and promote the Services and to perform our obligations and exercise our rights under the Terms of Service. This license will survive any termination of the Terms of Service solely to the extent that OrderUs requires the license to exercise any rights or perform any obligations that arose during the Term.

## 14. Additional Services

### POS Services

In addition to the terms applicable to Services generally, the following terms apply to your access and use of the POS Services.

Access to and use of the POS Services requires that you have an active and valid Account.

If your POS Services are enabled with Payments, you cannot concurrently use any other payment processing service. The payment gateway used for your POS Services must be the same as that used for your Online Services, if applicable.

You can terminate your POS Services without terminating your Account or any other Services you subscribe to, and in such case, you will continue to be billed, and will pay for, the Services (other than the terminated POS Services).

You agree to use the POS Services in accordance with all procedures that may be provided by OrderUs from time to time.

While the POS Services use encryption technology, and the law generally prohibits third parties from monitoring transmission, we cannot guarantee security with respect to the connection to the POS Services, and we will not be liable for any unauthorized access to or use of data transmitted via the POS Services.

POS Equipment is purchased, and not leased. Purchase of the POS Equipment is subject to the POS Equipment Agreement, POS Equipment Agreement and Return Policy, applicable to your country. Upon payment by you for the POS Equipment, and confirmation to you of shipment of the POS equipment, you will acquire ownership of and title to the hardware components of the POS Equipment, and you will be licensed to access and use all POS Software installed in the POS Equipment (and any updates thereto), on a limited, non-exclusive, revocable, non-sublicensable, non-transferable basis, solely for the purposes of using the POS Services.

The Fees for POS Services will be determined based on the number of locations at which you are using the POS Services. Locations are defined by business address and are used for associating orders with a specific business address. Locations are added through the OrderUs web administrative console associated with your Account. The number of locations using POS Services will also be detected by us and billed accordingly as part of your regular billing cycle. In the event of any discrepancy between the number of locations added by you through the OrderUs web administrative console and the number of locations detected by OrderUs, the number of locations detected by OrderUs will be deemed to be correct.

#### WHICH MEANS

If you use our POS Services, you must use the same payment processor that you use for the Online Services. You can cancel your POS Services at any time and still keep your Online Services active. While we take data security very seriously, we can't guarantee that all transmissions using the POS Equipment are 100% secure. All transactions transmitted using the POS Equipment are at your own risk. Remember that the POS equipment is purchased, not leased.

#### Website Theme Store

You may establish the appearance of your OrderUs Store with a design template from OrderUs's Theme Store (a "Theme"). If you download a Theme, you are licensed to use it for a single Store only. You are free to transfer a Theme to a second one of your own Stores if you close your first Store. To initiate a transfer of a Theme to a second one of your Stores, please contact OrderUs Support. You are not permitted to transfer or sell a Theme to any other person's Store on OrderUs or elsewhere. Multiple Stores require multiple downloads and each download is subject to the applicable fee. OrderUs gives no assurance that a particular Theme will remain available for additional downloads.

You may modify the Theme to suit your Store. OrderUs may add or modify the footer in a Theme that refers to OrderUs at its discretion. OrderUs may

modify the Theme where it contains, in our sole discretion, an element that violates the OrderUs AUP or other provisions of the Terms of Service, even if you received the Theme in that condition. OrderUs may modify the Theme to reflect technical changes and updates as required.

The intellectual property rights of the Theme remain the property of the designer. If you exceed the rights granted by your purchase of a Theme, the designer may take legal action against you, and, without prejudice to our other rights or remedies, OrderUs may take administrative action such as modifying your Store or closing your Store.

Technical support for a Theme is the responsibility of the designer, and OrderUs accepts no responsibility to provide such support. OrderUs may be able to help you contact the designer.

It is the responsibility of the user, and not OrderUs, to ensure that the installation of a new theme does not overwrite or damage the current or preexisting theme, or UI, of the user.

