CHOWLY ONLINE TERMS FOR RESTAURANTS

Updated on July 15, 2021

These terms, together with the Onboarding Form, constitute the services agreement between Restaurant and Chowly. The parties agree as follows:

1.   Definitions

(a)   "Chowly" means Chowly, Inc., a Delaware corporation.

(b)   "Restaurant" means the entity using the Software or receiving the Services.

(c)   "Services" means services Chowly provides to Restaurant 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 Services 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 Restaurant.

2.   Services: Use and Restrictions

(a)   During the Term, and subject to Restaurant's compliance with all of its obligations, Chowly will provide the Services to Restaurant. Chowly may, in its sole discretion, make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of Chowly's services, the competitive strength of or market for Chowly's services or the cost efficiency or performance of the services; or (b) to comply with applicable law.

(b)   As part of the Services, Chowly shall provide Restaurant with a private-label Google plug-in which will allow customers to order from the Restaurant (the "Private Label Integration"). Restaurant shall select Chowly as the "default" or "preferred" provider of Private Label Integration through the Google interface. Restaurant authorizes Chowly to share Restaurant's data with Google to enable and manage the Private Label Integration. Restaurant may opt out of the Private Label Integration by emailing Chowly at google@chowly.com and stating in the email the name and address of the location opting out.

(c)   Chowly provides the Services solely and exclusively for Restaurant's own use and access directly related to its business and confined solely to its own servers and within its place of business. Restaurant 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 Services for any illegal purpose. Restaurant shall not use the Services except in compliance with the terms of this agreement.

(d)   Restaurant represents to Chowly that:

(i)   neither this agreement, nor the Services performed by Chowly in accordance with or to satisfy its obligations pursuant to the agreement, violates or will violate the terms of any agreement between Restaurant and a third party;

(ii)   it complies with all applicable law in operating its business, including the preparation and sale of food and beverages;

(iii)   it is responsible for all Claims relating to Restaurant's business and all acts and omissions of its service providers, merchants, vendors, and agents;

(iv)   the menu data that Restaurant provides to Chowly in connection with the Services is accurate, and that Restaurant is responsible for reviewing the menus posted on TOOS and ensuring their accuracy;

(v)   it will provide Chowly with accurate information on the taxes owed by Restaurant's customers on orders placed, will promptly notify Chowly in writing of any changes to or inaccuracies in such information (whether as provided to Chowly or as displayed to customers), and agrees that Restaurant is solely responsible for any losses relating to incorrect tax information;

(vi)   it will not reidentify or attempt to reidentify, and it will prohibit its employees, agents, and affiliates from reidentifying or attempting to reidentify, any personal information of individual customers that may be associated with orders that Chowly processes in deidentified or encrypted form as part of the Services; and

(vii)   when it provides Chowly with direct access to Restaurant's accounts on third-party platforms, it consents to Chowly's use of such platforms as an agent of Restaurant for purposes of enabling Chowly to deliver the Services required by this agreement, and therefore Chowly's use will not constitute a violation of a third party's rights.

(e)   Restaurant shall not reverse engineer, disassemble, decompile, copy, distribute, transfer, reproduce, or archive any portion of the Software or other parts of the Services or data provided by Chowly. Chowly will have the right to require Restaurant to cease its use of the Services immediately if, in the sole reasonable judgment of Chowly, Chowly believes that Restaurant's use is outside the scope of the permitted use as set forth in this agreement.

(f)   Chowly will provide on-going assistance to Restaurant with regard to technical, administrative and service-oriented issues relating to the utilization, transmission and maintenance of the Services as Restaurant may reasonably request and Chowly may reasonably

accommodate. Support for technical, administrative and service-related matters may be requested at chowly.help.

