

# Merchant Agreement

(December 2020)



Yoello is authorised and regulated by the Financial Conduct Authority (FCA Reference Number 913784) to carry out payment services activities under the Payment Services Regulations 2017 as an Authorised Payment Institution.

Yoello Limited is registered in England and Wales (No. 09845469) at 168 City Road, Cardiff, CF24 3JE.

## Merchant Agreement (December 2020)

### BACKGROUND

(i) This Agreement ("Agreement") is a legal agreement between Yoello Ltd. ("Yoello", "us", "our" or "we") and the Merchant ("you", "your") consisting of the Merchant Agreement (the sign up pages) and these Conditions. If you do not understand any of the terms of this Agreement, please contact us before using the Services. You may not access or use any Services unless you agree to abide by all of the terms and conditions in this Agreement.

(ii) Yoello has developed certain software applications and platforms which it makes available to merchant subscribers via the internet on a pay per use basis for the purpose of receiving, preparing and serving of Orders by Customers on remises, for Take Away or in advance for goods, services or Vouchers from the Merchant ("Purpose");

(iii) The Merchant wishes to use Yoello's services in its business operations for the Purpose.

(iv) Yoello has agreed to provide, and the Merchant has agreed to take and pay for Yoello's services subject to the terms and conditions of this Agreement (defined below).

**THIS AGREEMENT** consists of the following:

(i) Merchant Agreement;

(ii) the Conditions;

(iii) Terms of Use; and

(iv) any forms submitted to us by you, and any other terms, rules, guidelines or documents about which we may give you notice that they form part of the Agreement which are applicable to the Merchant's use of Yoello's Services by the Merchant for the Purpose, and has been concluded as of the date you chose to Submit the Merchant Agreement on the Yoello sign up pages. If you instruct us to submit the Merchant Agreement on the Yoello sign up pages on your behalf we will do so and will send you email confirmation of your instructions, the Agreement and the date that it was concluded.

Collectively (the "**Agreement**").

From time to time Yoello may add additional services or features which will be available to the Merchant. If the Merchant wishes to add any such additional services or features, the Merchant shall select this via the Portal, and the terms of these Conditions shall apply to the Merchant's use of the additional services or features.

If you do not understand any of the terms of this Agreement, please contact us before using the Services.

You may not access or use any Services unless you agree to abide by all of the terms and conditions in this Agreement.

## **CONDITIONS**

These Conditions form a part of, and apply to the Merchant Agreement made between Yoello Ltd ("Yoello" "we" or "us") and the Merchant ("you" "your").

The following capitalised terms have the following meanings in these Conditions:

**"Authorised Users"** those employees, agents and independent contractors of the Merchant who are authorised by the Merchant to use the Services and the Documentation, as further described in clause 3.5.

**"Chargebacks"** any penalty, payment reversal or similar charges or fees we incur from any card scheme, merchant acquirer or card issuer in respect of Orders.

**"Conditions"** these terms and conditions which shall apply to the Merchant Agreement.

**"Confidential Information"** all information of a proprietary or confidential nature relating to the disclosing party's business, operations, processes, product information, know-how, trade-secrets, market opportunities, prices, charges, customers or suppliers.

**"Customer"** a person who has used an Order Channel to place an Order.

**"Data Protection Legislation"** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party or any similar legislation which applies in the jurisdiction in which the Services may be used by you in terms of this Agreement.

**"Documentation"** document made available to you by Yoello online via the Website or such other web address notified by Yoello to you from time to time which sets out a description of the Services and the user instructions for the Services.

**"Effective Date"** the date of this Agreement.

**"Gross Order Value"** the total amount charged by you to the Customer in respect of an Order (including tips), and any applicable taxes on that amount.

**"Hardware"** means the terminal provided by Yoello to the Merchant in order to receive and pay for on Premises Services and Take Away Services.

**"Initial Term"** has the meaning given to it in clause 12.1.

**"Installation Fee"** means the fee due upon entering into this Agreement. The amount of this charge (excluding taxes) is set out in the Merchant Agreement.

**"Invoice"** an invoice issued by us for the Installation Fee, Merchant Charges and any other amounts due from you under this Merchant

Agreement, payable in accordance with clause 7.

**"KYB"** means the know your business check required to be completed and passed by the Payment Processor prior to any payment being made to you.

**"KYC"** means the know your customer check required to be completed and passed by us and the Payment Processor prior to any payment being made to you.

**"Merchant Agreement"** means the agreement concluded between you and us, which incorporates these Conditions as well as any Yoello forms submitted to us by you, and any other terms, rules, guidelines or documents about which we may give you notice that they form part of the Merchant Agreement which contains the commercial details of this Agreement.

