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## TERMS AND CONDITIONS FOR USE OF FOODGURU PLATFORM - DELIVERY PARTNER

By registering on this platform, using the platform, or by clicking to accept or agree to the terms of service when this option is made available to you, you accept and agree, on behalf of yourself or on behalf of your employer or any other entity (if applicable), to be bound and abide by these terms and conditions and our Privacy Policy.

### Interpretation

In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

<b>"Administrative Adjudication of Roads Traffic Offences Act"</b>	means the Administrative Adjudication of Roads Traffic Offences Act, No. 46 of 1998, as amended;
<b>"Affiliate"</b>	shall be (i) in respect of any company, its subsidiary or holding company, or any other company which is a subsidiary of its holding company, or (ii) in respect of a licensee, any company who granted a licence to such company together with its subsidiary or holding company, or any other company which is a subsidiary of its holding company; or (iii) in respect of the licensor, any company which holds a licence to deploy, use and exploit the technology platform and its subsidiaries or holding company, or any other company which is a subsidiary of its holding company; as the context may indicate.
<b>"Agreement"</b>	means this document and all Annexes attached to this document, together with any other terms applicable to the use of the Platform all of which is deemed to be included herein by reference, as amended from time to time.
<b>"Applicable Law"</b>	shall mean all and any statutes and subordinate legislation and common law (including without limitation the Companies Act, Health Act, Occupational Health and Safety Act, National Road Traffic Act, Administrative Adjudication of Roads Traffic Offences Act, the Consumer Protection Act and POPI); regulations, ordinances and by-laws, directives, codes of practice, rules, circulars, guidance notices, judgments and decisions of any competent authority, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation and any replacement or amendment thereof. Other similar provisions, from time to time, compliance with which is mandatory for or imposed upon a Party in terms of this Agreement.
<b>"Approvals"</b>	all approvals, consents, authorisations, permissions, licences, permits and rights, including all approvals, consents, authorisations, permissions, licences, permits and rights from all government, regulatory and statutory entities and authorities.
<b>"Best Industry Practice"</b>	in relation to an obligation, undertaking, activity or a service, the exercise of the degree of skill, speed, care, diligence, judgment, prudence and foresight and the use of practices, controls, systems, technologies and processes, which would be expected from a skilled,

experienced and market leading service provider performing the same or similar obligation, undertaking, activity or service and utilising and applying skilled resources with the requisite level of expertise and complying with all Applicable Laws.

<b>"Brand Matter"</b>	means an event that, in FoodGuru's reasonable judgement, causes it or its Affiliates to have concern for the reputation of its brand, including, but not limited to, matters related to the alleged violation of any Applicable Laws, or any matter that may affect the integrity of the Platform.
<b>"Business Day"</b>	any day other than a Saturday, Sunday or gazetted national public holiday in South Africa;
<b>"Companies Act"</b>	the Companies Act, No. 71 of 2008, as amended.
<b>"Confidential Information"</b>	means any confidential, proprietary or other non-public information disclosed by or on behalf of one party (the "Discloser") to the other (the "Recipient"), whether disclosed verbally, in writing, or by inspection of tangible objects, and includes, without limitation, transactional, operational, performance and other data or information (including, FoodGuru Data, Consumer's information, package information, and the transaction volume, marketing and business plans, business, financial, technical, operational) and/or that is related to the sale and/or delivery of Meals to Consumers through the FoodGuru Platform and the terms and conditions of this Agreement. Confidential Information will not include information that: (i) was previously known to the Recipient without an obligation of confidentiality; (ii) was acquired by the Recipient without any obligation of confidentiality from a third party with the right to make such disclosure; or (iii) is or becomes publicly available through no fault of the Recipient.
<b>"Consumer Protection Act"</b>	the Consumer Protection Act, No. 68 of 2008, as amended.
<b>"Consumer"</b>	means a customer of the Merchant.
<b>"Criteria"</b>	means each of (i) the participation criteria which the Delivery Partner must meet as a pre-qualifier to offering their Service on the Platform; as well as (ii) the criteria which the Service must meet; or the combination thereof as the context may indicate.
<b>"Customer Dispute"</b>	means any dispute, action, claim, controversy or cause of action among the parties arising out of or in connection with the services rendered by one party to the other, which services are facilitated via the Platform.
<b>"Customer Feedback"</b>	means information provided by a Customer via the FoodGuru Platform, including rating of the service and comments or feedback related to the Consumer's experience with Delivery.
<b>"Customer"</b>	means the participants on the FoodGuru Platform being the Consumer, Merchant and the Delivery Partner.
<b>"Delivery Charge"</b>	means a delivery charge collected by FoodGuru on behalf of Delivery Partner from Merchants for Services rendered. The Delivery Charge is

set by FoodGuru and specified on the Pricing Page, as amended from time to time.

<b>"Delivery Partner"</b>	means the party who enters into this Agreement with FoodGuru.
<b>"Dispute"</b>	means any dispute, action, claim, controversy or cause of action among the parties arising out of or in connection with the Agreement or any term condition or provision hereof, including without limitation any of the same relating to the existence, validity, interpretation, construction, performance, enforcement and termination of the Agreement.
<b>"Effective Date"</b>	means the date of acceptance of this Agreement.
<b>"Feedback"</b>	means information provided by Delivery Partner to FoodGuru including feedback, suggestions, comments, ideas, or other concepts relating to FoodGuru.
<b>"Fees"</b>	means any applicable fees charged by FoodGuru to the Delivery Partner to access and use the Platform, or pertaining to the payment processing activities described under clause 3, which may include a subscription fee, access fee, usage fee, activation fee or handling fee (as may be relevant) specified in the Pricing Page, as amended from time to time.
<b>"FoodGuru Data"</b>	means all data related to the access and use of the FoodGuru Platform, including but not limited to all Personal Data related to Merchant, Delivery Partner, Personnel and Consumers.
<b>"FoodGuru Platform"</b>	means the current or future versions of the integrated technology platform incorporating the websites <a href="http://www.foodguru.ai">www.foodguru.ai</a> and <a href="http://www.foodguru.menu">www.foodguru.menu</a> , and any mobile application or other technology interface (including without limitation any mobile website, mobile application, affiliate website or related website for accessing and using the FoodGuru Website that may be developed from time to time) made available by FoodGuru to Customers on its standard terms and conditions, to facilitate the ordering, collection or delivery of Meals between Merchants, Customer and Delivery Partners, and consists, amongst others, of a Consumer App, a Merchant App and a Driver App or such other App's as may be available now or in the future. The term "Platform" or "App" is used to refer to the integrated technology platform or to any specific component therein, as the context may indicate.
<b>"FoodGuru Policies"</b>	means the policies, guidelines, procedures and practices of FoodGuru and its Affiliates, including the health and safety and technology or any other than may apply to the use of the Platform and/or the delivery of the Services, as amended from time to time.
<b>"FoodGuru"</b>	means XLink Communications (Pty) Ltd, a company registered in South Africa with reg no 2004/000478/07, which is licenced to deploy, use and exploit the FoodGuru Platform under licence from HelloThing (Pty) Ltd, a company registered in South Africa with reg no 1999/019582/07, the duly authorised representative in South Africa of FoodGuru.ai, a company registered in England and Wales with registered company number 12541611. The term "FoodGuru", "we", or

