



## Merchant Agreement – E-Foods

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### **DEFINITIONS**

The following terms have the respective meanings given to them below:

"Activation Fee" means a Fee paid by Merchant to ECOMS in consideration of ECOMS work to activate Merchant on the ECOMS App

"Agreement" means the Order Form, the Definitions and the Supplemental Terms.

"Aggregate Data" means aggregate, anonymized data related to Merchant's transactions in connection with the ECOMS Services.

"Aggregator Delivery Charge" means a delivery charge collected by ECOMS on behalf of Merchant from Customers for Items transferred via the Aggregator Method.

"Aggregator Delivery Partner" means an employee, contractor, worker or agent of Merchant who provides delivery services on a Merchant's behalf, arranged independently of ECOMS.

"Aggregator Item" means an Item transferred by Merchant to Customer via the Aggregator Method.

"Aggregator Item Payment" means the Retail Price of the Aggregator Item(s) sold by Merchant via the ECOMS App (including any VAT or other sales tax).

"Aggregator Item Revenue" means the total (i) Aggregator Item Payment earned by Merchant (other than with respect to Aggregator Cash Orders); (ii) Aggregator Delivery Charge collected from Customers on Merchant's behalf (other than Aggregator Delivery Charges directly collected by Aggregator Delivery Partners with respect to Aggregator Cash Orders) (iii) gratuity paid by a Customer in respect of delivery services, if applicable, (iv) less (1) the Aggregator Service Fee and



(2) any refunds given by ECOMS on behalf of Merchant to Customers.

"Aggregator Food" means any combination of food transferred by Merchant to Customer via the Aggregator Method. "Aggregator Food" is a subset of "Aggregator Item."

"Aggregator Method" means a Method whereby Merchant may use Aggregator Delivery Partners to fulfill delivery of Items requested by Customers.

"Applicable Law" shall mean all applicable laws, statutes, regulations and codes from time to time in force (including without limitation all applicable data protection and privacy laws).

"Brand Matter" means an event that, in ECOMS 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.

"Confidential Information" 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, ECOMS Data, Customer's information, package information, and the transaction volume, marketing and business plans, business, financial, technical, operational) and/or that is related to the sale of Merchant's Items to Customers through the ECOMS App 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.

"Community Guidelines" means the applicable Community Guidelines, as published by ECOMS from time to time.

"Criteria" means any quality, portion, size, ingredient, allergen, origin or nutritional information or rules and regulations that govern the adequacy of Items.

"Customer" means a customer of the Merchant.

"Customer Feedback" means information provided by a Customer in response to prompting by the ECOMS App, including rating of Item(s) and comments or feedback related to the Customer's experience with Merchant, the relevant Item(s) on the ECOMS App, and either the delivery services (provided by either a Marketplace Delivery Partner or Aggregator Delivery Partner) or the Non-Delivery Method experience.

"Damage Fee" means a Fee paid by Merchant to ECOMS for the loss or theft of a Device, the failure to timely return a Device, or any damage to a Device outside of normal wear and tear.

"Delivery Partner" means a Marketplace Delivery Partner or an Aggregator Delivery Partner. References to "Delivery Partners" should be read to include both Marketplace Delivery Partners and Aggregator Delivery Partners.

"Device" means a tablet or other portable device made available by ECOMS and/or its Affiliates



to Merchant to access and use the ECOMS Services.

"Dispute" 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.

"Effective Date" means the date specified in the Order Form.

"Fees" means any applicable fees charged by ECOMS to Merchant, including the Service Fee, the Activation Fee, and the Damage Fee. "Feedback" means information provided by Merchant to ECOMS including feedback, suggestions, comments, ideas, or other concepts relating to ECOMS products and services.

"Force Majeure Event" means occurrences beyond the control of the affected party including, but not limited to, decrees or restraints of Government, acts of God, strikes, work stoppage or other labor disturbances, war or sabotage.

"Indemnified Party" means the party receiving indemnification from the Indemnifying Party.

"Indemnifying Party" means the party providing indemnification to the Indemnified Party.

"Initial Term" means a period which will commence on the Effective Date and, unless earlier terminated as provided in the Agreement, will continue for a period of one (1) year from the Effective Date.

"Invoice Details" means information required for the accurate calculation and preparation of invoices by ECOMS. "Item" means food, beverage, or any other product made available by Merchant to Customer via the ECOMS App.

"Item Revenue" means the Retail Price (plus VAT and any other fees collected on Merchant's behalf) less the retained Fees (including the Service Fee, Activation Fee, and/or Damage Fee, where applicable), the Delivery Fee for delivery services provided by a Marketplace Delivery Partner (where applicable), and any refunds given to the Customers on behalf of Merchant.

"Losses" means any and all claims, damages, liabilities, causes of action, and losses (including reasonable attorney's fees).

"Marketplace Delivery Charge" means a delivery charge collected by ECOMS on behalf of Merchant from Customers for Items transferred via the Marketplace Method.

"Marketplace Delivery Fee" means an amount paid by Merchant to a Marketplace Delivery Partner for delivery services, which may be comprised of multiple components including, but not limited to: pick up fee, drop off fee, time spent, distance traveled, as well as other promotions and incentives.

"Marketplace Delivery Partner" means an independent contractor who intends to provide on demand delivery services on a Merchant's behalf using the ECOMS App. Marketplace Delivery Partners are not employees or workers of ECOMS or any of its Affiliates.



"Marketplace Discount" means a discount of the Marketplace Service Fee, provided by ECOMS to Merchant, equal to the difference between the Marketplace Delivery Fee (excluding any VAT or other sales tax) less the Marketplace Delivery Charge (excluding any VAT or other sales tax), in the event the Marketplace Delivery Fee exceeds the Marketplace Delivery Charge.

"Marketplace Item" means an Item transferred by Merchant to Customer via the Marketplace Method.

"Marketplace Item Payment" means the Retail Price of the Item(s) sold by Merchant via the ECOMS App (including any VAT or other sales tax).

"Marketplace Item Revenue" means the total Marketplace Item Payment (including any VAT or other sales tax collected on Merchant's behalf) earned by Merchant, together with the Delivery Charge collected from Customers on behalf of Merchant, less (1) the Marketplace Delivery Fee, (2) the Marketplace Service Fee (modified to reflect the Marketplace Discount, if any) and (3) any refunds given on behalf of Merchant to Customers

"Marketplace Food" means any combination of food transferred by Merchant to Customer via the Marketplace Method. "Marketplace Food" is a subset of "Marketplace Item."

"Marketplace Method" means a Method whereby Merchant may access and request on-demand delivery services provided by Marketplace Delivery Partners to fulfill delivery of Items requested by Customers.

"Marks" means the trademarks, service marks, trade names, copyrights, logos, slogans and other identifying symbols and indicia of the applicable party or its Affiliates.

"Food" means any combination of meals, beverages, meat, fish, fruit & vegetables, frozen foods, baked goods, bakery foods, pet foods, honey & sweeteners, pastries and groceries, transferred by Merchant to Customer via the ECOMS App. "Meal" is a subset of "Item," and any terms and conditions related to "Items" also apply to "Meals." "Marketplace Meal," "Aggregator Meal," and "Non-Delivery Meal" are subsets of "Meal."

"Food Voucher Order" means an order where ECOMS allows a Customer to pay for a given Meal provided by Merchant, and some or all associated fees and charges resulting from that transaction, with a meal voucher.

"Merchant" means the party who entered into the Agreement with ECOMS.

"Merchant Marketing Materials" means videos, still images or other materials provided by Merchant to ECOMS for use in connection with the display of Merchant's Items on the ECOMS App.

"Method" means a method by which Items requested by a Customer through the ECOMS App may be transferred from Merchant to such Customer.

"Non-Delivery Item" means an Item transferred by Merchant to Customer via the Non-Delivery Method.



"Non-Delivery Item Payment" means the Retail Price of the Item(s) sold by Merchant via the ECOMS App (including any VAT or other sales tax).

"Non-Delivery Method" means a Method whereby Merchant may allow Customers to collect Items requested from a specified location without the involvement of a Delivery Partner.

"Notice Period" means a period of reasonable notice, as allowed by Applicable Law, after which amended Supplemental Terms will take effect.

"Offer" means a short-term promotional offer that is created and fulfilled by Merchant that is intended to stimulate Customer demand through the ECOMS App (e.g., discounts).

"Offer Costs" means the amount spent by Merchant on an Offer.

"Offer Materials" means, with respect to an Offer, all suitable material to be provided by Merchant including artwork of Merchant's trademarks and trade names.

"Offer Tools" means proprietary, automated tools provided by ECOMS to Merchant which allow Merchant to create and provide Offers to Customers.

"Personal Data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"Renewal Term" means a one (1) year period where the Agreement automatically renews.

"Representatives" means with respect to a party, its or its Affiliates' respective officers, directors, employees or agents.

"Required Documentation" means all documentation required by ECOMS from Merchant, including but not limited to business license, identification, tax identification, information regarding VAT status, banking documentation, and all Invoice Details.

"Retail Price" means the original listed price determined by Merchant for each Item to be made available for sale via the ECOMS App prior to any discounts or promotions.

"Service Fee" means a Fee paid by Merchant to ECOMS in consideration for the use of the ECOMS Services. Merchant's Service Fee for each specific Method is specifically set forth in the Order Form.

"Substandard Item" means any Item that fails to meet the Criteria or standards required by Applicable Laws.

"Supplemental Terms" means the Definitions, the General Supplemental Terms, the Specific Supplemental Terms and any other terms applicable to the use of the ECOMS Services, ECOMS



Tools, and/or ECOMS E-Foods App and shared with the Merchant.

"Term" means the Initial Term together with all Renewal Terms.

"Territory" means South Africa.

"ECOMS & E-Foods" means Electronic Community Service (PTY) Ltd., a company registered under the laws South Africa (registration number: 2014 / 164595 / 07) whose registered address is 60 Van Rensburg Road, Goodwood, Cape Town, 7460, South Africa.