## WHICH MEANS

You can purchase our Themes to use for one Store at a time. You are free to modify our Themes, but do not infringe upon the intellectual property rights of others, including the designer. For Theme-related problems, contact the designer. Note that Themes may disappear over time and are subject to change.

## OrderUs Email

You may generate or send email from your Account using the OrderUs email services (the "Email Services"). In addition to the terms applicable to the Services generally (including OrderUs's Acceptable Use Policy, and Privacy Policy), the following terms apply to your access and use of the Email Services:

OrderUs employs certain controls to scan the content of emails you deliver using the Email Services prior to delivery ("Content Scanning"). Such Content Scanning is intended to limit spam, phishing, or other malicious

content that contravenes these Terms of Service, or OrderUs's Acceptable Use Policy (collectively, "Threats"). By using the Email Services, you explicitly grant OrderUs the right to employ such Content Scanning. OrderUs does not warrant that the Email Services will be free from Threats, and each OrderUs merchant is responsible for all content generated by their respective Stores.

By generating or sending email through the email services, you agree to comply with the following requirements (the "email services requirements"). Orderus, or its third party providers, may suspend or terminate your access to and use of the email services if you do not comply with the email services requirements. 1. Your use of the Email Services must comply with all applicable laws. Examples of applicable laws include laws relating to spam or unsolicited commercial email ("UCE"), privacy, security, obscenity, defamation, intellectual property, pornography, terrorism, homeland security, gambling, child protection, and other applicable laws. It is your responsibility to know and understand the laws applicable to your use of the Email Services and the emails you generate or send through the Email Services. 2. Your use of the Email Services must comply with OrderUs's Privacy Policy. It is your responsibility to read and understand the Privacy Policy applicable to your use of the Email Services and the emails you generate or send through the Email Services. 3. You will use commercially reasonable efforts not to send sensitive personal data, including information regarding an individual's medical or health condition, race or ethnic origin, political opinions, religious or philosophical beliefs, or other sensitive data (collectively, "Sensitive Data") through the Email Services. It is your responsibility to read and understand your obligations in relation to Sensitive Data. 4. Your use of the Email Services must follow all applicable guidelines established by OrderUs. The guidelines below are examples of practices that may violate the Email Services Requirements when generating, or sending emails through the Email Services:

using non-permission based email lists (i.e., lists in which each recipient has not explicitly granted permission to receive emails from you by affirmatively opting-in to receive those emails);

using purchased or rented email lists;



using third party email addresses, domain names, or mail servers without proper permission;

sending emails to non-specific addresses (e.g., webmaster@domain.com or info@domain.com);

sending emails that result in an unacceptable number of spam or UCE complaints (even if the emails themselves are not actually spam or UCE);

failing to include a working “unsubscribe” link in each email that allows the recipient to remove themselves from your mailing list;

failing to comply with any request from a recipient to be removed from your mailing list within 10 days of receipt of the request;

failing to include in each email a link to the then-current privacy policy applicable to that email;

disguising the origin or subject matter of any email or falsifying or manipulating the originating email address, subject line, headers, or transmission path information for any email;

failing to include in each email your valid physical mailing address or a link to that information; or

including “junk mail,” “chain letters,” “pyramid schemes,” incentives (e.g., coupons, discounts, awards, or other incentives) or other material in any email that encourages a recipient to forward the Email to another recipient.

If you or a customer knows of or suspects any violations of the Email Services Requirements, please notify OrderUs at support@orderus.au. OrderUs will determine compliance with the Email Services Requirements in its discretion.

OrderUs’s Email Services utilize Third Party Providers, including SendGrid (a Twilio Company). Your use of the Email Services is subject to SendGrid’s Acceptable Use Policy as it may be amended by SendGrid from time to time.

**WHICH MEANS**

By using the Email Services, you agree that OrderUs may use certain tools to ensure the content of the emails sent through the service is safe and compliant with our policies.