"our" refers to any or all of these entities and/or its Affiliates as the context may indicate.

<b>"Force Majeure Event"</b>	means an event of fire, lightning, explosion, flood, hurricane, act of God, war, terrorism, civil disorder, epidemics, plagues, strikes; boycotts, and lock-outs of all kinds and go-slows, or any other event beyond the control of the Party affected by the event, provided in all cases that the affected Party has taken all steps and precautions which could reasonably be expected for it to have taken in order to prevent such act or event occurring and in order to mitigate and minimise the effects of the event and furthermore that the affected Party is not at fault;
<b>"Health Act"</b>	means the Health Act, No. 63 of 1977, as amended.
<b>"Indemnified Party"</b>	means the party receiving indemnification from the Indemnifying Party.
<b>"Indemnifying Party"</b>	means the party providing indemnification to the Indemnified Party.
<b>"Initial Term"</b>	means a period which will commence on the Effective Date and, unless earlier terminated as provided below, will continue for a period of one (1) year from the Effective Date.
<b>"Losses"</b>	means any and all claims, damages, liabilities, causes of action, and losses (including reasonable attorney's fees).
<b>"Meal"</b>	means any combination of food and/or beverage and/or other goods transferred on behalf of Merchant by the Delivery Partner Personnel to Consumer as facilitated via the FoodGuru Platform.
<b>"Merchant"</b>	means any retailer who subscribes to the Platform in order to offer an online ordering, payment and delivery or collection services to its Consumers, and who elects to use the Service of the Delivery Partner.
<b>"National Road Traffic Act"</b>	means National Road Traffic Act, No. 93 of 1996, as amended;
<b>"Notice Period"</b>	means a period of seven (7) days' notice unless otherwise stipulated in Applicable Law, after which amended terms will take effect.
<b>"Occupational Health and Safety Act"</b>	means Occupational Health and Safety Act No. 85 of 1993, As amended;
<b>"Payment Service Provider Terms"</b>	means the payment processing terms located at <a href="https://www.payfast.co.za/end-user-agreement">https://www.payfast.co.za/end-user-agreement</a> , as amended or otherwise notified from time to time.
<b>"Personal Data"</b>	information relating to any person any other information which may be treated or defined as "personal information" in terms of Applicable Law (including POPI).
<b>"Personnel"</b>	means any natural person who perform the Services in whatever capacity (whether they do so as employees, agents, sub-contractors, employees or agents of sub-contractors of the Delivery Partner).
<b>"POPI"</b>	the Protection of Personal Information Act, No. 4 of 2013, as amended.

<b>"Pricing Page"</b>	means the document attached as Annexure A hereto, or the linked page labelled "Pricing" accessible on the Driver portal on the Platform, as amended from time to time.
<b>"Renewal Term"</b>	means a one (1) year period where the Agreement automatically renews.
<b>"Representatives"</b>	means with respect to a party, its or its Affiliates' respective officers, directors, employees or agents.
<b>"Required Documentation"</b>	means all documentation required by FoodGuru from Delivery Partner, including but not limited to business license, identification, tax identification, information regarding VAT status, alcohol/liquor license (if applicable), and banking documentation.
<b>"Service Beneficiaries"</b>	means the Merchants within the geographical areas in which the Delivery Partner operates as reflected in the Driver portal on the Platform, as amended from time to time.
<b>"Service"</b>	means the service rendered by the Delivery Partner to the Merchant consisting of the collection of the Meal from the Merchant and delivery to the Consumer on behalf of the Merchant, in accordance with the terms set out in this Agreement.
<b>"South Africa"</b>	means the Republic of South Africa.
<b>"Specifications"</b>	means the requirements, criteria and specifications which the Services are required to meet as set out in Applicable Law, Best Industry Practice, or any FoodGuru Policy.
<b>"Term"</b>	means the Initial Term together with all Renewal Terms.
<b>"Territory"</b>	means South Africa.
<b>"Trademarks"</b>	means the trademarks, service marks, trade names, copyrights, logos, slogans and other identifying symbols and indicia of the applicable party or its Affiliates.
<b>"VAT Act"</b>	the Value-added Tax Act, No. 89 of 1991, as amended.
<b>"VAT"</b>	means value-added tax levied in terms of the VAT Act.
1.1	In this Agreement:
1.1.1	references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
1.1.2	words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
1.1.3	references to a "person" include a natural person, company, close corporation or any other juristic person or other incorporated or unincorporated entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;

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- 1.1.4 references to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act, save that the interpretation and application of these definitions in the Companies Act shall include any juristic person or undertaking that would have been a subsidiary as defined in section 1 of the Companies Act but for the fact that it is incorporated outside of South Africa;
- 1.1.5 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.1.6 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.1.7 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of this Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this Agreement;
- 1.1.8 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the fast day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 1.1.9 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 1.1.10 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.1.11 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 1.1.12 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (le the *eiusdem generis rule*) shall not apply, and whenever the words "include", "includes" or "including" are used, these shall mean "include without limitation", "includes without limitation" and "including without limitation" respectively.
- 1.2 The expiration or termination of this Agreement shall not affect the Surviving Provisions or such provisions of this Agreement which implicitly must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this. The Surviving Provisions shall continue in full force and effect after expiration or termination of this Agreement.
- 1.3 Wherever provision is made for the giving or issuing of any notice, consent, permission, approval, certificate or determination by any person, then, unless otherwise specified, such notice, consent, permission approval, certificate or determination shall be in writing and the words "notify", "certify", "consent", "permit", "approve", "certify" or "determine" shall be construed accordingly.
- 1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the Agreement shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (the *contra proferentem* rule), shall not apply.
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## 2. General Terms