**"Merchant Charges"** means the amounts charged by us to the Merchant as set out in the Merchant Agreement.

## "Opening Hours"

has the meaning given in clause 5.4

**"Order"** an order for your goods, services or a Voucher placed by a Customer and communicated to you by us, and where relevant any comments directed to you by the Customer.

**"Order Channel"** any of the Website or related mobile applications and ordering platforms.

**"Partner Information"** means the information to be provided by the Merchant to Yoello in accordance with clause 5.1.

**"Payment Processor"** means Stripe Inc. and any of its Subsidiaries, or any other third party engaged by us from time to time, that is authorised and regulated to process payments.

**"Payment Processing Agreement"** means the Stripe Connected Account Agreement, or the payment processing agreement between you and any other Payment Processor engaged by us from time to time.

**"Portal"** means the portal which uses the Software made available on the Website which the Merchant accesses in order to receive Orders.

**"Premises"** an outlet controlled by you from which food, drink and other products or services are prepared and served to Customers.

**"Processing Fee"** the fee, plus applicable taxes, charged to you by the Payment Processor on our behalf, on the Gross Order Value of each Order. The amount of this charge (excluding taxes) is set out in the Merchant Agreement.

**"Refunds"** the cancellation of an Order and subsequent return of a Customer payment initiated at your request or by you using the decline, void or similar button on the Website.

**"Renewal Term"** has the meaning given to it in clause 12.1.

**"Service(s)"** means the platform subscription services provided by Yoello to you under this Agreement via the Website or any other website notified to you by Yoello from time to time, as described in clause 3 .

**"Service Fee"** means the fee, plus applicable taxes, payable by Customers to you for the convenience of placing Orders using the Order Channel.

**"Software"** means the online software applications provided by Yoello as part of the Product and Services.

**"Statement Date"** has the meaning provided to it in clause 7.14.

**"Subsidiaries"** means a subsidiary as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) as a nominee.

**"Subscription Fee"** means the fee due for receipt of the Services. The amount of this charge (excluding taxes) is set out in the Merchant Agreement.

**"Support Services Policy"** means Yoello's policy for providing support in relation to the Services as made available on the Website.

**"Take Away"** an Order that is made available for collection by the Customer or delivery by the Merchant to the Customer (if applicable).

**"Term"** the Initial Term together with any Renewal Term.

**"Terms of Use"** means acceptable use policy which applies to the use of the Software.

**"UK Data Protection Legislation"** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**"User Subscription"** the user subscription relating to each Authorised User to access and use the Portal and the Documentation in accordance with this Agreement.

**"Voucher"** an offer made by you to a Customer that may be exchanged for goods or services that you ordinarily provide at your Premises on or before the Voucher Expiry Date.

**"Voucher Expiry Date"** the date that an Order for a Voucher is placed plus 365 days.

**"Voucher Redemption"** the exchange by a Customer of a Voucher (or individual items within a Voucher) for goods or services ordinarily provided by you.

**"Website"** www.yoello.com (or such other website address as notified from Yoello from time to time), and its affiliated websites, web applications, Portal and mobile applications.

**"Yoello Product"** any Hardware or Software provided by us to you (or your staff or contractors) for the purpose of receiving or managing Orders (or other related purposes).

### Interpretation

- (i) Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- (ii) A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- (iii) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (iv) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (v) Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- (vi) A reference to a statute or statutory provision is a reference to it as it is in force as at the Effective Date of this Agreement.
- (v) A reference to a statute or statutory provision shall include all subordinate legislation made as at the Effective Date of this Agreement under that statute or statutory provision.
- (vi) A reference to writing or written includes e-mail unless otherwise expressly stated.
- (vii) References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## 1. FUTURE CHANGES TO THIS AGREEMENT & NOTICES

- 1.1. We may make amendments or additions to this Agreement by giving you no less than 30 days' notice at any time.
- 1.2. Notices under this Agreement shall be in writing and may be given by either party by email, post or via the Website to which both you and we have access.
- 1.3. We may send you Documentation (such as rules or guidelines) via these means, and such Documentation shall be incorporated into this Agreement as if set out herein.