"ECOMS Competitor" means any person engaged in the lead-generation, demand prediction, payment processing or other related services for the delivery of food and beverages who, in the reasonable determination of ECOMS, is deemed to be a competitor of the ECOMS App.

"ECOMS Data" means all data related to the access and use of the ECOMS Services and ECOMS Tools, including but not limited to all Personal Data related to Merchant and Customers.

"ECOMS App" means a website, application or other technology interface made available by ECOMS and/or its Affiliates to Customers, on a royalty-free basis, to purchase Items and, if applicable, delivery services from Merchant.

"ECOMS Marketing Materials" means video, still images and/or other materials created by ECOMS (or a party designated by ECOMS acting on ECOMS behalf) for marketing and other efforts related to the ECOMS App.

"ECOMS Services" means certain services made available by ECOMS and/or its Affiliates to Merchant to facilitate the marketing, sale and provision Items by Merchant to Customers, including on-demand lead generation, payment processing, marketing, operational and other support.

"ECOMS Tools" means a website, application and/or other technology interface, as well as a Device, made available by ECOMS and/or its Affiliates to Merchant, on a royalty-free basis, in connection with the ECOMS Services.

"VAT" means any VAT, GST and/or similar sales taxes.

"Virtual Restaurant" means an additional menu that is made available from Merchant's premises under a different trading name.

"Virtual Restaurant Data" means information provided by ECOMS from time to time and related to cuisine demand, consumer preferences and restaurant case studies to help inform Merchant's Virtual Restaurant menu choices.

## **GENERAL SUPPLEMENTAL TERMS**

ECOMS may amend the Supplemental Terms from time to time, as allowed by Applicable Law, upon giving a reasonable Notice Period and by ECOMS posting such amended Supplemental Terms on this website or ECOMS otherwise making such amended Supplemental Terms available to



Merchant. 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 ECOMS Services and/or ECOMS Tools or any other change which is effectively favourable to Merchant and does not reduce the scope of its rights or increase its responsibilities. Merchant's continued access to or use of the ECOMS Services and/or ECOMS Tools after such amended Supplemental Terms become effective constitutes Merchant's consent to be bound by the amended Supplemental Terms. If Merchant objects to any amended Supplemental Term, Merchant may terminate this Agreement in accordance with clause IV of the Order Form.

**1. ECOMS Services.**

a. **General.** ECOMS will make the applicable ECOMS Services available to Merchant including, but not limited to, on-demand lead generation, payment processing, marketing, operational and other support. Neither ECOMS nor its Affiliates provide Merchant or its Customers with delivery services. The ECOMS Services are solely for use by Merchant, subject to the terms of this Agreement.

**b. Appointment of Limited Payment Collection Agent.**

- i. Merchant hereby appoints ECOMS as Merchant's limited payment collection agent solely for the purpose of: (A) accepting payment of the Retail Price of Items (plus any applicable VAT and other fees collected on Merchant's behalf) sold by Merchant via the ECOMS App, via the payment processing functionality facilitated by the ECOMS Tools, and  
(B) transferring to Merchant the Retail Price (plus VAT and any other fees collected on Merchant's behalf) less the retained Fees (including the Service Fee, Activation Fee, and/or Damage Fee, where applicable), the Delivery Fee for delivery services provided by a Marketplace Delivery Partner (where applicable), and any refunds given to the Customers on behalf of Merchant ("Item Revenue");
- ii. Merchant agrees that payment collected by ECOMS on Merchant's behalf will be considered the same as payment made directly to Merchant.
- iii. Merchant further authorizes ECOMS to collect gratuities (if any) that are paid on the ECOMS App voluntarily by Customers to Delivery Partners acting on behalf of Merchant. For Marketplace Delivery Partners, Merchant agrees that ECOMS may remit the full value of such gratuities directly to Marketplace Delivery Partners on behalf of the Merchant. For Aggregator Delivery Partners, ECOMS shall remit the full value of any gratuities to Merchant. It is the sole responsibility of Merchant to make sure that any applicable gratuities are properly transferred to Aggregator Delivery Partners.
- iv. If reasonable, ECOMS may adjust the transfer of Item Revenue collected on Merchant's behalf for reasons including, but not limited to, failure to fulfil the provision of an Item as ordered. Merchant may dispute any such adjustments through the ECOMS Tools within fourteen (14) calendar days of Merchant being notified of such adjustment. ECOMS reserves the right to, and Merchant authorizes ECOMS to, collect the amount of such adjustments via a deduction from the Item Revenue collected on Merchant's behalf, or by debiting Merchant's payment method on record, or otherwise seeking reimbursement from Merchant.



- v. In exceptional circumstances only (as determined by ECOMS in its sole discretion, acting reasonably), ECOMS reserves the right to temporarily or permanently cancel or suspend a payment to Merchant. 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 Merchant, the actual or expected initiation of insolvency or bankruptcy proceedings against Merchant and any failure by Merchant to provide the Required Documentation in accordance with clause 1(j) of these General Supplemental Terms.
  - vi. ECOMS may, from time to time, request information from Merchant to confirm Merchant's identity as may be necessary under any applicable compliance obligations before transferring any payments to Merchant and may refuse to process payments owed to Merchant in accordance with clause 1(b)(vi) of these General Supplemental Terms if there exists a legal or regulatory risk or potential breach of law or regulation associated with such transfer to Merchant.
  - vii. ECOMS may engage any of its Affiliates to perform the activity of limited payment collection agent. Such engagement may be subject to additional terms.
- c. **Food Vouchers.** ECOMS and/or its Affiliates may allow Customers to pay for a given Meal provided by Merchant and some or all associated fees and charges resulting from that transaction with a meal voucher (a "Meal Voucher Order"). In certain circumstances, ECOMS will not act as limited payment collection agent for Meal Voucher Orders and Merchant will receive direct settlement of Item Revenue from a third party meal voucher issuer.
- d. **ECOMS Tools.** ECOMS may make available certain ECOMS Tools to Merchant, and Merchant may access and use those ECOMS Tools solely in connection with Merchant's use of the ECOMS Services. The ECOMS Tools, including all intellectual property rights therein, are and shall remain the property of ECOMS, its Affiliates or their respective licensors. Neither this Agreement nor Merchant's use of the ECOMS Tools or ECOMS Data conveys or grants to Merchant any rights in or related to the ECOMS Tools or ECOMS Data, except for the limited license granted above.
- e. **ECOMS App.** Merchant acknowledges and agrees that once it has accepted a request for an order of Items, the ECOMS App may provide certain information about Merchant to the Customer, including Merchant's name and contact number. As between Merchant and ECOMS, ECOMS will retain sole and absolute control over the ECOMS App (and all elements of the user experience and user interface relating to the ECOMS App), including, without limitation, with respect to:
- i. the personalisation of the ECOMS App for Customers;
  - ii. the prioritisation and display of options available to Customers;
  - iii. the search functionality and results provided to Customers; and





- iv. adding, removing or otherwise modifying any feature or functionality made available through the ECOMS App to optimize reliability or efficiency on the ECOMS App.
- f. **No Service Guarantee.** ECOMS and its Affiliates do not guarantee the availability or uptime of the ECOMS Tools or ECOMS App. Merchant acknowledges and agrees that the ECOMS Tools and ECOMS App may be unavailable at any time and for any reason (e.g., due to scheduled maintenance or network failure). Further, the ECOMS Tools and ECOMS App may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications, and ECOMS and its Affiliates are not responsible for any delays, delivery failures, or other damages, liabilities or losses resulting from such problems.
- g. **Disclaimer of Warranties.** This clause applies only to the maximum extent permitted by Applicable Law, and does not (and is not intended to) override any rights that Merchant has pursuant to Applicable Law. ECOMS and its Affiliates provide, and Merchant accepts, the ECOMS Tools and ECOMS App on an "as is" and "as available" basis. ECOMS and its Affiliates do not represent, warrant or guarantee that its access to or use of the ECOMS Tools or ECOMS App: (i) will be uninterrupted or error free; or (ii) will result in any requests for orders of Items (and delivery, if applicable). ECOMS and its Affiliates make no representations, warranties or guarantees as to the actions or inactions of Customers who may request or receive Items (and delivery services, if applicable), and ECOMS and its Affiliates do not screen or otherwise evaluate Customers. By using the ECOMS Tools, Merchant acknowledges and agrees that Merchant or a Delivery Partner may be introduced to a third party that may pose harm or risk to Merchant, Delivery Partners or other third parties. Merchant and their Aggregator Delivery Partners are advised to take reasonable precautions with respect to interactions with third parties encountered in connection with the use of the ECOMS Services and ECOMS Tools. ECOMS does not represent, warrant or guarantee the safety of any Items. Notwithstanding ECOMS appointment as limited payment collection agent of Merchant for the purpose of accepting payment from Customers on its behalf, ECOMS and its Affiliates expressly disclaim all liability for any act or omission of Merchant, any Aggregator Delivery Partners, any Customer or other third party.
- h. **Complaints.** In connection with the provision of ECOMS Services to Merchant, ECOMS, on behalf of Merchant, may respond to complaints by Customers about Items and/or delivery sold by Merchant via the ECOMS App.
- i. **Suspension of ECOMS Services.** ECOMS, at its sole discretion, reserves the right to temporarily or permanently suspend, in whole or in part, Merchant's access to the ECOMS Services and ECOMS Tools if:
  - i. Merchant fails to provide Required Documentation in a timely manner;
  - ii. Merchant's account is in arrears;
  - iii. A Brand Matter has occurred in accordance with clause V of the Order Form; or
  - iv. Merchant is, or ECOMS reasonably believe Merchant is, in breach of this Agreement.

## 2. **Merchant's Obligations.**

- a. **Availability of Items.** Merchant will make Items available for purchase through the ECOMS



App during its normal business hours.