- 2.1 FoodGuru may issue supplemental terms that may apply to any component, component thereof or event such as a promotion ("Supplemental Terms"). Any such Supplemental Terms shall be deemed to be an Annexe to this Agreement for the purposes of the applicable component and/or event.
- 2.2 FoodGuru may amend this Agreement from time to time upon giving a reasonable Notice Period and by FoodGuru posting such amended Agreement on the Platform or otherwise making such amended Agreement available to Delivery Partner. However, the Notice Period will not apply where an amendment is required by law or relates to the expansion or introduction of new services or functionalities to the existing Platform or any other change which is effectively favourable to Delivery Partner and does not reduce the scope of its rights or increase its responsibilities. Delivery Partner's continued access to or use of the Platform after such amended Agreement become effective constitutes Delivery Partner's consent to be bound by the amended Agreement. If Delivery Partner objects to any amended Agreement, Delivery Partner may terminate this Agreement.

## 3. FoodGuru Platform

- 3.1 FoodGuru may make the FoodGuru Platform available to Delivery Partner, and Delivery Partner and its Personnel may access and use the FoodGuru Platform solely in connection with the Delivery Partner making its Service available to Merchants and/or to utilise the value-added functionality offered via the Platform. Neither FoodGuru nor its Affiliates provide Merchant or its Consumers with delivery services. The Driver App is solely for use by Delivery Partner and/or their Personnel, subject to the terms of this Agreement.
- 3.2 The FoodGuru Platform, including all intellectual property rights therein, are and shall remain the property of FoodGuru, its Affiliates or their respective licensors. Neither this Agreement nor Delivery Partner's use of the FoodGuru Platform or FoodGuru Data conveys or grants to Delivery Partner any rights in or related to the FoodGuru Platform or FoodGuru Data, except for the limited licence granted above.
- 3.3 The Delivery Partner and its Personnel acknowledges and agrees that once it has accepted a request for the Service, the FoodGuru Platform may provide certain information about the Delivery Partner to the Consumer and the Merchant, including Delivery Partner and its Personnel's name, contact number and physical address.

## 4. Payment Processing and Disbursement

- 4.1 The Delivery Partner hereby appoints FoodGuru as Delivery Partner's agent solely for the purpose of: (A) processing payment of the Delivery Charge (plus any applicable VAT and other fees collected on Delivery Partner's behalf) for Services rendered by Delivery Partner via the Platform, and (B) transferring to Delivery Partner the Delivery Charge less the retained Fees (if applicable), and any refunds given to the Merchants on behalf of Delivery Partner.
- 4.2 The Delivery Partner agrees that payment collected by FoodGuru on Delivery Partner's behalf will be considered the same as payment made directly to Delivery Partner; and any refunds processed by FoodGuru on Delivery Partner's behalf will be considered the same as a refund made directly by a Delivery Partner.
- 4.3 The Delivery Partner further authorizes FoodGuru to collect gratuities (if any) that are paid on the Platform voluntarily by Consumers to Delivery Partners acting on behalf of Merchants. It is the

sole responsibility of Delivery Partner to make sure that any applicable gratuities are properly transferred to relevant Personnel.

- 4.4 If reasonable, FoodGuru may adjust the transfer of Delivery Charge collected on Delivery Partner's behalf for reasons including, but not limited to, failure to fulfil the Service in accordance with the terms set out herein. Delivery Partner may dispute any such adjustments through the support contact centre within fourteen (14) calendar days of Delivery Partner being notified of such adjustment. FoodGuru reserves the right to, and Delivery Partner authorizes FoodGuru to, collect the amount of such adjustments via a deduction from the Delivery Charge collected on Delivery Partner's behalf, or by debiting Delivery Partner's payment method on record, or otherwise seeking reimbursement from Delivery Partner.
- 4.5 In exceptional circumstances only (as determined by FoodGuru in its sole discretion, acting reasonably), FoodGuru reserves the right to temporarily or permanently cancel or suspend a payment to Delivery Partner. The foregoing exceptional circumstances shall include, but not be limited to, any legal or regulatory risk or potential breach of Applicable Laws associated with the transfer of such payment to Delivery Partner and any failure by Delivery Partner to provide the Required Documentation in accordance with clause 10.10 of this agreement.
- 4.6 FoodGuru may, from time to time, request information from Delivery Partner to confirm Delivery Partner's identity as may be necessary under any applicable compliance obligations before transferring any payments to Delivery Partner and may refuse to process payments owed to Delivery Partner in accordance with this Agreement if there exists a legal or regulatory risk or potential breach of law or regulation associated with such transfer to Delivery Partner.
- 4.7 FoodGuru may engage any duly authorised third-party payment service provider to perform the payment processing and disbursement activities set out in this clause specifically, or the Agreement generally. The payment processing activities are subject to the Payment Service Provider Terms, which are incorporated herein by reference.

## 5. Cash

- 5.1 FoodGuru and/or its Affiliates do not allow for Customers to pay for a given Meal and delivery services provided by Delivery Partner in cash.

## 6. Service Guarantee

- 6.1 FoodGuru and its Affiliates do not guarantee the availability or uptime of the Platform, or any component thereof. Delivery Partner acknowledges and agrees that the Platform may be unavailable at any time and for any reason (e.g., due to scheduled maintenance or network failure). Further, the Platform may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications, and FoodGuru and its Affiliates are not responsible for any delays, delivery failures, or other damages, liabilities or losses resulting from such problems.

## 7. Warranty

- 7.1 This clause 7.1 applies only to the maximum extent permitted by Applicable Law.
- 7.1.1 FoodGuru and its Affiliates provide, and Delivery Partner accepts, the Platform on an "as is" and "as available" basis. FoodGuru and its Affiliates do not represent, warrant or guarantee that its access to or use of the Platform: (i) will be uninterrupted or error free; or (ii) will result in any requests for Services.
- 7.1.2 FoodGuru and its Affiliates make no representations, warranties or guarantees as to the actions or inactions of Merchant and/or Consumers who may request or receive Services and FoodGuru and its Affiliates do not screen or otherwise evaluate Merchants and/or Consumers.