### Third Party Services, Experts, and Experts Marketplace

OrderUs may from time to time recommend, provide you with access to, or enable third party software, applications (“Apps”), products, services or website links (collectively, “Third Party Services”) for your consideration or use, including via the OrderUs App Store, or Experts Marketplace. Such Third Party Services are made available only as a convenience, and your purchase, access or use of any such Third Party Services is solely between you and the applicable third party services provider (“Third Party Provider”). In addition to these Terms of Service, you also agree to be bound by the additional service-specific terms applicable to services you purchase from, or that are provided by, Third Party Providers.

OrderUs Experts is an online directory of independent third parties (“Experts”) that can help you build and operate your OrderUs Store.

You can engage and work with an Expert directly or through Experts Marketplace. Experts Marketplace provides you with recommendations on Experts that can assist you with different aspects of your Store. Using Experts Marketplace, you can find, hire, and communicate with Experts directly from your Account admin.

Any use by you of Third Party Services offered through the Services, OrderUs Experts, Experts Marketplace or OrderUs’s website is entirely at your own risk and discretion, and it is your responsibility to read the terms and conditions and/or privacy policies applicable to such Third Party Services before using them. In some instances, OrderUs may receive a revenue share from Third Party Providers that OrderUs recommends to you or that you otherwise engage through your use of the Services, OrderUs Experts, Experts Marketplace or OrderUs’s website.

We do not provide any warranties or make representations to you with respect to Third Party Services. You acknowledge that OrderUs has no control over Third Party Services and will not be responsible or liable to you or anyone else for such Third Party Services. The availability of Third Party Services on OrderUs's websites, including the OrderUs App Store or Experts Marketplace, or the integration or enabling of such Third Party Services with the Services does not constitute or imply an endorsement, authorization, sponsorship, or affiliation by or with OrderUs. OrderUs does not guarantee the availability of Third Party Services and you acknowledge that OrderUs may disable access to any Third Party Services at any time in its sole discretion and without notice to you. OrderUs is not responsible or liable to anyone for discontinuation or suspension of access to, or disablement of, any Third Party Service. OrderUs strongly recommends that you seek specialist advice before using or relying on Third Party Services, to ensure they will meet your needs. In particular, tax calculators should be used for reference only and not as a substitute for independent tax advice, when assessing the correct tax rates you should charge to your customers.

If you install or enable a Third Party Service for use with the Services, you grant us permission to allow the applicable Third Party Provider to access your data and other Materials and to take any other actions as required for the interoperation of the Third Party Service with the Services, and any exchange of data or other Materials or other interaction between you and the Third Party Provider is solely between you and such Third Party Provider. OrderUs is not responsible for any disclosure, modification or deletion of your data or other Materials, or for any corresponding losses or damages you may suffer, as a result of access by a Third Party Service or a Third Party Provider to your data or other Materials. Google Maps is a Third Party Service that is used within the Services. Your use of the Services is subject to your acceptance of the Google Maps and Earth Enterprise Universal Acceptable Use Policy, Google Maps and Google Earth Additional Terms of Service and Google Privacy Policy as it may be amended by Google from time to time.

You acknowledge and agree that: (i) by submitting a request for assistance or other information through Experts Marketplace, you consent to being contacted by one or more Experts at the Primary Email Address (or such other email address provided by you) as well as the applicable user email

address; and (ii) OrderUs will receive all email communications exchanged via Experts Marketplace or in any reply emails (each a “Reply”) that originate from Experts Marketplace (directly or indirectly) between yourself and Experts. You further agree that OrderUs may share your contact details and the background information that you submit via the Experts Marketplace with Experts. Experts may require access to certain admin pages on your OrderUs Store. You choose the pages that the Experts can access.

The relationship between you and any Third Party Provider is strictly between you and such Third Party Provider, and OrderUs is not obligated to intervene in any dispute arising between you and a Third Party Provider.

Under no circumstances will OrderUs be liable for any direct, indirect, incidental, special, consequential, punitive, extraordinary, exemplary or other damages whatsoever, that result from any Third Party Services or your contractual relationship with any Third Party Provider, including any Expert. These limitations will apply even if OrderUs has been advised of the possibility of such damages. The foregoing limitations will apply to the fullest extent permitted by applicable law.