## 2. THE SERVICES WE PROVIDE TO YOU

- 2.1. **Order Channels:** We enable Customers to place Orders to purchase goods, services, Take Away (delivery or collection) or a Voucher from you via an Order Channel. We intend to make each Order Channel available and functional for the purpose of providing the Service at all times but we are under no obligation to do so.
- 2.2. **Agency:** For the term of this Agreement, you irrevocably appoint and authorise us to act as your sole and exclusive provider of services for the purpose of concluding online contracts for the sale of goods, services, Take Away, or a Voucher between you and Customers by means of Customers placing Orders via an Order Channel. The legal contract for the purchase of your goods, services or a Voucher will in all cases be between you and the relevant Customer and you shall fully indemnify and hold us harmless against any claim from a Customer or third party which arises as a result of a breach of such contract by you.
- 2.3. **Marketing:** We may carry out marketing activities using your brand, the purpose of which is

to generate more Orders for you. For example, we may do this online by search engine optimisation using your brand name or other keywords relating to your Premises, by displaying your menu in search results (including on online maps) or by adding links to Order Channels in search engine results for your brand. We may also create and promote a website with a domain of our choosing which allows Customers and consumers to view your products and links to the Order Channels, and (after first obtaining your permission) place a link to any Order Channel on your own website or other online assets controlled by you or us (such as Google My Business pages). You grant us a non-exclusive, royalty free licence to use your name, logo and other intellectual property for the purpose of these marketing activities during the Term and you warrant to us that you have the ability to grant this license to us.

- 2.4. We may provide you with marketing communication from us or third parties (provided you have given us your consent to receive marketing from third parties) in accordance with our Merchant privacy policy.
- 2.5. **Support Services:** We shall, as part of the Services and at no additional cost to you, provide you with our standard Merchant support services in accordance with our Support Services Policy in effect at the time that the Services are provided. We may amend the Support Services Policy at our sole and absolute discretion from time to time.

### 3. YOUR USE OF THE YOELLO PRODUCT

- 3.1. **Ownership of Hardware, repairs & return:** The Yoello Product Hardware, and any other hardware we supply to you remains our property at all times. Risk to the Hardware shall pass to you on delivery, and it must be returned to us in good working condition immediately at the end of the Term. If it is not returned, or if you damage the Yoello Product Hardware through negligence, misuse or by allowing alterations to be performed by anyone other than us or our representatives, we shall charge you for our reasonable costs of repairing or replacing the relevant Yoello Product Hardware.
- 3.2. We shall provide the Yoello Product Hardware with one Merchant login and password to be used by all Authorised Users. You shall, and you shall procure that all Authorised Users keep the login details confidential.
- 3.3. **Ownership of software & use:** The Software remains our property, or that of our licensors at all times. You are authorised to use this Software during the Term in accordance with this Agreement and any additional Terms of Use applicable to the Software which we give you notice of from time to time. You must ensure compliance with the terms of such Terms of Use and this Agreement by your Authorised Users. You must not, and you must ensure that your Authorised Users do not reverse engineer, decompile, disassemble, crack or otherwise misuse the Software, and you will use reasonable efforts to keep the functionality of the Software confidential to you and your Authorised Users.
- 3.4. You acknowledge that the Yoello Product may enable or assist you to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that you do so solely at your own risk. We make no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by you, with any such third party. Any contract entered into and any transaction completed via any third-party website is between you and the relevant third party, and not us. We recommend that you refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. We do not endorse or approve any third-party website nor the content of any of the third-party website made available via the Yoello Product.

- 3.5. **Authorised Users:** Subject to you paying the Merchant Charges in accordance with this Agreement, and the restrictions contained in these Conditions, we shall grant you a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Portal, Yoello Product and Documentation in order to receive the Services during the term solely for your internal business operations.
- 3.6. In relation to the Authorised Users, you shall undertake that:
- 3.6.1. In relation to the Portal, you will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Portal or the Documentation;
  - 3.6.2. each Authorised User shall keep a secure password for his use of the Portal and Documentation, and that each Authorised User shall keep his password confidential; and
  - 3.6.3. you shall maintain a written, up to date list of current Authorised Users and provide such list to us within 5 Business Days of the our written request at any time or times.
- 3.7. Yoello **Product changes:** We may upgrade or alter the Yoello Product Hardware or Software at any time.
- 3.8. Yoello **Product instructions:** You must comply with, and ensure that all Authorised Users comply with any lawful instructions we give you in relation to the use of the Yoello Product Hardware or Software.
- 3.9. **SIM card:** If the Yoello Product contains a SIM card, you must ensure that it is not used for any reason other than in connection with the Yoello Product's use as part of the Service. We may, acting reasonably, invoice you for any costs incurred by us which we believe result from the SIM card being used for any other reason.
- 3.10. **Remote access:** We may remotely access the Yoello Product Software at any time for any lawful reason, in particular to update the Software or to perform Software maintenance.