- i. Merchant will prepare, handle and store all Items in accordance with Applicable Laws, which shall include, without limitation, all laws, rules and regulations governing time or temperature controls required for food hygiene and safety.
- ii. Merchant will determine any Criteria that apply to Items and Merchant is responsible for ensuring that the Items meet the applicable Criteria as displayed to Customers in the ECOMS App. ECOMS, at its sole discretion, reserves the right to remove from the ECOMS App any Item for sale by Merchant deemed unsuitable for sale on the ECOMS App.

b. **Item Inventory and Delivery Services.**

- i. Merchant acknowledges and agrees that neither ECOMS nor any Marketplace Delivery Partner takes title to any Item. Merchant remains responsible for the delivery of Items and shall maintain possession, control and care of the Items at all times in full compliance with Applicable Laws.
  - ii. Merchant shall remain responsible for complying with all health and safety laws and regulations applicable in relation to all Items, up to and including the time of delivery of the Items to a Customer. Merchant agrees that, for purposes of delivery of Items, Delivery Partners shall operate under cover of the Merchant's retail and health and safety licenses, registrations, authorizations and privileges and control.
  - iii. Merchant is responsible for costs related to reimbursement to Customers in the event any such Customer(s) request a refund for Substandard Items or otherwise unsatisfactory Item(s) (including, without limitation, any costs associated with retrieving any such Substandard Items or otherwise unsatisfactory Item(s), if applicable). ECOMS may deduct refunds from the Item Revenue transmitted to Merchant under this Agreement in accordance with ECOMS refund policy that will be published on its website from time to time (or as otherwise provided to Merchant), as updated from time to time, provided always that Merchant has received notification of such refund policy.
- c. **Documentation.** Merchant will provide all documentation required by ECOMS (including but not limited to business license, identification, tax identification, information regarding VAT status, banking documentation, and all Invoice Details) ("Required Documentation"). Merchant is solely responsible for providing ECOMS with, and maintaining, accurate bank account information.
- d. **Restrictions.** Merchant will not, and will not allow any third party to: (i) use the ECOMS Services, the ECOMS Tools, or any other transactional, operational, performance or other data or information that is related to the sale of the Items (and, if applicable, delivery) to Customers through the ECOMS App to compete with ECOMS, its Affiliates or the ECOMS Services;  
(ii) reverse engineer or attempt to discover any source code or underlying ideas or algorithms used to provide the ECOMS Services or ECOMS (except to the extent that Applicable Law



prohibits reverse engineering restrictions); or (iii) provide, lease, lend, disclose, or otherwise use or allow others to use, in each case, for the direct benefit of any third party, the ECOMS Services or ECOMS Tools (except as otherwise authorized by ECOMS).

- e. **Tax.** Merchant is responsible for ensuring the accuracy of its own tax filings.
3. **Ratings.** Merchant acknowledges and agrees that, after receiving Item(s), a Customer may be prompted by the ECOMS App to provide a rating of such Item(s) (and, if applicable, delivery) and, at such Customer's option, to provide comments or feedback related to the Customer's experience with Merchant, the relevant Item(s) on the ECOMS App, and either the delivery services (provided by either a Marketplace Delivery Partner or Aggregator Delivery Partner) or the Non-Delivery Method experience ("Customer Feedback"). ECOMS reserves the right to use, share, and display Customer Feedback in any manner in connection with the business of ECOMS without attribution to or approval of Merchant. ECOMS 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 ECOMS content policies.
4. **Reporting.** ECOMS will provide Merchant with information regarding the number of Items sold by Merchant to its Customers. ECOMS will also provide information to Merchant regarding any refunds given to its Customers by ECOMS on Merchant's behalf, including the date of the transaction, the Item(s) refunded, the reason for the refund and any other information ECOMS is permitted to provide under applicable privacy laws and regulations.
5. **Fees, Retail Price of Items and Taxes.**
  - a. **Fees and Taxes.**
    - i. **Fees.** In consideration for the use of the ECOMS Services, ECOMS will charge Merchant a "Service Fee" for each specific Method as specifically set forth in the Order Form.
    - ii. **Payment Terms.** All Fees under this Agreement will be paid in South African Rands. ECOMS will deduct any Fees from the payment ECOMS collects from Customer on Merchant's behalf, as detailed below.
    - iii. **Costs and Expenses.** Except as may be expressly set forth in this Agreement, each party will be responsible for its expenses and costs in connection with this Agreement.
    - iv. **Taxes on Fees.**
      1. All Fees payable pursuant to this Agreement shall be deemed to be exclusive of Value Added Tax (VAT). The term "VAT" includes any VAT, GST and/or similar sales taxes.
      2. If VAT is chargeable on any Fees, the Merchant shall pay to ECOMS an amount equal to the amount of the VAT in addition to and at the same time as payment of the Fees.
      3. Fees shall be paid free and clear of and without deduction for or on account of



withholding tax (if applicable). If Merchant is required to make such a deduction or withhold such tax, the sum payable by Merchant shall be increased to the extent necessary to ensure that ECOMS receives a sum net of any withholding or deduction equal to the sum which it would have received had no such deduction or withholding been made or required to be made.

b. **Retail Price of Items and Taxes.**

- i. Merchant is the "retailer" or "seller" of all Items (including delivery services related to such Items, if applicable).

Merchant is responsible for determining and setting the original listed price, prior to any discounts or promotions, for each Item to be made available for sale via the ECOMS App (the "Retail Price"). The Retail Price for each Item will include VAT, but Merchant is solely responsible for determining and setting all applicable VAT and identifying and informing ECOMS of the appropriate VAT amount for ECOMS to charge Customers on Merchant's behalf for Items available on the ECOMS. To the extent that applicable VAT rate is not determined by Merchant, Merchant expressly authorizes ECOMS to make such determination on its behalf and Merchant hereby acknowledges and agrees that ECOMS will have no liability for the accuracy of any such determination. Merchant expressly authorizes ECOMS, at Merchant's direction, to collect such VAT on Merchant's behalf.

- ii. Merchant is solely responsible for the remittance of all applicable VAT, sellers use, transaction privilege, privilege, general excise, gross receipts, meals tax and similar transaction taxes in connection with the sale of Items.

6. Invoices. For each order completed using the ECOMS App, ECOMS may issue an invoice and/or receipt for Items and (if applicable) delivery services to Customers on Merchant's behalf provided that Merchant has completed the required Invoice Details. Merchant may dispute invoices and/or receipts issued by ECOMS on Merchant's behalf within a period not exceeding three (3) days from the issuance date of the invoice and/or receipt. Failing this, Merchant is deemed to have validated said invoice and/or receipt.

7. Method Restrictions and Limitations.

- a. **Method Settings.** If Merchant has selected both the Aggregator Method and the Marketplace Method, Merchant may select Aggregator Method and/or Marketplace Method for delivery of future orders of Items to its Customers. Merchant may apply its selections to some or all future orders. Merchant may modify its Method selection at any time. However, the selected Method for an order cannot be modified after the order has been placed. All orders pending at the time Merchant modifies its Method must be completed via the Method selected when the order was placed. The proper Method for each order will be reflected in Merchant's order dashboard available via the ECOMS Tools. ECOMS may modify delivery settings on Merchant's behalf.

- b. **Delivery Radius Modification.** ECOMS, at its discretion, reserves the right to modify Merchant's delivery radius for reasons including, without limitation, to prevent or otherwise limited unfulfilled orders.



- c. **Temporary Usage Restriction.** ECOMS, at its discretion, reserves the right to restrict or otherwise limit Merchant's access to the ECOMS App for a period of time for reasons including, without limitation, to prevent or otherwise limited unfulfilled orders.
  - d. **Transfer Restrictions.** The following restricted items may not be transferred via the ECOMS App: people or animals of any size, illegal items, fragile items, dangerous items (like weapons, explosives, flammables, etc.), stolen goods, or any items that Merchant does not have permission to transfer.
8. **Marks.**

Subject to this Agreement, each party hereby grants to the other party (and, in the case of ECOMS, 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 Merchant's Marks by ECOMS in connection with making Items available through the ECOMS App 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. Merchant agrees that it will not, and will ensure that Aggregator Delivery Partners do not, try to register or otherwise use and/or claim ownership in any of the ECOMS 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.

9. **Marketing and Promotional Activities.**

- a. **Marketing.** ECOMS may showcase the availability of Merchant's Items via the ECOMS App through various promotional activities including, without limitation, social media channels, websites, advertisements, blogs or other media available now or hereinafter created. ECOMS (or a party designated by ECOMS acting on ECOMS behalf) may create video, still images and/or other materials for marketing and other efforts related to the ECOMS App ("ECOMS Marketing Materials"). Merchant agrees that ECOMS Marketing Materials (including, without limitation, all intellectual property rights therein) are and will remain the sole and exclusive property of ECOMS. Additionally, Merchant may choose to provide videos, still images and/or other materials to ECOMS ("Merchant Marketing Materials") for use in connection with the display of Merchant's Items on the ECOMS App, and Merchant hereby grants ECOMS a non-exclusive, royalty free right to use, reproduce, adapt, represent, and display such Merchant Marketing Materials in connection with Merchant's Items and other promotional activities relating to the ECOMS Services, for the entire world, during the Term, using all means and media, and without any restriction other than as required by Applicable Law as regards



exploitation methods, number of prints, dissemination or utilisation.