You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, OrderUs partners, officers, directors, agents, employees, and suppliers harmless from any claim or demand, including reasonable attorneys’ fees, arising out of your use of a Third Party Service or your relationship with a Third Party Provider.

## **15. Refunds, Reversals & Chargebacks**

(a) The Venue is responsible for Refunds and can process Refunds via its Manage login. All Refunds will appear as a deduction line item on the Venue’s remittance payments. If the Refund is processed after the funds from the relevant Transaction have already been paid out to the Venue, OrderUs will implement a deduction facility on a future remittance payment.

(b) In the event of a Chargeback or Reversal, The Venue acknowledges and agrees that the Venue must pay:

(i) the Fees;

(ii) the Chargeback Fee (in the event of a Chargeback); and

(iii) any other associated fees incurred by OrderUs in respect of the Chargeback or Reversal.

## **16. Third Party Delivery Services**

(a) The Venue may elect to use a Delivery Provider made available under the Platform in order to facilitate the Delivery Services.

(b) In respect of the Delivery Services, the Venue acknowledges that:

(i) The Venue is responsible for the Delivery Fees, which will be paid in accordance with the Payment Method;

(ii) the Delivery Services are subject to the terms and conditions of the selected Delivery Provider, made available on the Delivery Provider's website;

(iii) OrderUs excludes all representations, warranties or terms (whether express or implied) in relation to the Delivery Services;

(iv) OrderUs will not be liable for any Loss suffered by the Venue arising out of or in relation to anything caused or contributed to by the Delivery Services, including any failure or delay in the deliver of the Order to the Customer; and

(v) The Venue is wholly responsible for any conflict resolution, Customer support, additional fees or Refunds that may be required in relation to the Delivery Services.

## 17. Hosting And Integration

(a) The Platform will be hosted on a cloud server operated by a third party.

(b) The Venue acknowledges and agrees that OrderUs will not at any time host the Platform, and accordingly OrderUs will not be liable for any losses occasioned by the Venue arising out of or in relation to the hosting of the Platform.

(c) OrderUs will notify the Venue of:

(i) any violations of the Privacy Act, or violations of the terms of this Agreement of which it becomes aware;

(ii) any request, claim, order, authority report made by any government or statutory authority in respect of the Platform or the data generated by the Platform; and

(iii) the details of the third party hosting of the Platform upon the Venue's request (unless this information is confidential).

(d) OrderUs can be integrated either:

(i) directly into the Venue's system through an application programming interface, or

(ii) into the Venue's point of sale system (**POS**) through the POS third party integration partner, which will allow OrderUs to send the Venue's customer's orders directly to the Venue's kitchen or bar.

(e) If OrderUs is integrated into the POS, the Venue indemnifies OrderUs from and against any loss arising as a result of any act or omission of the Venue out of errors, defects or incorrect information in the POS and POS third party integration partner.

## 18. Representations And Warranties

(a) Each party hereby represents and warrants to the other that:

- (i) it has the right to deal with the Intellectual Property Rights and has the authority to grant its respective rights under this Agreement;
  - (ii) it is a corporation duly organized, validly existing, and in good standing under the laws of Australia;
  - (iii) the grant, execution, delivery, and performance of its obligations under this Agreement have been duly authorized by all necessary action; and
  - (iv) this Agreement a legal, valid, and binding obligation.
- (b) Notwithstanding anything else in these Terms of Service, OrderUs:

- (i) does not warrant that the Venue's use of the Platform will be uninterrupted or error-free; and
- (ii) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including cloud and internet services, and the Venue acknowledges that the Platform may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## **19. Intellectual Property Rights**

- (a) Nothing in this Agreement constitutes an assignment from OrderUs to the Venue of any Intellectual Property Rights in connection with the Platform.
- (b) The Venue:
- (i) acknowledges that OrderUs holds all Intellectual Property Rights in the Platform;
  - (ii) acknowledges that OrderUs will not share Customer Data this with the Venue unless the customer opts into the Venue's marketing list via the Platform;

(iii) will not directly or indirectly do anything that would or might invalidate or put in dispute OrderUs's title in the Platform;

(iv) cannot share login details to the Platform with any third party, unless OrderUs first provides written its approval; and

(v) will not copy, modify, reverse engineer, decompile or attempt to extract the source code of the Websites and associated functionality.