By using the Platform, Delivery Partner acknowledges and agrees that Delivery Partner may be introduced to a third party that may pose harm or risk to Delivery Partner, or other third parties. Delivery Partner and their Personnel are advised to take reasonable precautions with respect to interactions with third parties encountered in connection with the use of the Platform and rendering of Services. FoodGuru does not represent, warrant or guarantee the safety of any person.

- 7.1.3 Notwithstanding FoodGuru's appointment as agent of Delivery Partner (whether directly or through the intermediary of a third party in terms of clause 4.7) for the purpose of accepting payment from Merchants on its behalf, FoodGuru and its Affiliates expressly disclaim all liability for any act or omission of Merchant, Delivery Partner, any Personnel, any Consumer or other third party.
- 7.2 The Delivery Partner represents, warrants and undertakes on the Effective Date and at all times during the Term that:
- 7.2.1 it meets all Criteria;
  - 7.2.2 it will implement and maintain adequate procedures, policies, controls, systems and technology necessary to ensure that it executes its obligations and deliver a Service in accordance with the terms set out in this Agreement;
  - 7.2.3 it will implement and maintain adequate procedures, policies, controls, systems and technology necessary to monitor and validate that its Personnel and vehicles continue to abide by and meet all requirements specified in the Applicable Law and Specifications;
  - 7.2.4 it will implement and maintain adequate procedures, policies, controls, systems and technology necessary to prevent and avoid any unauthorised access to, alteration of, loss, interference with, interception, or destruction of the FoodGuru Platform and FoodGuru Data;
  - 7.2.5 all Personnel are duly informed of the terms of use of the Platform and its, his or her obligations as set out in this Agreements;
  - 7.2.6 it is duly constituted, organised and validly existing under the laws of South Africa;
  - 7.2.7 it will not cause any of the Services Beneficiaries, FoodGuru or any of their Affiliates to infringe or misappropriate the rights, including the Intellectual Property Rights, of any person or entity;
  - 7.2.8 it has all Approvals necessary for it to perform its obligations under this Agreement, including all undertakings, assignments, waivers, transfers, making over, cessions, licences and Approvals given, made, procured and/or granted hereunder; and
  - 7.2.9 it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under this Agreement and all the documents which are to be executed by it as envisaged by this Agreement.
- 7.3 Each of the warranties and undertakings set out in clause 7.2 above shall be read separately from and without prejudice to and without derogation from the others.

## 8. Complaints

- 8.1 It is the responsibility of the Delivery Partner to address any concerns or complaints raised by a Customer.
- 8.2 In order to ensure a consistent Customer experience, FoodGuru may, in its sole discretion, elect to be the first point of contact for any Customer complaint, and FoodGuru, may respond to complaints by Customers about the Service, on behalf of the Delivery Partner.
- 8.3 Should a complaint escalate into a Customer Dispute, the Delivery Partner is responsible to resolve it with the counterparty. FoodGuru shall be entitled, but not obliged to become involved in an attempt to resolve any such Dispute.

## 9. Suspension of Platform Access

- 9.1 FoodGuru, at its sole discretion, reserves the right to temporarily or permanently suspend, in whole or in part, Delivery Partner's or any of its Personnel's access to the Platform if:
- 9.1.1 The Delivery Partner fails to provide Required Documentation in a timely manner, or in case the Required Document is not valid or has expired and new Documentation is not provided timeously or fails to timeously;
- 9.1.2 Any act or omission on the side of the Delivery Partner or its Personnel which give rise to a Brand Matter;
- 9.1.3 The Delivery Partner's account is in arrears;
- 9.1.4 The Delivery Partner is, or FoodGuru reasonably believes Delivery Partner is, in breach of the Applicable Law, this Agreement, any Specification or FoodGuru Policy.

## 10. The Services

### 10.1 Rendering of the Services

- 10.1.1 In addition to all other obligations which it may have under this Agreement, the Delivery Partner agrees and shall be obliged for the duration of the Term, to:
- 10.1.1.1 render the Services to the Services Beneficiaries during the normal business hours of the Merchants utilising the FoodGuru Driver App;
- 10.1.1.2 ensure that the Services comply with the Applicable Law, Specifications, FoodGuru Policies and Criteria;
- 10.1.1.3 ensure that all of its obligations are performed in accordance with Best Industry Practice and FoodGuru Policies including any service levels;
- 10.1.1.4 comply with all Applicable Laws which shall include, without limitation, all laws, rules and regulations governing anti-bribery and corruption, transportation, health and safety, or the time, temperature and transport controls required for food hygiene and safety;
- 10.1.1.5 perform all other services and activities and procure and provide all Approvals and all other resources, personnel, and facilities as may be necessary for the proper, diligent and timely fulfilment of its obligations under this Agreement.
- 10.2 The Delivery Partner acknowledges and agrees that neither FoodGuru nor any Delivery Partner takes title to any Meal. Delivery Partner remains responsible for the delivery of the Meal and shall maintain possession, control and care of the Meal from the time of collection at the Merchant