- b. **No Additional Amounts.** Merchant acknowledges and agrees that, through advertising and marketing, ECOMS may seek to attract new merchants to ECOMS and to increase existing users of the ECOMS Services and ECOMS App. Merchant acknowledges and agrees such advertising or marketing does not entitle Merchant to any additional monetary amounts beyond the amounts expressly stated in this Agreement.
- c. **Merchant Promotional Offers.** ECOMS may authorize Merchant to use certain automated tools that allow Merchant to provide promotional Offers to Customers through the ECOMS App in accordance with the terms of this Agreement. Merchant agrees that it is solely responsible for fulfilling and, subject to technical and functional limitations of the automated tools, defining the Offers provided by Merchant to its Customers.
  - i. **Merchant Promotional Offers.** Subject to this Agreement and any other guidelines or eligibility criteria for Offers that ECOMS may make available from time to time, ECOMS hereby authorizes Merchant to use ECOMS proprietary, automated tools ("Offer Tools") to create and provide Offers to Customers. Unless otherwise specified by ECOMS, Merchant will be solely responsible for defining each Offer (within the scope of functionality provided by the Offer Tools), including, without limitation, the start date, end date, and budget for each Offer. Each Offer will be subject to ECOMS approval. Merchant is responsible for providing to ECOMS Offer Materials in a format and within deadlines specified by ECOMS for such to be reproduced for the provision of the Offer to Customers.
  - ii. **Enhanced Promotional Placements.** Subject to ECOMS App functionality, ECOMS may provide enhanced promotional placement or other visual treatment for the Offers through the start and end date identified by Merchant. Merchant acknowledges that the time period of enhanced promotional placement for an Offer (if applicable) may vary due to a number of factors including Merchant's budget, the start and end date for an Offer, and other ECOMS App functionality.
  - iii. **Merchant's Responsibilities.** Merchant will honor and fulfill the terms of the Offer. Merchant represents and warrants that Merchant will run all Offers in accordance with all Applicable Laws which apply to the Offers. Merchant represents and warrants that Merchant possesses all necessary authority, rights, licenses, consents and permissions to run the Offer (including, without limitation, the rights to any Offer Materials provided to ECOMS). Merchant will not use an Offer to make charitable donations. For free or reduced Delivery Charge Offers, Merchant will be solely responsible for the reduction to the amount that ECOMS collects from Customers with respect to the Delivery Charge.
  - iv. **Reporting and Offer Costs.** ECOMS will use good faith efforts to provide Merchant with reasonable information regarding Merchant's Offers, which may include, without limitation, the Offer Costs and the number of Items sold in connection with an Offer. ECOMS, in its sole discretion, may highlight Offers and/or the results of Offer in its own marketing materials.
  - v. **Service Fees.** For Items where an Offer has been applied as a discount to the Retail Price of the Item, ECOMS will charge Merchant a Service Fee based on the discounted Retail Price and not the full Retail Price. If Merchant's Offer consists of a discount on delivery, the Service Fee will be calculated as described in the Agreement and will not change. Merchant agrees that Merchant is solely responsible for Offer Costs and that ECOMS may deduct Offer Costs from Merchant's Item Revenue. If Merchant is paid for an Item, it is responsible for the Service Fee and relevant Offer Costs.



vi. **Modification, Suspension, Discontinuation.** ECOMS reserves the right, at any time, temporarily or permanently, in whole or in part, to modify, suspend or discontinue the Offer Tools or the ability for Merchant to provide Offers. Merchant agrees that neither ECOMS nor any of its Affiliates shall be liable to Merchant (or to any third party) for the Offer or the Offer Tools, including for any modification, suspension or discontinuance of the Offer or the Offer Tools or providing Merchant with the ability to provide Offers.

d. **Publicity.** Except as may be expressly set forth in this Agreement or otherwise agreed by the parties in writing, neither party may issue a press release or otherwise refer to the other party in any manner with respect to this Agreement or otherwise, without the prior written consent of such other party.

## 10. Virtual Stores.

a. **Definition.** A Merchant who currently offers Foods via the ECOMS App may, under certain conditions, operate a Virtual Stores. All Virtual Store Foods are sold by Merchant.

b. **Merchant's Responsibilities.** Without prejudice to any other provision of this Agreement, a Merchant operating a Virtual Store must adhere to the following conditions:

i. Merchant represents and warrants that Merchant will prepare and sell all Foods and from Virtual Stores at Merchant's premises.

ii. If this premises address changes, Merchant will provide ECOMS with no less than seven (7) days' advance written notice.

iii. The Virtual Store trading name is Merchant's Mark and is subject to the indemnification provision of the Agreement. Merchant represents and warrants that (A) the Virtual Store trading name does not infringe, misappropriate, or otherwise violate any third party's intellectual property or other proprietary rights and (B) it has the right to display the Virtual Store trading name on the ECOMS App. Merchant agrees that ECOMS may remove Virtual Store and stores from the ECOMS App if ECOMS reasonably believes that it may infringe, misappropriate, or otherwise violate any intellectual property or other proprietary rights.

iv. ECOMS may provide Merchant with Virtual Store Data. Merchant agrees that any Virtual Store Data provided by ECOMS or its Affiliates to Merchant constitutes Confidential Information.

v. In consideration for access to Virtual Store Data, Merchant will not enter into any agreement to make Meals and Products available via Virtual Store, or using the same or similar menu or trading name to Virtual Store, with any ECOMS Competitor.

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

a. **Confidentiality.** 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: (i) the Discloser has authorized such use or disclosure (and Merchant hereby authorizes ECOMS to disclose the terms of this Agreement to Merchant's franchisees in connection with executing contracts that reference this Agreement with such franchisees) and (ii) 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".

- b. **Privacy.** Merchant agrees to use Personal Data provided to Merchant by ECOMS solely for the purpose of providing Items to Customers under this Agreement. Merchant agrees to use Personal Data provided to Merchant by ECOMS solely by using the ECOMS Tools provided by ECOMS and shall not copy, store, retain, remove from the ECOMS Tools or otherwise process the Personal Data. Only in the Aggregator Method, Merchant is permitted to copy Personal Data provided via the ECOMS Tools and share it with its Aggregator Delivery Partners for the sole purpose of providing Items to Customers in accordance with this Agreement, and will be responsible for compliance with applicable data protection regulations as a data controller, or the responsible party, for such Personal Data as specified in clause 5(a) of the Aggregator Method Specific Supplemental Terms. In respect of any Personal Data transferred by ECOMS to Merchant, the parties agree that they shall enter into the Data Processing Agreement (controller to controller) in substantially the form attached at Addendum A, included as part of the Aggregator Method Specific Supplemental Terms.
- c. **Aggregate Data.** Merchant acknowledges that ECOMS may use aggregate, anonymized data related to Merchant's transactions in connection with the ECOMS Services ("Aggregate Data"). If Merchant allows a third party to provide technology services to Merchant in connection with Merchant's obligations under this Agreement, then ECOMS may share Aggregate Data with such third party to enable the provision of ECOMS Services to Merchant.
- d. **Third Party Disclosure.** Merchant acknowledges that ECOMS may share Merchant contact information (including name, address, email, and phone number) with third parties necessary to Merchant's onboarding on the ECOMS App, including logistics and/or delivery service providers (for the delivery of Devices or other equipment), as well as photography services (for any photography which may be provided by a third-party provider on behalf of ECOMS).
- e. **Passwords.** Merchant is responsible for maintaining the integrity of information related to Merchant's access and use of the ECOMS Tools and related ECOMS Services, including any password, login or key information. Merchant represents and warrants that Merchant will not share such information with any third party.
- f. **Data Identification Restriction.** Without limiting any other provision of this Agreement, including any provision in this clause, Merchant 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.



- g. **Feedback.** Merchant may, but is not obligated to, provide or otherwise make available to ECOMS certain feedback, suggestions, comments, ideas, or other concepts relating to ECOMS products and services ("Feedback"). However, to the extent that Merchant provides or otherwise makes available Feedback to ECOMS, Merchant hereby grants to ECOMS 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.

## 12. Indemnification.

- a. 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 claims, damages, liabilities, causes of action, and losses (including reasonable attorney's fees) (collectively, "Losses") with respect to any third party claim arising out of or related to: (i) the negligence or willful misconduct of the Indemnifying Party or its employees or agents (in Merchant's case, including Aggregator Delivery Partners but excluding ECOMS and Marketplace Delivery Partners to the extent they are Merchant's agents) in their performance of this Agreement; (ii) any claims that, if true, would be a breach of any of the Indemnifying Party's (in Merchant's case, including via Aggregator Delivery Partners) representations, warranties or covenants in this Agreement; and (iii) 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.
  - b. Merchant will indemnify, defend and hold harmless the ECOMS Indemnified Parties from and against any and all Losses with respect to any third party claim arising out of or related to: (A) Merchant's violation or alleged violation of any applicable retail food or other health and safety code, rule or regulation, (B) Merchant's failure to determine the applicable VAT and other fees charged; (C) Merchant's failure to apply correct VAT rates, including those rates adjusted by ECOMS on Merchant's behalf; (D) VAT, other fees, penalties, interest and other costs related to Merchant's obligations; (E) Merchant copying, storing, retaining, removing from the ECOMS Tools or otherwise processing the Personal Data, except as permitted by clause 11(b) of these General Supplemental Terms; (F) any third party claim for actual or alleged infringement of a third party's intellectual property or other proprietary rights arising out of or in connection with any Offer run by Merchant and use of Offer Materials; and/or (G) any third party claim arising out of or in connection with the manufacture, production, distribution, handling, advertising, consumption or use of, or otherwise relating to, any Offer run by Merchant, whether or not any claim arises during the Term of the Agreement, except in the case of each of (A)-(E) above, to the extent such harm was directly caused by the gross negligence or willful misconduct of ECOMS or its employees, agents or Delivery Partners. With respect to the indemnities in (F) and (G) above, approval by an ECOMS Party of any Offer or use of any Offer Materials shall not affect this right of indemnification.
  - c. 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.
13. Insurance. During the Term and for one (1) year thereafter, each party will maintain Commercial General Liability and, if required by law, Worker's Compensation insurance. The Commercial General Liability insurance policy limits will be ZAR 5 000,000 combined single

limit per occurrence for bodily injury, death and property damage liability, and ZAR 5 000,000 in aggregate. All policies will be written by reputable insurance companies with a Best's policyholder rating of not less than A-. Merchant shall not cancel or materially reduce its insurance without thirty (30) days' prior written notice to ECOMS. Upon a party's request, the other party will provide evidence of the insurance required herein. In no event will the limits of any policy be considered as limiting the liability of a party under this Agreement.