(c) OrderUs shall retain all Intellectual Property Rights in any of the material that it creates for the Venue under this Agreement.

## **20. Liability**

(a) To the full extent permitted by law, OrderUs excludes all liability in respect of loss of data.

(b) To the full extent permitted by law, OrderUs excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement.

(c) To the fullest extent permitted by law, in no circumstances will OrderUs be liable (whether before or after the expiry or termination of these Terms of Service) for special, indirect or Consequential Loss as a result of a defect in the Platform or a breach by OrderUs of this Agreement including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Platform and the costs of any substitute software which the Venue acquires.

(d) OrderUs's total aggregate liability for all claims relating to these this Agreement is limited to the amount of the Platform Fees paid by the Venue under this Agreement in the 12 months preceding the relevant claim.

(e) OrderUs shall have no liability for any damage caused by errors or omissions in any information, instructions or material provided to OrderUs by the Venue in connection with the Platform, or any actions taken by OrderUs at the Venue's direction.



(f) All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

(g) To the extent, if any, that we act as a 'service provider' pursuant to the Payment Card Industry Data Security Standard in respect of the Services provided under this Agreement, we shall be responsible for the security of cardholder data that we possess or otherwise store, process or transmit on the Venue's behalf, or to the extent that we impact the security of the Venue's cardholder data environment.

## **21. Termination**

(a) Either party may terminate this Agreement at any time by providing 30 days' written notice to the other party.

(b) Either party may terminate this Agreement immediately by notice in writing if:

(i) the other party is in breach of any term of this Agreement and such breach is not remedied within 14 days of receipt of notice;

(ii) the other party is in breach of a term of this Agreement and such breach is incapable of remedy;

(iii) the other party for any reason destroys or disposes of or loses custody of the Platform (other than in accordance with the terms of these Terms of Service); or

(iv) the other party suffers an Insolvency Event.

(v) The term of these Terms of Service will begin on the date of your completed registration for use of a Service and continue until terminated by us or by you, as provided below (the "Term").

(vi) You may cancel your Account and terminate the Terms of Service at any time by contacting OrderUs Support and then following the specific instructions indicated to you in OrderUs's response.

(vii) Without limiting any other remedies, we may suspend or terminate your Account or the Terms of Service for any reason, without notice and at any time (unless otherwise required by law), including if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with the use of the Services. Termination of the Terms of Service will be without prejudice to any rights or obligations which arose prior to the date of termination.

(viii) Upon termination of the Services by either party for any reason:

OrderUs will cease providing you with the Services and you will no longer be able to access your Account;

unless otherwise provided in the Terms of Service, you will not be entitled to any refunds of any Fees, pro rata or otherwise;

any outstanding balance owed to OrderUs for your use of the Services through the effective date of such termination will immediately become due and payable in full; and

your OrderUs Store will be taken offline.

## CONSEQUENCES OF TERMINATION

(a) If this Agreement is terminated or expires for any reason:

(i) the licences (including the Licence) granted under this Agreement immediately terminate and the Venue can no longer use the Platform;

(ii) OrderUs shall cease providing the Services to the Venue;

(iii) the Venue must return to OrderUs or delete all copies of the Platform any adaptations or versions of the Platform and any other media constituting or containing OrderUs's Intellectual Property Rights or any other thing provided to the Venue under this Agreement;

(iv) all amounts owing by the Venue to OrderUs will become immediately due and payable to OrderUs without further notice and interest will accrue on this amount at the Penalty Interest Rate;

- (v) the Venue must immediately pay all outstanding Fees;
- (vi) OrderUs will make any final remittance payment (less and Fees, Delivery Costs and Pass-Through Costs and any costs for which the Venue is responsible under this Agreement) to the Venue within 7 days of termination; and
- (vii) termination will not affect the parties accrued rights and obligations prior to the date of termination.