#### 4. YOUR FULFILMENT OF ORDERS

- 4.1. **Your obligations to Customers:** You acknowledge and understand that once a Customer has placed an Order via an Order Channel, a contract for the supply of goods has been created and you are obliged to fulfil that Order in accordance with the Order details received from us, including on Premises and Take Away Orders. If you do not prepare and serve an Order you receive, you acknowledge that you are in breach of your Agreement with the Customer, and that we may take any action we see fit (including refunding the Customer for any amount received by us from them).
- 4.2. **Acceptance & rejection:** So that we can communicate promptly to Customers the status of their Order, the Yoello Product may allow you to indicate your acceptance or rejection of an Order. You will use best efforts to accept all Orders received from us promptly during your Opening Hours.
- 4.3. **Preparation:** The goods or services forming part of any Order will be supplied from the Premises to which the Order relates and prepared under your control and with reasonable care and skill, and otherwise in accordance with the terms of this Agreement.



- 4.4. **Customer receipts:** You will provide each Customer with a receipt (and a VAT receipt, if applicable) in respect of an Order, if the Customer so requests.
- 4.5. **Take Away:** Unless we have agreed otherwise, we will allow Customers to select Take Away (for collection or delivery) when placing their Order. you must check that the Order number given by the Customer corresponds with the Order number received by you from us.
- 4.6. **Vouchers:** Where the Order relates to the purchase of a Voucher, you will allow the Customer to redeem the Voucher, or an element of the Voucher, at your Premises during normal Opening Hours on or before the Voucher Expiry Date. If the Customer is required to make a reservation in order to redeem their Voucher you will accommodate their reservation request in a manner equivalent to Customers making a reservation without a Voucher.
- 4.7. **Voucher Redemption:** When a Customer redeems a Voucher in whole or in part you are responsible for verifying that the Voucher is valid and that the Customer is entitled to use the Voucher. You are also responsible for registering the redemption of the Voucher in whole or in part on the Product. You agree and accept that if you fail to update the Product correctly you will remain liable for the provision of any goods or services remaining on the Voucher.
- 4.8. **Voucher - alternative goods or services:** If you are unable to provide the goods or services requested by the Customer at the time a Voucher is presented for redemption, you will use your best endeavours to provide a suitable alternative product of equivalent quality and value. If you are unable to provide a suitable alternative you will provide a refund directly to the Customer.
- 4.9. **Voucher Expiry:** If a Customer does not exchange a Voucher for goods or services by the Voucher Expiry Date your obligations to exchange the Voucher will cease. The price paid for any unused goods or services remaining in the Voucher following the Voucher Expiry Date will be retained by you.
- 4.10. **Identification checks:** If the Order contains alcohol, tobacco or other smoking products, or any other age-restricted goods, you must request proof of age from the Customer (in accordance with applicable laws) at the point of service (or collection or delivery if the Order relates to a Take Away). You acknowledge that you are solely responsible for ensuring that the Customer is over the relevant legal age for the purchase of any age-restricted goods.
- 4.11. **Complaints & compensation:** If a Customer complains to us about any aspect of an Order and we give you details of the complaint you will respond to the Customer in a timely manner and will act reasonably and cooperate with us to ensure a prompt resolution. Where we, acting reasonably, have incurred costs as a direct result of complaints about your goods, Premises or services (including where you have rejected an Order), we may invoice you for those costs.

## 5. INFORMATION YOU SUPPLY TO US

- 5.1. **Accuracy & completeness:** You must supply us with any information about your products, your Premises or your business ("**Partner Information**") which we (acting reasonably) may ask you to supply, and you must ensure that such information is accurate. You acknowledge that your Partner Information (such as postcode, and Opening Hours) and information about your services and products will be reproduced verbatim for display to Customers via the Order Channels. You must ensure that we are supplied with Partner Information which is up to date and accurate at all times. You are responsible for the accuracy of all prices and applicable taxes applied to Your services and products on the Website and for ensuring you use the Website to keep your Partner Information, prices and applicable taxes up to date.
- 5.2. **Allergen information:** You are responsible for providing us with up to date details of any

allergens in the goods offered for sale via the Order Channels in accordance with applicable laws, and you acknowledge that we will repeat the information you provide about allergens verbatim on the Order Channels. We do not undertake to check, and are not liable for checking this information on your behalf. You shall fully indemnify and hold us harmless against any claim from a Customer or third party which arises as a result of a breach of this clause 5.2.