#### 14. **Governing Law and Dispute Resolution.**

- a. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of South Africa without regard to its conflict of laws provisions.
- b. **Dispute Resolution.** "Should any dispute, disagreement or claim arise between the parties (called hereafter "the dispute") concerning this agreement, the parties shall try to resolve the dispute by negotiation. This entails that the one party invites the other in writing to a meeting and to attempt to resolve the dispute within 7 (seven) days from date of the written invitation. If the dispute has not been resolved by such negotiation, the parties shall submit the dispute to AFSA administered mediation, upon the terms set by the AFSA Secretariat. Failing such a resolution, the dispute, if arbitrable in law, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation."

#### 15. **General.**

- a. **Waiver.** The failure of either party to enforce, at any time or for any period of time, the provisions hereof, or the failure of either party to exercise any option herein, shall not be construed as a waiver of such provision or option and shall in no way affect that party's right to enforce such provisions or exercise such option.
- b. **Modification.** Any modification or amendment to the Order Form shall be effective only if in writing and signed by both parties, provided that ECOMS reserves the right to modify any information referenced at hyperlinks from this Agreement from time to time. Any modification or amendment to the Supplemental Terms shall be in accordance with clause II(B) of the Order Form.
- c. **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision or part thereof shall to that extent be deemed not to form part of the Agreement but the legality, validity and enforceability of the remainder of the Agreement shall not be affected. In that event, the parties shall replace the illegal, invalid or unenforceable (part of the) provision with a (part of a) provision that is legal, valid and enforceable and that has, to the greatest extent possible, a similar effect as the illegal, invalid or unenforceable (part of the) provision, given the contents and purpose of the Agreement.
- d. **Force Majeure Event.** Any delay in or failure by either party in the performance of this Agreement shall be excused if and to the extent such delay or failure is caused by a Force Majeure Event. The affected party will promptly notify the other party upon becoming aware that any Force Majeure has occurred or is likely to occur and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under the Agreement.
- e. **Assignment.** Merchant may not assign or transfer this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of ECOMS. ECOMS may assign or transfer this Agreement or any or all of its rights or obligations hereunder, in



whole or in part, under this Agreement without consent or notification. ECOMS shall be expressly discharged from all obligations and responsibilities arising after the assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of each party hereto and its respective successors and assigns.

- f. **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 (including from a labour law, tax law or social security law perspective), between ECOMS (and/or its Affiliates) and Merchant or ECOMS (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 ECOMS (and/or ECOMS Affiliates) and Merchant or ECOMS (and/or ECOMS 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 ECOMS acting as the limited payment collection agent solely for the purpose of collecting payment from Customers on behalf of Merchant, the relationship between the parties under this Agreement is solely that of independent contractors.
- g. **Entire Agreement.** This Agreement contains the full and complete understanding and agreement between the parties and supersedes all prior and contemporary understandings and agreements, whether oral or written. In this Agreement, the words "including" and "include" mean "including, but not limited to."
- h. **Third Party Beneficiaries.** Merchant acknowledges that there are no third party beneficiaries to this Agreement, except for ECOMS. (in its capacity as agent for ECOMS) and ECOMS Affiliates. Nothing contained in this Agreement is intended to or shall be interpreted to create any third-party beneficiary claims, except with respect to ECOMS. (in its capacity as agent for ECOMS) and ECOMS Affiliates.
- i. **Liability.** Nothing herein limits or excludes (nor is intended to limit or exclude) any statutory rights that Merchant or ECOMS may have under Applicable Laws that cannot be lawfully limited or excluded.
- j. **Payment Processing.** Errors. ECOMS reserves the right, in its sole discretion, to seek reimbursement from Merchant if ECOMS discovers payment processing errors. ECOMS may deduct from Merchant's Item Revenue, debit Merchant's payment method on file, or seek reimbursement from Merchant by any other lawful means to correct any errors. Merchant authorizes ECOMS to use any or all of the above methods to seek reimbursement.
- k. **Notice.** Any notice will be sent to the address of the relevant party listed in the Order Form and deemed duly given: (a) upon actual delivery, if delivery is by hand; or (b) three (3) days after being sent by overnight courier, charges prepaid; or (c) by electronic mail to the designated recipient



## **SPECIFIC SUPPLEMENTAL TERMS**

### **MARKETPLACE METHOD**

The following Specific Supplemental Terms govern the use of the Marketplace Method and the general availability of Items via the ECOMS App delivered to Customers on behalf of Merchant by Marketplace Delivery Partners ("Marketplace Items"). All undefined, capitalized terms will have the meaning set forth in the Order Form, the Definitions or the General Supplemental Terms.

1. **Marketplace Items.** Upon Merchant agreeing to the Order Form, Definitions, General Supplemental Terms and Specific Supplemental Terms governing the Marketplace Method, and contingent upon completion of any additional verification steps, the ECOMS Tools will be made available to Merchant to access and request on-demand delivery services provided by Marketplace Delivery Partners. Neither ECOMS nor its Affiliates provide any delivery services. Rather, the ECOMS Services in connection with the Marketplace Method include, without limitation: (a) providing on-demand lead generation, payment processing, marketing, onboarding, operational and other support services in connection with the sale and delivery of Marketplace Items by Merchant via the ECOMS App; and (b) enabling Merchant to access and request on-demand delivery services provided by Marketplace Delivery Partners.
2. **Payment.**
  - a. **Marketplace Service Fee.** In consideration for the ECOMS Services in connection with the Marketplace Method, ECOMS will charge Merchant a Marketplace Service Fee in the amount set out in the Order Form for each Marketplace Item sold by Merchant via the ECOMS App. ECOMS will calculate the Marketplace Service Fee as follows: the Retail Price of the Item(s) sold by Merchant via the ECOMS App (including any VAT or other sales tax) (the "Marketplace Item Payment") multiplied by the Marketplace Service Fee percentage.
  - b. **Marketplace Delivery Services.** Merchant will pay a "Marketplace Delivery Fee" to Marketplace Delivery Partners. The Marketplace Delivery Fee may be comprised of multiple components including, but not limited to: pick up fee, drop off fee, time spent, distance traveled, as well as other promotions and incentives. Where applicable, Marketplace Delivery Partners, via the ECOMS App, will invoice Merchant for the delivery services they provide to Merchant, provided that both Merchant and Marketplace Delivery Partner have completed the required Invoice Details. If Merchant is paid for an Item, it is responsible for the Marketplace Service Fee and for the Marketplace Delivery Fee even if a Marketplace Delivery Partner is unable to complete the delivery services on behalf of Merchant. Merchant authorizes ECOMS to (i) collect a delivery fee from its Customers on its behalf (the "Marketplace Delivery Charge") and (ii) transfer the applicable Marketplace Delivery Fee earned by a Marketplace Delivery Partner to the Marketplace Delivery Partner on Merchant's behalf. In the event the Marketplace Delivery Fee exceeds the Marketplace Delivery Charge, ECOMS will provide Merchant with a discount of the Marketplace Service Fee equal to the difference between the Marketplace Delivery Fee (excluding any VAT or other sales tax) less the Marketplace Delivery Charge (excluding any VAT or other sales tax) (such discount amount being the "Marketplace Discount").
  - c. **Marketplace Delivery Charge.** Merchant authorizes ECOMS to recommend and implement the Marketplace Delivery Charge (comprised of one or more components), and to subsequently suggest and implement modifications, taking into account factors including (but not limited to) eater demand, delivery time, delivery distance, and basket size.
  - d. **Collections.** Notwithstanding the appointment of ECOMS by Merchant as its limited payment collection agent under the Agreement, in the event of a Marketplace Cash Order request by a Customer, Merchant authorizes a Marketplace Delivery Partner to collect the Marketplace



Item Payment sold by Merchant via the ECOMS App (including any VAT or other sales tax) together with the Marketplace Delivery Charge from the Customers on behalf of Merchant. The Marketplace Delivery Partner shall be notified of the funds to be collected by the Marketplace Delivery Partner ("Marketplace Cash Collections"), exclusive of any gratuities, in the ECOMS App. ECOMS role as Merchant's agent with regard to Marketplace Cash Collections shall be to collect the Marketplace Item Payment and ECOMS Marketplace Service Fee from Marketplace Delivery Partners by either obtaining the funds electronically or offsetting such amounts from funds otherwise due to Marketplace Delivery Partners from their delivery services in aggregate generated on the ECOMS App. Merchant acknowledges and agrees that collection shall be the responsibility of the Marketplace Delivery Partner. If for whatever reason Marketplace Delivery Partner's electronic payment to ECOMS is delayed or unsuccessful, ECOMS, in its capacity as Merchant's collection agent, will act as a fall-back and ensure receipt of payment by Merchant. Merchant acknowledges and agrees that in consideration of ECOMS provision of lead generation, demand prediction, and other related services provided via the ECOMS App under the Agreement, Merchant owes ECOMS the respective Marketplace Service Fee, regardless of collections related to the attempted or completed deliveries. ECOMS shall not be deemed to have waived its right to any amounts owed by Merchant if: (a) there are insufficient payment card order to set off against; (b) Merchant does not timely repay any amounts owed to ECOMS; or (c) ECOMS elects to require a minimum amount owed prior to initiating collection efforts or otherwise delays collecting amounts owed by Merchant. ECOMS reserves the right to suspend Merchant's account if Merchant maintains a negative balance for more than one (1) week. With each payment statement, ECOMS shall report any offsetting and deductions.

- e. **Revenue Transfer.** ECOMS will transfer to Merchant the total Marketplace Item Payment (including any VAT or other sales tax collected on Merchant's behalf) earned by Merchant, together with the Delivery Charge collected from Customers on behalf of Merchant, less (1) the Marketplace Delivery Fee, (2) the Marketplace Service Fee (modified to reflect the Marketplace Discount, if any) and (3) any refunds given on behalf of Merchant to Customers (such final transferred amount being the "Marketplace Item Revenue"). The Marketplace Item Revenue will be transferred on a bi-weekly basis.
  - f. **No Additional Amounts.** Merchant acknowledges that the Marketplace Item Payment and the Marketplace Delivery Charge is full payment for the Items and delivery services provided by Merchant to Customers, although the ECOMS Services may provide Customers with the ability to apply a gratuity through the ECOMS Services. With regard to cash gratuities provided by a Customer directly to a Marketplace Delivery Partner, no portion of that gratuity is owed to or should be paid to ECOMS.
3. **Batched Trips.** ECOMS may, at its sole discretion, arrange for one Marketplace Delivery Partner to deliver orders to multiple Customers as part of the same trip. Batched trips may include multiple orders from Merchant, or one or more orders from Merchant combined with one or more orders from other merchants using the ECOMS App.