## 22. Data Protection

(a) OrderUs agrees to provide the Venue with the customer's order details (**Order Details**) to the extent necessary for the Venue to manage and fulfil the customer's order (**Purpose**). To the extent that the Order Details contains any Personal Information of the customer, the parties acknowledge and agree that:

- (i) The Venue shall not access or use such Personal Information other than as necessary for the Purpose;
- (ii) each party is regarded as an independent data controller for the purposes of the Data Protection Legislation; and
- (iii) each party shall comply with the Data Protection Legislation at all times in its capacity as a data controller and shall, upon request, provide reasonable assistance to the other party in the event that a customer exercises its rights under the Data Protection Legislation, or a query or investigation is commenced by a Data Protection Authority.

## 23. Variation To Terms

We reserve the right to change, modify, add or remove parts of these Terms of Service at any time, subject to providing you with 30 days' written

notice. By continuing to use or access the Platform and/or Services after the date these changes become effective, you signify that you have read, understood and agree to be bound by the updated Terms of Service.

## **24. Notices**

(a) Any notice given under this Agreement by either party to the other must be in writing by email and will be deemed to have been given on transmission.

(b) Notices must be sent support@orderus.au or to any other email address notified by email to you by us.

(c) Notices to you may be sent via electronic messages, including email, text message/SMS, or mobile push notifications, to the email address or numbers which you provided when setting up your access to the Platform.

## **25. General**

### **25.1 Waiver**

A waiver of a provision of or right under this Agreement is effective only if it is in writing signed by the party granting the waiver.

### **25.2 Invalidity**

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction only, be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement which are self-sustaining and capable of separate enforcement without regard to the read down or severed provision in that jurisdiction are and will continue to be valid and enforceable in accordance with their terms.

### **25.3 Assignment**

You acknowledge that:

- (a) You may not assign your rights or obligations under this Agreement without the prior written consent of OrderUs; and
- (b) OrderUs may assign or transfer its rights or obligations under this Agreement without your consent.

#### **25.4 Entire Agreement**

This Agreement, together with any documents referred to in this Agreement or provided in conjunction with this Agreement from time to time, comprises the entire agreement between the parties with respect to the subject matter of this Agreement.

#### **25.5 Inconsistency**

If there is any inconsistency between the documents forming part of or contemplated by the Agreement, then the following order of priority applies to determine which provisions prevail to the extent of the inconsistency:

- (a) the Fee Acceptance Form;
- (b) the Privacy Policy; and
- (c) the Terms of Service.

#### **24.6 Governing Law**

This Agreement shall be governed and construed in all respects in accordance with the laws of Victoria, Australia and, except where restricted by the applicable Law, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Victoria, Australia.

#### **25.7 Electronic Agreement**

You acknowledge and agree that:

- (a) a printed version of this Agreement will be admissible in judicial, administrative or arbitral proceedings; and

(b) you waive any rights to originally execute by hand this Agreement.

## 26. Dictionary

### 26.1 Interpretation

(a) (**singular and plural**) words in the singular includes the plural (and vice versa);

(b) (**currency**) a reference to \$ or “dollar” is to Australian currency;

(c) (**gender**) words indicating a gender includes the corresponding words of any other gender;

(d) (**person**) a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;

(e) (**party**) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

(f) (**document**) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;

(g) (**headings**) headings and words in bold type are for convenience only and do not affect interpretation;

(h) (**includes**) the word “includes” and similar words in any form is not a word of limitation; and

(i) (**adverse interpretation**) no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

### 26.2 Dictionary

**Term****Definition****Affiliate**

means as regards a party, its ultimate holding company and each of its ultimate holding company's other subsidiaries for the time being.

**Agreement**

has the meaning given to it in clause 1 of these Terms of Service.

**Applicable Laws**

means all applicable laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, or decisions and awards of any court or competent authority or tribunal from time to time in force.