- 5.3. **Alcohol, tobacco and smoking products:** Without limiting your obligations to comply with all applicable laws and regulations: (i) if you sell alcohol products, the Partner Information provided by you must include the volume and ABV of each alcohol product offered for sale by you via an Order Channel; and (ii) if you sell tobacco or other smoking products, you will ensure that the Partner Information provided by you, and any images of such products provided by you (if any), complies with all applicable laws relating to the packaging, labelling and health information that is required to be displayed on or accompanying any such products offered for sale by you via an Order Channel. You shall fully indemnify and hold us harmless against any claim from a Customer or third party which arises as a result of a breach of this clause 5.3
- 5.4. **Opening Hours:** You must keep us informed of your hours of operation, and in the case of sales of alcohol products, any licensing restrictions on the hours during which such products can be sold in accordance with clause 9.2 below, (the "**Opening Hours**"), and of any changes to your Opening Hours. If your Opening Hours are stated on your menu or website, we will be entitled to treat these as the Opening Hours unless you give us notice to the contrary.

## 6. PRICE PROMISE

- 6.1. **Merchant prices & discounts:** Unless we have agreed otherwise, the prices, discounts and special offers you provide in respect of your goods and services through the Order Channels (including any delivery charges and minimum order values set by you) must be no less favourable than those offered to consumers via your own online channels for the same goods or services, and you must ensure that details of all prices, discounts and special offers offered on your website are promptly supplied to us so that where we reasonably can, we can offer them to Customers via the Order Channels.

## 7. CHARGES

- 7.1. **Our Charges:** We will charge the Merchant Charges to you, and you shall pay to us the Merchant Charges in accordance with the following:
- 7.1.1. **Installation Fee:** Upon signing the Merchant Agreement, the Installation Fee falls immediately due and in any event shall be payable to us on or before the Effective Date.
  - 7.1.2. **Subscription Fee:** Upon signing the Merchant Agreement, the Subscription Fee is payable on a monthly or annual subscription basis payable in advance and commencing on the Effective date.
  - 7.1.3. **Other charges to you:** We may also charge you (upon reasonable notice) for other services we have provided to you or administrative services at the rates as varied by us from time to time.
  - 7.1.4. We shall be entitled to increase the Merchant Charges at any time during the Term upon 30 days' prior notice to you and the Merchant Agreement shall be deemed to have been amended accordingly.

- 7.2. All amounts and fees stated or referred to in this Agreement:
  - 7.2.1. shall be payable in pounds sterling;
  - 7.2.2. are non-cancellable and non-refundable unless termination of this Agreement is caused by our breach;
  - 7.2.3. are exclusive of value added tax, which shall be added to our Invoice(s) at the appropriate rate.
- 7.3. You shall on the Effective Date provide to us valid, up-to-date and complete credit card details or direct debit details, acceptable to us and any other relevant valid, up-to-date and complete contact and billing details.
- 7.4. You hereby authorise us to bill any credit card, or receive by direct debit, any relevant Merchant Charges or additional charges due from you to us as they fall due in accordance with this Agreement.
- 7.5. **Payments from you to us:** When a payment is due from you to us we will prepare an Invoice setting out the Merchant Charges. Each Invoice, if not otherwise paid by direct debit, is payable within 14 days from the date of the Invoice.
- 7.6. If you disagree with any Invoice, you must give us notice within 7 days of the delivery of the Invoice setting out in detail your reasons for the disagreement. If you do not do this, we reserve the right to treat the relevant Invoice as having been accepted.
- 7.7. Without prejudice to any other right and remedies afforded to us under this Agreement, we shall be entitled to:
  - 7.7.1. charge you monthly interest at 8% above the Bank of England base rate on any unpaid amount as from the payment due date until the earlier of the date that the amount is set off or the amount is received by us. We may also ask you to pay, and you will be liable for, any costs reasonably incurred in connection with the settling or recovering of any overdue payment, and we may set off such costs and any interest on any unpaid amount in accordance with clause 7.7;
  - 7.7.2. disable your password and account and access to all or part of the Services and the Website, without liability to you, and we shall be under no obligation to provide any or all of the Services to you whilst such overdue amounts remain unpaid.
  - 7.7.3. You understand that we are not under any obligation to make refunds of any amounts you have paid to us in respect of the Service or any ancillary or related services.
- 7.8. **Customer fees:** We may levy any charges to Customers for the services we provide to the Customer or to cover the costs to us of operating our own business, as we see fit.
- 7.9. **Payments by Customers to you.**
  - 7.9.1. Where a Customer places an Order, the Payment Processor will arrange payment from the Customer to you of the Gross Order Value (minus the Processing Fee) in accordance with the terms of the Payment Processing Agreement.
  - 7.9.2. You may choose to charge Customers the Service Fee by selecting the option from the Website. If you do this, Customers will be charged the Service Fee (plus applicable taxes) on each order placed through the Order Channel and this amount

will be included in the Gross Order Value.