### **AGGREGATOR METHOD**

The following Specific Supplemental Terms govern the Aggregator Method and Items delivered to Customers on behalf of Merchant by Aggregator Delivery Partners ("Aggregator Items"). All undefined, capitalized terms will have the meaning set forth in the Order Form, the Definitions or the General Supplemental Terms.

1. **Aggregator Items.** Upon Merchant agreeing to the Order Form, the Definitions, the General Supplemental Terms and the Specific Supplemental Terms governing the Aggregator Method, and contingent upon completion of any additional verification steps, the ECOMS Tools will be made available to Merchant for it to (a) access and request lead generation,



demand prediction, payment processing and other related services in connection with its sale and delivery of Items; and (b) fulfil the delivery of its Items using Aggregator Delivery Partners. ECOMS does not provide any delivery services. Rather, ECOMS provides lead generation, demand prediction, payment processing and other related services in connection with the sale and delivery by or on behalf of Merchant of Items to be delivered by Aggregator Delivery Partners.

## 2. Payment.

- a. **Aggregator Service Fee.** In consideration for the ECOMS Services in connection with the Aggregator Method, ECOMS will charge Merchant an Aggregator Service Fee in the amount of 5% of the sale value set forth in the Order Form for each Aggregator Item sold by Merchant via the ECOMS App. ECOMS will calculate the Aggregator Service Fee as follows: the Retail Price of the Aggregator Item(s) sold by Merchant via the ECOMS App (including any VAT or other sales tax) (such amount, the "Aggregator Item Payment") multiplied by the Aggregator Service Fee percentage.
- b. **Aggregator Delivery Services.** Merchant will pay Aggregator Delivery Partners for their delivery services provided to Merchant at its sole discretion, and Merchant is at all times solely responsible for providing payment to Aggregator Delivery Partners. If Merchant is paid for an order, Merchant is responsible for the Aggregator Service Fee even if an Aggregator Delivery Partner is unable to complete the delivery. If applicable, Merchant authorizes ECOMS to collect a delivery charge from Customers on its behalf (the "Aggregator Delivery Charge").
- c. **Revenue Transfer.** ECOMS will transfer to Merchant the total (i) Aggregator Item Payment earned by Merchant (other than with respect to Aggregator Cash Orders); (ii) Aggregator Delivery Charge collected from Customers on Merchant's behalf (other than Aggregator Delivery Charges directly collected by Aggregator Delivery Partners with respect to Aggregator Cash Orders) (iii) gratuity paid by a Customer in respect of delivery services, if applicable, (iv) less (1) the Aggregator Service Fee and (2) any refunds given by ECOMS on behalf of Merchant to Customers (such final transferred amount being the "Aggregator Item Revenue"). The Aggregator Item Revenue will be transferred on a bi-weekly basis.
- d. **No Additional Amounts.** Merchant acknowledges that the Aggregator Item Payment and, where applicable, the Aggregator Delivery Charge is full payment for the Items and delivery services provided to Customers, although the ECOMS Services may provide Customers with the ability to apply a gratuity through the ECOMS Services. With regard to cash gratuities provided by a Customer directly to an Aggregator Delivery Partner, no portion of that gratuity is owed to or should be paid to ECOMS.

## 3. Aggregator Delivery Terms.

- a. **Provision of Delivery Services.** If Merchant chooses for delivery services to be fulfilled by an Aggregator Delivery Partner, Merchant will need to provide the Aggregator Delivery Partner with certain Customer Information provided to Merchant through the ECOMS Tools, including (as applicable) the drop-off location of the applicable Items to be delivered and the name and phone number of the Customer. In order to enhance Customer's satisfaction with the delivery services, it is recommended that an Aggregator Delivery Partner: (i) follow Merchant's instructions for drop-off details (e.g., the location within the building address to pick-up/drop-off a package, etc.); and (ii) wait at least ten (10) minutes for the Customer to appear at the requested pick-up or drop-off location. Merchant represents and warrants that it shall not, and shall ensure that all Aggregator Delivery Partners do not, contact any Customers or use any of the Customer's Personal Data collected in the course of providing the delivery services for any reason other than for the purposes of fulfilling delivery services.



As between ECOMS and Merchant, Merchant acknowledges and agrees that: (a) Merchant and Aggregator Delivery Partners shall be solely responsible for determining the most effective, efficient and safe manner to perform each instance of delivery services; and (b) except for the ECOMS Services and ECOMS Tools, Merchant shall provide all necessary equipment, tools and other materials, at Merchant's expense, necessary to perform delivery services.

- b. **Merchant's Relationship with Customers.** ECOMS and its Affiliates are not responsible or liable for the actions or inactions of a Customer in relation to the activities of Merchant, Aggregator Delivery Partners or any Transportation Method. Merchant acknowledges and agrees that each Aggregator Delivery Partner shall have the sole responsibility for any obligations or liabilities to Merchant, Customers or other third parties that arise from an Aggregator Delivery Partner's provision of delivery services. Merchant acknowledges and agrees that: (a) Merchant and each Aggregator Delivery Partner is solely responsible for taking such precautions as may be reasonable and proper (including maintaining adequate insurance that meets the requirements of all Applicable Laws) regarding any acts or omissions of a Customer or other third party; and (b) ECOMS or its Affiliates may release Merchant's or Aggregator Delivery Partner's contact and/or insurance information to a Customer upon such Customer's reasonable request (e.g., in connection with an accident).
- c. **Merchant's Relationship with ECOMS.** Merchant acknowledges and agrees that ECOMS provision to Merchant of the ECOMS Services creates a legal and direct business relationship between Merchant and ECOMS. ECOMS does not, and shall not be deemed to, direct or control Merchant or its Aggregator Delivery Partners generally or in its or their performance under this Agreement specifically, including in connection with the operation of its business, the provision of delivery services, the acts or omissions of Aggregator Delivery Partners, or the operation and maintenance of any Transportation Method. Merchant and Aggregator Delivery Partners retain the sole right to determine when, where and for how long each of them will utilize the ECOMS Services. Merchant will not, and will ensure that its Aggregator Delivery Partners do not: (a) display ECOMS or any of its affiliates' names, logos or colours on any Transportation Method; or (b) wear a uniform or any other clothing displaying ECOMS or any of its affiliates' names, logos or colours. The foregoing does not apply if Merchant and ECOMS have agreed otherwise in writing or if so required by law. Merchant acknowledges and agrees that Merchant has complete discretion to operate its independent business and direct its Aggregator Delivery Partners at its own discretion, including the ability to provide services at any time to any third party separate and apart from the delivery services. Merchant understands that it retains the complete right to: (i) provide delivery services to its existing Customers; and (ii) use other software application services in addition to the ECOMS Services.
- d. **Merchant's Relationship with Aggregator Delivery Partners.** Merchant shall have the sole responsibility for any obligations or liabilities to Aggregator Delivery Partner that arise from its relationship with Aggregator Delivery Partners (including the provision of delivery services). Merchant acknowledges and agrees that it exercises sole control over the Aggregator Delivery Partners and will comply with (a) all Applicable Laws (including tax, social security and employment laws where applicable) governing or otherwise applicable to its relationship with Aggregator Delivery Partners; (b) industry best practice in respect of working conditions and compensation for Aggregator Delivery Partners. Notwithstanding Merchant's rights, if applicable, to take recourse against Aggregator Delivery Partners, Merchant acknowledges and agrees that it is at all times responsible and liable for the acts and omissions of Aggregator Delivery Partners vis-à-vis Customers, ECOMS and its Affiliates, even where such liability may not be mandated under Applicable Law. Merchant hereby indemnifies ECOMS against any claims brought by or against Aggregator Delivery Partners.

#### 4. **Aggregator Delivery Partners and Transportation Methods.**

- a. **Aggregator Delivery Partner's Requirements.** Merchant acknowledges and agrees that each Aggregator Delivery Partner shall at all times: (i) hold and maintain (A) a valid applicable license with the appropriate level of certification to operate the Transportation Method assigned to each Aggregator Delivery Partner (e.g., a driver's license if the Transportation Method is a motor vehicle), and (B) all licenses, permits, approvals and authority applicable to Merchant and/or Aggregator Delivery Partner that are necessary to provide delivery services to third parties in the Territory; (ii) provide the delivery services in a professional manner with due skill, care and diligence; and (iii) maintain high standards of professionalism, service and courtesy. Merchant will undertake background and driving record checks from time to time, to the extent that such checks would be undertaken by a prudent Merchant exercising reasonable skill and care. Merchant acknowledges and agrees that ECOMS reserves the right, at any time in ECOMS sole discretion, to (i) deactivate or otherwise restrict Merchant from accessing or using the ECOMS Services and/or ECOMS Tools, and/or (ii) request that Merchant prevent an Aggregator Delivery Partner from providing delivery services on behalf of Merchant in connection with the ECOMS Services, in each case if Merchant and/or an Aggregator Delivery Partner fails to meet the requirements set forth in this Agreement. In the event that ECOMS requests that Merchant prevents an Aggregator Delivery Partner from providing delivery services on behalf of Merchant in connection with the ECOMS Services, Merchant shall procure compliance with such request.
- b. **Transportation Method Requirements.** Merchant acknowledges and agrees that any Transportation Method will at all times be: (i) properly registered and licensed to operate as a delivery vehicle in the Territory (if the Transportation Method is a vehicle); (ii) owned or leased by Merchant, or otherwise in its lawful possession; (iii) suitable for performing the delivery services contemplated by this Agreement; and (iv) maintained in good operating condition, consistent with industry safety and maintenance standards for a Transportation Method of its kind and any additional standards or requirements in the applicable Territory, and in a clean and sanitary condition.
- c. **Taxes.** Merchant acknowledges and agrees that Merchant is required to: (i) complete all tax registration obligations and calculate and remit all tax liabilities related to the provision of delivery services and receipt of the ECOMS Services as required by Applicable Law; and (ii) provide ECOMS with all relevant tax information (including a valid VAT number belonging to Merchant and/or any Aggregator Delivery Partner, if obtaining a VAT number is required of Merchant and/or any Aggregator Delivery Partner by Applicable Law). Merchant further acknowledges and agrees that Merchant and each of its Aggregator Delivery Partners are responsible for taxes on their own income arising from the performance of delivery services. Notwithstanding anything to the contrary in this Agreement, ECOMS may in its reasonable discretion, and Merchant accordingly gives consent to ECOMS and its affiliates to, based on applicable tax and regulatory considerations, collect and remit taxes resulting from the provision of delivery services and/or provide any of the relevant tax information Merchant and/or any Aggregator Delivery Partner has provided pursuant to the requirement mentioned above, directly to the applicable governmental tax authorities on Merchant's and/or the applicable Aggregator Delivery Partner's behalf or otherwise.