- until it is duly delivered to the Consumer in full compliance with Applicable Laws. The Merchant shall retain all risk in the Meal whilst under its possession control and care.
- 10.3 The Delivery Partner is responsible for all costs, including handling fees, related to reimbursement to Merchants in the event such Merchant request a refund for substandard or otherwise unsatisfactory Service. FoodGuru may deduct refunds from the Delivery Charge due to the Delivery Partner under this Agreement in accordance with FoodGuru's refund policy made available to the Delivery Partner, as updated from time to time.
- 10.4 The Delivery Partner will notify FoodGuru telephonically and in writing (by way of email and registered post) immediately upon the occurrence of any of the following events:
- 10.4.1 if it becomes aware that it is financially distressed;
- 10.4.2 if it contemplates, discusses or agrees to any business rescue or proposes to do any of these things; or
- 10.4.3 if it becomes aware of any person proposing to take, or taking, any step to apply to court or actually applies to court for the business rescue of the Delivery Partner; or
- 10.4.4 if it becomes aware of any incident which could give rise to potential Losses which, if proven, may cause financial distress.
- 10.5 In providing the Services, the Delivery Partner recognises and agrees that time is of the essence and, without derogating from or limiting its further obligations under this Agreement, the Delivery Partner shall perform its obligations under this Agreement in such manner as to ensure compliance with any time frames set out in a FoodGuru Policy.
- 10.6 Scope of the Services
- 10.6.1 The Services include:
- 10.6.1.1 the delivery services and the driver services including the procurement, operation and maintenance of vehicles; supply and oversight of duly qualified and experienced drivers; maintenance of a contact centre to handle feedback and complaints; and capability to investigate and resolve any incidences;
- 10.6.1.2 such services which are incidental to but not specifically described in the Services, and upon which the proper performance of the Services is dependent; and
- 10.6.1.3 the services described in clauses 10.6.1.1 and 10.6.1.2, as they evolve and are supplemented over time, having regard to advances of technology and as required for the Services to remain competitive and relevant.
- 10.7 The Delivery Partner Personnel
- 10.7.1 The Delivery Partner shall use an adequate number of qualified, skilled and trained personnel who is equipped with good quality vehicles and a smart phone with the Diver App installed, to perform the Services. The Delivery Partner shall also use its best endeavours to:
- 10.7.1.1 ensure that all Personnel required for rendering of Services remain available and continuously and directly involved in the provision of the Services for the duration of this Agreement;
- 10.7.1.2 ensure that every planned leave of absence of the Delivery Partner's Personnel will be scheduled in such a way so as not to cause delays or disruptions to the Services; and
- 10.7.1.3 minimise the turnover of the Delivery Partner's Personnel.
- 10.7.2 The Delivery Partner will comply, and will procure that its Personnel comply, with the provisions of this Agreement, the FoodGuru Policies and such other practices, policies and procedures as may be reasonably required or prescribed by the Services Beneficiaries from time to time. The Delivery Partner acknowledges and agrees that it remains in all instances liable for any breaches thereof by its Personnel.

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- 10.7.3 The Delivery Partner shall provide FoodGuru with all information as may be reasonably requested regarding any Delivery Partner Personnel involved in the provision of the Services and shall cooperate in the investigation of any incidences.
- 10.7.4 The Delivery Partner acknowledges that it is an employer in its own right and shall be exclusively responsible for satisfying any claims for wages, salaries, leave pay, bonuses and other employee benefits, of all of Delivery Partner Personnel, and any other claims of Delivery Partner Personnel.
- 10.8 The Delivery Partner shall be liable for any criminal activity, delict, misconduct, failure to comply with any law, act, omission and/or wrongdoing on the part of a Personnel and the Supplier hereby indemnifies FoodGuru and its **Affiliates** and holds FoodGuru and its **Affiliates** harmless against any costs, liabilities, expenses or damages of whatever nature suffered or incurred by FoodGuru, and caused by the Delivery Partner and/or its Personnel.
- 10.9 Use of subcontractors by the Delivery Partner
- The Delivery Partner may employ subcontractors for the purposes of rendering the Services, subject to the following terms and conditions:
- 10.9.1 the subcontractors shall be suitably qualified and competent to render the Services;
- 10.9.2 The Delivery Partner shall enter into agreements with its subcontractors on terms substantively the same terms of this Agreement and as may be necessary for the Delivery Partner to fulfil its obligations under this Agreement;
- 10.9.3 The Delivery Partner shall remain responsible for the obligations, services and functions performed by subcontractors to the same extent as if such obligations, services and functions were performed by Delivery Partner Personnel and, for purposes of this Agreement, such work performed by subcontractors shall be deemed to be work performed by the Delivery Partner.
- 10.10 **Documentation.**
- 10.10.1 The Delivery Partner will provide all documentation required by FoodGuru (including but not limited to business license, identification, tax identification, information regarding VAT status and banking documentation) ("Required Documentation"). Delivery Partner is solely responsible for providing FoodGuru with, and maintaining, accurate bank account information.
- 10.10.2 The Delivery Partner will ensure that it timeously notifies FoodGuru of any changes in the information or Documentation.
- 10.10.3 FoodGuru will not be held responsible for incorrect banking details being provided by the Delivery Partner which may lead to monies due to the Delivery Partner being transferred to the incorrect party. It is the Delivery Partner's responsibility to ensure the accuracy of the provided banking details.
- 10.11 **Restrictions.**
- 10.11.1 Delivery Partner will not, and will not allow its Personnel or any third party to:

- 10.11.1.1 use the Platform, or any other transactional, operational, performance or other data or information that is related to the Service or the delivery of Meals to Customers through the Platform to compete with FoodGuru, its Affiliates or the FoodGuru Services.
- 10.11.1.2 reverse engineer or attempt to discover any source code or underlying ideas or algorithms used to provide the Platform (except to the extent that Applicable Law prohibits reverse engineering restrictions); or
- 10.11.1.3 provide, lease, lend, disclose, or otherwise use or allow others to use, in each case, for the direct benefit of any third party, the FoodGuru Platform (except as otherwise authorized by FoodGuru).

## 10.12 Alcohol

- 10.12.1 To the extent permitted under Applicable Laws and provided that Merchant has a valid alcohol license, Merchant may use the FoodGuru App to sell alcohol to a Consumer, and the Delivery Partner shall deliver such orders subject to the additional terms set forth herein.
- 10.12.2 The Delivery Partner personnel who will deliver alcohol will only deliver alcohol to the Consumer who placed the Order and subject to verification that the Consumer is above the legal age with reference to the Consumer's valid original identity document, passport or driver's license.

## 10.13 Tax on Earning from Delivery Charges

- 10.13.1 The Delivery Partner is responsible for ensuring the accuracy of its own tax filings and for payment of all outstanding amounts on its own behalf to the South African Revenue Services.

## 11. Ratings.

- 11.1 Delivery Partner acknowledges and agrees that, after delivery of a Meal, a Merchant and/or Consumer may, on own initiative or in response to being prompted by the Platform, provide a rating of the Service and, at such Merchant or Consumer's option, to provide comments or feedback related to the Merchant or Consumer's experience with Delivery Partner. FoodGuru reserves the right to use, share, and display Feedback in any manner in connection with the business of FoodGuru without attribution to or approval of Delivery Partner. FoodGuru reserves the right to edit or remove comments in the event that such comments include obscenities or other objectionable content, include an individual's name or other Personal Data, violate any privacy laws and regulations or other Applicable Laws, or violate FoodGuru's content policies.

## 12. Reporting.

- 12.1 FoodGuru will provide Delivery Partner with information regarding the number of Service trips conducted by Delivery Partner. FoodGuru will also provide information to Delivery Partner regarding any refunds given to Merchants by FoodGuru on Delivery Partner's behalf, including the date of the transaction, the amount refunded, the reason for the refund and any other information FoodGuru is permitted to provide under applicable privacy laws and regulations.

