

## CHOWLY TERMS AND CONDITIONS

These terms and conditions, together with the Onboarding Form, constitute the services agreement between Customer and Chowly. The parties acknowledge receipt and sufficiency of good and valuable consideration and agree as follows:

### 1. Definitions.

- (a) "Chowly" means Chowly, Inc.
- (b) "Customer" means the entity using the Software or receiving the Offerings.
- (c) "Offerings" means services Chowly provides to Customer under this agreement, including access to and use of the Software.
- (d) "Order Data" means all information submitted by individuals using TOOS, and may include name, physical address, phone number, email address, items ordered, preferences, and special instructions.
- (e) "Software" means local and online software that Chowly provides to facilitate orders placed using TOOS.
- (f) "Taxes" means any sales, use and other applicable taxes or duties that the Offerings may be subject to, however designated, including without limitation, withholding taxes, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes.
- (g) "TOOS" means third party online ordering software and related technology services that allow individuals to place restaurant orders with Customer.

### 2. Offerings: Use and Restrictions.

- (a) For the term of this agreement, and subject to Customer's compliance with all of its obligations, Chowly will provide the Offerings to Customer.
- (b) Chowly provides the Offerings solely and exclusively for Customer's own use and access directly related to its business and confined solely to its own servers and within its place of business. Customer represents that it is not engaged in, and will not engage in, the operation of any illegal business and will not use, or permit anyone else to use, the Offerings for any illegal purpose. Customer shall make no use of the Offerings except in compliance with the terms of this agreement.
- (c) Customer is solely responsible for obtaining all required authorizations from TOOS for data received through the Offerings that require TOOS authorization.
- (d) Customer shall not reverse engineer, disassemble, decompile, copy, distribute,

transfer, reproduce, or archive any portion of the Software or other parts of the Offerings or data provided by Chowly. Chowly will have the right to require Customer to cease its use of the Offerings immediately if, in the sole reasonable judgment of Chowly, Chowly believes that Customer's use is outside the scope of the permitted use as set forth in this agreement.

### 3. Term and Termination.

(a) This agreement is effective as of Customer's first use of the Offerings, and shall remain in effect until terminated by either party as specifically described in this section.

(b) This agreement will terminate upon any of the following conditions:

(i) Either party providing written notice of termination at least 45 days in advance to the other party, and, where Customer terminates the agreement, by uninstalling and destroying all copies of the Software in its possession and discontinuing receipt and use of the Offerings;

(ii) Either party becoming insolvent or the subject of a bankruptcy, conservatorship, receivership or similar proceeding, or making a general assignment for the benefit of its creditors; or

(iii) Immediately upon any attempt by Customer to assign use or access to the Offerings to any individual or entity that is not a party to this agreement without Chowly's prior written consent.

### 4. Intellectual Property

(a) **Chowly Ownership Rights.** Customer acknowledges and agrees that, as between Customer and Chowly, Chowly exclusively owns all rights, title, and interest in, to and related to the Software and the Offerings, as such may be modified, upgraded and/or enhanced from time to time, including, without limitation, all ownership and intellectual property rights therein resulting from or relating to performance of the Offerings, including, patents, copyrights, trademarks, trade secrets, rights of publicity, rights of privacy, sui generis database rights, moral rights, and other intellectual property or proprietary rights anywhere in the world. Customer further acknowledges and agrees that, as between Customer and Chowly, the Software and the Offerings are and shall remain the sole and exclusive property of Chowly. All other rights in and to the Offerings are expressly reserved by Chowly and the respective third-party licensors.

(b) **Data.** Customer hereby acknowledges and agrees that Chowly may, by means of the Software or Offerings, gather and compile Order Data, and that Chowly may use such Order Data for any lawful purpose which may include disclosure to third parties for Chowly's commercial purposes. Customer hereby consents to such gathering, compilation and disclosure.

(c) Trademarks; Attribution. Neither party may use any trademark service marks, names, logos, or other identifiers of the other party without the other party's prior written consent, except, however, Customer may use Chowly's name for the purpose of source attribution and Chowly may publicly identify Customer as a customer and may generally describe the Offerings provided to Customer as part of Chowly's sales and marketing efforts. Each party authorizes the other party to use its trademarks to the extent permitted in this Section 4(c), subject to usage guidelines that the other party may provide.

## 5. Fees and Payment Terms

(a) Fees. For its services, Customer agrees to pay Chowly all fees as outlined in the Onboarding Agreement executed by all parties. All locations covered under this agreement are subject to a \$35 per month minimum fee per location.