#### 5. **Privacy.**

- a. In respect of any Personal Data transferred by ECOMS to Merchant, the parties agree that they shall enter into the Data Processing Agreement (controller to controller) in substantially the form attached at Addendum A. Merchant agrees to retain Personal Data provided to Merchant by ECOMS solely by using the software and tools provided by ECOMS, except that Merchant may provide Aggregator Delivery Partners with the Personal Data specified in the Data





Processing Agreement between the parties (or any other Personal Data as ECOMS deems required in its sole discretion) to be used by an Aggregator Delivery Partner solely for the purpose of delivering the applicable Item(s). To the extent that any Personal Data is printed or written on a receipt and transferred to the Aggregator Delivery Partner, Merchant shall procure that (i) the Aggregator Delivery Partner transfers such receipt to the Customer on delivery of the Item(s); or (ii), if the delivery services cannot be completed, the Aggregator Delivery Partner returns such receipt to Merchant and Merchant disposes of such receipt.

- b. Subject to Applicable Law, ECOMS and its Affiliates may provide to Merchant, a Customer, an insurance company and/or relevant authorities and/or regulatory agencies any information (including Personal Data and Confidential Information) about Merchant or an Aggregator Delivery Partner or any delivery services provided hereunder if: (i) there is a complaint, dispute or conflict, including an accident, between an Aggregator Delivery Partner and Merchant or an Aggregator Delivery Partner and a Customer; (ii) it is necessary to enforce the terms of this Agreement; (iii) it is required, in ECOMS or any Affiliate's sole discretion, by Applicable Law or regulatory requirements (e.g., ECOMS or its Affiliates receive a subpoena, warrant, or other legal process for information); or (iv) it is necessary, in ECOMS or any Affiliate's sole discretion, to (A) protect the safety, rights, property or security of ECOMS or its Affiliates, the ECOMS Services, the ECOMS Tools or any third party; (B) to protect the safety of the public for any reason including the facilitation of insurance claims related to the ECOMS Services; (C) to detect, prevent or otherwise address fraud, security or technical issues; (D) to prevent or stop activity which ECOMS or any of its Affiliates, in their sole discretion, may consider to be, or to pose a risk of being, an illegal, unethical, or legally actionable activity; or (v) it is required or necessary, in ECOMS or any Affiliate's sole discretion, for insurance or other purposes related to Merchant and/or its Aggregator Delivery Partners. Merchant understands, and will make Aggregator Delivery Partners aware, that ECOMS and its Affiliates may retain Merchant and Aggregator Delivery Partners' Personal Data for legal, regulatory, safety and other necessary purposes after this Agreement is terminated.
- c. ECOMS and its Affiliates may collect Merchant or Aggregator Delivery Partners' Personal Data during the course of Merchant's use of the ECOMS Services, or from third parties. Such information may be processed by ECOMS and its Affiliates, third parties and service providers, in accordance with its privacy policy.

## **6. Insurance.**

- a. Prior to the Effective Date of the Agreement, Merchant must obtain the coverage required at its sole cost and expense. Merchant agrees to review the terms and conditions of such coverage to ensure that it provides the amounts of coverage required while Merchant and its Aggregator Delivery Partners are using a vehicle to provide delivery services. As between Merchant and ECOMS, it is Merchant's sole responsibility to inform its insurer of the use of its vehicles while providing delivery services.
- b. Merchant agrees to maintain during the Term all compulsory insurance required by Applicable Law to provide delivery services in the Territory. This shall include any applicable compulsory motor vehicle liability insurance on all vehicles operated by Merchant and Aggregator Delivery Partners under this Agreement which provides protection against bodily injury and property damage to Merchant and/or Aggregator Delivery Partners, and third parties at levels of coverage that satisfy the minimum requirements to operate a motor vehicle being used for delivery services on the public roads within the Territory. This shall also include Commercial General Liability insurance that provides protection against personal injury, advertising injury and property damage to third parties at levels of coverage required by all Applicable Laws in the Territory. Merchant shall add ECOMS (or any Affiliate which may be designated by ECOMS from time to time) to its insurance policies required as an additional insured. Merchant agrees to provide ECOMS a copy of the insurance policy, policy

declarations, certificate of Motor Vehicle Liability insurance and proof of premium payment for the insurance policy required upon request. Furthermore, such insurance as required shall not be cancelled or materially reduced without thirty (30) days' prior written notice to ECOMS. ECOMS shall have no right to control Merchant's selection or maintenance of its policy. Merchant must be a named insured or individually rated driver, for which a premium is charged, on any insurance policy required at all times.

- c. Merchant agrees to maintain, during the term of this Agreement, Employer's Liability insurance where required by local law in the Territory. Merchant may also choose where permitted by local law to insure itself against industrial injuries by maintaining Occupational Accident insurance in place of Employer's Liability insurance. Furthermore, if permitted by Applicable Law, Merchant's subcontractors may also, to the extent permitted by Applicable Law, maintain occupational accident insurance in place of Employer's Liability insurance.
7. **Representations and Warranties; Disclaimers.** Merchant's representation and warranty to comply with all Applicable Laws in the performance of the Agreement (as per clause III(A) of the Order Form) shall include holding and complying with all permits, licenses, registrations and other governmental authorisations necessary to provide (i) delivery services using the Transportation Method pursuant to this Agreement, and (ii) delivery services to third parties in the Territory generally.
8. **Tax Indemnity.** Merchant shall comply with all of its obligations under tax and social security laws to the extent applicable to this Agreement. Merchant shall indemnify ECOMS and its Affiliates from all tax liabilities, duties, levies, claims and penalties that may be imposed on Merchant or on ECOMS and/or its affiliates as a result of Merchant's failure to comply with any of its tax obligations. In particular, but without limitation to the foregoing, such taxes or duties shall include taxes, wages or other duties or withholdings (including any wage tax, social insurance premiums or employee insurance premiums) arising in the event that the relationship described in this Agreement, contrary to the intention and meaning of the parties, should be held to be an employment agreement between ECOMS and Merchant by any fiscal or social security authority.
9. **Relationship of the Parties.**
  - a. Merchant has no authority to bind ECOMS and/or its Affiliates and Merchant undertakes not to hold itself out, and to ensure that each Aggregator Delivery Partner does not hold herself or himself out, as an employee, worker, agent or authorized representative of ECOMS and/or its Affiliates. Where, by implication of mandatory law or otherwise, Merchant or any Aggregator Delivery Partner may be deemed an employee, worker, agent or representative of ECOMS or an Affiliate of ECOMS, Merchant undertakes and agrees to indemnify, defend (at ECOMS option) and hold ECOMS and its affiliates harmless from and against any claims by any person, entity, regulators or governmental authorities based on such implied employment, agency or representative relationship.
  - b. Merchant expressly acknowledges and agrees that by agreeing to this Agreement, Merchant intends to perform delivery services in a non-incidentual manner and, as such, ECOMS will consider Merchant and Aggregator Delivery Partners to be taxable persons in accordance with all applicable VAT and indirect tax legislation.

## ADDENDUM A - DATA PRIVACY TERMS

### Commission Decision C(2004)5721 SET II

Standard contractual clauses for the transfer of personal data from the Community to third countries (controller to controller transfers)

Data transfer agreement between

- ECOMS, located at 60 Van Rensburg Goodwood, Cape Town, 7460, South Africa. (the "data exporter") And
- Merchant, identified within the Agreement, as accepting these Clauses (the "data importer"), each a "party"; together the "parties".

The parties have agreed on the following Standard Contractual Clauses (the "clauses") in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Annex A.

The clauses (including Annex A and B) are effective from the date the data importer entity has clicked to accept these clauses. If you are accepting on behalf of the data importer, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand the clauses; and (iii) you agree, on behalf of the party that you represent, to the clauses. The parties agree that where data importer has been presented with these clauses and clicked to accept these terms electronically, such acceptance shall constitute execution of the entirety of the clauses by both parties, subject to the effective date described above.

### Definitions

For the purposes of the clauses:

1. "personal data", "special categories of data/sensitive data", "process/processing", "controller", "processor", "data subject" and "supervisory authority/authority" shall have the same meaning as in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (whereby "the authority" shall mean the competent data protection authority in the territory in which the data exporter is established);
2. "the data exporter" shall mean the controller who transfers the personal data;
3. "the data importer" shall mean the controller who agrees to receive from the data exporter personal data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection;
4. "clauses" shall mean these contractual clauses, which are a free-standing document that does not incorporate commercial business terms established by the parties under separate commercial arrangements.

The details of the transfer (as well as the personal data covered) are specified in Annex B, which forms an integral part of the clauses.