3.   Term and Termination

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

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

(i)   Either party providing written notice of termination at least 30 days in advance to the other party, and, where Restaurant terminates the agreement, by uninstalling and destroying all copies of the Software in its possession and discontinuing receipt and use of the Services;

(ii)   Either party may terminate the agreement upon the occurrence of a material breach thereof by the other party, which breach is not cured (or for which a detailed remedial plan is not presented to the terminating party) within 30 days after notice is given by the terminating party;

(iii)   If Restaurant fails to pay fees when due under this agreement that are not the subject of a good faith dispute, which failure is not cured within 10 business days after Chowly provides Restaurant with written notice, Chowly may, in addition to pursuing any remedies available to it under the law, suspend its performance of Services until Restaurant pays the undisputed fees in full, or immediately terminate this agreement following notice to Restaurant; or

(iv)   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.

4.   Intellectual Property

(a)   Chowly Ownership Rights. Restaurant acknowledges and agrees that, as between Restaurant and Chowly, Chowly exclusively owns all rights, title, and interest in, to and related to the Software and the Services, 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 Services, 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. All other rights in and to the Services are expressly reserved by Chowly and the respective third-party licensors.

(b)   Data. Restaurant hereby acknowledges and agrees that Chowly may, by means of the Software or Services, 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. Restaurant 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; however, Restaurant may use Chowly's name for the purpose of source attribution and Chowly may publicly identify Restaurant as a customer and may generally describe the Services provided to Restaurant 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, Restaurant agrees to pay Chowly all fees as outlined in the Onboarding Form. All locations covered under this agreement are subject to a $35 per month minimum fee per location.

(b)   Private Label Integration Fees. Restaurant shall pay Chowly 5% of the Total Order Value. Restaurant shall pay the payment processing partner of Chowly 2.9% of the Total Order Value plus $0.30 per order. "Total Order Value" means the total order value (before taxes, tips, delivery fees, payment processing fees and other service fees) for each order placed through the Private Label Integration, regardless of customer discounts, credits and chargebacks.

(c)   Payment Due Dates. Restaurant 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 Services commence. Any portion of fees remaining unpaid 30 days or more beyond the due date may be subject to interest of 1.5% per month or the maximum permitted by law, whichever is less.

(d)   Payment Method. Restaurant hereby authorizes Chowly to automatically charge the Fees using the credit card information that Restaurant has provided to Chowly or using ACH by the applicable due date. Restaurant represents that if it is paying the Fees by ACH, it has verified its bank account using the Chowly billing link for ACH authorization before signing this agreement.

(e)   Taxes for the Services. All fees stated in this agreement are exclusive of Taxes. Restaurant is responsible for paying any applicable Taxes for the Services (other than those taxes based on the income of Chowly) and any related penalties or interest to the relevant tax authority. Restaurant will not withhold any Taxes from any amounts due to Chowly.

(f)   Additional Services. Restaurant may elect to receive additional services during the Term. However, Chowly is not obligated to deliver such additional services and Restaurant is not obligated to pay for such additional services until the parties agree in writing as to the scope of the additional services, the fees to be paid for such additional services, and any additional terms that may be necessary.

(g)   Fee Increases. Chowly may, by providing Restaurant 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 Services. Such fee changes will become effective on the first day of the subsequent monthly invoicing period.

6.   Confidentiality

(a)   During the Term and for five years thereafter, neither party shall disclose Confidential Information disclosed to it by the other party or use such information other than for purposes of the agreement. "Confidential Information" means all communications, documents and other information, whether in written, oral, electronic, or other form, which a party furnishes or otherwise discloses (the "Discloser") to the other party (the "Recipient") relating to the business relationship between Chowly and Restaurant, including the terms of this agreement.

(b)   Confidential Information does not include any information that:

(i)   is or becomes generally known to the public not as a result of a disclosure by the Recipient;

(ii)   is already known by the Recipient prior to disclosure by the Discloser;

(iii)   is received by the Recipient from a third party without restriction on disclosure and without breach of any confidentiality agreement by such third party; or

(iv)   is independently developed by the Recipient without reliance upon the Discloser's information.

(c)   After the termination or expiration of the agreement, at the Discloser's written request, the Recipient shall promptly (but no later than 14 days following the request) destroy the Discloser's Confidential Information and certify in writing that this action has occurred. Recipient may retain Confidential Information to the extent contained in deleted emails and electronic documents which are archived by or on behalf of Recipient consistent with Recipient's standard archival processes but which, in the ordinary course of operations, are not accessible by the individuals who created or received such emails or documents.