## 13. Fees

- 13.1 In consideration for the use of the Platform, FoodGuru may charge Delivery Partner a Fee as specifically set forth in the Pricing Page.
- 13.2 All Fees under this Agreement will be paid in South African Rand. FoodGuru will deduct any Fees from the payment FoodGuru collects from Merchants on Delivery Partner's behalf, as detailed below.

**14. Tax on Fees**

- 14.1 All Fees payable pursuant to this Agreement shall be deemed to be exclusive of Value Added Tax (VAT).
- 14.2 If VAT is chargeable on any Fees, the Delivery Partner shall pay to FoodGuru an amount equal to the amount of the VAT in addition to and at the same time as payment of the Fees.

**15. Delivery Charge**

- 15.1 In line with the broader value proposition for the benefit of all parties, the Delivery Charges applicable to the Services offered by the Delivery Partner via the Platform are specified by FoodGuru set forth in the Pricing Page and will be amended or adjusted from time to time.
- 15.2 The Delivery Charge will exclude VAT.
- 15.3 Delivery Partner is solely responsible for the remittance of all applicable VAT, transaction taxes, and invoicing in connection with the delivery of its Services to Merchants.

**16. Delivery Radius Modification**

- 16.1 FoodGuru, at its discretion, reserves the right to modify Delivery Partner's delivery radius for reasons including, without limitation, to prevent or otherwise limited unfulfilled orders.

**17. Item Restrictions**

- 17.1 The following restricted items may not be sold, marketed or transported under a transaction facilitated via the Platform: people or animals of any size, illegal items, fragile items, dangerous items (including but not limited to weapons, explosives, flammables, etc.), stolen goods, or any items that Delivery Partner does not have permission to transfer. FoodGuru reserves the right to prohibit or restrict transfer of additional items at its sole discretion.

**18. Trademarks.**

- 18.1 Subject to this Agreement, each party hereby grants to the other party (and, in the case of FoodGuru, to its Affiliates) a limited, non-exclusive and non-transferable license during the Term to use such party's respective Marks, on a royalty free basis, in connection with the activities related to this Agreement. This license includes the right to reproduce, adapt and represent (in connection with all or part of the activities related to this Agreement) the Marks for the entire world, using all means and media, and without any restriction of any kind as regards exploitation methods, number of prints, dissemination or utilisation. All uses of a party's Marks (owned or licensed, as applicable) by the other party will be in the form and format specified or approved by the party that owns (or is a licensee of, as applicable) such Marks. Other than as specifically set forth in this Agreement, neither party will use the other party's Marks without the prior, express, written consent of the other party. Any use or display of Delivery Partner's Marks by FoodGuru in connection with making Items available through the Platform in the ordinary course of business will not require any such prior, express, written consent. All goodwill related to the use of a party's Marks by the other party will inure to the benefit of the party that owns (or is a licensee of, as applicable) such Marks. Except as expressly set forth herein, neither party will be deemed to grant the other party any license or rights under any intellectual property or other proprietary rights. All rights not granted are expressly reserved. Delivery Partner agrees that it will not, and will ensure that Delivery Partner Delivery Partners do not, try to register or otherwise use and/or claim ownership in any of the FoodGuru Marks, alone or in combination with other letters, punctuation,

words, symbols and/or designs, or in any confusingly similar mark, name or title, for any goods and services.

## 19. Confidential Information; Personal Data; Feedback.

### 19.1 Confidentiality.

19.1.1 Each Recipient agrees that it will not disclose the Discloser's Confidential Information to any third parties other than Representatives or use it in any way other than as necessary to perform this Agreement. Each Recipient will ensure that Confidential Information will only be made available to those of its Representatives who have a need to know such Confidential Information and who, prior to any disclosure of such Confidential Information, are bound by written obligations of confidentiality with respect to such Confidential Information that are no less stringent than those set forth in this Agreement. Recipient will cause its Representatives to comply with the terms of this Agreement and will be solely responsible for any breach of this Agreement by any of its Representatives. Each Recipient will not, and will not authorize others to, remove or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of the Discloser's Confidential Information. The foregoing prohibition on use and disclosure of Confidential Information will not apply to the extent:

19.1.1.1 the Discloser has authorized such use or disclosure (and Delivery Partner hereby authorizes FoodGuru to disclose the terms of this Agreement to Delivery Partner's Personnel in connection with executing their duties or contracts that reference this Agreement with such Personnel) and

19.1.1.2 a Recipient is required to disclose certain Confidential Information of the Discloser as a matter of law or by order of a court, provided that the Recipient gives the Discloser prior written notice of such obligation to disclose (to the extent legally permissible) and reasonably assist in obtaining a protective order prior to making such disclosure. Upon expiration or termination of this Agreement and as requested by Discloser, each Recipient will deliver to the Discloser (or destroy at the Discloser's election) any and all materials or documents containing the Discloser's Confidential Information, together with all copies thereof in whatever form. Neither party makes any representation or warranty that Confidential Information is complete or accurate; all Confidential Information is provided "as is".

### 19.2 Privacy

19.2.1 The Delivery Partner acknowledges and agrees that once it has accepted a request for a Service, the Platform may provide certain information about Delivery Partner and/or its Personnel to the Consumer and/or Merchant, including name and contact number.

19.2.2 The Delivery Partner agrees to use Personal Data provided to Delivery Partner by FoodGuru solely for the purpose of providing Items to Customers under this Agreement. Delivery Partner agrees to use Personal Data provided to Delivery Partner by FoodGuru solely by using the Platform provided by FoodGuru and shall not copy, store, retain, remove from the Platform or otherwise process the Personal Data.

### 19.3 Delivery Partner Data

19.3.1 The Delivery Partner acknowledges that FoodGuru may use aggregate, anonymized data related to Delivery Partner's transactions in connection with the FoodGuru Services ("Delivery Partner Data"). If Delivery Partner allows a third party to provide technology services to Delivery Partner in connection with Delivery Partner's obligations under this Agreement, then FoodGuru may share Delivery Partner Data with such third party to enable the provision of FoodGuru Services to Delivery Partner.

#### 19.4 Third Party Disclosure

19.4.1 The Delivery Partner acknowledges that FoodGuru may share Delivery Partner contact information (including name, address, email, and phone number), but not limited to, with third parties necessary to Delivery Partner's onboarding on the Platform, and payment processors.