(b) Payment Due Dates. Customer agrees to pay Chowly a one-time set up fee per location in the initial invoice, and a monthly fee per location that will be invoiced in each month after the month in which the Offerings commence.

(c) Taxes. All fees stated in this agreement are exclusive of Taxes. In addition to the fees, Customer shall pay any Taxes, except for those taxes based on the income of Chowly. Customer will not withhold any Taxes from any amounts due to Chowly.

(d) Additional Services. Customer may elect to receive additional Offerings during the term of this agreement. However, Chowly is not obligated to deliver such additional Offerings and Customer is not obligated to pay for such additional Offerings until the parties agree in writing as to the scope of the additional Offerings, the fees to be paid for such additional Offerings, and any additional terms that may be necessary.

(e) Fee Increases. Chowly may, by providing Customer with written notice at least 30 days prior to the end of a monthly invoicing period, change the fees for all or any portion of the Offerings. Such fee changes will become effective on the first day of the subsequent monthly invoicing period.

## 6. Support and Modification of Data Offerings

(a) Support. Chowly will provide on-going assistance to Customer with regard to technical, administrative and service-oriented issues relating to the utilization, transmission and maintenance of the Offerings as Customer may reasonably request and Chowly may reasonably accommodate. Support for technical, administrative and service related matters may be requested via email at support@chowlyinc.com.

(b) Modification of Offerings. Chowly may modify the format, content, or delivery of the Offerings from time to time and at any time for technical or other business reasons.

7. Indemnification. Customer shall defend and indemnify Chowly and its shareholders, directors, officers, employees and agents, from and against any and all liabilities, damages,

awards, settlements, losses, claims, and expenses, including reasonable attorneys' fees and costs of investigation, due to any claim by a third party arising from or in connection with Customer's gross negligence, willful misconduct, breach of any of its representations, warranties, covenants, or obligations in this agreement, or any use of the Offerings that is not in accordance with this agreement.

8. General.

(a) Governing Law and Choice of Forum. This agreement will be governed in all respects by the laws of the State of Illinois as they apply to agreements entered into and to be performed entirely within Illinois between Illinois residents, without regard to conflict of law provisions. Both parties agree that any claim or dispute between them must be resolved exclusively by a state or federal court located in Cook County, Illinois. Both parties agree to submit to the personal jurisdiction of the courts located within Cook County, Illinois for the purpose of litigating all such claims or disputes, and hereby waive all claims of forum non conveniens.

(b) Attorneys' Fees and Costs. Should either party, through any court of competent jurisdiction or otherwise, successfully enforce any of the terms and conditions of this agreement against the other party, the losing party agrees to pay to the prevailing party its costs, including reasonable attorneys' fees.

(c) Notices. Whenever any ordinary day-to-day communication shall be given by one party to the other, such communication shall be delivered to Customer by Chowly sending an email to the email address provided by Customer for the delivery of notices as set forth herein and to Chowly by Customer sending an email to support@Chowly.com, or by sending an email to such other email address as either party may specify in a notice given hereunder. Notice shall be deemed given on the day of delivery. For the notice to be effective, the subject line of each email notice provided hereunder must state in bold letters: NOTICE UNDER CHOWLY, INC. SERVICES AGREEMENT. All notices other than in connection with ordinary day-to-day communication shall be delivered to the mailing address or email address provided as either party may specify in a notice given hereunder.

(d) Assignment. Customer may not assign its rights or delegate its obligations under this agreement without Chowly's prior written consent. Chowly may assign its rights under this agreement. Any purported assignment in violation of this section will be void.

(e) Waivers. The failure of either party at any time or times to require full performance of any provision hereof will in no manner affect the right of such party to enforce the same at a later time.

(f) Severability. If a court of competent jurisdiction declares any provision of this agreement to be invalid, unlawful or unenforceable as drafted, the parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and

construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

(g) Survival. 4.7 The rights and obligations of the parties set forth in Sections 1, 3, 4, 7 and 8 and any provisions that reference a period of time after termination or expiration, will survive to the maximum extent permitted by law or for the period of time so referenced.

(h) Entire Agreement. This agreement constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all other agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter this agreement by any representations or promises not specifically stated in this agreement. The protections of this agreement will apply to actions of the parties performed in preparation for and anticipation of the execution of this agreement. Chowly may amend this agreement by posting a revised version of this agreement online, and Customer's continued use of the Offerings following such date will constitute Customer's acceptance of such amendments.