7.   Restaurant Indemnification. Restaurant 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 (collectively, "Claims"), due to any claim by a third party arising from or in connection with (a) Restaurant's gross negligence, willful misconduct, or breach of any of its representations or obligations in this agreement, (b) any use of the Services that is not in accordance with this agreement, or (c) any claim relating to the Services or Restaurant's use of the Services that is brought by or on behalf of a customer, employee or contractor of Restaurant, or a TOOS or point-of-sale company.

8.   Limitation of Liability. Neither Chowly nor its employees, agents, or affiliates is liable to Restaurant for any indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by Chowly's use of reasonable diligence, even if Chowly had been advised or should be aware of the possibility of such damages. In no event is Chowly liable to Restaurant for any punitive damages. The aggregate monetary liability of Chowly and any of its employees, agents or affiliates under any theory of law will not exceed the fees that Restaurant paid to Chowly under this agreement in the six months preceding the first act giving rise to liability.

9.   Disclaimer of Warranties. Restaurant accepts the Services "as is", with no implied warranty of any kind, including implied warranties of merchantability, noninfringement of intellectual property rights, course of performance, course of dealing and usage of trade.

10.   General

(a)   Mediation. The parties agree to attempt to resolve any dispute relating to this agreement by mediation, which shall be conducted under the then-current mediation procedures of The CPR Institute or any other mediation procedures upon which the parties may agree. The parties further agree that their good-faith participation in mediation is a condition precedent to pursuing any other available legal or equitable remedy.

Either party may commence the mediation process by providing written notice to the other party, setting forth the subject of the dispute and the relief requested. Within 10 business days after the receipt of the notice, the other party shall deliver a written response. The initial mediation session will be held within 30 days after the initial notice. The parties agree to share the costs and expenses of the mediation (which does not include the expenses incurred by each party for its own legal representation in connection with the mediation).

The parties further agree that mediation proceedings are settlement negotiations, and that all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents will be confidential and inadmissible in any subsequent legal proceeding involving the parties; provided, however, that evidence that would be independently admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

The parties agree that any settlement agreement that they may enter into during the mediation process is fully binding and enforceable by any court with jurisdiction of the dispute. The party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.

In the event that a dispute is not settled by mediation, the parties agree that that the exclusive venue for the litigation of any claim arising out of this agreement will be the state and federal courts located in Chicago, Illinois and Cook County, United States. The parties irrevocably consent to the personal jurisdiction of these courts and irrevocably waive, to the fullest extent permitted by law, any objection thereto.

(b)   Governing Law. 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.

(c)   Force Majeure. Chowly shall not be liable for any default or delay in the performance of its obligations hereunder due to acts of God, war, terrorism, natural disasters, earthquakes, fire, riots, floods, and other similar events, to the extent such event is beyond Chowly's reasonable control and only for the duration of such event.

(d)   **Waiver of Jury Trial. The parties agree that any controversy that may arise**

under this agreement is likely to involve complicated and difficult issues, and therefore each party irrevocably and unconditionally waives any right it may have to a trial by jury in any legal action relating to this agreement or the transactions contemplated hereby.

(e)   Notices. Except for notices pursuant to section 2(b) and 2(f), all notices regarding this agreement shall be delivered to Restaurant by Chowly sending an email to the email address provided by Restaurant for the delivery of notices as set forth herein and to Chowly by Restaurant sending an email to notices@chowly.com. Notice shall be deemed given on the day of delivery.

(f)   Assignment. Restaurant 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.

(g)   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.

(h)   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.

(i)   Survival. The rights and obligations of the parties set forth in Sections 1, 3, 4, 7, 8, 9 and 10 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.

(j)   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. Chowly may, without notice to Restaurant, amend this agreement by posting a revised version of this agreement online, and Restaurant's continued use of the Services following such date will constitute Restaurant's acceptance of the revised version.