#### 19.5 Passwords

19.5.1 The Delivery Partner is responsible for maintaining the integrity of information related to Delivery Partner and its Personnel's access and use of the Platform, including any password, login or key information. Delivery Partner represents and warrants that neither the Delivery Partner nor its Personnel will share such information with any third party.

#### 19.6 Data Identification Restriction

19.6.1 Without limiting any other provision of this Agreement, including any provision in this clause, Delivery Partner will not merge any of the data collected or otherwise obtained in connection with this Agreement, including, without limitation, any Personal Data, with other data collected from any source or otherwise use any of the data collected or otherwise obtained in connection with this Agreement, including, without limitation, any Personal Data, for the purpose of re-identification, targeted marketing, analytics or any other similar purpose.

#### 19.7 Feedback

19.7.1 The Delivery Partner may, but is not obligated to, provide or otherwise make available to FoodGuru certain Feedback. However, to the extent that Delivery Partner provides or otherwise makes available Feedback to FoodGuru, Delivery Partner hereby grants to FoodGuru a perpetual, irrevocable, worldwide, royalty free, fully sublicensable right to use, reproduce, adapt, represent and otherwise exploit such Feedback, during the Term, using all means and media, and without any restriction of any kind with regard to exploitation methods, number of prints, dissemination or utilisation.

### 20. Verification and audit rights

20.1 FoodGuru, its auditors and professional advisors shall, during business hours and with 24 hours' prior written notice, have access to the Delivery Partner's premises, and on request to such documentation as they may reasonably request for purposes of performing inspections and audits relating to the Services, including without limitation those required to:

20.1.1 investigate any incident which may give rise to a Brand Matter;

20.1.2 verify the security and integrity of data;

20.1.3 assess the Delivery Partner's performance of the Services, including the Delivery Partner's practice, procedures, systems and applications;

20.1.4 verify the Delivery Partner's compliance in relation to POPI matters under this Agreement;

20.1.5 establish whether the Delivery Partner complies with the FoodGuru Policies; and

20.1.6 verify the Delivery Partner's compliance with Applicable Laws.

20.2 FoodGuru shall use reasonable commercial endeavours to conduct such audits and inspections in a manner which shall not disrupt the provision of the Services.

20.3 The Delivery Partner shall, and shall procure that its subcontractors shall:

20.3.1 cooperate with, and provide reasonable assistance in respect of such audit procedures;

20.3.2 respond without delay to any matters raised pursuant to any audit or inspection;

20.3.3 retain records in accordance with the procedures and standards required by FoodGuru from time to time.



- 20.4 In conducting any audit or inspection, FoodGuru shall comply with any confidentiality undertakings reasonably requested by the Delivery Partner.
- 20.5 Following an audit or inspection:
- 20.5.1 the Parties shall meet to discuss the results thereof;
- 20.5.2 the Delivery Partner shall provide such further information as may be required by the Parties in relation to the subject matter of the audit or inspection; and
- 20.5.3 the Parties shall in good faith discuss the manner in which to address any adverse findings or reports resulting from such audit or inspection, and the Delivery Partner shall take all steps necessary without delay to implement any procedures so agreed between them.

## 21. Indemnification

- 21.1 Each party (the "Indemnifying Party") will indemnify, defend and hold harmless the other party, its affiliates and their respective directors, officers, employees and agents (the "Indemnified Party") from and against any and all Losses with respect to any third party claim arising out of or related to:
- 21.1.1 the negligence or wilful misconduct of the Indemnifying Party or its employees or agents (including Personnel in Delivery Partner's case) in their performance of this Agreement;
- 21.1.2 any claims that, if true, would be a breach of any of the Indemnifying Party's (including Personnel in Delivery Partner's case) representations, warranties or covenants in this Agreement; and
- 21.1.3 any claims that the Indemnifying Party's Marks infringe a third party's intellectual property rights, as long as such Marks have been used in the manner approved by the Indemnifying Party.
- 21.2 The Delivery Partner will indemnify, defend and hold harmless the FoodGuru Indemnified Parties from and against any and all Losses with respect to any third-party claim arising out of or related to:
- 21.2.1 The Delivery Partner's violation or alleged violation of Applicable Law including any applicable retail food or other health and safety code, rule or regulation,
- 21.2.2 The Delivery Partner's failure to determine the applicable VAT and other fees charged;
- 21.2.3 The Delivery Partner's failure to apply correct VAT rates, including those rates adjusted by FoodGuru on Delivery Partner's behalf;
- 21.2.4 VAT, other fees, penalties, interest and other costs related to Delivery Partner's obligations;
- 21.2.5 Delivery Partner copying, storing, retaining, removing from the Platform or otherwise processing the Personal Data, except as expressly permitted under this Agreement.
- 21.3 Each Indemnified Party will provide prompt notice to the Indemnifying Party of any potential claim subject to indemnification hereunder. The Indemnifying Party will assume the defence of the claim through counsel designated by it and reasonably acceptable to the Indemnified Party. The Indemnifying Party will not settle or compromise any claim, or consent to the entry of any judgment, without written consent of the Indemnified Party, which will not be unreasonably withheld. The Indemnified Party will reasonably cooperate with the Indemnifying Party in the defence of a claim, at Indemnifying Party's expense.

## 22. Limitation of Liability

- 22.1 In no event will FoodGuru, its Affiliates or their licensors, service providers, employees, agents, officers or directors be liable for damages of any kind, arising out of or in connection with the use,

or inability to use, the Platform, any websites linked to it, any content on the Platform or such other websites or any services or items obtained through the Platform or such other websites, including any direct, indirect, special, incidental, consequential or punitive damages, including but not limited to, personal injury, pain and suffering, emotional distress, loss of revenue, loss of profits, loss of business or anticipated savings, loss of use, loss of goodwill, loss of data, and whether caused by delict (including negligence), breach of contract or otherwise, even if foreseeable.

22.2 This clause applies only to the maximum extent permitted by Applicable Law.

## 23. Insurance

Without limiting the Delivery Partner's obligations or liability under this Agreement, for the duration of the Term and for a period of three (3) years after the date of termination, The Delivery Partner must have in place, and maintain, adequate insurance with a reputable insurance company (including public and professional indemnity insurance) in accordance with Best Industry Practice. Such insurance must include and extend to any liability, indemnification obligations and claims which may arise pursuant to this Agreement.