- 7.10. **Payments by the Payment Processor to You:** The amounts owed by the Payment Processor to you (minus any Refunds and Chargebacks) shall be settled and paid to you by BACS in accordance with the terms of the Payment Processing Agreement.
- 7.11. **Refunds:** The Payment Processor will deduct from any amounts due to you the Gross Order Value in respect of any Refunds initiated by you.
- 7.12. **Chargebacks:** The Payment Processor will deduct from any amounts due to you any Chargebacks incurred from any payment provider (and associated costs and expenses), as set out in the Payment Processing Agreement. You acknowledge and agree that You are responsible for Chargebacks, and neither Yoello or the Payment Processor shall suffer any loss arising from your failure to investigate and resolve Chargeback transactions.
- 7.13. **Withholding & set off:** We are entitled to set off any amounts owed to us by you against any amount owed by the Payment Processor to you at any time ("**Withholdings**"). We may also make Withholdings from any amounts we hold on your behalf where we or the Payment Processor are, or have notice that we may be, ordered to do so by a competent authority. If we make any Withholdings, we will do only for so long as is reasonable, and (if applicable) we will make a credit to you in the next Statement after it becomes clear that we will not incur any liability in respect of it.
- 7.14. **Statements:** Statements showing Orders placed through the Order Channel shall be provided by email or made available to you through the Website. If you disagree with any Statement you must give us notice within 14 days of the delivery of the Statement setting out in detail your reasons for the disagreement. If you do not do this, we reserve the right to treat the relevant Statement as having been accepted.

## 8. YOUR AUTHORITY & CHANGES TO PROPRIETORSHIP

- 8.1. **Authority to deal with us:** Unless we have agreed otherwise in writing, we are authorised to take instructions in respect of your account from, and provide information about your account to, the person who signed this Agreement, any person who appears to us to be employed by that person or by the Merchant and any other person who we (acting reasonably) are satisfied has authority to act on your behalf. You will promptly provide us with any information or evidence we may request for the purpose of proving ownership of the Merchant or its business or Premises.
- 8.2. **Franchises:** We will not be liable to you if we, acting reasonably, decline to provide any aspect of the Services or related services, or decline to act on your instructions because we are on notice from any person who we have reason to believe is your duly authorised franchisor that to do so would breach any agreement made between you and that franchisor.
- 8.3. **Changes to proprietorship:** If you cease to operate your business, or you give someone else the right to operate your business (whether permanently or temporarily) you must give us written notice as soon as possible. If we receive notice of a change to the proprietorship of your business, or other important details relating to your business (for example a change of name, or a change to the account to which payments to you are made) from someone other than you and who appears to us to be authorised by you, then we will make reasonable efforts to contact you. You acknowledge that if you do not respond, or if you don't give us the notice referred to in the first sentence of this clause, we may terminate this Agreement without further notice to you.

## 9. CONSENTS & COMPLIANCE WITH LAWS

- 9.1. **Compliance with laws:** You warrant, represent and undertake to us that you, and any contractors you use in connection with the preparation or serving of Orders will comply at all times with all applicable laws and regulations, in particular (but without limitation) in relation to health and safety, VAT, data protection, food standards, hygiene and information, and the sale of regulated products, and will provide reasonable evidence to us of compliance upon request.
- 9.2. **Licences & consents:** You warrant, represent and undertake to us that you have and will maintain, and will ensure that your contractors have and will maintain, on signature and throughout the Term, any consents, licences, permissions, approvals or authorisations ("**Consents**") (including from any franchisor) required in connection with entering into this Agreement and your performance of your obligations under it, and you will, and will ensure that your contractors will, comply at all times with the terms of such Consents. If you sell alcohol you will also inform us of any restrictions or conditions of your licences that would need to be managed through an Order Channel such as any restrictions of the times at which alcoholic products can be made available for sale. You are not party to and will not enter into any Agreement which would be breached by, or under which any default would occur as a consequence of becoming a party to this Agreement. If you are a franchisee, you warrant to us that you have obtained all necessary Consents from your franchisor in respect of your entry into this Agreement and that you have given notice to your franchisor that you have entered into this Agreement. You will notify us immediately if any Consent is revoked or suspended, lapses, or you otherwise cease to be able to rely on or benefit from any such Consent for any reason.
- 9.3. **Data protection:**
- 9.3.1. We shall process your personal data and the personal data relating to your Authorised Users in accordance with our Merchant privacy policy.
- 9.3.2. For the purposes of this clause 9.3, the following definitions shall apply:
- Agreed Purposes:** the performance by each party of its obligations under this Agreement and the fulfilment of Orders.
- Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures:** as set out in the Data Protection Legislation in force at the time.
- Permitted Recipients:** The parties to this Agreement, any Authorised Users and the employees and contractors of each party, any third parties engaged to perform obligations in connection with this Agreement.
- Shared Personal Data:** the personal data to be shared between you and us under this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the Customer:
- personal details including titles,
  - first name,
  - last name,
  - email address,
  - phone number,
  - online identifiers including IP address.
- 9.3.3. You acknowledge that any data that is inputted into our Website by the Customer or you, any Authorised User or us on your behalf, that is not Shared Personal Data,

shall belong to us.