**Business Day**

means a day that is not a Saturday, Sunday or public or bank holiday in the State of New South Wales, Australia.

**Chargeback Fee**

means the sum of \$25.00.

**Commencement Date**

means the date the Venue submits the Onboarding Form and the Onboarding Form is accepted by us.

**Confidential Information**

means all information provided by one party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure (and includes in particular the documentation and all of the Intellectual Property Rights

associated with the Platform as disclosed or provided to the Venue by OrderUs pursuant to this Agreement), but excluding:

(a) information that enters the public domain or is disclosed to a party by a third party, other than through a breach of this Agreement; and

(b) information developed independently by a party.

### **Consequential Loss**

means indirect or consequential loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation, loss of profits, loss of revenue, loss of production, loss of denial or opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity, damage to credit rating, loss of use or indirect remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the Commencement Date.

### **Copyright Act**

means the Copyright Act 1968 (Cth) (as amended).

### **Corporations Act**

means the Corporations Act 2001 (Cth) (as amended).

### **Customer**

means a customer of the Venue that places an Order through the Platform

### **Customer Data**

Means any data or any other information, which is uploaded to the Platform by a Customer, including any Intellectual Property Rights attaching to those materials

### **Customer Payment**

means the Transaction payment made by a Customer via the Platform in respect of an Order and includes any card surcharge fees.



## **Customer Portal**

means the portal by which the Customer can access the Platform and enables the Customer's access to the Menu.

## **Data Protection Legislation**

means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Personal Information to which a party is subject, including the Privacy Act and the GDPR.

## **Data Protection Authority**

means a person or body which has regulatory or supervisory authority over all or any part of the business or activities of the relevant person in respect of Personal Information.

## **Delivery Fees**

means the fees payable to a Delivery Provider in respect of providing the Delivery Services.

## **Delivery Provider**

means a third-party delivery service provider integrated with the Platform to facilitate delivery of Orders to a Customer.

## **Delivery Services**

means the services of delivering Orders to Customers operated by a Delivery Provider.

## **Documentation**

means all manuals, help files and other documents supplied by us to you relating to the Software, whether in electronic or hardcopy form.

## **Fee Acceptance Form**

means the document named 'Fee Acceptance Form' signed by you and forming part of the Agreement.

### **Fees**

means any amount payable by the Venue to OrderUs in accordance with this Agreement, including but not limited to the Platform Fee, Payment Processing Fee and Minimum Commitment Fee.

### **Financial Information**

has the meaning given to it in clause 6.1

### **Force Majeure Event**

means an act of God, fire, lightning, explosion, flood, subsidence, insurrection or civil disorder or military operation, government or quasi-government restraint, expropriation, prohibition, intervention, direction or embargo, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences or authorities, strikes, lock-outs or other industrial disputes of any kind and, any other cause whether similar or not to the foregoing, outside of the affected party's control.

### **GDPR**

means the EU General Data Protection Regulation (EU) 2016/679.

### **GMV (or Gross Merchandise Volume)**

means the total sales volume of all Transactions placed through the Platform by the Venue.

### **GST**

has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended).

### **Insolvency Event**

means the occurrence of any event or transaction in relation to any party that would cause that party to become insolvent within the meaning of section 95A(2) of the Corporations Act 2001 (Cth).

### **Intellectual Property Rights**

means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trademarks, designs, patents or other proprietary rights, Confidential Information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the date of this Agreement, whether registered or unregistered.

### **Licence**

has the meaning given to it in clause 3(a).

### **Loss**

means any and all losses, damages, costs, expenses (including reasonable legal fees) and other liabilities, including Consequential Loss, and Losses shall be construed accordingly.

### **Manage**

means the backend access management portal of the Platform accessible by the Venue.

### **Menu**

means the Venue's menu located on the Platform.

### **Minimum Commitment Fee**

has the meaning given to it in the Fee Acceptance Form.

### **Monthly GMV**

means the GMV for a single calendar month.

### **Onboarding Form**

means the initial onboarding form completed by you, containing information used by us to set up your Manage portal.