## 24. Dispute resolution

### 24.1 Separate, divisible agreement

This clause 24 is a separate, divisible agreement from the rest of this Agreement and shall:

24.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), Illegality, Immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause 24. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause 24;

24.1.2 remain in effect even if the Agreement terminates or is cancelled.

### 24.2 Disputes subject to mediation and arbitration

Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

24.2.1 the existence of the Agreement apart from this clause 24;

24.2.2 the interpretation and effect of the Agreement;

24.2.3 the Parties' respective rights or obligations under the Agreement;

24.2.4 the rectification of the Agreement;

24.2.5 the breach, termination or cancellation of the Agreement or any matter arising out of the breach, termination or cancellation;

24.2.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the Agreement apart from this clause 24 is valid and enforceable,

shall be referred to mediation as set out in clause 24.

### 24.3 Mediation

If the Parties are unable to agree on a mediator or to resolve any dispute by way of mediation within fourteen (14) days of any Party in writing requesting that the dispute be resolved by mediation, then the dispute shall be submitted to and decided by arbitration as set out in this clause 24.

#### 24.4 Appointment of arbitrator

24.4.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"). If agreement is not reached within ten (10) Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.

24.4.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within seven (7) days, submit written comments on the request to the addressee of the request with a copy to the first Party.

#### 24.5 Venue and period for completion of arbitration

The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within ninety (90) days after notice requiring the claim to be referred to arbitration is given.

#### 24.6 Arbitration Act - rules

The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

#### 24.7 Application to court for urgent Interim relief

Nothing contained in this clause 24 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

### 25. **Miscellaneous Matters**

#### 25.1 Entire agreement

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

#### 25.2 No stipulation for the benefit of a third person

Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

#### 25.3 No representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

#### 25.4 Variation, cancellation and waiver

25.4.1 Subject to clause 2.2 no agreement varying, adding to, deleting from or cancelling this Agreement and no waiver of any right under this Agreement shall be effective unless reduced to writing and signed by or on behalf of the Parties.

#### 25.5 Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

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## 25.6 Waiver

25.6.1 Failure or neglect by a Party, at any time, to enforce any of the provisions of this Agreement shall not, in any manner, be construed as a waiver of any of that Party's rights in terms of this Agreement.

25.6.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

## 25.7 Cession and delegation

25.7.1 The Delivery Partner is not entitled to cede, delegate, assign, or in any other manner dispose of any of its rights or obligations in terms of this Agreement, without the prior written consent of FoodGuru.

25.7.2 FoodGuru shall be entitled, without the other Parties' prior written consent, to cede or assign any of its rights and obligations under this Agreement to any third party by written notice to the Parties.

## 25.8 Governing law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of South Africa.

## 25.9 Jurisdiction of South African courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg for any proceedings arising out of or in connection with this Agreement.

## 25.10 Conflict between the Agreement and Annexes

25.11 In the event of any irreconcilable conflict between the provisions of the main body of this Agreement and the provisions of the Annexes, the provisions of the Annexes shall prevail, and this Agreement shall be read and construed accordingly. In the event of any irreconcilable conflict between the provisions of the main body of this Agreement or the provisions of the Annexes, on the one hand, and a provision in any other terms that govern the use of the Platform or the delivery of the Service, on the other hand, the provisions of the latter shall prevail, and this Agreement shall be read and construed accordingly. Severability

All provisions of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this Agreement which is or becomes unenforceable in any jurisdiction in which it applies or in which its enforcement is sought, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

## 25.12 Successors-in-title

Without prejudice to any other provision of this Agreement, any successor-in-title, including any Business Rescue practitioner, curator, executor, heir, liquidator or trustee of a Party will be bound by this Agreement.

## 25.13 Independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

25.13.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

25.13.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

25.14 Good faith

The Parties shall at all times act in good faith towards each other and shall not bring the other Party into disrepute.

25.15 Co-operation

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

25.16 Relationship between the Parties.

The parties expressly agree that: (a) this Agreement is not an employment agreement, nor does it create an employment or worker relationship, between FoodGuru (and/or its Affiliates) and Delivery Partner or FoodGuru (and/or its Affiliates) and any Delivery Partners; and (b) except as specified in this Agreement, no joint venture, partnership, or agency relationship exists between FoodGuru (and/or FoodGuru's Affiliates) and Delivery Partner or FoodGuru (and/or FoodGuru's Affiliates) and any Delivery Partners. No party shall have the right to enter into contracts on behalf of, to legally bind, to incur debt on behalf of, or to otherwise incur any liability or obligation on behalf of, the other party hereto, in the absence of a separate writing, executed by an authorized representative of the other party. Each party shall be solely responsible for its employees and contractors used in connection with this Agreement. Except as otherwise expressly provided herein with respect to FoodGuru acting as the limited payment collection agent solely for the purpose of collecting payment from Customers on behalf of Delivery Partner, the relationship between the parties under this Agreement is solely that of independent contractors.

25.17 Payment Processing Errors

FoodGuru reserves the right, in its sole discretion, to seek reimbursement from Delivery Partner if FoodGuru discovers payment processing errors. FoodGuru may deduct from Delivery Partner's Delivery Charges, debit Delivery Partner's payment method on file, or seek reimbursement from Delivery Partner by any other lawful means to correct any errors. Delivery Partner authorizes FoodGuru to use any or all of the above methods to seek reimbursement.

25.18 Notice

25.18.1 Any legal notice other than a change of terms in accordance with clause 2.2, will be sent to the address specified on the Platform.

25.18.2 The notice shall be deemed to have been duly given:

25.18.2.1 Five (5) Business Days after posting, if posted by registered post (airmail, if available) to the Party's relevant address;

25.18.2.2 on delivery, if delivered to the Party's physical address in terms of clause 25.18.1 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);

25.18.2.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours);

unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

- 25.18.3 A Party may change that Party's address or fax number or e-mail address for this purpose by updating on the Platform.
- 25.18.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address.

**PRICING PAGE**

As at 1 November 2020

- i. **Delivery Fee:** N/A
- ii. **Delivery Charge:**

Distance (radius)	Charge (VAT excl)
0 – 5km	R 25,00
5.1 – 7km	R 30,00
7.1 – 10km	R 35,00
10.1 – 15km	R 45,00

Distance is measured based on geolocation radius between the collection address of the Merchant and the delivery address specified by the Consumer, irrespective of distance travelled.