- 9.3.4. The remainder of this clause 9.3 sets out the framework for the sharing of personal data belonging to the Customer between us as data controllers. Both you and we acknowledge that either you or us (the Data Discloser) will regularly disclose to you or us (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Both parties shall:
- 9.3.4.1. ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
  - 9.3.4.2. give full information to any Customer data subject whose personal data may be processed under this Agreement of the nature such processing. This includes giving notice that, on the termination of this Agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Data Recipients, their successors and assigns;
  - 9.3.4.3. process the Shared Personal Data only for the Agreed Purposes;
  - 9.3.4.4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - 9.3.4.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Agreement;
  - 9.3.4.6. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
  - 9.3.4.7. not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
    - (i) complies with the provisions of Article 26 of the GDPR (in the event the transferee is a joint controller); and
    - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
  - 9.3.5. Compliance. Both you and us shall comply with the Data Protection Legislation and agree that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this Agreement with immediate effect.
  - 9.3.6. Mutual assistance. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
    - 9.3.6.1. consult with the other party about any notices given to data subjects in

relation to the Shared Personal Data;

- 9.3.6.2. promptly inform the other party about the receipt of any data subject access request;
  - 9.3.6.3. provide the other party with reasonable assistance in complying with any data subject access request;
  - 9.3.6.4. not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
  - 9.3.6.5. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
  - 9.3.6.6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
  - 9.3.6.7. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the personal data or for its own purposes;
  - 9.3.6.8. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
  - 9.3.6.9. maintain complete and accurate records and information to demonstrate its compliance with this clause 9.3; and
  - 9.3.6.10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 9.3.7. **Indemnity.** You shall indemnify us against all claims and proceedings and all liability, loss, costs and expenses incurred by the other as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to us as a result of any breach by you of the Data Protection Legislation, its Authorised Users, or any employees or agents.
- 9.4. **Taxes:** You are solely responsible for self-assessing, claiming and remitting all applicable taxes.
- 9.5. **Inspections:** We may, at our cost, inspect your Premises and your business records on no less than 24 hours' notice so that we can audit your compliance with this clause 9.

## 10. REVIEWS

- 10.1. We may display on the Order Channels ratings and comments ("**Reviews**") provided by Customers regarding the Merchant or an Order. We assume no responsibility or liability to

you for any Reviews, and we are not under any obligation to you to remove or edit any Reviews. You will not yourself post, or cause any other party to post any Reviews about your own Merchant or which otherwise breach any guidelines for Reviews published by us.

## 11. SUSPENSION OF SERVICES

- 11.1. If we (acting reasonably) believe that you are in default of your obligations under this Agreement or otherwise are operating your business in a manner which is harmful to our business, goodwill or reputation then without limiting our other rights or remedies, we may at any time suspend provision of the Services under this Agreement (including by suspending your profile on any Order Channel and ceasing to conclude the sale of your goods via any Order Channel) or any other services that we provide to you without liability to you. If you operate more than one Premises, we are entitled to invoke this clause in respect of only one Premises or all of them, at our reasonable discretion.

## 12. TERM & TERMINATION

- 12.1. **Term:** Subject to clauses 12.2, this Agreement comes into force when executed by you, and has an Initial Term of twelve months ("**Initial Term**"). Thereafter, it will automatically renew for successive twelve month periods ("**Renewal Term**") unless terminated in accordance with these Conditions.
- 12.2. **Termination:** Either party can terminate this Agreement by giving the other 30 days' notice at any time to expire at the end of the Initial Term or any Renewal Term. If you are in breach of this Agreement, or if you suffer an insolvency event, we can terminate it immediately on notice to you. Otherwise, we can terminate this Agreement by giving you up to 30 days' notice (but not less than reasonable notice) at any time.
- 12.3. **Automatic termination:** Following execution of this Agreement, we may require you to provide information to us and our Payment Processor or execute further documents for the purpose of onboarding you as a Merchant or other compliance purposes. You may be able to utilise our Services and our Website prior to any KYB and KYC checks being carried out, but we will not be able to make any payments to you until such information has been provided and all KYB and KYC checks have been completed and are satisfactory to us. If you cannot comply with our reasonable requirements within 90 days of execution of this Agreement, or if you fail to pass the KYB and KYC checks, this Agreement will automatically terminate on the last day of that period and we shall not be liable to complete any payments to you. Any money received from the Customer shall be refunded directly to the Customer, and any vouchers provided shall be invalidated.
- 12.4. **Obligations at the end of the Term:** At the end of the Term, we will remove or disable your profile on the Order Channels reasonably promptly. Both you and we will also promptly stop using each other's intellectual property both online and offline (for example, you will remove any links to the Website which may exist on your own website). We will promptly cease to perform our obligations under this Agreement and use reasonable efforts to procure that any affiliate performing similar functions on our behalf ceases to do so, and (if applicable) we will shut down any Order Channel in our control which links to your website. Cached versions of such Order Channels may continue to exist in the web browsers and web servers of search engines and Customers following such termination. We will not have any liability to you in connection with these matters to the extent that they lie outside of our control.
- 12.5. **Survival of certain rights & obligations:** The rights and obligations of the parties under clauses 3.1, 3.2, 4, 7, 8, 9, 11, 12.4 and 12.5 will continue and survive beyond the