### **Order**

means an order for food and beverage placed through the Platform by a Customer.

### **Parties**

means the parties to the Agreement and 'party' means each of them.

### **Pass-Through Costs**

means any cost for which the Venue is responsible in respect of a Transaction (including Refunds, SMS Fees, Delivery Fees and Chargeback Fees and paid in accordance with the Payment Method.

### **Payment Facilitator**

means Stripe Payments Australia Pty Ltd (CAN 160 180 343) or any other payment processing software that OrderUs integrates with from time to time.

### **Payment Facilitator Fee**

has the meaning given to it in the Fee Acceptance Form.

### **Payment Method**

OrderUs will accept the Customer Payments and will deduct the Fees, Delivery Fees and Pass-Through Costs from these funds prior to remitting the balance to the Venue on each Remittance Date.

### **Payment Platforms**

means Payment Facilitator and any other payment platforms that OrderUs integrates with from time to time.

### **Penalty Interest Rate**

means the rate of 2% per annum plus the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983 (Vic).

### **Permitted Purpose**

has the meaning given to it in clause 19(a).

### **Personal Information**

has the meaning given in the Data Protection Legislation.

### **Personnel**

means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.

### **Platform**

means the software known as "OrderUs", owned by OrderUs and delivered to the Venue by OrderUs pursuant to the Agreement.

### **Platform Fee**

has the meaning given to it in the Fee Acceptance Form.

### **Privacy Act**

means the Privacy Act 1988 (Cth) as amended from time to time.

### **Refunds**

means a refund requested by a Customer for a Transaction and approved by the Venue.

### **Related Website**

means the Websites or any other website of any Payment Platform.

### **Restricted Goods**

means:

- (i) goods or services that infringe third party Intellectual Property Rights;
- (ii) dangerous goods, being goods that cause damage, harm or injury;
- (iii) tobacco products or alcoholic beverages (except to the extent that such products or beverages are provided as part of your licenced and ordinary course of business);
- (iv) adult merchandise, including (without limitation) sex toys, adult magazines and books, sexual enhancement products and pornographic materials and items;
- (v) gambling-related content;
- (vi) medicines and dietary supplements;
- (vii) products that encourage dishonest behaviour;
- (viii) cannabis products (prescription or otherwise);
- (ix) without limiting the above, any goods or services which are required by law to be sold to Customers over 18 years of age; and
- (x) any other goods or services which OrderUs reasonably considers to be dangerous, inappropriate or high risk.

## **Services**

means any and all of the following:

- (i) Websites;
- (ii) Platform;
- (iii) Set-up Services; and
- (iv) Support Services,

provided by us to you.

## **Set-up Material**

means any material created by OrderUs for the Venue in performing the Set-Up Services.

### **Set-up Services**

means services to set up the Venue for trading via the Platform, including setting up Manage and providing Menu build support (the Venue is responsible for the actual menu build).

### **SMS Fees**

means the SMS fees charged to OrderUs in respect of facilitating a Transaction.

### **Support Services**

means the software support services in relation to Platform, including but not limited to implementation, support, training and development services, provided by us to you.

### **Term**

has the meaning given to it in clause 4(a).

### **Transaction**

means the Customer payment processed by OrderUs for an Order via the Platform and includes any card surcharge fees.

### **User**

means any person (including any Customer) that is subject to the Terms of Use, and where the context permits, includes any entity on whose behalf that person who uses or accesses the Platform.

### **Venue**

means any venue or merchant using the Platform and/or any person from whom food, beverages or goods may be purchased via the Platform.

### **Venue Data**

means any documents or materials supplied by you to us under or in connection with these Terms of Service, including any Intellectual Property Rights attaching to those materials.

### **Websites**

Means [www.OrderUs.com.au](http://www.OrderUs.com.au); [www.OrderUs.au](http://www.OrderUs.au) and any other site operated by us in connection with the Platform or Services.

### **You or Your**

means the Venue and where the context permits, any Affiliate or person you authorise to use the Platform and/or Services on your behalf.