## I. Obligations of the data exporter

The data exporter warrants and undertakes that

The personal data have been collected, processed and transferred in accordance with the laws applicable to the data exporter.

- a. It has used reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses.
- b. It will provide the data importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the data exporter is established.
- c. It will respond to enquiries from data subjects and the authority concerning processing of the personal data by the data importer, unless the parties have agreed that the data importer will so respond, in which case the data exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the data importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- d. It will make available, upon request, a copy of the clauses to data subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the data exporter shall inform data subjects in writing of the reason for removal and of their right to draw the removal to the attention of the authority. However, the data exporter shall abide by a decision of the authority regarding access to the full text of the clauses by data subjects, as long as data subjects have agreed to respect the confidentiality of the confidential information removed. The data exporter shall also provide a copy of the clauses to the authority where required.

## II. Obligations of the data importer

The data importer warrants and undertakes that:

- a. It will have in place appropriate technical and organisational measures to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- b. It will have in place procedures so that any third party it authorises to have access to the personal data, including processors, will respect and maintain the confidentiality and security of the personal data. Any person acting under the authority of the data importer, including a data processor, shall be obligated to process the personal data only on instructions from the data importer. This provision does not apply to persons authorised or required by law or regulation to have access to the personal data.
- c. It has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided for under these clauses, and it will inform the data exporter (which will pass such notification on to the authority where required) if it becomes aware of any such laws.
- d. It will process the personal data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses.
- e. It will identify to the data exporter a contact point within its organisation authorised to respond to enquiries concerning processing of the personal data, and will cooperate in good faith with

the data exporter, the data subject and the authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the data exporter, or if the parties have so agreed, the data importer will assume responsibility for compliance with the provisions of clause I(e).

- f. At the request of the data exporter, it will provide the data exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause III (which may include insurance coverage).
- g. Upon reasonable request of the data exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the data exporter (or any independent or impartial inspection agents or auditors, selected by the data exporter and not reasonably objected to by the data importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the data importer, which consent or approval the data importer will attempt to obtain in a timely fashion.
- h. It will process the personal data, at its option, in accordance with:
  - i. the data protection laws of the country in which the data exporter is established, or
  - ii. the relevant provisions of any Commission decision pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), where the data importer complies with the relevant provisions of such an authorisation or decision and is based in a country to which such an authorisation or decision pertains, but is not covered by such authorisation or decision for the purposes of the transfer(s) of the personal data, or
  - iii. the data processing principles set forth in Annex A.
- Data importer to indicate which option it selects: the data processing principles set forth in Annex A
- i. Data importer accepts by virtue of accepting these clauses.
  - i. It will not disclose or transfer the personal data to a third party data controller located outside the European Economic Area (EEA) unless it notifies the data exporter about the transfer and
  - ii. the third party data controller processes the personal data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - iii. the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - iv. data subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - v. with regard to onward transfers of sensitive data, data subjects have given their unambiguous consent to the onward transfer

### III. Liability and third party rights

- a. Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to data subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the data exporter under its data protection law.
- b. The parties agree that a data subject shall have the right to enforce as a third party beneficiary this clause and clauses I(b), I(d), I(e), II(a), II(c), II(d), II(e), II(h), II(i), III(a), V, VI(d) and VII against the data importer or the data exporter, for their respective breach of their contractual obligations, with regard to his personal data, and accept jurisdiction for this purpose in the data exporter's country of establishment. In cases involving allegations of breach by the data importer, the data subject must first request the data exporter to take appropriate action to enforce his rights against the data importer; if the data exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the data subject may then enforce his rights against the data importer directly. A data subject is entitled to proceed directly against a data exporter that has failed to use reasonable efforts to determine that the data importer is able to satisfy its legal obligations under these clauses (the data exporter shall have the burden to prove that it took reasonable efforts).

### IV. Law applicable to the clauses

These clauses shall be governed by the law of the country in which the data exporter is established, with the exception of the laws and regulations relating to processing of the personal data by the data importer under clause II(h), which shall apply only if so selected by the data importer under that clause.

### V. Resolution of disputes with data subjects or the authority

- a. In the event of a dispute or claim brought by a data subject or the authority concerning the processing of the personal data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.
- b. The parties agree to respond to any generally available non-binding mediation procedure initiated by a data subject or by the authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- c. Each party shall abide by a decision of a competent court of the data exporter's country of establishment or of the authority which is final and against which no further appeal is possible.

### VI. Termination

- a. In the event that the data importer is in breach of its obligations under these clauses, then the data exporter may temporarily suspend the transfer of personal data to the data importer until the breach is repaired or the contract is terminated.
- b. In the event that:
  - i. the transfer of personal data to the data importer has been temporarily suspended by

- the data exporter for longer than one month pursuant to paragraph (a);
- ii. compliance by the data importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
  - iii. the data importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
  - iv. a final decision against which no further appeal is possible of a competent court of the data exporter's country of establishment or of the authority rules that there has been a breach of the clauses by the data importer or the data exporter; or
  - v. a petition is presented for the administration or winding up of the data importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the data importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occur; then the data exporter, without prejudice to any other rights which it may have against the data importer, shall be entitled to terminate these clauses, in which case the authority shall be informed where required. In cases covered by (i), (ii), or (iv) above the data importer may also terminate these clauses.
- c. Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the data importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- d. The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause VI(c)) does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the personal data transferred.

## VII. Variation of these clauses

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the authority where required. This does not preclude the parties from adding additional commercial clauses where required.

## VIII. Description of the Transfer

The details of the transfer and of the personal data are specified in Annex B. The parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause I(e). The parties may execute additional annexes to cover additional transfers, which will be submitted to the authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

## AGGREGATOR METHOD - DATA PRIVACY TERMS - ANNEX A DATA PROCESSING

### PRINCIPLES

1. Purpose limitation: Personal data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the data subject.
2. Data quality and proportionality: Personal data must be accurate and, where necessary, kept up to date. The personal data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the data exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the data controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process the data except on instructions from the data controller.
5. Rights of access, rectification, deletion and objection: As provided in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), data subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the data exporter. Provided that the authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the data importer or other organisations dealing with the data importer and such interests are not overridden by the interests for fundamental rights and freedoms of the data subject. The sources of the personal data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A data subject must also be able to object to the processing of the personal data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the data importer, and the data subject may always challenge a refusal before the authority.
6. Sensitive data: The data importer shall take such additional measures (e.g. relating to security) as are necessary to protect such sensitive data in accordance with its obligations under clause II.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the data subject at any time to "opt-out" from having his data used for such purposes.



8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the data exporter or the data importer which produces legal effects concerning a data subject or significantly affects a data subject and which is based solely on automated processing of personal data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc. The data importer shall not make any automated decisions concerning data subjects, except when:
- a. such decisions are made by the data importer in entering into or performing a contract with the data subject, and
  - b. the data subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to that parties, or
  - c. where otherwise provided by the law of the data exporter.

## AGGREGATOR METHOD - DATA PRIVACY

### TERMS - ANNEX B DESCRIPTION OF THE TRANSFER

#### Data subjects

The personal data transferred concern the following categories of data subjects:

Customers – ECOMS users who receive on-demand delivery of food or other products through ECOMS app(s)

#### Purposes of the transfer(s)

The transfer is made for the following purposes:

Data Importer (Merchant) shall process Data Exporter Personal Data, which shall include (i) name, drop-off location and contact details (including phone number) of the Customers using the ECOMS App; (ii) any Controller Personal Data to be transferred in accordance with the Specific Supplemental Terms for the Aggregator Method; and (iii) any such Controller Personal Data as ECOMS deems needed in connection with the delivery services, in each case for the purpose of procuring the delivery of Items to their customers or as otherwise set out in the Agreement.

#### Categories of data

The personal data transferred concern the following categories of data:

- Profile Information - Such as name, contact details (including phone number), and drop-off location
- Usage information - Information about an ECOMS user's use of ECOMS app(s) or other products or services



## Recipients

The personal data transferred may be disclosed only to the following recipients or categories of recipients: Delivery Partners for the limited specific purpose of providing delivery services Sensitive data (if appropriate)

The personal data transferred concern the following categories of sensitive data:

### **NON-DELIVERY**

The following Specific Supplemental Terms govern the Non-Delivery Method and Items provided to Customers via the Non-Delivery Method ("Non-Delivery Items"). All undefined, capitalized terms will have the meaning set forth in the Order Form, the Definitions or the General Supplemental Terms.

1. **Non-Delivery Items.** Upon Merchant agreeing to the Order Form, the Definitions, the General Supplemental Terms and the Specific Supplemental Terms governing the Non-Delivery Method, and contingent upon completion of any additional verification steps, the ECOMS Tools will be made available to Merchant for it to allow Customers to collect Items requested via the ECOMS App from a specified location without the involvement of a Delivery Partner. Merchant agrees to make Items available via the ECOMS App during its normal business hours, and as further set forth in this clause or mutually agreed between the parties in writing.
2. **Payment.**
  - a. **Non-Delivery Service Fee.** In consideration for the ECOMS Services in connection with the Non-Delivery Method, ECOMS will charge Merchant a Non-Delivery Service Fee in the amount set forth in the Order Form for each Non-Delivery Item sold by Merchant via the ECOMS App. ECOMS will calculate the Non-Delivery Service Fee as follows: the Retail Price of the Item(s) sold by Merchant via the ECOMS App (including any VAT or other sales tax) (such amount, the "Non-Delivery Item Payment") multiplied by the Non-Delivery Service Fee percentage. The Non-Delivery Service Fee shall be net of any VAT or other sales taxes.
  - b. **Delivery Services.** Non-Delivery Items do not require the involvement of a Delivery Partner. As such, for Non-Delivery Items, no delivery services are provided, so there is no Delivery Fee or Delivery Charge.

### **Acceptance**

By clicking "Accept" on the online application form, the merchant agrees to and accepts the terms and conditions of this agreement.