termination of this Agreement.

### 13. LIMITATION OF LIABILITY & INDEMNITY

- 13.1. **General exclusion:** Nothing in this Agreement shall limit or exclude either party's liability for: death or personal injury caused by its own negligence, or the negligence of its employees, agents or subcontractors; or fraud or fraudulent misrepresentation; or breach of any term implied by any statute or any liability which (in each case) cannot lawfully be limited or excluded.
- 13.2. **Exclusion of our liability:** Subject to clause 13.1, we are not liable to you whether in contract, tort (including negligence), breach of statutory duty or otherwise for: (a) any special damages, any loss of goodwill, reputation, business, profits, data, actual or anticipated income or profits or loss of contract or any indirect or consequential losses; and (b) any damages, costs, direct or indirect losses which relate to faults, breakdowns or other interruptions to the ability of Customers to place Orders for any reason whatsoever;
- 13.3. **Limitation of our liability:** Subject always to clause 13.2, our total liability to you in respect of any losses arising under or in connection with this Agreement howsoever caused is limited to an amount equal to an amount of money held by us on your behalf as at the date of the event giving rise to the claim.
- 13.4. **Force majeure:** We will not be liable to you as a result of any delay or failure to perform our obligations under this Agreement caused by any event or circumstance beyond our reasonable control.
- 13.5. **Indemnity:** You will indemnify us against: any charges (including Chargebacks), losses, damages or claims (and all related costs) made or levied against us by a Customer or any third party in connection with a breach by you of this Agreement and/or any applicable laws, rules and regulations in force at the relevant time; and any losses, damages or claims (and all related costs) resulting from a third-party claim against us relating to a violation of the third party's intellectual property rights where we have used a brand name, logo or related intellectual property in accordance with this Agreement.

### 14. OTHER MATTERS

- 14.1. **Entire agreement:** Save as set out in the Merchant Agreement, this Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between the parties, whether written or oral, relating to its subject matter, and neither party will have any claim for innocent or negligent misstatement based upon any statement in this Agreement.
- 14.2. **Assignment by us:** We are entitled to assign, transfer or sub-contract all or any of our rights and obligations under this Agreement to any entity which is at least 50% owned or is controlled by us, or which directly or indirectly controls us, or which is owned (directly or indirectly) by any entity that directly or indirectly controls us, or to any other third-party which owes us at least equivalent obligations as we owe to you under this Agreement.
- 14.3. **Assignment by you:** You are entitled to assign, transfer, charge, or sub-contract all or any of your rights or obligations under this Agreement only with our prior consent in writing.
- 14.4. **Confidentiality:** Both you and us may be given access to Confidential Information from the other party in order to perform our obligations under this Agreement. Confidential information shall not be deemed to include information that:

- 14.4.1. is or becomes publicly known other than through any act or omission of the receiving party;
  - 14.4.2. was in the other party's lawful possession before the disclosure;
  - 14.4.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 14.4.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.5. Subject to clause 14.7, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 14.6. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 14.7. Either of us may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 14.8. You acknowledge that details of the Services constitute our Confidential Information.
- 14.9. **Severability:** If any of the terms this Agreement are declared wholly or partly invalid, illegal or unenforceable, the remainder of this Agreement will remain in full force and effect and any wholly or partly invalid term or condition will be deemed modified to the minimum extent possible to make it valid, legal and enforceable.
- 14.10. Governing law & jurisdiction:** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any dispute or claim relating to non-contractual obligations) is governed by and construed in accordance with English law. The courts of England & Wales have exclusive jurisdiction to settle any dispute or claim (including any dispute or claim relating to non-contractual obligations) arising in connection with this Agreement.